

Complaint

IN THE MATTER OF

AGRIUM INC.

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

Docket No. C-4277; File No. 091 0068

Filed, December 22, 2009 — Decision, February 3, 2010

This consent order addresses the \$3.6 billion acquisition by Agrium Inc., of CF Industries Holdings. In the Pacific Northwest, Agrium and CF are the only major suppliers of anhydrous ammonia. The complaint alleges that, in the Pacific Northwest and two adjacent areas in Northern Illinois, Agrium's acquisition of CF would eliminate actual, direct, and substantial competition between Agrium and CF; increase Agrium's ability to exercise market power unilaterally; and substantially increase the level of market concentration and enhance the probability of coordination in the two markets in Northern Illinois. The Consent Agreement, requires Agrium to, among other things, divest anhydrous ammonia terminals in Ritzville, Washington, and Marseilles, Illinois to Terra Industries Inc. or another Commission-approved purchaser. Agrium is also required to divest its rights to market and distribute the anhydrous ammonia produced by Rentech at Rentech's East Dubuque, Illinois manufacturing plant back to Rentech.

Participants

For the *Commission*: *E. Eric Elmore, Victoria Luxardo Jeffries, and Victoria Lippincott.*

For the *Respondents*: *Joseph Simons, Paul, Weiss, Rifkind, Wharton & Garrison LLP; and Joshua Gray, Ian John, and Neal Stoll, Skadden, Arps, Slate, Meagher & Flom LLP.*

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act, and its authority thereunder, the Federal Trade Commission ("Commission"), having reason to believe that Respondent Agrium Inc. ("Agrium"), a corporation subject to the jurisdiction of the

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Commission, has made an offer to acquire all of the voting securities of CF Industries Holdings, Inc. ("CF"), a corporation subject to the jurisdiction of the Commission, 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 ("FTC Act"), as amended, 15 U.S.C. § 45, 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:

I. RESPONDENT

1. Respondent Agrium is a Canadian corporation organized, existing, and doing business under, and by virtue of, the laws of Canada, with its office and principal place of business located at 13131 Lake Fraser Drive SE, Calgary, Alberta, Canada, T2J 7E8. In the United States, Agrium operates its chemical and agricultural business through its subsidiary, Agrium USA, headquartered at Suite 1700, 4582 South Ulster Street, Denver, Colorado, 80237. Agrium is a multinational fertilizer and farm products company that develops, manufactures, and markets chemical and agricultural products and services, including nitrogen fertilizers, that it distributes to customers in the Americas and elsewhere.

2. CF is a corporation organized, existing, and doing business under, and by virtue of, the laws of Illinois, with its office and principal place of business located at 4 Parkway North, Suite 400, Deerfield, IL 60015-2590. CF is a fertilizer products company that develops, manufactures, and distributes agricultural products, including nitrogen fertilizers, that it distributes to customers in the Americas and elsewhere.

II. JURISDICTION

3. Agrium and CF are, and at all times relevant herein have been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and are corporations whose businesses are in or affect commerce as

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“commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

III. THE PROPOSED TRANSACTION

4. On February 25, 2009, Agrium proposed to CF’s board of directors that Agrium acquire all of the voting securities of CF for approximately \$3.6 billion. CF rejected that offer. Since then, Agrium has proposed several revised offers, which have also been rejected by CF’s board of directors. Most recently, on November 5, 2009, Agrium increased its offer to approximately \$4.5 billion. If CF accepts Agrium’s tender offer, Agrium will hold 100 percent of the voting securities of CF, and CF will become a wholly owned subsidiary of Agrium.

IV. RELEVANT PRODUCT MARKET

5. The relevant line of commerce in which to analyze the effects of the proposed acquisition described herein is the distribution and sale of anhydrous ammonia (“AA”), a form of nitrogen fertilizer, for agricultural application.

6. AA is one of several types of nitrogen fertilizer used in the agricultural sector. Nitrogen fertilizers come in many different chemical forms with varying nitrogen concentrations. Among the different chemical forms, Agrium and CF both produce AA, urea, and urea ammonium nitrate solution. Of these different forms of nitrogen fertilizer, AA has the highest concentration of nitrogen per ton. Customers consider soil and topographical characteristics, equipment, and weather when deciding which type of nitrogen fertilizer to use.

7. AA is injected or knifed into the soil using specialized machinery. Many customers who use AA have made significant investments to acquire the necessary infrastructure and application equipment. Switching from AA to another nitrogen fertilizer would require these customers to abandon the significant investments they have already made and to make additional

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investments to obtain the proper infrastructure and equipment for application of the other nitrogen products.

8. Because of the advantages of using AA for certain topographies and in certain climate conditions, and the substantial capital invested in AA storage and application equipment, most users of AA would not switch to alternative forms of nitrogen fertilizer in response to a significant and sustained increase in price.

V. RELEVANT GEOGRAPHIC MARKETS

9. There are three relevant geographic markets in which to analyze the effects of the proposed acquisition: the Pacific Northwest ("PNW"); East Dubuque, Illinois; and Marseilles, Illinois.

10. In each relevant geographic market, the users of AA would not purchase from terminals located more than approximately 140 miles from their location, even in response to a significant and sustained increase in price. Transportation costs make it difficult for terminal owners to be price competitive and to make profitable sales at distances over generally 140 miles.

VI. MARKET STRUCTURE

11. Each relevant market is highly concentrated, and the proposed transaction will further increase concentration levels.

12. In the PNW, Agrium and CF are the only major distributors and sellers of AA. As a result, the proposed acquisition would reduce the number of significant AA suppliers with storage and distribution assets in the PNW from two to one.

13. In both East Dubuque, Illinois, and Marseilles, Illinois, there are only three major distributors and sellers of AA and the

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proposed acquisition would reduce the number of significant AA suppliers with storage and distribution assets from three to two.

VII. CONDITIONS OF ENTRY

14. New entry or fringe expansion into the relevant markets would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of the acquisition. New entry would require several years, including a lengthy process to obtain the regulatory approvals to add new AA storage capacity in a local area. Further, a new entrant would need to build a terminal large enough to benefit from economies of scale, and as a result, would face difficulty in securing sufficient sales to make entry attractive. Together with the high sunk costs associated with the addition of new AA terminal capacity, these difficulties make new entry unlikely.

VIII. EFFECTS OF THE ACQUISITION

15. In the areas identified in paragraphs 9 through 13, above, Agrium and CF compete directly with each other in the distribution and sale of AA. Other competitors are not effective competitive constraints to Agrium or CF in each relevant geographic area, due to factors such as the location of their manufacturing operations and their lack of storage facilities.

