

Complaint

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IN THE MATTER OF

GIFFORD-HILL & COMPANY, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECTION 7 OF THE CLAYTON ACT AND SECTION 5 OF THE FEDERAL
TRADE COMMISSION ACT

Docket 8989. Complaint, Aug. 7, 1976 — Decision, Sept. 28, 1976

Consent order requiring a Dallas, Tex., producer and seller of construction material, among other things, to divest itself of the stock assets and capital stock of three acquired companies; Southern Equipment Corporation, Becker Sand & Gravel Company, and Concrete Supply Company, within one (1) year of the effective date of this order. Further, respondent is prohibited from acquiring any company engaged in the sale of construction aggregates within a specified radius of respondent's North Carolina plant, for a period of ten (10) years without prior F.T.C. approval.

Appearances

For the Commission: *Paul N. Kane* and *Paul T. Breitstein*.

For the respondent: *John H. Schafer*, *Covington & Burling*, Washington, D.C. *Merlyn D. Sampels*, *Worsham, Forsythe & Sampels*, Dallas, Tex.

COMPLAINT

The Federal Trade Commission having reason to believe that Gifford-Hill & Company, Inc., a corporation, has violated and is now violating the provisions of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §§18, 45) through the acquisition of the capital stock or assets of Concrete Materials, Inc., a corporation; Southern Equipment Corporation, a corporation; H. L. Coble Construction Company, a corporation; Becker Sand & Gravel Company, a corporation; and capital stock of Concrete Supply Co., a corporation, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint pursuant to the provisions of Section 11 of the aforesaid Clayton Act (15 U.S.C. §21) and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §45) stating its charges as follows:

I

DEFINITIONS

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

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

b. "Ready mixed concrete" — includes all portland cement concrete manufactured and delivered to a purchaser in a plastic and unhardened state. Ready mixed concrete includes central mixed concrete, shrink mixed concrete and transit mixed concrete.

c. "Prestressed concrete products" — includes all precast, pretensioned, prestressed or post-tensioned concrete members, the essential raw materials of which are portland cement, aggregates, water and frequently steel.

d. "Concrete block" — includes all concrete masonry and paving block, the essential raw materials of which are portland cement, aggregates and water.

e. "Fine aggregate" — Fine aggregate is that material which consists of natural sand, manufactured sand, or a combination thereof, having clean, hard, uncoated particles conforming to all specifications established by the State Highway Commission of North Carolina or by the State Highway Department of South Carolina for use in portland cement concrete.

f. "The Charlotte Area" — Consists of the Counties of Mecklenburg and Union in the State of North Carolina.

g. "The Fayetteville Area" — Consists of Cumberland County in the State of North Carolina.

h. "The Greensboro Area" — Consists of the Counties of Forsyth, Guilford, Randolph and Yadkin in the State of North Carolina.

i. "The Raleigh Area" — Consists of Wake County in the State of North Carolina.

j. "The Wilmington Area" — Consists of the Counties of Brunswick and New Hanover in the State of North Carolina.

k. "The Charleston Area" — Consists of the Counties of Berkeley and Charleston in the State of South Carolina.

l. "The Greenville Area" — Consists of the Counties of Greenville and Pickens in the State of South Carolina.

m. "The Atlanta Area" — Consists of the Counties of Clayton, Cobb, Dekalb, Fulton and Gwinnett in the State of Georgia.

II

GIFFORD-HILL & COMPANY, INC.

2. Gifford-Hill & Company, Inc. (hereinafter Gifford-Hill), respondent herein, was incorporated under the laws of Texas in 1926, and since its 1969 reincorporation has been a corporation organized, existing

and doing business under the laws of the State of Delaware with its office and principal place of business located at 2949 Stemmons Freeway, Dallas, Texas.

