

Complaint

IN THE MATTER OF

**OCCIDENTAL PETROLEUM CORPORATION AND
VULCAN MATERIALS COMPANY**

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

*Docket C-4139; File No. 0510009
Complaint, July 13, 2005--Decision, July 13, 2005*

This consent order addresses the acquisition by Respondent Occidental Chemical Company of the chemical assets of Respondent Vulcan Materials Company. The order, among other things, requires the respondents to divest a facility owned by Vulcan in Port Edwards, Wisconsin -- and assets relating to the research, development, marketing, sales, and production of chemicals produced at that facility, including chlorine, caustic soda (sodium hydroxide), KOH (potassium hydroxide), APC (anhydrous potassium carbonate), and hydrochloric acid ("Port Edwards business") -- to ERCO Worldwide ("ERCO") or to another buyer approved by the Commission. An accompanying Order to Maintain Assets requires the respondents to preserve the Port Edwards business as a viable, competitive, and ongoing operation until the divestiture is achieved.

Participants

For the Commission: *John B. Warden, Susan Huber, Wallace W. Easterling, Kristina Martin, April Tabor, Eric D. Rohlck, Jacqueline Tapp, Sara S. Brown, Ria M. Williams, Michael H. Knight, Daniel P. Ducore, Louis Silvia, and Mark Frankena.*

For the Respondent: *Deborah L. Feinstein and Mark R. Merley, Arnold & Porter LLP and Joseph P. Larson, Wachtell, Lipton, Rosen & Katz.*

COMPLAINT

Pursuant to the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission ("Commission"), having reason to believe that Occidental Petroleum Corporation, a corporation subject to the jurisdiction of the Commission, has entered into an agreement

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to acquire the chemicals business of Vulcan Materials Company, a corporation subject to the jurisdiction of the Commission, and that the acquisition, if consummated, would result in a violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and Section 7 of the Clayton Act, 15 U.S.C. § 18, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

A. THE RESPONDENTS

1. Respondent Occidental Petroleum Corporation (“Occidental”) is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its headquarters and principal place of business at 10889 Wilshire Boulevard, Los Angeles, CA. It is the parent company of Occidental Chemical Corporation (“OxyChem”), whose headquarters and principal place of business is located at Occidental Tower, 5005 LBJ Freeway, Dallas, Texas 75244.

2. Occidental, through its subsidiary OxyChem, owns and operates eight U.S. chloralkali plants and holds a 76 percent interest in OxyVinyls LP which has two additional U.S. chloralkali plants. The large majority of chloralkali plants produce chlorine and caustic soda (sodium hydroxide or NaOH); however, some chloralkali facilities produce chlorine and KOH (potassium hydroxide or caustic potash). OxyChem produces KOH at its chloralkali facilities in Delaware City, Delaware; Mobile, Alabama; and Muscle Shoals, Alabama. OxyChem is the largest producer of KOH in the United States.

3. OxyChem owns 50 percent of Armand Products Company (“Armand”), a joint venture with Church & Dwight. Armand produces potassium carbonate (“potcarb”) and potassium bicarbonate at a facility in Muscle Shoals, Alabama that is operated by OxyChem and located next to OxyChem’s Muscle Shoals chloralkali facility. Armand is the largest producer of potcarb in the

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United States. Most of Armand's production is of the solid form of potcarb, known as APC or anhydrous potassium carbonate.

4. Respondent Occidental is, and at all times relevant herein has been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, 15 U.S.C. § 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

5. Respondent Vulcan Materials Company ("Vulcan") is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its headquarters and principal place of business located at 1200 Urban Center Drive, Birmingham, Alabama 35242.

6. Respondent Vulcan's chemicals business consists of three chloralkali plants and related assets. Vulcan's plants are located in Port Edwards, Wisconsin; Geismar, Louisiana; and Wichita, Kansas. In addition, Vulcan and Mitsui & Co. Ltd. are joint venture partners in a second chloralkali plant and an ethylene dichloride plant in Geismar, Louisiana. Vulcan produces KOH and potcarb at its Port Edwards, Wisconsin facility and sells these chemicals to customers in the United States. Vulcan produces the second largest volume of potassium hydroxide and potassium carbonate in the United States.

7. Respondent Vulcan is, and at all times relevant herein has been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, 15 U.S.C. § 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

B. THE PROPOSED TRANSACTION

8. On October 12, 2004, Respondents announced that they had entered into an agreement whereby Occidental, through its subsidiary OxyChem, would purchase Vulcan's chemical business, including Vulcan's three plants and related transportation and distribution assets and assume certain liabilities. Included in the transaction is

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the Vulcan-Mitsui joint venture at Geismar. The purchase price is \$214 million plus certain contingent future payments, projected to equal approximately \$145 million. Throughout this Complaint this transaction is referred to as “the proposed transaction.”

C. THE RELEVANT MARKETS

9. For the purposes of this Complaint, the relevant product markets in which to analyze the effects of the proposed transaction are research, marketing, manufacture, and sale of (1) potassium hydroxide (also known as KOH); (2) potcarb; and (3) anhydrous potassium carbonate or APC.

10. KOH is a chemical made by the electrolytic decomposition of potassium chloride brine into chlorine and KOH. It is the most commonly used intermediate form in which inorganic potassium chemicals are manufactured. KOH is the raw material for the production of many potassium chemicals, such as potassium carbonate, potassium permanganate, citrate, acetate, cyanide, benzoate, iodide, and sorbate.

11. Potcarb is the highest volume potassium chemical produced using KOH. It is produced through the carbonation of KOH. End uses for potcarb include nutrition supplements for dairy cattle, video glass for television and computer monitors, other specialty glass, potassium silicates, fertilizers, gas processing, industrial intermediaries, photographic development processes, detergents, and food products.

12. Potcarb can be produced in liquid or solid form. The solid form is known as anhydrous potassium carbonate or APC. The majority of total potcarb production in the United States is of APC. APC requires a more sophisticated production process and greater capital investment than does liquid potcarb production. Most APC users cannot economically substitute liquid potcarb for APC.