16. The effects of the merger, if consummated, may be to substantially lessen competition or tend to create a monopoly in each of the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45. Specifically, the merger would:

- a. eliminate actual, direct, and substantial competition between Agrium and CF in the relevant markets;
- b. increase Respondent's ability to exercise market power unilaterally in the relevant markets; and

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- c. substantially increase the level of concentration in the relevant markets, and enhance the probability of coordination in East Dubuque, Illinois and Marseilles, Illinois.

IX. VIOLATIONS CHARGED

17. The merger described in Paragraph 4, if consummated, would constitute a violation of Section 5 of the FTC 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 twenty-second day of December, 2009, issues its Complaint against said Respondent.

By the Commission.

DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition of CF Industries Holdings, Inc., by Agrium Inc. ("Respondent Agrium"), and Respondent Agrium having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent Agrium with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C.

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§ 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent Agrium, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondent Agrium of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent Agrium 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 Respondent Agrium has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Hold Separate and Maintain Assets (“Hold Separate Order”), 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 Decision and Order (“Order”):

1. Respondent Agrium Inc. is a corporation organized, existing and doing business under and by virtue of the laws of Canada, with its office and principal place of business located at 13131 Lake Fraser Drive SE, Calgary, Alberta, T2J7E8, Canada.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

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ORDER**I.**

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

- A. “Agrium” means Agrium Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Agrium Inc. (including CF after the Agrium-CF Acquisition Date), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “CF” means CF Industries Holdings, Inc., a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 4 Parkway North, Suite 400, Deerfield, IL 60015-2590.
- C. “Commission” means the Federal Trade Commission.
- D. “Agrium-CF Acquisition Date” means the date on which Agrium acquires a majority of the issued and outstanding shares of common stock of CF on a fully diluted basis.
- E. “Agrium/Rentech Distribution Agreement” means the April 26, 2006, distribution and marketing agreement between Rentech and Royster-Clark Resources LLC, (“RCR”)(which was acquired by Agrium on February 9, 2006) under which Agrium, as RCR’s successor, markets and distributes nitrogen-based fertilizer, including Anhydrous Ammonia, produced by Rentech at Rentech’s plant in East Dubuque, Illinois. The Agrium/Rentech Distribution Agreement is attached as

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Confidential Exhibit A to this Order.

- F. “Agrium/Rentech Distribution Amendment” means the October 13, 2009, amendment to the Agrium/Rentech Distribution Agreement. The Agrium/Rentech Distribution Amendment is attached as Confidential Exhibit B to this Order.
- G. “Anhydrous Ammonia” means the nitrogen-based fertilizer with the scientific formula NH_3 .
- H. “Carseland Facility” means Agrium’s Carseland Nitrogen Operations located approximately 50 km from Calgary, AB, Canada. The Carseland Nitrogen Operations facility produces, among other things, Anhydrous Ammonia, urea, and controlled released urea products.
- I. “Carseland Facility Interest” means a fifty percent (50%) interest in the Carseland Facility being purchased by Terra pursuant to and as defined by the October 18, 2009, agreement between Terra Industries Inc. and Agrium, and amendments thereto, attached as part of the Terra Ritzville Divestiture Agreements.
- J. “CF-Terra Acquisition” means CF’s acquisition of a majority of the issued and outstanding shares of common stock of Terra on a fully diluted basis.
- K. “Confidential Business Information” means competitively sensitive, proprietary, and all other information that is not in the public domain owned by or pertaining to a Person or a Person’s business, and includes, but is not limited to, all customer lists, price lists, contracts, cost information, marketing methods, patents, technologies, processes, or other trade secrets.
- L. “Designated Marseilles Terminal Employee” means all

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of the employees working at the Marseilles Terminal anytime on or after November 1, 2009, and any other Agrium employee who spent more than 50% of his/her time working on Marseilles Terminal issues in the twelve (12) months preceding the Agrium-CF Acquisition Date.

- M. "Designated Ritzville Terminal Employee" means all of the employees working at the Ritzville Terminal anytime on or after November 1, 2009, and any other CF employee who spent more than 50% of his/her time working on Ritzville Terminal issues in the twelve (12) months preceding the Agrium-CF Acquisition Date.
- N. "Illinois-Iowa Area" means the states of Illinois and Iowa.
- O. "Marseilles Terminal" means the Agrium Anhydrous Ammonia, UAN and dry storage facility located at 1801 E. Broadway Street in Marseilles, IL. 61341, and includes, but is not limited to:
 - 1. The real property owned by Agrium related to the Marseilles Terminal together with all rights, interests, improvements, and appurtenances pertaining thereto;
 - 2. All fertilizer terminal related assets, wherever located, such as the unloading systems, warehousing facilities, machinery, fixtures, equipment, technology, know-how, specifications, designs, drawings, processes, quality control data, vehicles, transportation and storage facilities, furniture, tools, supplies, stores, spare parts, and any tangible personal property;
 - 3. Any adjacent strips and gores between the property

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and any abutting properties, and any land lying in or under the bed of any creek, stream, or waterway or any highway, avenue, road, easement, street, alley, or right-of-way, open or proposed, in, on, across, abutting, or adjacent to the property;

4. All certificates for appropriation of water and other water rights generally that relate to the property;
5. All right, title, interest in and to the contracts relating exclusively or primarily to the Marseilles Terminal;
6. All rights under warranties and guarantees, express or implied, wherever located;
7. All dedicated management information systems and information contained in management information systems, and all separately maintained, as well as relevant portions of not separately maintained books, records, and files, wherever located;
8. All federal, state, and local regulatory agency registrations, permits, and applications, and all documents related thereto, wherever located;
9. All items of prepaid expense;
10. All separately maintained, as well as relevant portions of not separately maintained books, records, and files, wherever located; and
11. Any additional assets defined in the Marseilles Terminal Divestiture Agreement.

P. "Marseilles Terminal Acquirer" means the Person approved by the Commission to acquire the Marseilles Terminal pursuant to this Order. The Ritzville

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Terminal Acquirer may be the same Person as the Marseilles Terminal Acquirer.

- Q. “Marseilles Terminal Contracts” means contracts that relate exclusively or primarily to the Marseilles Terminal.
- R. “Marseilles Terminal Divestiture Agreement” means all the divestiture agreements, licenses, assignments, and other agreements entered into by the Marseille Terminal Acquirer and Respondent Agrium pursuant to Paragraph III of this Order, including the Terra Divestiture Agreements, or by the Marseilles Terminal Acquirer and the Divestiture Trustee pursuant to Paragraph VI of this Order, or any other agreements, licenses, assignments that effectuate the divestiture of the Marseilles Terminal to the Marseilles Terminal Acquirer.
- S. “Marseilles Terminal Divestiture Date” means the date on which Respondent Agrium or the Divestiture Trustee divests the Marseilles Terminal to the Marseilles Terminal Acquirer pursuant to Paragraph III or Paragraph VII of this Order.
- T. “Medicine Hat Plant” means the nitrogen fertilizer complex owned by Canadian Fertilizers Limited, a joint venture owned in part by CF, and located at 1250 52nd Street, N.W. Medicine Hat, in Alberta, Canada.
- U. “Person” means any natural person, partnership, corporation, association, trust, joint venture, government, government agency, division, or department, or other business or legal entity.
- V. “PNW” means the Pacific Northwest States of Idaho, Washington, and Oregon.