3. Gifford-Hill, its subsidiaries and 50%-owned companies are primarily engaged in the production and sale of certain construction materials, including ready mixed concrete, aggregates, portland cement, prestressed and pre-cast concrete products, concrete pipe, concrete pressure pipe and roll-formed metal building products. In addition, Gifford-Hill manufactures and sells agricultural irrigation systems, aluminum tubing, plastic pipe and machinery, tools and dies for metal fabrication and handling. A wholly-owned subsidiary is engaged in specialized motor truck transportation of specified commodities and another wholly-owned subsidiary of Gifford-Hill is engaged in real estate investment and development.

4. Gifford-Hill, in calendar 1972, had net sales of \$146,071,442, assets of \$128,370,004 and net income amounting to \$9,020,415.

5. In 1972 Gifford-Hill began construction of a portland cement plant near Harleyville, South Carolina (55 miles southeast of Columbia), which, when completed will have an annual estimated capacity to produce 3 million barrels of portland cement, which can be distributed in each of the areas defined in Paragraph 1 above and in other areas of North Carolina, South Carolina, Georgia and Florida. This plant will cost approximately \$26 million and was scheduled to be completed in January of 1974.

6. At all times relevant herein, Gifford-Hill has been a corporation engaged in the purchase or sale of products in interstate commerce and is engaged in commerce, as "commerce" is defined in the amended Clayton and Federal Trade Commission Acts.

III

CONCRETE MATERIALS, INC. AND WHOLLY OWNED SUBSIDIARY — CONCRETE MATERIALS OF GEORGIA, INC.

7. Prior to December 15, 1967, Concrete Materials, Inc. (hereinafter CMI), was a corporation organized and existing under the laws of the State of North Carolina with its principal office located in Charlotte, North Carolina. CMI's wholly-owned subsidiary, Concrete Materials of Georgia, Inc. (hereinafter CMI of Georgia) was a corporation organized and existing under the laws of the State of Georgia with its principal office located in Clayton County, Georgia.

8. At the time of its acquisition, CMI and its wholly-owned subsidiary, CMI of Georgia were, and for many years had been, engaged in the production and sale of prestressed concrete products.

For the calendar year 1967, CMI and its wholly-owned subsidiary CMI of Georgia had sales of \$9,178,190 and assets of \$7,975,883.

9. CMI and CMI of Georgia operated two prestressed concrete products plants, one being located in Charlotte, North Carolina and the other being located in Conley, Georgia. During 1969, CMI was the leading producer of prestressed concrete products in the Charlotte Area and CMI of Georgia was likewise the leading producer of prestressed concrete products in the Atlanta Area.

10. At all times relevant herein, CMI and its wholly-owned subsidiary CMI of Georgia were corporations engaged in the purchase or sale of products in interstate commerce and were engaged in commerce, as "commerce" is defined in the amended Clayton and Federal Trade Commission Acts.

IV

ACQUISITION

11. On or about December 15, 1967, Gifford-Hill acquired 81 percent of all the outstanding capital stock of CMI and thereby acquired control of its wholly-owned subsidiary, CMI of Georgia, for a total consideration of \$1,052,552.50. Thereafter, on December 31, 1969, CMI of Georgia was merged into CMI. In April of 1970, Gifford-Hill purchased the remaining 19 percent of all the outstanding capital stock of CMI for 29,624 shares of Gifford-Hill common stock, \$2.00 par value, having a fair market value of \$402,886. On December 31, 1970, CMI was dissolved and liquidated, its assets and business being transferred to Gifford-Hill.

V

CONCRETE SUPPLY CO.

12. Prior to December, 1967, Concrete Supply Co. was a corporation organized and existing under the laws of the State of North Carolina with its principal office located in Charlotte, North Carolina.

13. At the time of its acquisition, Concrete Supply Co. was and for many years had been, engaged in the production and sale of ready mixed concrete in the Charlotte Area and nearby Counties in North Carolina. For the calendar year 1967, Concrete Supply Co. had net sales of \$5,066,000, assets of \$1,358,596 and net profit before taxes of \$414,557.

14. Concrete Supply Co. operated six ready mixed concrete plants in the Charlotte Area and nearby Counties in North Carolina. Concrete Supply Co. was the leading supplier of ready mixed concrete and the

largest such consumer of portland cement in the Charlotte Area. During 1967, Concrete Supply Co. consumed 480,000 barrels of portland cement and sold 369,000 cubic yards of ready mixed concrete.