13. The relevant geographic market in which to assess the impact of the proposed acquisition is no broader than the United States.

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Competition is national in scope, with U.S. producers of the relevant products marketing and selling their products to customers throughout the United States. Imports of the relevant products are limited. The potential for increased imports is limited by transportation costs and by customer requirements for security and timeliness of supply.

D. MARKET STRUCTURE

a. KOH

14. The market for KOH is highly concentrated. In 2004, there were three producers of KOH in the United States: OxyChem, Vulcan, and ASHTA Chemicals (“ASHTA”). In that year, production by OxyChem and Vulcan accounted for over 80% of total U.S. production and capacity.

15. In 2005, Olin Corp. entered the domestic KOH market. Olin partially converted half of its chloralkali facility in Tennessee to be able to produce either KOH or caustic soda. With the addition of Olin’s KOH capacity, the combined KOH capacity of OxyChem and Vulcan is approximately 70% of total U.S. capacity. It is expected that Olin’s production in 2005 will represent a small portion of total U.S. production.

16. As measured by capacity, including Olin, the proposed transaction would increase the Herfindahl-Hirschman Index (“HHI”) of concentration in domestic KOH by over 1300 points to over 5000.

b. PotCarb

17. The market for potcarb is highly concentrated. There are four producers of potcarb in the United States: Armand, Vulcan, ASHTA, and Na-Churs/Alpine Solutions. ASHTA and Na-Churs produce only liquid potcarb. Armand and Vulcan together accounted the great majority of potcarb produced in the United States in 2004 and controlled over 80% of total capacity. Imports of potcarb account for less than 2% of total potcarb sales.

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18. If the proposed transaction is consummated, OxyChem will own the potcarb production assets of Vulcan. Because of the relationship between Armand and OxyChem, they are not independent competitors and their capacity and production are considered jointly for concentration analysis.

19. The proposed transaction would increase the HHI for potcarb, as measured by capacity, by over 1800 points to a postmerger HHI of over 7000 points.

c. APC

20. The market for APC is very highly concentrated. Armand and Vulcan are the only two producers of APC in the United States. Together they accounted for all of the APC produced and over 95% of the APC sold in the United States. ASHTA also owns a facility that can produce APC; however, the company idled the facility at the end of 2002.

21. For APC, the proposed transaction would increase the HHI for production to 10,000 points, an increase of over 2000 points. Taking into account the available capacity of ASHTA's idled APC facility, the transaction would result in an HHI of over 8500 and an increase of over 2000 points.

E. COMPETITION

22. KOH and potcarb are commodity products. The majority of customers have no preference based on product composition for KOH or potcarb from a particular manufacturer, although customers may require products of differing granularity.

23. OxyChem and Vulcan are direct competitors in the sale of KOH in the United States. Many KOH customers obtain bids or quotes from both companies and use competition between them to obtain better pricing.

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24. OxyChem, through Armand, and Vulcan are direct competitors in the sale of potcarb and APC in the United States. The companies compete with one another to supply customers with potcarb and APC, often participating in competitive bidding processes to be a particular customer's supplier of potcarb and/or APC.

F. ENTRY CONDITIONS

25. New entry will not be timely, likely, or sufficient to constrain OxyChem from exercising market power if the proposed transaction is consummated. To constrain OxyChem sufficiently, entry or expansion would have to be of a size and scope that would replicate the competitive impact of Vulcan.

26. New entry will not be timely, likely, or sufficient in the KOH market. Prior to Olin's entry into the KOH market in 2005, the most recent entrant into the KOH market had been Vulcan, which entered the market in the mid-1980s, also through conversion of caustic soda capacity at an existing chloralkali plant. Only caustic soda production facilities using mercury cell or membrane technology are suitable for conversion to KOH for the U.S. market. These production technologies account for less than 35% of U.S. caustic soda capability and a number of plants are too large to be viably converted to KOH production for the smaller KOH market. There are at least two caustic soda manufacturers with facilities theoretically suitable for conversion, in whole or part, to the production of KOH; however, it is unlikely that either of these would enter the KOH market, even if KOH pricing increases a small but significant amount as a result of the proposed transaction. *De novo* construction of a KOH facility is extremely unlikely and would not be timely. It would require a significant capital expenditure and take over two years to complete.

27. Entry into the potcarb market will not be timely, likely, or sufficient. The vast majority of potcarb customers in the U.S. require APC, the solid form of potcarb; therefore, a new producer of liquid potcarb would not be sufficient to replace the competition lost

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by the exit of Vulcan as a result of the proposed transaction. It is very unlikely a manufacturer without its own source of KOH would find it economically viable to invest in an APC production facility and compete with manufacturers with internal sources of product.

28. Market conditions in the potcarb market are not conducive to additional APC entry. There is excess APC capacity in the United States due to a decrease in demand over the past several years. Further, available KCl for use in KOH production is extremely tight due to increasing demand in the agricultural market and it is unlikely that increased supplies will be available at least over the next 12 to 24 months. Given the current market conditions and other factors, it is unlikely that either Olin or ASHTA would find it economically viable to enter the APC market within the next two years, even in response to a small but significant increase in price. Further, unless Olin were to make the decision to enter relatively quickly, its putative entry would not be timely as it can take up to 2 years to construct an APC facility.

G. EFFECTS OF THE PROPOSED ACQUISITION

29. The effect of the acquisition may be substantially to lessen competition and to tend to create a monopoly in the relevant markets in violation 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, in the following ways, among others:

- a. It will substantially increase concentration in the markets for KOH, potcarb and APC;
- b. It will eliminate Vulcan as the most significant competitor in the KOH market and the only significant competitor in the potcarb and APC markets; and
- c. It will lead to a reduction in competition and an increase in the likelihood that OxyChem and Armand will increase prices in the markets for KOH, potcarb, and APC.

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H. VIOLATIONS CHARGED

30. The proposed transaction between Occidental and Vulcan violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

31. The proposed transaction between Occidental and Vulcan, if consummated, would violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this 13th day of July, 2005, issues its Complaint against said Respondents.