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- W. “Relating To” or “Related To” means pertaining in any way to, and is not limited to that which pertains exclusively to or primarily to.
- X. “Rentech” means Rentech Development Corporation, a wholly owned subsidiary of Rentech Inc., a Colorado corporation, with its principal office at 1331 17th St., Ste 720, Denver, Colorado, 80202.
- Y. “Ritzville Terminal” means all the assets Related To the CF Ammonia Terminal located at Danekas Road at I-90, Ritzville, WA 99169 and includes, but is not limited to:
1. The real property owned by Agrium related to the Ritzville Terminal together with all rights, interests, improvements, and appurtenances pertaining thereto;
 2. All fertilizer terminal related assets, wherever located, such as the unloading systems, warehousing facilities, machinery, fixtures, equipment, technology, know-how, specifications, designs, drawings, processes, quality control data, vehicles, transportation and storage facilities, furniture, tools, supplies, stores, spare parts, and any tangible personal property;
 3. Any adjacent strips and gores between the property and any abutting properties, and any land lying in or under the bed of any creek, stream, or waterway or any highway, avenue, road, easement, street, alley, or right-of-way, open or proposed, in, on, across, abutting, or adjacent to the property;
 4. All certificates for appropriation of water and other water rights generally that relate to the property;

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5. All right, title, interest in and to contracts relating exclusively or primarily to the Ritzville Terminal;
 6. All rights under warranties and guarantees, express or implied, wherever located;
 7. All dedicated management information systems and information contained in management information systems, and all separately maintained, as well as relevant portions of not separately maintained books, records, and files, wherever located;
 8. All federal, state, and local regulatory agency registrations, permits, and applications, and all documents related thereto, wherever located;
 9. All items of prepaid expense;
 10. All separately maintained, as well as relevant portions of not separately maintained books, records, and files, wherever located; and
 11. Any additional assets defined in the Ritzville Terminal Divestiture Agreement.
- Z. “Ritzville Terminal Acquirer” means the Person approved by the Commission to acquire the Ritzville Terminal pursuant to this Order. The Ritzville Terminal Acquirer may be the same Person as the Marseilles Terminal Acquirer.
- AA. “Ritzville Terminal Contracts” means all right, title, interest in and to contracts relating primarily or exclusively to the Ritzville Terminal.
- BB. “Ritzville Terminal Divestiture Agreements” means all

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the divestiture agreements, licenses, assignments, and other agreements entered into by the Ritzville Terminal Acquirer and Respondent Agrium pursuant to Paragraph II of this Order, including the Terra Ritzville Divestiture Agreements, or by the Ritzville Terminal Acquirer and the Divestiture Trustee pursuant to Paragraph VI of this Order, or any other agreements, licenses, assignments that effectuate the divestiture of the Ritzville Terminal to the Ritzville Terminal Acquirer.

- CC. “Ritzville Terminal Divestiture Date” means the date on which Respondent Agrium or the Divestiture Trustee divests the Ritzville Terminal to the Ritzville Terminal Acquirer pursuant to Paragraph II or Paragraph VII of this Order.
- DD. “Terra” means Terra Industries, Inc. a corporation organized, existing and doing business under and by virtue of the laws of Maryland, with its office and principal place of business located at 600 Fourth Street, in Sioux City, Iowa 51102-6000.
- EE. “Terra Ritzville Divestiture Agreements” means all the divestiture agreements, licenses, assignments, and other agreements entered into by Terra and Respondent Agrium for the divestiture of the Ritzville Terminal and the fifty percent (50%) interest in the Carseland Facility, and the assignment of the Ritzville Terminal Contracts (including by sub-assignment, if necessary). The Terra Ritzville Divestiture Agreements are attached to this Order as Confidential Exhibit C.
- FF. “Terra Marseilles Divestiture Agreements” means all the divestiture agreements, licenses, assignments, and other agreements entered into by Terra and Respondent Agrium for the divestiture of the Marseilles Terminal and the assignment of the Marseilles Terminal

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Contracts (including by sub-assignment, if necessary). The Terra Marseilles Divestiture Agreements are attached to this Order as Confidential Exhibit D.

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

- A. Within forty-five (45) days after the Agrium-CF Acquisition Date, Respondent Agrium shall divest the Ritzville Terminal, and the Carseland Facility Interest, and assign the Ritzville Terminal Contracts (including by sub-assignment if necessary) absolutely and in good faith, to Terra in a manner that receives the prior approval of the Commission and consistent with the Terra Ritzville Divestiture Agreements.
- B. Within one-hundred-eighty (180) days after the Agrium-CF Acquisition Date, Respondent Agrium shall divest itself of any stock or shares in Terra that CF or Respondent Agrium had acquired before the Agrium-CF Acquisition Date. *provided, however*, that this Paragraph II.B. shall only apply if there is no CF-Terra Acquisition such that the terms of Paragraph X of this Order come into effect.
- C. For the time period following the Agrium-CF Acquisition Date that Respondent Agrium holds, directly or indirectly, any interest in Terra; has the ability or right to elect or appoint a Terra Directors; or has any right to Confidential Business Information of or Relating To Terra, Respondent Agrium shall:
 - 1. not elect or appoint a Terra director;
 - 2. not have a director, officer, partner, employee, agent, or representative on any Terra board;

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3. not influence or attempt to influence, directly or indirectly, by voting or otherwise, Terra, or the management or operation of Terra; and
4. not receive or attempt to receive, directly or indirectly, any Confidential Business Information of, from or Relating To Terra.

provided, however, that this Paragraph II.C. shall only apply if there is no CF-Terra Acquisition such that the terms of Paragraph X of this Order come into effect.

- D. Within thirty (30) days after the Agrium-CF Acquisition Date, Respondent Agrium shall give notice to the Commission staff of all assets acquired by CF from Terra, or any other company that sells or produces Anhydrous Ammonia, from July 2009 until the Agrium-CF Acquisition Date ("CF-Terra Assets").