15. At all times relevant herein, Concrete Supply Co. was a corporation engaged in the purchase or sale of products in interstate commerce and was engaged in commerce, as "commerce" is defined in the amended Clayton and Federal Trade Commission Acts.

VI

ACQUISITION

16. On or about December 15, 1967, Gifford-Hill acquired 81 percent of all the outstanding capital stock of Concrete Materials, Inc. (hereinafter CMI). Thereafter, in April of 1970, Gifford-Hill purchased the remaining 19 percent of all the outstanding capital stock of CMI. CMI owned 50 percent of all the outstanding capital stock of Concrete Supply Co. On December 31, 1970, CMI was dissolved and liquidated and direct ownership of 50 percent of all the outstanding capital stock of Concrete Supply Co. was thereby acquired and secured by Gifford-Hill. Gifford-Hill has continued its ownership of substantially all of such acquired capital stock of Concrete Supply Co.

VII

SOUTHERN EQUIPMENT CORPORATION

17. Prior to September 14, 1970, Southern Equipment Corporation was a corporation organized and existing under the laws of the State of North Carolina with its principal office located in Raleigh, North Carolina.

18. At the time of its acquisition, Southern Equipment Corporation was, and for many years had been, engaged in production and sale of ready mixed concrete in the Raleigh Area. For the calendar year 1969, this company had sales of \$3,175,531, assets of \$1,472,701, and net profits before taxes of \$394,623.

19. Southern Equipment Corporation operated four ready mixed concrete plants in the Raleigh Area. This corporation was the largest producer of ready mixed concrete and the largest such consumer of portland cement, in the Raleigh Area during 1969. In 1969 this corporation sold 193,281 cubic yards of ready mixed concrete and consumed 255,667 barrels of portland cement.

20. At all times relevant herein, Southern Equipment Corporation was a corporation engaged in the purchase or sale of products in

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interstate commerce, and was engaged in commerce, as "commerce" is defined in the amended Clayton and Federal Trade Commission Acts.

VIII

ACQUISITION

21. On or about September 14, 1970, Gifford-Hill acquired all the outstanding capital stock of Southern Equipment Corporation for approximately \$2,600,000 in the form of cash and notes.

IX

READY-MIX CONCRETE COMPANY DIVISION OF THE H. L. COBLE
CONSTRUCTION CO.

22. Prior to September 15, 1970, H. L. Coble Construction Company, a corporation organized and existing under the laws of the State of North Carolina, with its principal office located in Greensboro, North Carolina, operated a division known as Ready-Mix Concrete Company (hereinafter Greensboro Ready-Mix).

23. At the time of its acquisition, Greensboro Ready-Mix was, and for several years had been, engaged in the production and sale of ready mixed concrete and since 1969, had been engaged in the production and sale of concrete block in the Greensboro Area. For the calendar year 1969, Greensboro Ready-Mix had sales of \$1,507,037, assets of \$761,302, and net profits before taxes of \$35,100.

24. Greensboro Ready-Mix operated two ready mixed concrete plants and a concrete block plant in Greensboro, North Carolina. During 1969, Greensboro Ready-Mix consumed 131,651 barrels of portland cement, and sold 88,608 cubic yards of ready mixed concrete.

25. At all times relevant herein, H. L. Coble Construction Company, through Greensboro Ready-Mix, was engaged in the purchase or sale of products in interstate commerce and was engaged in commerce, as "commerce" is defined in the amended Clayton and Federal Trade Commission Acts.

X

ACQUISITION

26. On or about September 15, 1970, Gifford-Hill acquired the business and assets of the Ready-Mix Concrete Company Division of the H. L. Coble Construction Company for approximately \$1,400,000 in cash, notes and assumed liabilities.

XI

BECKER SAND & GRAVEL COMPANY

27. Prior to July 1, 1972, Becker Sand & Gravel Company (hereinafter Becker), was a corporation organized and existing under the laws of the State of Minnesota with its principal office located in Cheraw, South Carolina.