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DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent Occidental Petroleum Corporation, hereinafter referred to as “Respondent Oxy,” of three chemical plants and related assets from Vulcan Chloralkali, LLC and Vulcan Materials Company, hereinafter collectively referred to as “Respondent Vulcan,” and Respondent Oxy and Respondent Vulcan (“Respondents”) having been furnished thereafter with a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge Respondents with violations 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

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent 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, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and thereupon having issued its Complaint and Order to Maintain Assets, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following

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Decision and Order (“Order”):

1. Respondent Occidental Petroleum Corporation is a publicly traded company, 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 10889 Wilshire Boulevard, Los Angeles, California 90024-4201.

2. Respondent Vulcan Materials Company is a publicly traded company, organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its office and principal place of business located at 1200 Urban Center Dr., Birmingham AL 35242.

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

4. ERCO Worldwide (USA) Inc. is a company organized, existing, and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 302 The East Mall, Suite 200, Toronto, Ontario, Canada, M9B 6C7, and is a subsidiary of Superior Holdings (USA) Inc., which is a subsidiary of Superior Plus, Inc. (a Canadian company).

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Respondent Oxy” or “Oxy” means Occidental Petroleum Corporation, a corporation, its directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns; its joint ventures, including Armand Products Company, subsidiaries, including Occidental Chemical Corporation (“OxyChem”) and Basic Chemicals Company, LLC, divisions, groups and affiliates controlled by Occidental Petroleum Corporation, and the respective directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns of each.

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- B. “Respondent Vulcan” or “Vulcan” means Vulcan Materials Company, a corporation, its directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns; its joint ventures, including Vulcan Chloralkali LLC, subsidiaries, divisions, groups and affiliates controlled by Vulcan Materials Company, and the respective directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns of each.
- C. “ERCO” means ERCO Worldwide (USA) Inc., a corporation organized and doing business under the laws Delaware, with its executive offices at 302 The East Mall, Suite 200, Toronto, Ontario, Canada, M9B 6C7, and which is a subsidiary of Superior Holdings (USA) Inc. which is a subsidiary of Superior Plus, Inc. (a Canadian company).
- D. “Commission” means the Federal Trade Commission.
- E. “Acquirer” means either ERCO or any other entity that receives the prior approval of the Commission to acquire the Port Edwards Assets pursuant to Paragraphs II or V of this Order.
- F. “Acquisition” means the proposed acquisition by Respondent Oxy of three chloralkali plants and related assets in Geismar, Louisiana, Port Edwards, Wisconsin, and Wichita, Kansas, from Vulcan pursuant to and as described in the Asset Purchase Agreement dated October 11, 2004, between Basic Chemicals Company, LLC, and Vulcan.
- G. “Acquisition Date” means the date the Acquisition is consummated.
- H. “Assigned Contract Customer” means a KOH or potassium carbonate customer of the Acquirer whose contract was assigned as a part of the Divestiture Agreement and is listed in Confidential Appendix C.
- I. “Confidential Business Information” means all information that is not in the public domain related to research, development, manufacture, marketing, commercialization, distribution, importation, cost, pricing, supply, sales, sales support, or use of the particular assets.
- J. “Divestiture Agreement” means either the ERCO Acquisition Agreement or any other agreement that receives the prior approval of the Commission between Respondents

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and an Acquirer (or between a Divestiture Trustee and an Acquirer), as well as all amendments, exhibits, attachments, agreements, and schedules thereto, related to the divestiture of the Port Edwards Assets pursuant to Paragraphs II or V of this Order.

- K. “Divestiture Trustee” means any trustee appointed by the Commission pursuant to Paragraph V of this Order.
- L. “Designated Vulcan Staff” means those persons, or persons filling the positions, identified in Confidential Appendix A to this Order.
- M. “Dual Contract Customer” means an Assigned Contract Customer who, at the time this Order is issued, is supplied either KOH or potassium carbonate, by contract or otherwise, by Respondent Oxy and is listed in Confidential Appendix C.
- N. “ERCO Acquisition Agreement” means the April 11, 2005, Asset Purchase and Sale Agreement, with amendments, attachments, exhibits, and schedules, between Basic Chemicals Company, LLC, and ERCO Worldwide (USA) Inc. attached as Confidential Appendix B to this Order.
- O. “Effective Date of Divestiture” means the date on which Respondents (or a Divestiture Trustee) divests to the Acquirer the Port Edwards Business completely and as required by Paragraphs II or V of this Order.
- P. “Governmental Entity” means any Federal, state, local or non-U.S. government or any court, legislature, governmental agency or governmental commission or any judicial or regulatory authority of any government.
- Q. “Person” means any individual, partnership, association, company or corporation.
- R. “Port Edwards Assets” means the chlorine, KOH (potassium hydroxide), caustic soda (sodium hydroxide), hydrochloric acid, and potassium carbonate manufacturing facility, located at 100 State Highway 73, Port Edwards, Wisconsin, 54469, and includes:
 - 1. all tangible and real assets used in the operation of the facility, including any leasehold, ownership, fee, or any other interest in real estate at the facility grounds in Port Edwards, Wisconsin, and in the production or

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- distribution of the products produced at the facility, and includes, but is not limited to,
- a. the main plants;
 - b. rail cars, trucks, and other vehicles owned by Respondents related to the transportation and distribution of products produced or used in the facility; and
 - c. raw materials, work-in-process inventories, stores and spares, inventories, packaging materials, finished goods inventories, finished goods in transit to offsite storage or to customers, and offsite inventory.
2. all books, records, and documents, including but not limited to electronically stored documents and records produced in an electronically readable form, together with all necessary instructions and software, or access to software licenses to the Acquirer, relating to the facility and to the production, marketing, distribution, or sale of products produced at the facility; *PROVIDED, HOWEVER*, that if any such books, records, or documents also include matters not related to the facility or products produced at the facility, then only those portions of the books records and documents that relate to the facility or the products produced at the facility shall be included;
 3. an exclusive right to all intellectual property used solely in the operation of the facility or in the production, marketing, distribution, or sale of the products produced at the facility, and a non-exclusive right to all other intellectual property used in the operation of the facility and in the production, marketing, distribution, or sale of the products produced at the facility;
 4. all licenses and permits used in the operation of the facility and in the production, marketing, distribution, or sale of the products produced at the facility;
 5. at the Acquirer's option, all contracts, agreements, and understandings, other than Shared Customer Contracts and Shared Terminal Contracts, relating to the manufacture, transportation, storage, terminaling, marketing, distribution, or sale of the products produced