Such written notification shall contain a detailed description of the CF-Terra Assets; the date of the acquisition; the amount paid for the CF-Terra Assets; and any documents prepared by CF Relating To the acquisition of the CF-Terra Assets (hereinafter the "CF-Terra Asset Notification"). The CF-Terra Asset Notification shall be filed with the Secretary of the Commission, with a simultaneous filing with the Assistant Director for Compliance and the Assistant Director for Mergers II of the Bureau of Competition

- E. If, at the time the Commission determines to make this Order final, the Commission notifies Respondent Agrium that Terra is not an acceptable acquirer of the Ritzville Terminal or that the manner in which the divestiture was accomplished is not acceptable, then, after receipt of such written notification:

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1. Respondent Agrium shall immediately notify Terra of the notice received from the Commission and shall as soon as practicable effect the rescission of the Terra Divestiture Agreements with regard to the Ritzville Terminal; and
2. Respondent Agrium shall, within one-hundred-twenty (120) days from the date this Order becomes final, divest the Ritzville Terminal and assign the Ritzville Terminal Contracts (including by sub-assignment if necessary) absolutely and in good faith, at no minimum price, to the Ritzville Terminal Acquirer that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission. *provided, however*, the Ritzville Terminal Acquirer shall have (a) a secure and stable, independent, long-term source of Anhydrous Ammonia with a capability to supply to the Ritzville Terminal a volume of Anhydrous Ammonia similar to the volume of Anhydrous Ammonia supplied to the Ritzville Terminal before the Ritzville Terminal Divestiture Date at a delivered price of Anhydrous Ammonia consistent with the competitive position of the Ritzville Terminal before the Ritzville Terminal Divestiture Date; (b) an additional secure and stable, independent, long-term source of Anhydrous Ammonia with a capability to supply to the Ritzville Terminal a volume of Anhydrous Ammonia enough to expand the Ritzville Terminal output by 30% over its 2008 output; and (c) a settled transportation plan including, but not limited to, signed contracts with rail or other transportation options, for transportation of the Anhydrous Ammonia from an Anhydrous Ammonia producer/supplier to the Ritzville Terminal. *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 Ritzville Terminal Acquirer's option, Respondent Agrium need not divest such assets or enter into such agreements only if the Ritzville Terminal Acquirer chooses not to acquire such assets or enter into such agreements and the Commission approves the divestiture without such assets or agreements.

- F. If Respondent Agrium is unable to divest pursuant to Paragraph II.A. of this Order if (1) Terra notifies Respondent Agrium that it invokes a termination provision in the Terra Ritzville Divestiture Agreements terminating its obligation to acquire the Ritzville Terminal and the Carseland Facility Interest, or (2) Terra fails to close the Terra Ritzville Divestiture Agreements as required by such agreements or the terms of this Order, then:
1. Respondent Agrium shall, within one (1) day, notify the Commission of Terra's actions and that the Terra Divestiture Agreements are no longer effective as to the Ritzville Terminal ("Terra Ritzville Termination Date"); and
 2. Respondent Agrium shall, within one-hundred-twenty (120) days from the Agrium-CF Acquisition Date, divest the Ritzville Terminal and assign the Ritzville Terminal Contracts (including by sub-assignment if necessary) absolutely and in good faith, at no minimum price, to a Ritzville Terminal Acquirer that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission. *Provided, however,* the Ritzville Terminal Acquirer shall have (a) a secure and stable, independent, long-term source of Anhydrous Ammonia with a capability to supply to the Ritzville Terminal a volume of Anhydrous

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Ammonia similar to the volume of Anhydrous Ammonia supplied to the Ritzville Terminal before the Ritzville Terminal Divestiture Date at a delivered price of Anhydrous Ammonia consistent with the competitive position of the Ritzville Terminal before the Ritzville Terminal Divestiture Date; (b) an additional secure and stable, independent, long-term source of Anhydrous Ammonia with a capability to supply to the Ritzville Terminal a volume of Anhydrous Ammonia enough to expand the Ritzville Terminal output by 30% over its 2008 output; and (c) a settled transportation plan including, but not limited to, signed contracts with rail or other transportation options, for transportation of the Anhydrous Ammonia from an Anhydrous Ammonia producer/supplier to the Ritzville Terminal. *Provided, further, however,* with respect to assets that are to be divested or agreements entered into pursuant to this paragraph at the Ritzville Terminal Acquirer's option, Respondent Agrium need not divest such assets or enter into such agreements only if the Ritzville Terminal Acquirer chooses not to acquire such assets or enter into such agreements and the Commission approves the divestiture without such assets or agreements.

- G. The Ritzville Terminal Divestiture Agreement shall not limit or contradict, or be construed to limit 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 any Commission-approved Acquirer or to reduce any obligations of Respondent Agrium under such agreements, and each such agreement, if approved by the Commission as the Divestiture Agreement, shall be incorporated by reference into this Order and made a part hereof.

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Respondent Agrium shall comply with all terms of the Ritzville Terminal Divestiture Agreement, and any breach by Respondent Agrium of any term of the Ritzville Terminal Divestiture Agreement shall constitute a violation of this Order. If any term of the Ritzville Terminal Divestiture Agreement varies from the terms of this Order ("Order Term"), then to the extent that Respondent Agrium cannot fully comply with both terms, the Order Term shall determine Respondent Agrium's obligations under this Order. Any material modification of the Ritzville Terminal Divestiture Agreement between the date the Commission approves the Ritzville Terminal Divestiture Agreement and the Closing Date, without the prior approval of the Commission, or any failure to meet any material condition precedent to closing (whether waived or not), shall constitute a violation of this Order. Notwithstanding any paragraph, section, or other provision of the Ritzville Terminal Divestiture Agreement, for a period of five (5) years after the relevant Ritzville Terminal Divestiture Date, any modification of the Ritzville Terminal Divestiture Agreement, without the approval of the Commission, shall constitute a failure to comply with this Order. Respondents shall provide written notice to the Commission not more than five (5) days after any modification (material or otherwise) of the Ritzville Terminal Divestiture Agreement, or after any failure to meet any condition precedent (material or otherwise) to closing (whether waived or not).

- H. Respondent Agrium shall, prior to the Ritzville Terminal Divestiture Date and as a condition precedent to the consummation of the divestiture pursuant to Paragraph II.A., Paragraph II.B., or Paragraph II.C., secure all consents and waivers from all third parties that are necessary to permit Respondent Agrium to divest the Ritzville Terminal and assign the Ritzville

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Terminal Contracts (including by sub-assignment if necessary) required to be divested and assigned pursuant to this Order to the Ritzville Terminal Acquirer, *provided, however*, Respondent Agrium may satisfy this requirement by certifying that the Ritzville Terminal Acquirer has executed all such agreements directly with each of the relevant third parties.