28. At the time of its acquisition Becker was, and for many years had been, engaged in the production and sale of mineral aggregates principally within the States of North Carolina and South Carolina. For the calendar year 1971, Becker had sales of \$10,067,414, assets of \$9,074,839, and net income before taxes of \$1,226,422.

29. Becker operated five sand and gravel plants, a gravel plant, two sand plants and a specialty aggregate plant and a slag sales outlet in North Carolina and South Carolina. Becker is one of the leading producers of fine aggregate which is essential in the production of ready mixed concrete, in North Carolina and South Carolina.

30. At all times relevant herein, Becker was a corporation engaged in the purchase or sale of products in interstate commerce and was engaged in commerce, as "commerce" is defined in the amended Clayton and Federal Trade Commission Acts.

XII

ACQUISITION

31. On or about July 1, 1972, Gifford-Hill acquired all the outstanding stock of Becker, exchanging therefor 300,000 shares of Gifford-Hill Common Stock valued at that time at approximately \$8,100,000 and cash of \$81,098.

XIII

NATURE OF TRADE AND COMMERCE

32. Portland cement is a material which in the presence of water binds coarse aggregate, such as crushed stone or gravel and fine aggregate, such as sand, into concrete. Portland cement and fine aggregate are essential ingredients in the manufacture of ready mixed concrete, prestressed concrete products and concrete block.

33. The portland cement industry in the United States is substantial. In 1972, there were approximately 51 portland cement companies in the United States operating approximately 170 plants. Total shipments of portland cement in 1972 amounted to approximately 83 million tons, valued at about \$1.6 billion.

34. Portland cement manufacturers sell their portland cement to consumers such as ready mixed concrete companies, prestressed concrete products manufacturers, concrete block producers, contractors and building material dealers. On a national basis, approximately 60 percent of all portland cement is shipped to firms engaged in the production and sale of ready mixed concrete. However, in heavily populated metropolitan areas, the percentage of portland cement consumed by ready mixed concrete companies is usually higher. In North Carolina, South Carolina and Georgia, portland cement consumers have generally not been integrated or affiliated with portland cement manufacturers.

35. The fine aggregate industry in North Carolina and South Carolina is substantial. In 1972, there were approximately 45 producers of fine aggregate doing business within these two States. Total shipments of fine aggregate to all customers located in the Fayetteville, Greensboro, Raleigh, Wilmington, Charleston and Greenville Areas exceeded 2,000,000 tons during 1972.

36. Fine aggregate producers sell their product to consumers such as ready mixed concrete companies, prestressed concrete products manufacturers, concrete block producers, contractors and building material dealers. During 1972, producers of ready mixed concrete consumed approximately 59 percent of all fine aggregate shipped to the Fayetteville, Greensboro, Raleigh, Wilmington, Charleston and Greenville Areas.

37. Any vertical merger or acquisition which occurs in the portland cement or fine aggregate industries potentially forecloses competing portland cement or fine aggregate manufacturers from a segment of the market otherwise open to them and places great pressure on competing manufacturers likewise to acquire portland cement or fine aggregate consumers in order to protect their markets. Thus, each such vertical acquisition may form an integral part of a chain reaction of such acquisitions, contributing both to the share of the market already foreclosed, and to the impetus for further such acquisitions. Gifford-Hill, by its programs and activities, has demonstrated its proclivity to conduct its business and to engage in competition, on vertically integrated bases, not only within the States of North Carolina, South Carolina and Georgia, but also within other domestic geographic areas.

38. The ownership of a significant producer of fine aggregate by a portland cement manufacturer may foreclose competing portland cement or fine aggregate producers from segments of otherwise available markets. This amalgamation may be used to compel or influence the purchasing decisions of independent consumers of

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portland cement and fine aggregate to the detriment of actual or potential competition in the manufacture and sale of these products.

XIV

EFFECTS OF THE ACQUISITIONS

Count I

Alleging the violation of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §§18, 45), the charges of Paragraphs One through Eleven and Thirty-Two through Thirty-Eight hereof are incorporated by reference herein as if set forth verbatim.