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- at the facility, which includes but is not limited to:
- a. agreements under which the facility receives potassium and sodium salts, electricity, natural gas, and carbon dioxide or other inputs at or for the facility;
 - b. agreements for services provided to the facility, including, but not limited to, rail, trucking, capital maintenance, and technology;
 - c. agreements and contracts with customers for products produced exclusively by the facility;
 - d. agreements and contracts with terminals for products produced exclusively by the facility;
6. all joint ventures relating to the operation of the facility and the production, marketing, distribution, or sale of the products produced at the facility;
 7. all plans (including proposed and tentative plans, whether or not adopted), specifications, drawings, and other assets (including the non-exclusive right to use patents, know-how, and other intellectual property relating to such plans) related to the operation of the facility;
 8. existing easements and rights of way;
 9. related facilities required for the operation or the storage of products produced or used at the facility including, but not limited to, truck, rail, and pipeline facilities, including truck and rail racks, for the receipt and delivery of products produced or used at the facility;
 10. approximately 34 acres of land located at 100 State Highway 73, Port Edwards, Wisconsin, 54469, on which the Port Edwards facility sits, including the parcels described in Schedule 2.1(a) to the ERCO Acquisition Agreement;
 11. all licenses, permits, contracts, agreements, and understandings relating to the ownership and operation of the facility.
- S. “Potash Contract” means the Product Supply Agreement entered into on March 15, 2005, between PCS Sales (USA), Inc. and OxyChem for the supply of potassium chloride chicklets.

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- T. “Shared Customer Contracts” means contracts under which customers receive Hydrochloric Acid, Chlorine, or Caustic Soda produced both by the Port Edwards facility and by other chemical facilities owned by Vulcan prior to the Acquisition Date that are not subject to divestiture under this order.
- U. “Shared Terminal Contracts” means contracts or agreements with terminals, including those owned by Vulcan, for storage of products produced both by the Port Edwards facility and by other chemical facilities owned by Vulcan prior to the Acquisition Date that are not subject to divestiture under this order.
- V. “Terminaling Agreement” means an agreement between the Acquirer and Respondent Oxy in which the Acquirer will use a terminal or facility owned by Respondent Oxy to store or transfer products produced by the Acquirer at the Port Edwards facility.

II.**IT IS FURTHER ORDERED** that:

- A. Within ten (10) days after the Acquisition Date, Respondents shall divest the Port Edwards Assets in good faith to ERCO, pursuant to and in accordance with the ERCO Acquisition Agreement (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of ERCO or to reduce any obligations of Respondents under such agreements), and such agreement, if approved by the Commission as the Divestiture Agreement, is incorporated by reference into this Order and made a part hereof as Confidential Appendix B.
- PROVIDED, HOWEVER*, at the option of the Acquirer and with approval of the Commission, Respondent Oxy may (1) agree to a long-term lease for the real estate upon which the Port Edwards facility sits, as a substitute for an acquisition of the real estate; and (2) exclude the divestiture of the groundwater collection, monitoring, and treatment systems.
- PROVIDED, FURTHER, HOWEVER*, with respect to assets

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that are to be divested or agreements entered into pursuant to this paragraph at the Acquirer's option, Respondents need not divest such assets or enter into such agreements only if the Acquirer chooses not to acquire such assets or enter into such agreements and the Commission approves the divestiture without such assets or agreements.

- B. If, at the time the Commission determines to make this Order final, the Commission notifies Respondents that ERCO is not an acceptable acquirer of the Port Edwards Assets or that the manner in which the divestiture was accomplished is not acceptable, then, after receipt of such written notification:
1. Respondent Oxy shall immediately notify ERCO of the notice received from the Commission and shall as soon as practicable effect the rescission of the ERCO Acquisition Agreement; and
 2. Respondents shall, within six (6) months from the date this Order becomes final, divest the Port Edwards Assets absolutely and in good faith, at no minimum price, to an acquirer that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission. *PROVIDED, HOWEVER*, at the option of the Acquirer and with approval of the Commission, Respondent Oxy may (1) agree to a long-term lease for the real estate upon which the Port Edwards facility sits, as a substitute for an acquisition of the real estate; and (2) exclude the divestiture of the groundwater collection, monitoring, and treatment systems. *PROVIDED, FURTHER, HOWEVER*, with respect to assets that are to be divested or agreements entered into pursuant to this paragraph at the Acquirer's option, Respondents need not divest such assets or enter into such agreements only if the Acquirer chooses not to acquire such assets or enter into such agreements and the Commission approves the divestiture without such assets or agreements.
 3. The Commission may appoint a Monitor pursuant to Paragraph IV of this Order to assist Respondents in:
 - a. effectuating modifications to the Divestiture