- I. After the Agrium-CF Acquisition Date and until the Ritzville Terminal Divestiture Date, Respondent Agrium shall take such actions as are necessary to prevent the destruction, removal, wasting, deterioration, or impairment of the facilities Related To the Ritzville Terminal.
- J. Respondent Agrium shall, not later than the Ritzville Terminal Divestiture Date and at the Ritzville Terminal Acquirer's option, enter into one or more transition services agreements for the provision of services to be provided by Respondent Agrium to the Ritzville Terminal Acquirer. Such agreements shall be subject to the prior approval of the Commission and become a part of the Ritzville Terminal Divestiture Agreement.
 1. Such agreements may include, but are not limited to, an agreement providing for supply of Anhydrous Ammonia to the Ritzville Terminal from the Medicine Hat Plant for a period of time until a different stable, independent, long-term source for Anhydrous Ammonia is secured for the Ritzville Terminal, and an agreement for technical assistance.
 2. Respondent Agrium shall not terminate any transition services agreement before the end of the term approved by the Commission without:
 - a. the written agreement of the Ritzville Terminal

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Acquirer and thirty (30) days prior notice to the Commission; or,

- b. in the case of a proposed unilateral termination by Respondent Agrium due to an alleged breach of an agreement by the Ritzville Terminal Acquirer, sixty (60) days prior notice to the Commission of such termination. *provided, however, such sixty (60) days notice shall only be given after the parties have in good faith:*

- (1) attempted to settle the dispute between themselves, and

- (2) engaged in arbitration and received an arbitrator's decision, or

- (3) received a final court decision after all appeals.

- K. The purposes of this Paragraph II of the Order are: (1) to ensure the continuation of the Ritzville Terminal as a going concern in the same manner in which it conducted business as of the Agrium-CF Acquisition Date, (2) to ensure that the Ritzville Terminal Acquirer has the intention and ability to operate the Ritzville Terminal independent of Respondent Agrium, similar to CF's independent use of the Ritzville Terminal, (3) to ensure that the Ritzville Terminal Acquirer has an independent, secure, stable, and long-term source of Anhydrous Ammonia to sell out of the Ritzville Terminal, (4) to ensure that the Ritzville Terminal Acquirer has an independent, secure, stable, and long-term source of Anhydrous Ammonia to expand sales out of the Ritzville Terminal by 30% over its 2008 sales, and (5) to remedy the lessening of competition resulting from the Agrium-CF Acquisition as alleged in the Commission's Complaint.

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

- A. Within forty-five (45) days after the Agrium-CF Acquisition Date, Respondent Agrium shall divest the Marseilles Terminal and assign the Marseilles Terminal Contracts (including by sub-assignment if necessary) absolutely and in good faith, to Terra in a manner that receives the prior approval of the Commission and consistent with the Terra Marseilles Divestiture Agreements.
- B. If, at the time the Commission determines to make this Order final, the Commission notifies Respondent Agrium that Terra is not an acceptable acquirer of the Marseilles Terminal or that the manner in which the divestiture was accomplished is not acceptable, then, after receipt of such written notification:
 - 1. Respondent Agrium shall immediately notify Terra of the notice received from the Commission and shall as soon as practicable effect the rescission of the Terra Divestiture Agreements with regard to the Marseilles Terminal; and
 - 2. Respondent Agrium shall, within one-hundred-twenty (120) days from the date this Order becomes final, divest the Marseilles Terminal and assign the Marseilles Terminal Contracts (including by sub-assignment if necessary) 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,* the Marseilles Terminal Acquirer shall have (a) a secure and

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stable, independent source of Anhydrous Ammonia with a capability to supply to the Marseilles Terminal a volume of Anhydrous Ammonia similar to the volume of Anhydrous Ammonia supplied to the Marseilles Terminal before the Marseilles Terminal Divestiture Date at a delivered price of Anhydrous Ammonia consistent with the competitive position of the Marseilles Terminal before the Marseilles Terminal Divestiture Date; and (b) a settled transportation plan including, but not limited to, signed contracts with rail or other transportation options, for transportation of the Anhydrous Ammonia from an Anhydrous Ammonia producer/supplier to the Marseilles Terminal. *Provided, further, however*, with respect to assets that are to be divested or agreements entered into pursuant to this paragraph at the Marseilles Terminal Acquirer's option, Respondent Agrium need not divest such assets or enter into such agreements only if the Marseilles Terminal Acquirer chooses not to acquire such assets or enter into such agreements and the Commission approves the divestiture without such assets or agreements.

- C. If Respondent Agrium is unable to divest pursuant to Paragraph III.A. of this Order if (1) Terra notifies Respondent Agrium that it invokes a termination provision in the Terra Marseilles Divestiture Agreements terminating its obligation to acquire the Marseilles Terminal, or (2) Terra fails to close the Terra Marseilles Divestiture Agreements as required by such agreements or the terms of this Order, then:
1. Respondent Agrium shall, within one (1) day, notify the Commission of Terra's actions and that the Terra Divestiture Agreements are no longer effective as to the Marseilles Terminal ("Terra Marseilles Termination Date"); and

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2. Respondent Agrium shall, within one-hundred-twenty (120) days from the Agrium-CF Acquisition Date, divest the Marseilles Terminal and assign the Marseilles Terminal Contracts (including by sub-assignment if necessary) 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,* the Marseilles Terminal Acquirer shall have (a) a secure and stable, independent source of Anhydrous Ammonia with a capability to supply to the Marseilles Terminal a volume of Anhydrous Ammonia similar to the volume of Anhydrous Ammonia supplied to the Marseilles Terminal before the Marseilles Terminal Divestiture Date at a delivered price of Anhydrous Ammonia consistent with the competitive position of the Marseilles Terminal before the Marseilles Terminal Divestiture Date; and (b) a settled transportation plan including, but not limited to, signed contracts with rail or other transportation options, for transportation of the Anhydrous Ammonia from an Anhydrous Ammonia producer/supplier to the Marseilles Terminal. *Provided, further, however,* with respect to assets that are to be divested or agreements entered into pursuant to this paragraph at the Marseilles Terminal Acquirer's option, Respondent Agrium need not divest such assets or enter into such agreements only if the Marseilles Terminal Acquirer chooses not to acquire such assets or enter into such agreements and the Commission approves the divestiture without such assets or agreements.
- D. The Marseilles Terminal Divestiture Agreement shall not limit or contradict, or be construed to limit or

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contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of any Commission-approved Acquirer or to reduce any obligations of Respondent Agrium under such agreements, and each such agreement, if approved by the Commission as the Divestiture Agreement, shall be incorporated by reference into this Order and made a part hereof. Respondent Agrium shall comply with all terms of the Marseilles Terminal Divestiture Agreement, and any breach by Respondent Agrium of any term of the Marseilles Terminal Divestiture Agreement shall constitute a violation of this Order. If any term of the Marseilles Terminal Divestiture Agreement varies from the terms of this Order ("Order Term"), then to the extent that Respondent Agrium cannot fully comply with both terms, the Order Term shall determine Respondent Agrium's obligations under this Order. Any material modification of the Marseilles Terminal Divestiture Agreement between the date the Commission approves the Marseilles Terminal Divestiture Agreement and the Closing Date, without the prior approval of the Commission, or any failure to meet any material condition precedent to closing (whether waived or not), shall constitute a violation of this Order. Notwithstanding any paragraph, section, or other provision of the Divestiture Agreements, for a period of five (5) years after the relevant Marseilles Terminal Divestiture Date, any modification of the Marseilles Terminal Divestiture Agreement, without the approval of the Commission, shall constitute a failure to comply with this Order. Respondents shall provide written notice to the Commission not more than five (5) days after any modification (material or otherwise) of the Marseilles Terminal Divestiture Agreement, or after any failure to meet any condition precedent (material or otherwise) to closing (whether waived or not).