39. The effect of Gifford-Hill's acquisition of the stock and assets of Concrete Materials, Inc. and Concrete Materials of Georgia, Inc., in itself, cumulatively, and by potentially causing a trend toward vertical integration between suppliers and consumers of portland cement, may be substantially to lessen competition or to tend to create a monopoly in the manufacture and sale of portland cement or prestressed concrete products in the Charlotte Area or in the Atlanta Area in the following ways, among others:

a. Gifford-Hill's competitors have been and/or may be foreclosed from a substantial segment of the market for portland cement.

b. The ability of Gifford-Hill's nonintegrated competitors effectively to compete in the sale of portland cement or prestressed concrete products has been and/or may be substantially impaired.

c. The entry of new portland cement or prestressed concrete products competitors may have been and/or may be inhibited or prevented.

d. Gifford-Hill, as a fully integrated manufacturer and seller of portland cement and prestressed concrete products, may achieve a decisive competitive advantage over its competitors which are engaged solely in the manufacture and sale of portland cement or prestressed concrete products.

e. Gifford-Hill has been eliminated as a potential entrant through internal expansion in the production and sale of prestressed concrete products.

Count II

Alleging the violation of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §§18, 45), the charge of Paragraphs One through Six, Twelve

through Sixteen and Thirty-Two through Thirty-Eight hereof are incorporated by reference herein as if set forth verbatim.

40. The effect of Gifford-Hill's acquisition of 50 percent of the outstanding stock of Concrete Supply Company, in itself, cumulatively, and by potentially causing a trend toward vertical integration between suppliers and consumers of portland cement, may be substantially to lessen competition or to tend to create a monopoly in the manufacture and sale of portland cement or ready mixed concrete in the Charlotte Area, in the following ways, among others:

- a. Gifford-Hill's competitors have been and/or may be foreclosed from a substantial segment of the market for portland cement.
- b. The ability of Gifford-Hill's nonintegrated competitors effectively to compete in the sale of portland cement or ready mixed concrete has been and/or may be substantially impaired.
- c. The entry of new portland cement or ready mixed concrete competitors may have been and/or may be inhibited or prevented.
- d. Gifford-Hill, as a fully integrated manufacturer and seller of portland cement, ready mixed concrete, prestressed concrete products and fine aggregate, may achieve a decisive competitive advantage over its competitors which are engaged solely in the manufacture and sale of portland cement or ready mixed concrete.
- e. Gifford-Hill has been eliminated as a potential entrant through internal expansion in the production and sale of ready mixed concrete.

Count III

Alleging the violation of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §§18, 45), the charges of Paragraphs One through Six, Seventeen through Twenty-One and Thirty-Two through Thirty-Eight hereof are incorporated by reference herein as if set forth verbatim.

41. The effect of Gifford-Hill's acquisition of the stock of Southern Equipment Corporation in itself, cumulatively, and by potentially causing a trend toward vertical integration between suppliers and consumers of portland cement, may be substantially to lessen competition or tend to create a monopoly in the manufacture and sale of portland cement, ready mixed concrete or fine aggregate in the Raleigh Area, in the following ways, among others:

- a. Gifford-Hill's competitors have been and/or may be foreclosed from a substantial segment of the market for portland cement or fine aggregate.
- b. The ability of Gifford-Hill's nonintegrated competitors effective-

ly to compete in the sale of portland cement, ready mixed concrete or fine aggregate has been and/or may be substantially impaired.

c. The entry of new portland cement, ready mixed concrete or fine aggregate competitors may have been and/or may be inhibited or prevented.

d. Gifford-Hill, as a fully integrated manufacturer and seller of portland cement, ready mixed concrete and fine aggregate, may achieve a decisive competitive advantage over its competitors which are engaged solely in the manufacture and sale of portland cement, ready mixed concrete or fine aggregate.

e. Gifford-Hill has been eliminated as a potential entrant through internal expansion in the production and sale of ready mixed concrete or fine aggregate.