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- Agreement or manner of divestiture of the Port Edwards Assets (including, but not limited to, entering into additional agreements or arrangements) as the Commission may determine are necessary to satisfy the requirements of this Order; and
- b. taking such actions as are necessary to maintain the full economic viability, marketability and competitiveness of the Port Edwards Assets, including, but not limited to, monitoring the exchange of Confidential Business Information about the Port Edwards Assets to and between Respondents, to minimize any risk of loss of competitive potential for the businesses associated with the Port Edwards Assets, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Port Edwards Assets except for ordinary wear and tear.
- C. Any Divestiture Agreement that has been approved by the Commission between the Respondents (or a Divestiture Trustee) and an Acquirer of the Port Edwards Assets shall be deemed incorporated into this Order, and any failure by Respondents to comply with any term of such Divestiture Agreement shall constitute a failure to comply with this Order.
- D. Until the Effective Date of Divestiture, Respondents shall:
1. take such actions as are necessary to maintain the viability and marketability of the Port Edwards Assets and to prevent the destruction, removal, wasting, deterioration, or impairment of the Port Edwards Assets, except for ordinary wear and tear; and
 2. not sell, transfer, encumber or otherwise impair the full economic viability, marketability, or competitiveness of the Port Edwards Assets.
- E. No later than the Effective Date of Divestiture, Respondents shall secure all assignments, consents, and waivers, including rights of approval and rights of first refusal, from all private and Governmental Entities that are necessary for the divestiture of the Port Edwards Assets to the Acquirer.
- F. Respondent Oxy shall, no later than the Effective Date of

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Divestiture and as part of the Divestiture Agreement, assign the Potash Contract to the Acquirer.

G. Respondents shall, at the option of the Acquirer, no later than the Effective Date of Divestiture, and as part of the Divestiture Agreement, enter into one or more transition agreements for the short-term provision of services provided by Respondents to the Acquirer.

H. Respondents and Respondents's employees shall not receive, or have access to, or use or continue to use any Confidential Business Information about the Port Edwards Assets or about the production, transportation, delivery, storage, distribution, marketing, and sale of products of the Acquirer from the Port Edwards facility except:

1. As otherwise allowed in the Order to Maintain Assets or this Order;
2. As provided for in a transition services agreement;
3. As consented to by the Acquirer for provision to Respondent Vulcan;
4. As required by law;
5. To the extent that necessary information is exchanged in the course of consummating the Acquisition;
6. In negotiating agreements to divest assets pursuant to this Order and engaging in related due diligence;
7. In complying with this Order or the Order to Maintain Assets;
8. To the extent necessary to allow Respondents to comply with the requirements and obligations of the laws of the United States and other countries;
9. In defending legal claims, investigations or enforcement actions threatened or brought against or related to the Port Edwards Assets;
10. In obtaining legal advice.

Respondents shall require any Persons with access to Confidential Business Information to immediately enter into agreements with the Respondents and Acquirer not to disclose any Confidential Business Information to the Respondents or to any third party except for the purposes set forth this paragraph.

I. The purposes of this Paragraph are (1) to ensure the

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continuation of Port Edwards Assets as a going concern in the same manner in which it conducted business as of the date the Consent Agreement is signed, and (2) to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

III.**IT IS FURTHER ORDERED** that:

- A. For Shared Customer Contracts, Respondents shall, no later than the Effective Date of Divestiture of the Port Edwards Assets and as part of the Divestiture Agreement, assign Shared Customer Contracts in whole or in part, or contribute to the Acquirer additional customer contracts held by them, or modify the Shared Customer Contracts or other customer contracts held by them, to insure that, as a result of the divestiture, the Acquirer receives:
1. customers of comparable financial strength as measured by credit rating or some other similar widely accepted measure;
 2. customers requiring delivery to locations at distances similar to or shorter than the delivery distances for products from the Port Edwards facility prior to the divestiture and consistent with the historical delivery distances for products delivered by the Port Edwards facility;
 3. customers requiring quantities similar to or exceeding the quantities of product delivered by the Port Edwards facility prior to the divestiture and consistent with historical amounts of product delivered by the Port Edwards facility; and
 4. customer contracts of similar or longer lengths of time for the products delivered by the Port Edwards facility prior to the divestiture.
- B. Respondents shall, no later than the Effective Date of Divestiture of the Port Edwards Assets, at the option of the Acquirer, and as part of the Divestiture Agreement, assign Shared Terminal Contracts in whole or in part, modify current Shared Terminal Contracts or enter into new

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terminal contracts to insure that, as a result of the divestiture, the Acquirer receives:

1. the same terminals as, or terminals of a quality similar to, those retained by Respondent Oxy;
2. terminal space equal to or exceeding the capacity of terminal space used for products delivered by the Port Edwards facility prior to the divestiture and consistent with historical amounts of products delivered by the Port Edwards facility;
3. terminal contracts of similar or longer lengths of time that existed for the products delivered by the Port Edwards facility prior to the divestiture; and
4. terminal capacity in locations similar to the locations used for products delivered by the Port Edwards facility prior to the divestiture.

C. Respondents shall:

1. not receive Confidential Business Information about the transportation, delivery, storage, distribution, marketing, and sale of product by the Acquirer at a terminal owned by Respondents and used by the Acquirer, *PROVIDED, HOWEVER*, individual employees of the Respondents may receive and use Confidential Business Information only to the extent required for the operation of a Terminating Agreement or to the extent necessary to allow Respondents to comply with the requirements and obligations of the laws of the United States and other countries, and to prepare consolidated financial reports, tax returns, reports required by securities laws, and personnel reports. Respondents shall require any Persons with access to Confidential Business Information to immediately enter into agreements with the Respondents and Acquirer not to disclose any Confidential Business Information to the Respondents or to any third party except for the purposes set forth in this paragraph.
2. include in any Terminating Agreement:
 - a. a provision prohibiting Respondents or any employee of Respondents from receiving Confidential Business Information about the transportation, delivery,

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- storage, distribution, marketing, and sale of product by the Acquirer at a terminal owned by Respondents and used by the Acquirer, except at otherwise provided in this Paragraph III.C.; and
- b. a provision consistent with the proviso in Paragraph III.C.1., above, regarding non-disclosure of Confidential Business Information.
- D. The purposes of this Paragraph are (1) to ensure the continuation of the Port Edwards Assets as a going concern in the same manner in which it conducted business as of the date the Consent Agreement is signed, and (2) to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

IV.**IT IS FURTHER ORDERED** that:

- A. At any time after Respondents sign the Consent Agreement in this matter, the Commission may appoint a Monitor to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order;
- B. The Commission shall select the Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If the Respondents have not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Monitor, Respondents shall be deemed to have consented to the selection of the proposed Monitor.
- C. Not later than ten (10) days after appointment of the Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondents's compliance with the relevant terms of the Order in a manner consistent with the purposes of the Order.
- D. If a Monitor is appointed pursuant to this Paragraph IV,

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Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:

1. The Monitor shall have the power and authority to monitor the Respondents's compliance with the terms of the Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the Order and in consultation with the Commission including, but not limited to:
 - a. Assuring that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by the Order to Maintain Assets and the Decision and Order in this matter;
 - b. Monitoring Terminating Agreements;
 - c. Monitoring any transition services agreements;
 - d. Assuring that Confidential Business Information is not received or used by Respondents or Acquirer, except as allowed in the Order to Maintain Assets and the Decision and Order in this matter.
2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.
3. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondents's personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondents's compliance with their obligations under the Order. Respondents shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondents's compliance with the Order.
4. The Monitor shall serve, without bond or other security, at the expense of Respondents on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of the Respondents, such consultants,

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- accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Monitor shall account for all expenses incurred, including fees for services rendered, subject to the approval of the Commission.
5. Respondents shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Monitor.
 6. The Monitor Agreement shall state that within one (1) month from the date the Monitor is appointed pursuant to this paragraph, and every sixty (60) days thereafter, the Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under the Order.
 7. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *PROVIDED, HOWEVER*, such agreement shall not restrict the Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Monitor's duties.
- F. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor in the same manner as provided in this Paragraph IV.

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- G. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Order.
- H. A Monitor appointed pursuant to this Order may be the same person appointed as the monitor appointed pursuant to the Order to Maintain Assets in this matter or the Divestiture Trustee pursuant to the relevant provisions of this Order.

V.

IT IS FURTHER ORDERED that:

- A. If Respondents have not fully complied with the obligations to divest the Port Edwards Assets as required by Paragraph II of this Order, the Commission may appoint a Divestiture Trustee to divest the Port Edwards Assets in a manner that satisfies the requirements of Paragraph II.
In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to divest the Port Edwards Assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph V shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order.
- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after

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notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

- C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestitures required by this Order.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph V, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
 - 1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to divest the Port Edwards Assets.
 - 2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to divest the Port Edwards Assets absolutely and in good faith, at no minimum price, to an Acquirer that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period or periods may be extended by the Commission; *PROVIDED, HOWEVER*, the Commission may extend the divestiture period only two (2) times.
 - 3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities related to the relevant assets that are required to be divested by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other

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information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee.

Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. The Divestiture Trustee shall have the right and authority to negotiate and modify contracts to satisfy the provisions of Paragraph III of this Order.

Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph V in an amount equal to the delay, as determined by the Commission.

4. The Divestiture Trustee shall use best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an acquirer as required by this Order;
PROVIDED, HOWEVER, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission;
PROVIDED FURTHER, HOWEVER, that Respondents shall select such entity within five (5) days after receiving notification of the Commission's approval.
5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the

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divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of the Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

6. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.
7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
8. The Divestiture Trustee shall act in a fiduciary capacity for the benefit of the Commission.
9. The Divestiture Trustee shall report in writing to Respondents and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
10. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *PROVIDED, HOWEVER*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
11. The Commission may, among other things, require the

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Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.

- E. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph V.
- F. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.
- G. The Divestiture Trustee(s) appointed pursuant to Paragraph V of this Order may be the same Person appointed as the Monitor pursuant to Paragraph IV of this Order.

VI.

IS FURTHER ORDERED that until December 31, 2006, Respondent Oxy, including, but not limited to, its agents and Armand Products Company, shall not solicit any Assigned Contract Customer in an attempt to sell, currently or in the future, such customer KOH (if the contract assigned to the Assigned Contract Customer was for KOH) or potassium carbonate (if the contract assigned to the Assigned Contract Customer was for potassium carbonate) including, but not limited to, making offers pursuant to a "meet or release" or "competitive price" or similar clause in customer contracts. *PROVIDED, HOWEVER*, Respondent Oxy may discuss the terms of Respondent Oxy's contract or supply with a Dual Contract Customer, but shall not otherwise solicit an Assigned Contract Customer as prohibited by this Paragraph VI. *PROVIDED, FURTHER, HOWEVER*, if an Assigned Contract Customer is no longer under contract with the Acquirer, this Paragraph VI no longer applies to Respondent Oxy in relation to that Assigned Contract Customer.

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VII.

IT IS FURTHER ORDERED that Respondents shall facilitate the hiring of any Designated Vulcan Staff by the Acquirer prior to the Effective Date of Divestiture by:

- A. Allowing the Acquirer an opportunity to interview each person identified as Designated Vulcan Staff before they are hired pursuant to this Paragraph VII;
- B. Allowing the Acquirer to inspect the personnel files and other documentation relating to the Designated Vulcan Staff, to the extent permissible under applicable laws, before they are hired pursuant to this Paragraph VII;
- C. Not offering any incentive to the Designated Vulcan Staff to decline employment with the Acquirer;
- D. Not interfering with any negotiations by the Acquirer to employ any Designated Vulcan Staff;
- E. Removing any contractual impediments with the Respondents that may deter any Designated Vulcan Staff from accepting employment with the Acquirer and assigning any confidentiality agreements or restrictions, except as to information related solely to products or businesses not transferred to the Acquirer and any non-compete agreements; and
- F. Vesting all pension rights, current and accrued, of any Designated Vulcan Staff as of the date of transition to employment with the Acquirer.

VIII.

IT IS FURTHER ORDERED that for a period of ten (10) years from the date this Order is issued, Respondent Oxy, including its joint venture, Armand Products Company, shall not, without providing advance written notification to the Commission in the manner described in this Paragraph VIII, directly or indirectly:

- A. Acquire any stock, share capital, equity or other interest in any Person, corporate or non-corporate that produces, or assets used in the production or sale of, potassium hydroxide, potassium carbonate, or potash; or

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- B. Enter into any contracts to manage or operate any Person that produces potassium hydroxide, potassium carbonate, or potash.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (herein referred to as “the Notification”), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of Respondent Oxy and not of any other party to the transaction. Respondent Oxy shall provide the Notification to the Commission at least thirty days prior to consummating the transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondent Oxy shall not consummate the transaction until thirty days after submitting such additional information or documentary material. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition.