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- E. Respondent Agrium shall, prior to the Marseilles Terminal Divestiture Date and as a condition precedent to the consummation of the divestiture pursuant to Paragraph III.A, Paragraph III.B., or Paragraph III.C., secure all consents and waivers from all third parties that are necessary to permit Respondent Agrium to divest the Marseilles Terminal and assign the Marseilles Terminal Contracts (including by sub-assignment if necessary) required to be divested and assigned pursuant to this Order to the Marseilles Terminal Acquirer, *provided, however*, Respondent Agrium may satisfy this requirement by certifying that the Marseilles Terminal Acquirer has executed all such agreements directly with each of the relevant third parties.
- F. Until the Marseilles Terminal Divestiture Date, Respondent Agrium shall take such actions as are necessary to prevent the destruction, removal, wasting, deterioration, or impairment of the facilities Related To the Marseilles Terminal.
- G. Respondent Agrium shall, not later than the Marseilles Terminal Divestiture Date and at the Marseilles Terminal Acquirer's option, enter into one or more transition services agreements for the provision of services to be provided by Respondent Agrium to the Marseilles Terminal Acquirer. Such agreements shall be subject to the prior approval of the Commission and become a part of the Marseilles Terminal Divestiture Agreement.
 - 1. Such agreements may include, but are not limited to an agreement for technical assistance.
 - 2. Respondent Agrium shall not terminate any transition services agreement before the end of the

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term approved by the Commission without:

- a. the written agreement of the Marseilles Terminal Acquirer and thirty (30) days prior notice to the Commission; or,
- b. in the case of a proposed unilateral termination by Respondent Agrium due to an alleged breach of an agreement by the Marseilles Terminal Acquirer, sixty (60) days prior notice to the Commission of such termination. *Provided, however, such sixty (60) days notice shall only be given after the parties have in good faith:*
 - (1) attempted to settle the dispute between themselves, and
 - (2) engaged in arbitration and received an arbitrator's decision, or
 - (3) received a final court decision after all appeals.

- H. The purposes of this Paragraph III of the Order are: (1) to ensure the continuation of the Marseilles Terminal as a going concern in the same manner in which it conducted business as of the Agrium-CF Acquisition Date, (2) to ensure that the Marseilles Terminal Acquirer has the intention and ability to operate the Marseilles Terminal independent of Respondent Agrium, (3) to ensure that the Marseilles Terminal Acquirer has an independent, secure, and stable source of Anhydrous Ammonia to sell out of the Marseilles Terminal, and (4) to remedy the lessening of competition resulting from the Agrium-CF Acquisition as alleged in the Commission's Complaint.

IV.

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IT IS FURTHER ORDERED that:

- A. No later than five (5) days after the Agrium-CF Acquisition Date, Respondent Agrium shall terminate certain portions of the Agrium/Rentech Distribution Agreement, and modify and supplement the Agrium/Rentech Distribution Agreement pursuant to the Agrium/Rentech Distribution Amendment.
- B. The purpose of the terminations, modifications, and supplements described in Paragraph IV.A. of this Order, as agreed-to by Respondent Agrium and Rentech in the Agrium/Rentech Distribution Amendment, is to (1) establish Rentech as a viable distributor and marketer of Anhydrous Ammonia similar to the competitive position Respondent Agrium had pursuant to the Agrium/Rentech Distribution Agreement including, but not limited to, the ability to receive, store, and transport Anhydrous Ammonia for customers in the areas where Respondent Agrium had serviced customers pursuant to the Agrium/Rentech Distribution Agreement; and (2) to remedy the lessening of competition resulting from the Agrium-CF Acquisition as alleged in the Commission's Complaint.

V.

IT IS FURTHER ORDERED that Respondent Agrium and Respondent Agrium's employees shall not, after the divestiture of the Ritzville Terminal and the Marseilles Terminal, use or share, directly or indirectly, any Confidential Business Information Relating To the Ritzville Terminal or the Marseilles Terminal (including, but not limited to, the production, transportation, delivery, storage, distribution, marketing, and sale of Anhydrous Ammonia to or from such terminals) with any of Respondent Agrium's employees who manage, market, store, or sell Anhydrous

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Ammonia to or from Respondent Agrium's Terminals in the PNW or the Illinois-Iowa Area. *Provided, however*, the provisions of this Paragraph V apply except:

- A. As otherwise allowed in this Order or the Hold Separate Order, in this matter;
- B. As provided for in a transition services agreement;
- C. As consented to by the Ritzville Terminal Acquirer or Marseilles Terminal Acquirer;
- D. As required by law;
- E. In negotiating agreements to divest assets pursuant to this Order and engaging in related due diligence;
- F. In complying with this Order;
- G. To the extent necessary to allow Respondent Agrium to comply with the requirements and obligations of the laws of the United States and other countries;
- H. In defending legal claims, investigations or enforcement actions threatened or brought against or related to the Ritzville Terminal or the Marseilles Terminal; and
- I. In obtaining legal advice.

VI.

IT IS FURTHER ORDERED that:

- A. If Respondent Agrium has not fully complied with the obligations as required by Paragraphs II., III., and IV. of this Order, the Commission may appoint a Divestiture Trustee to divest the Ritzville Terminal and

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the Marseille Terminal, and terminate the Agrium/Rentech Marketing Agreement, unless otherwise divested or terminated pursuant to this Order, and enter into other agreements, assignments, and licenses, in a manner that satisfies the requirements of this Order. 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, Respondent Agrium shall consent to the appointment of a Divestiture Trustee in such action to effectuate the divestitures and other obligations as described in Paragraphs II, III, and IV. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph VI 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 Respondent Agrium to comply with this Order.

- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent Agrium, which consent shall not be unreasonably withheld. If any other competition authority has appointed a Person to aid in the divestiture of assets that are the same as the assets to be divested pursuant to this Order, the Commission will consider that Person as a possible Divestiture Trustee. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent Agrium has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondent Agrium of the identity of

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any proposed Divestiture Trustee, Respondent Agrium 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, Respondent Agrium 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 and contract termination required by this Order.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph VI, Respondent Agrium 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 Ritzville Terminal, and/or divest the Marseilles Terminal, and/or terminate the Agrium/Rentech Marketing Agreement, and enter into all agreements, licenses and assignments as described in Paragraphs II, III, and IV of this Order.
 - 2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to divest the Ritzville Terminal, and/or divest the Marseilles Terminal, and/or terminate the Agrium/Rentech Marketing Agreement, and enter into all agreements, licenses and assignments as described in Paragraphs II, III, and IV of this Order, absolutely and in good faith, at no minimum price, to one or more acquirers that receives the prior approval of the Commission and in a manner that receives the prior approval of the

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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. Respondent Agrium shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent Agrium shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent Agrium shall extend the time for divestiture under this Paragraph VI 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 Respondent Agrium'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 for

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assets and businesses to be divested pursuant to Paragraph II and Paragraph III, respectively, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondent Agrium from among those approved by the Commission. *provided further, however*, that Respondent Agrium 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 Respondent Agrium, 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 Respondent Agrium, 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 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 Respondent Agrium, 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. Respondent Agrium shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless

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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 gross negligence, malfeasance, 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 Respondent Agrium and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
10. Respondent Agrium 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 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

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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 VI.
- 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 obligations under Paragraphs II, III, and IV of this Order.
- G. The Divestiture Trustee(s) appointed pursuant to Paragraph VI of this Order may be the same Person appointed as the Hold Separate Trustee or Monitor pursuant to the Hold Separate Order.

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

- A. Beginning from the Agrium-CF Acquisition Date until ninety (90) days after each of the Ritzville Terminal Divestiture Date and the Marseilles Terminal Divestiture Date, Respondent Agrium shall, in a manner consistent with local labor laws:
 - 1. facilitate employment interviews between employees at the Ritzville Terminal and the Ritzville Terminal Acquirer, and between employees at the Marseilles Terminal and the Marseilles Terminal Acquirer, including providing the names and contact information for such

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employees and allowing such employees reasonable opportunity to interview with the Ritzville Terminal Acquirer or the Marseilles Terminal Acquirer, respectively, and shall not discourage such employee from participating in such interviews;

2. not interfere in employment negotiations between each Designated Ritzville Terminal Employee and the Ritzville Terminal Acquirer, or between each Designated Marseilles Terminal Employee and the Marseilles Terminal Acquirer;
3. with respect to each employee who receives an offer of employment from the Ritzville Terminal Acquirer or the Marseilles Terminal Acquirer, respectively:
 - a. not prevent, prohibit, or restrict, or threaten to prevent, prohibit, or restrict:
 - (1) the Designated Ritzville Terminal Employee from being employed by the Ritzville Terminal Acquirer, and shall not offer any incentive to the Designated Ritzville Terminal Employee to decline employment with the Ritzville Terminal Acquirer; or
 - (2) the Designated Marseilles Terminal Employee from being employed by the Marseilles Terminal Acquirer, and shall not offer any incentive to the Designated Marseilles Terminal Employee to decline employment with the Marseilles Terminal Acquirer.
 - b. cooperate with:

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- (1) the Ritzville Terminal Acquirer in effecting transfer of the Designated Ritzville Terminal Employee to the employ of the Ritzville Terminal Acquirer, if the Designated Ritzville Terminal Employee accepts an offer of employment from the Ritzville Terminal Acquirer; or
 - (2) the Marseilles Terminal Acquirer in effecting transfer of the Designated Marseilles Terminal Employee to the employ of the Marseilles Terminal Acquirer, if the Designated Marseilles Terminal Employee accepts an offer of employment from the Marseilles Terminal Acquirer;
- c. eliminate any contractual provisions or other restrictions entered into or imposed by Respondent Agrium that would otherwise prevent the Designated Ritzville Terminal Employee or Designated Marseilles Terminal Employee from being employed by the Ritzville Terminal Acquirer or Marseilles Terminal Acquirer, respectively;
- d. eliminate any confidentiality restrictions (imposed by Respondent Agrium or CF) that would prevent:
- (1) the Designated Ritzville Terminal Employee who accepts employment with the Ritzville Terminal Acquirer from using or transferring to the Ritzville Terminal Acquirer any information Relating To the operation of the Ritzville Terminal; or
 - (2) the Designated Marseilles Terminal Employee who accepts employment with the

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Marseilles Terminal Acquirer from using or transferring to the Marseilles Terminal Acquirer any information Relating To the operation of the Marseilles Terminal.

- e. unless alternative arrangements are agreed upon with the Ritzville Terminal Acquirer or the Marseilles Terminal Acquirer, retain the obligation to provide for the benefit of:

- (1) any Designated Ritzville Terminal Employee who accepts employment with the Ritzville Terminal Acquirer, all accrued bonuses, vested pensions, and other accrued benefits;

- (2) any Designated Marseilles Terminal Employee, who accepts employment with the Marseilles Terminal Acquirer, all accrued bonuses, vested pensions, and other accrued benefits.

- B. Respondent Agrium shall not, for a period of two (2) years following the Ritzville Terminal Divestiture Date and Marseilles Terminal Divestiture Date, respectively, directly or indirectly, solicit, induce, or attempt to solicit or induce:

- 1. any Designated Ritzville Terminal Employee who is employed by the Ritzville Terminal Acquirer to terminate his or her employment relationship with the Ritzville Terminal Acquirer, unless that employment relationship has already been terminated by the Ritzville Terminal Acquirer; *provided, however*, Respondent Agrium may make general advertisements for employees including, but not limited to, in newspapers, trade publications,

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websites, or other media not targeted specifically at the Ritzville Terminal Acquirer's employees; *provided further, however*, Respondent Agrium may hire Designated Ritzville Terminal Employees who apply for employment with Respondent Agrium as long as such employees were not solicited by Respondent Agrium in violation of this Paragraph.

2. any Designated Marseilles Terminal Employee who is employed by the Marseilles Terminal Acquirer to terminate his or her employment relationship with the Marseilles Terminal Acquirer, unless that employment relationship has already been terminated by the Marseilles Terminal Acquirer; *provided, however*, Respondent Agrium may make general advertisements for employees including, but not limited to, in newspapers, trade publications, websites, or other media not targeted specifically at the Marseilles Terminal Acquirer's employees; *provided further, however*, Respondent Agrium may hire Designated Marseilles Terminal Employees who apply for employment with Respondent Agrium as long as such employees were not solicited by Respondent Agrium in violation of this Paragraph.

VIII.