Count IV

Alleging the violation of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §§18, 45), the charges of Paragraphs One through Six, Twenty-Two through Twenty-Six and Thirty-Two through Thirty-Eight are incorporated by reference herein as if set forth verbatim.

42. The effect of Gifford-Hill's acquisition of the assets of Ready-Mix Concrete Company Division of the H. L. Coble Construction Co., in itself, cumulatively, and by potentially causing a trend toward vertical integration between suppliers and consumers of portland cement may be substantially to lessen competition or tend to create a monopoly in the manufacture and sale of portland cement, ready mixed concrete, concrete block or fine aggregate in the Greensboro Area in the following ways, among others:

a. Gifford-Hill's competitors have been and/or may be foreclosed from a substantial segment of the market for portland cement or fine aggregate.

b. The ability of Gifford-Hill's nonintegrated competitors effectively to compete in the sale of portland cement, ready mixed concrete, concrete block or fine aggregate has been and/or may be substantially impaired.

c. The entry of new portland cement, ready mixed concrete, concrete block or fine aggregate competitors may have been and/or may be inhibited or prevented.

d. Gifford-Hill, as a fully integrated manufacturer and seller of portland cement, ready mixed concrete, concrete block and fine aggregate, may achieve a decisive competitive advantage over its competitors which are engaged solely in the manufacture and sale of

portland cement, ready mixed concrete, concrete block or fine aggregate.

e. Gifford-Hill has been eliminated as a potential entrant through internal expansion in the production and sale of ready mixed concrete, concrete block or fine aggregate.

Count V

Alleging the violation of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §§18, 45), the charges of Paragraphs One through Six, Twenty-Seven through Thirty-Eight hereof are incorporated by reference herein as if set forth verbatim.

43. The effect of Gifford-Hill's acquisition of the stock and assets of Becker Sand & Gravel Company in itself, cumulatively, and by potentially causing a trend toward vertical integration between suppliers and consumers of fine aggregate may be substantially to lessen competition or to tend to create a monopoly in the manufacture and sale of portland cement or fine aggregate in the Fayetteville Area, Greensboro Area, Raleigh Area, Wilmington Area, Charleston Area, or the Greenville Area, or may be substantially to lessen competition or to tend to create a monopoly in the manufacture and sale of ready mixed concrete in the Raleigh Area or the Greensboro Area in the following ways, among others:

a. Gifford-Hill's competitors have been and/or may be foreclosed from a substantial segment of the market for portland cement or fine aggregate.

b. The ability of Gifford-Hill's competitors effectively to compete in the sale of portland cement and/or fine aggregate may be substantially impaired.

c. The ability of Gifford-Hill's nonintegrated competitors effectively to compete in the sale of ready mixed concrete in the Raleigh Area or in the Greensboro Area may be substantially impaired.

d. The entry of new portland cement and/or fine aggregate competitors may have been and/or may be inhibited or prevented.

e. Gifford-Hill, as a manufacturer and seller of both portland cement and fine aggregate, may achieve a decisive competitive advantage over its competitors which are engaged solely in the manufacture and sale of portland cement or fine aggregate.

f. Gifford-Hill, as a fully integrated manufacturer and seller of portland cement, ready mixed concrete and fine aggregate, may achieve a decisive competitive advantage over its competitors in the Raleigh Area or in the Greensboro Area which are engaged solely in the

manufacture and sale of portland cement, ready mixed concrete or fine aggregate.

g. Gifford-Hill has been eliminated as a potential entrant through internal expansion in the production and sale of fine aggregate.

DECISION AND ORDER

The Commission having issued its complaint charging that the respondent named in the caption hereof has violated the provisions of Section 7 of the Clayton Act, as amended (15 U.S.C. §18) and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §45); and

Respondent and complaint counsel, by joint motion filed March 31, 1976 having moved to have the matter withdrawn from adjudication for the purpose of submitting an executed consent agreement; and

The Commission, by Order issued April 20, 1976, having withdrawn this matter from adjudication pursuant to Section 3.25(c) of its Rules; and

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

The Commission having considered and provisionally accepted the agreement, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, and having duly considered the comment filed thereafter pursuant to Section 3.25(d) of its Rules, now in further conformity with the procedure prescribed in Section 3.25(d) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent, Gifford-Hill & Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 8435 Stemmons Freeway, Dallas, Texas.