PROVIDED, HOWEVER, that prior notification shall not be required by this paragraph for a transaction for which Notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

PROVIDED, FURTHER, HOWEVER, that prior notification shall not be required by this paragraph for an acquisition, if Respondent Oxy acquires no more than one percent of the outstanding securities or other equity interest in an entity described in subparagraphs VIII.A and VIII.B.

IX.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after the date this Order becomes final, and every sixty (60) days thereafter until Respondents have fully complied with Paragraphs II and V of this Order,

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Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order. Respondents shall submit at the same time a copy of their report concerning compliance with this Order to the Divestiture Trustee or the Monitor, if any Divestiture Trustee or Monitor has been appointed pursuant to this Order. Respondents shall include in their reports, among other things that are required from time to time, a full description of the efforts being made to comply with the relevant Paragraphs of the Order, including a description of all substantive contacts or negotiations related to the divestiture of the relevant assets and the identity of all parties contacted. Respondents shall include in their reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning completing the obligations.

- B. Within thirty (30) days after the date this Order is issued, and annually for ten (10) years on the anniversary of the date this Order is issued, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they have complied, are complying, and will comply with this Order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with the Order and copies of all written communications to and from all persons relating to this Order.

PROVIDED, HOWEVER: Respondents Vulcan shall submit annual reports pursuant to this Paragraph IX.B for two (2) years on the anniversary of the date this Order is issued.

PROVIDED FURTHER, HOWEVER, if either Paragraph II.B or Paragraph V come into effect, Respondent Vulcan shall submit annual reports pursuant to this Paragraph IX.B for five (5) years on the anniversary of the date this Order is issued.

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X.

IT IS FURTHER ORDERED that Respondent Oxy shall notify the Commission at least thirty (30) days prior to any proposed (1) dissolution of the Respondent Oxy, (2) acquisition, merger or consolidation of Respondent Oxy, or (3) any other change in the Respondent Oxy that may affect compliance obligations arising out of the order, including but not limited to assignment and the creation or dissolution of subsidiaries.

XI.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice, Respondents shall permit any duly authorized representative of the Commission:

- A. access, during office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents related to compliance with this Order; and
- B. upon five (5) days' notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

XII.

IT IS FURTHER ORDERED that this Order shall terminate ten (10) years from the date it is issued.

By the Commission.

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CONFIDENTIAL APPENDIX A

**[Redacted From the Public Record Version But Incorporated
By Reference]**

CONFIDENTIAL APPENDIX B

**[Redacted From the Public Record Version But Incorporated
By Reference]**

CONFIDENTIAL APPENDIX C

**[Redacted From the Public Record Version But Incorporated
By Reference]**

Analysis

**Analysis of the Complaint and Proposed Consent Order to
Aid Public Comment**

I. Introduction

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from Occidental Chemical Company (“OxyChem”) and Vulcan Materials Company (“Vulcan”) (collectively “Respondents”). The Consent Agreement is intended to resolve anticompetitive effects stemming from OxyChem’s proposed acquisition of the chemical assets of Vulcan. The Consent Agreement includes a proposed Decision and Order (“Order”) which requires Respondents to divest Vulcan’s facility in Port Edwards, Wisconsin and assets relating to the research, development, marketing, sales, and production of chemicals produced at the facility including chlorine, caustic soda (sodium hydroxide), KOH (potassium hydroxide), APC (anhydrous potassium carbonate), and hydrochloric acid (“Port Edwards business”). The Order calls for divestiture of the Port Edwards business to ERCO Worldwide (“ERCO”) or, in the event the Commission requires rescission of such acquisition, another approved buyer. The Consent Agreement also includes an Order to Maintain Assets, which requires Respondents to preserve the Port Edwards business as a viable, competitive, and ongoing operation until the divestiture is achieved.

The Consent Agreement, if finally accepted by the Commission, would settle charges that OxyChem’s proposed acquisition of Vulcan’s chemical assets may have substantially lessened competition in the markets for KOH, potassium carbonate, and APC. The Commission has reason to believe that OxyChem’s proposed acquisition of Vulcan’s Port Edwards business would have violated Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

II. The Proposed Complaint

Analysis

According to the Commission's proposed complaint, the relevant product markets in which to analyze the effects of OxyChem's proposed acquisition of Vulcan's chemical assets are the production and sale of KOH, potassium carbonate, and APC. KOH is the raw material for the production of many potassium chemicals, such as potassium permanganate, citrate, acetate, cyanide, benzoate, iodide, and sorbate. The largest end use of KOH is the production of potassium carbonate, commonly known as potash. End uses for potassium carbonate include nutrition supplements for dairy cattle, video glass for television and computer monitors, other specialty glass, potassium silicates, fertilizers, gas processing, industrial intermediaries, photographic development processes, detergents; and food products. Potassium carbonate can be produced in liquid or flake (solid) form. Over 90% of total potcarb production in the United States is of the flake form, known as APC. For most APC customers, liquid potassium carbonate is not an economically viable substitute.

The proposed complaint alleges that the markets for KOH, potcarb, and APC are highly concentrated and that OxyChem and Vulcan have been the primary competitors in these markets for many years and are the only producers of APC in the U.S. As the proposed Complaint describes, customers have relied on the competition between these companies to maintain competitive pricing levels. The proposed complaint alleges that OxyChem's proposed acquisition of Vulcan's chemical assets would reduce competition by eliminating direct competition between these two companies. The proposed complaint further alleges that entry into the relevant markets would not be timely, likely, or sufficient to deter or offset the acquisition's adverse competitive effects.