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

ORDER

For the purposes of this order the following definitions shall apply:

A. "Portland cement"—includes Types I through V of portland

cement as specified by the American Society for Testing Materials. Neither masonry nor white cement is included.

B. "Ready mixed concrete"—includes all portland cement concrete manufactured and delivered to a purchaser in a plastic and unhardened state. Ready mixed concrete includes central mixed concrete, shrink mixed concrete and transit mixed concrete.

C. "Concrete block"—includes all concrete masonry and paving block, the essential raw materials of which are portland cement, aggregates and water.

D. "Construction aggregates"—Construction aggregates are those materials which consist of natural sand, gravel, manufactured sand, or crushed stone suitable in the manufacture of portland cement concrete.

E. "Respondent" means Gifford-Hill & Company, Inc. and all of its domestic subsidiaries, affiliates and their respective successors and assigns.

I

It is ordered, That respondent, and its officers, directors, agents, representatives, and employees, within one (1) year from the date of service of this order, (i) divest, absolutely, subject to the approval of the Federal Trade Commission, as going concerns and as separate and viable competitor(s), all stock, assets, properties, rights or privileges, tangible and intangible, including, but not limited to, all plants, equipment, machinery, raw material reserves, inventory, customer lists, contract rights, trade names, trademarks and goodwill, acquired by respondent, as a result of the acquisition of the stock and/or assets of Southern Equipment Corporation, and Becker Sand & Gravel Company, together with all additions and improvements thereto and replacements thereof of whatever description and (ii) divest, absolutely, subject to the approval of the Federal Trade Commission, its ownership of the capital stock of Concrete Supply Company.

II

It is further ordered, That pending such divestitures, respondent shall not make or permit any deterioration or changes in any of the plants, assets, machinery, equipment, properties, rights or privileges, tangible and intangible, to be divested which would impair their present capacity or market value.

III

It is further ordered, That none of the stock, assets, properties, rights or privileges, tangible and intangible, required to be divested be sold or

transferred, directly or indirectly, to any person who is at the time of the divestiture an officer, director, employee, or agent of, or under the control or direction of, Gifford-Hill & Company, Inc., 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 voting stock of Gifford-Hill & Company, Inc., or any of its subsidiaries or affiliates, or successors or assigns thereof, without the prior approval of the Federal Trade Commission, or, directly or indirectly, to Martin-Marietta Corporation, B.V. Hedrick Gravel & Sand Co., lessees of B.V. Hedrick Gravel & Sand Co., or W.R. Bonsal Company, their respective subsidiaries, affiliates, stockholders, directors, officers, employees, lessees, successors, agents or assigns, or to the lessees, successors, agents or assigns of such stockholders, directors, officers or employees. Without the prior approval of the Federal Trade Commission, each divestiture herein required shall be concluded with separate and unrelated acquirers.

IV

It is further ordered, That for a period of ten (10) years from the date of service of this order, respondent shall cease and desist from acquiring, directly or indirectly, without the prior approval of the Federal Trade Commission, the whole or any part of the share capital, assets or any interest of any company, corporation or partnership engaged in the sale of construction aggregates within a three hundred (300) mile distance of respondent's cement plant located at Harleyville, South Carolina, or the whole or any part of the share capital, assets or any interest of any company, corporation or partnership engaged in the sale of ready mixed concrete or concrete block within a three hundred (300) mile distance of respondent's cement plant located at Harleyville, South Carolina, which purchased more than 40,000 barrels or 7,520 tons of portland cement in any of the three (3) years preceding the proposed acquisition.

V

It is further ordered, That for so long as respondent holds, directly or indirectly, any security interest or promissory note received as whole or part consideration in the sale effecting each divestiture required by Paragraph I hereof or retains directly or indirectly, a bona fide lien, mortgage, deed of trust, or other security interest in any of the stock, property, plants or equipment divested, respondent, without the prior approval of the Federal Trade Commission, may provide no more portland cement to that plant or group of plants than an amount, in

tons, equal to more than (i) fifty percent (50%) of the portland cement consumed by the plant or group of plants, respectively, during the three (3) calendar years following such divestiture, (ii) forty percent (40%) for the next such three (3) calendar years, and (iii) thirty percent (30%) thereafter. When respondent ceases to hold, directly or indirectly any such security interest, promissory note, lien, mortgage or deed of trust, or other security interest in any of the stock, property, plants or equipment divested, the restriction provided for in this Paragraph V shall no longer be applicable.

VI

It is further ordered, That with respect to the divestitures required herein, nothing in this order shall be deemed to prohibit respondent from accepting consideration which is not entirely cash and from accepting and enforcing a promissory note, mortgage, deed of trust or other interest for the purpose of securing to respondent payment of the price received by respondent in connection with each divestiture required by Paragraph I hereof; *provided, however,* that should respondent by enforcement of such interest, or for any other reason, regain direct or indirect ownership or control of any of the divested assets, properties, rights and privileges, tangible and intangible, said ownership or control shall be expeditiously redvested subject to the provisions of this order as soon as possible, but in no event beyond one (1) year from the date of reacquisition.

VII

It is further ordered, That respondent shall, within sixty (60) days from the date of service of this order, and every sixty (60) days thereafter until the divestitures are fully effected, submit to the Commission a detailed written report of its actions, plans and progress in complying with the divestiture provisions of this order, and fulfilling its objectives. All reports shall include, among other things that will be from time to time required, a summary of all contacts and negotiations with any person or persons interested in acquiring the stock, assets, properties, rights or privileges, whether tangible or intangible, to be divested under this order, the identity of each such person or persons, and copies of all written communications to and from each such person or persons. Annual reports of compliance with the remaining provisions of this order shall be submitted to the Commission on the anniversary date of the service of this order.

VIII

It is further ordered, That respondent provide a copy of this order to each purchaser of stock, plants and assets divested pursuant to this order at or before the time of purchase.

Commissioner Dole did not participate by reason of absence.

IN THE MATTER OF
AMREP CORPORATION

Docket 9018. Order, Sept. 28, 1976

Administrative law judge's recommendation to obtain transcript of grand jury testimony taken under advisement pending report from administrative law judge, upon resumption of administrative hearing, relative to disclosure to the parties of said testimony in the criminal trial.

Appearances

For the Commission: *Perry W. Winston, Jon R. Calhoun and George E. Schulman.*

For the respondent: *Martin M. Maneker, Proskauer, Rose, Goetz & Mendelsohn, New York City and Peter W. Williamson and Michael E. Schoeman, New York City.*

ORDER

The administrative law judge on July 6, 1976, certified to the Commission a recommendation that appropriate action be taken to obtain transcripts of grand jury testimony of various witnesses named in a subpoena duces tecum issued by the administrative law judge on June 17, 1976, who have testified, or are expected to testify, during the presentation of complaint counsel's case-in-chief. On August 2, 1976, the ALJ, in a supplementary report, advised that the transcripts of two of the witnesses have been made available to the parties in the instant proceeding and that two of the witnesses did not testify before the grand jury. The ALJ now recommends that the Commission attempt to procure the testimony of the fifth witness, Paul W. Heinz. The recommendation, however, may be mooted if the testimony is made available to defendant Amrep during the course of the trial in *United States v. Amrep Corp.*, 75 Cr. 1023 (S.D. N.Y.), pursuant to the Jencks Act, 18 U.S.C. §3500.¹

The Commission will, therefore, take the recommendation under advisement pending the certification of a report by the ALJ upon the resumption of the administrative hearing indicating whether complaint counsel intend to call Mr. Heinz as a witness, and, if so, whether Mr. Heinz' grand jury testimony was disclosed to the parties during the course of the criminal trial.

It is so ordered.

Commissioner Dole not participating by reason of absence.

¹ The Commission need not now address the question whether respondent is entitled to the testimony for use in the instant proceeding.