III. Terms of the Proposed Order

The proposed Order also requires that, within 10 days of OxyChem's acquisition of Vulcan's chemical assets, OxyChem divest the Port Edwards business to ERCO Worldwide (USA) Inc., an indirect subsidiary of Superior Plus, Inc., a Canadian company. The Port Edwards business will become part of ERCO Worldwide,

Analysis

a division of Superior Plus whose parent, Superior Plus Income Fund, is a Canadian income fund. Superior Plus, Inc. has four divisions: Superior Propane; ERCO Worldwide; Winroc; and Superior Energy Management. The market value of the fund is Cdn \$2.5 billion. ERCO's total revenues in 2004 were Cdn \$396 million.

The assets to be divested under the proposed Order include Port Edwards's manufacturing facilities, related transportation assets (including railcars and terminal contracts), raw material supply agreements, and customer contracts. Port Edwards is Vulcan's only manufacturing facility that has the capacity to produce KOH and APC. The divested assets are sufficient to allow ERCO to effectively continue the production and marketing of KOH, APC, HCl, caustic soda, and chlorine at Port Edwards in amounts, and under terms, equivalent to the historical production and sale of these chemicals from the facility.

The Order further provides that if, at the time the Commission makes this Order final, the Commission notifies Respondents that ERCO is not an acceptable acquirer of the Port Edwards business or that the manner in which the divestiture was accomplished is not acceptable, then, the divestiture to ERCO shall be rescinded and within a six-month period, OxyChem shall divest the Port Edwards business to an acquirer acceptable to the Commission. If, following this six month period, the Port Edwards Assets have not been divested, then the Commission may appoint a Divestiture Trustee to divest the assets in a manner acceptable to the Commission.

The proposed Order to Maintain Assets that is also included in the Consent Agreement requires that Respondents maintain the Port Edwards business as a viable and competitive operation until the business is transferred to ERCO or another Commission-approved acquirer. Furthermore, the order contains measures designed to ensure that no material confidential information is exchanged between Respondents and the Port Edwards business (except as otherwise provided in the Order to Maintain Assets) and measures designed to prevent interim harm to competition in the relevant markets pending divestiture.

Analysis

The proposed Order also provides for the Commission to appoint a Monitor Trustee to oversee OxyChem's compliance with the terms of the order, and in the Order to Maintain Assets, the Commission appoints Richard M. Klein as Monitor Trustee. Mr. Klein has a Ph.D in Inorganic Chemistry and was the President and CEO of Sybron Chemicals from 1979 to 2001. He serves on the boards of a number of companies and has been appointed by the Commission as Monitor Trustee or Hold Separate Trustee in other FTC matters.

Within thirty (30) days after the date this Order becomes final, and every sixty (60) days thereafter until Respondents have fully divested the Port Edwards business, Respondents are required to submit a verified written report describing how they are complying, have complied, and intend to comply with the terms of the Order. Further, within thirty (30) days after the date this Order is issued, and annually for ten (10) years on the anniversary of the date this Order is issued, Respondent OxyChem must submit a verified written report to the Commission describing how it is complying, has complied, and intends to comply with the terms of the Order. Finally, within thirty (30) days after the date this Order is issued and annually for two (2) years on the anniversary of the date this Order is issued, Respondent Vulcan shall submit to the Commission a verified written report describing how it has complied, is complying, and will comply with this Order; however, if either Paragraph II.B or Paragraph V of the Order come into effect, Respondent Vulcan shall submit annual reports for five (5) years on the anniversary of the date this Order is issued.

IV. Opportunity for Public Comment

The proposed Order has been placed on the public record for thirty (30) days to receive comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will review the Consent Agreement and comments received and decide whether to withdraw its agreement or make final the Consent Agreement's proposed Order and Order to Maintain Assets.

Analysis

The purpose of this analysis is to facilitate public comment on the proposed Order. This analysis is not intended to constitute an official interpretation of the Consent Agreement, the proposed Order, or the Order to Maintain Assets, or in any way to modify the terms of the Consent Agreement, the proposed Order, or the Order to Maintain Assets.

Complaint

IN THE MATTER OF

VALERO L.P., ET. AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE
COMMISSION ACT*Docket C-4141; File No. 0510022*
Complaint, June 14, 2005--Decision, July 22, 2005

This consent order addresses the acquisition by Respondents Valero L.P. and Valero Energy Corporation -- collectively engaged in the transportation and storage of crude oil, and in the refining, transportation, and marketing of petroleum products and related petrochemical products -- of Respondents Kaneb Services LLC and Kaneb Pipe Line Partners, L.P., which collectively own and operate refined petroleum product pipelines and petroleum and specialty liquids storage and terminaling facilities. The order, among other things, requires the respondents to divest three Kaneb petroleum terminals in the Greater Philadelphia, Pennsylvania area; to divest a Kaneb pipeline system that originates in Casper, Wyoming, and terminates in Rapid City, South Dakota (and includes Kaneb petroleum terminals in Rapid City, South Dakota, Cheyenne, Wyoming, Denver, Colorado, and Colorado Springs, Colorado); and to divest Kaneb petroleum terminals in Martinez and Richmond, California. The consent order also requires Respondent Valero L.P. to ensure that customers and prospective customers have non-discriminatory access to commingled terminaling of ethanol at its retained San Francisco Bay terminals - on terms and conditions no less advantageous than those given to Valero Energy -- and to create firewalls that prevent the transfer of competitively sensitive information between the merged firm and Valero Energy.

Participants

For the Commission: *Peter Richman, Marc W. Schneider, Robert E. Friedman, Brian J. Telpner, Vadim M. Brusser, Natasha Allen, Jacob Swanton, Sara S. Brown, Nick Pedersen Phillip L. Broyles, Naomi Licker, Elizabeth A. Piotrowski, Daniel P. Ducore, Mark D. Williams, Louis Silvia and Mark Frankena.*

For the Respondents: *Ilene Knable Gotts, Wachtell, Lipton, Rosen & Katz, and Daniel Wellington, Fulbright & Jaworski LLP*