IT IS FURTHER ORDERED that for a period of ten (10) years from the date this Order becomes final:

- A. Respondent Agrium shall not, without the prior approval of the Commission, acquire, directly or indirectly, any assets divested pursuant to this Order or rescind, modify, or terminate the Agrium/Rentech Distribution Amendment; and

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- B. Respondent Agrium shall not, without providing advance written notification to the Commission in the manner described in this Paragraph VIII.B., and observing the required waiting periods, directly or indirectly, acquire:
1. any stock, share capital, equity, or other interest in any Person, corporate or non-corporate, that owns a terminal that stores Anhydrous Ammonia in the PNW or the Illinois-Iowa Area; or
 2. a terminal that stores Anhydrous Ammonia in the PNW or the Illinois-Iowa Area.

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. The Notification shall be filed with the Secretary of the Commission, with a simultaneous filing with the Assistant Director for Compliance of the Bureau of Competition. The Notification need not be made to the United States Department of Justice, and notification is required only of Respondent Agrium and not of any other party to the transaction. Respondent Agrium 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 Agrium shall not consummate the

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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 VIII.B. for an acquisition, if Respondent Agrium holds, after such acquisition, no more than one percent of the outstanding securities or other equity interest in an entity described in this Paragraph 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 Respondent Agrium has fully complied with Paragraphs II., III., IV, and VII. of this Order, Respondent Agrium shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondent Agrium shall submit at the same time a copy of its report concerning compliance with this Order to the Monitor, Hold Separate Trustee, or Divestiture Trustee, if any Monitor or Trustee has been appointed pursuant to this Order or the Hold Separate Order. Respondent Agrium shall include in its report, among other things that are required from time to time, a full description of the efforts being made to

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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. Respondent Agrium shall include in its report copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning completing the obligations.

- B. Beginning twelve (12) months after the date this Order becomes final, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondent Agrium shall submit to the Commission a verified written report setting forth in detail the manner and form in which it has complied, is complying, and will comply with this Order. Respondent Agrium shall include in its 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. Additionally, Respondent Agrium shall include in its compliance report whether or not it made any notifiable acquisitions pursuant to Paragraph VIII. Respondent Agrium shall include a description of such acquisitions including, but not limited to, the identity of the Person or assets acquired, the location of the Person or assets, and a detailed description of the assets or Person.

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

- A. In the event of a CF-Terra Acquisition before the Agrium-CF Acquisition Date, Respondent Agrium shall

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not, without providing advance written notification to the Commission in the manner described in this Paragraph X. and observing the required waiting periods, directly or indirectly acquire CF; and

- B. In the event of a CF-Terra Acquisition before the Agrium-CF Acquisition Date, Respondent Agrium shall not, without providing advance written notification to the Commission in the manner described in this Paragraph X. and observing the required waiting periods, directly or indirectly acquire Terra, through an acquisition of Terra by CF or in any other manner.

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. The Notification shall be filed with the Secretary of the Commission, with a simultaneous filing with the Assistant Director for Compliance of the Bureau of Competition. The Notification need not be made to the United States Department of Justice, and notification is required only of Respondent Agrium and not of any other party to the transaction. Respondent Agrium 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 Agrium 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

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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 Respondent Agrium's previous notifications pursuant to the Hart-Scott-Rodino Premerger Notification Act for the acquisition of CF shall not qualify as a notification pursuant to this Paragraph X.

Provided, further, however, that the terms of this Order and the Hold Separate Order in this matter shall continue to apply to Respondent Agrium if it does not file a Notification pursuant to this Paragraph X., and that the Commission's decision to request additional information, or not request additional information, under this Paragraph X shall not be construed to indicate whether the Commission believes an acquisition by Respondent Agrium of Terra would violate, or not violate, any law enforced by the Commission.

Provided, further, however, for the avoidance of doubt, the requirements of this Order, including specifically Paragraphs II, III, and IV, shall be binding upon Respondent Agrium whether or not the Commission determines that further relief may be needed for any acquisition by Respondent Agrium of Terra.

XI.

IT IS FURTHER ORDERED that Respondent Agrium shall notify the Commission at least thirty (30) days prior to any proposed:

- A. dissolution of the Respondent Agrium;
- B. acquisition, merger or consolidation of Respondent Agrium; or
- C. other change in the Respondent Agrium, including, but not limited to, assignment and the creation or

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dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

XII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondent Agrium, Respondent Agrium shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

- A. access, during business office hours of Respondent Agrium 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 Respondent Agrium related to compliance with this Order, which copying services shall be provided by Respondent Agrium at its expense; and
- B. to interview officers, directors, or employees of Respondent Agrium, who may have counsel present, regarding such matters.

XIII.

IT IS FURTHER ORDERED that this Order shall terminate on February 3, 2020.

By the Commission.

Decision and Order

CONFIDENTIAL EXHIBIT A
Agrium/Rentech Distribution Agreement

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

CONFIDENTIAL EXHIBIT B
Agrium/Rentech Distribution Amendment

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

CONFIDENTIAL EXHIBIT C
Terra Ritzville Divestiture Agreements

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

CONFIDENTIAL EXHIBIT D
Terra Marseilles Divestiture Agreements

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

Order to Maintain Assets

ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition of CF Industries Holdings, Inc., by Agrium Inc. ("Respondent Agrium"), and Respondent Agrium having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent Agrium 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

Respondent Agrium, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders ("Consent Agreement"), containing an admission by Respondent Agrium of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent Agrium 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 Respondent Agrium has violated the said Acts, and that a Complaint should issue stating its charges in that respect, 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 issues its complaint, makes the following jurisdictional findings and issues the following Order to Hold Separate and Maintain Assets ("Hold Separate Order"):

1. Respondent Agrium Inc. is a corporation organized,

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existing and doing business under and by virtue of the laws of Canada, with its office and principal place of business located at 13131 Lake Fraser Drive SE, Calgary, Alberta, T2J7E8, Canada.

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

ORDER**I.**

IT IS ORDERED that, as used in this Hold Separate Order, the following definitions and the definitions in Paragraph I of the Decision and Order attached to the Agreement Containing Consent Orders in this matter and, when made final, Paragraph I of the Decision and Order, which are incorporated herein by reference and made a part hereof, shall apply:

- A. "Decision and Order" means:
 1. the Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance of a final Decision and Order by the Commission; and
 2. the Final Decision and Order issued and served by the Commission.
- B. "Hold Separate Trustee" means the person appointed pursuant to Paragraph III of this Hold Separate Order.
- C. "Monitor" means any monitor appointed pursuant to Paragraph VII of this Hold Separate Order.
- D. "Orders" means the Decision and Order and this Order

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to Hold Separate and Maintain Assets.

- E. "Ritzville Held Separate Business" means the Ritzville Terminal and the on-going supply, storage, and sale of Anhydrous Ammonia at the Ritzville Terminal.

II.

IT IS FURTHER ORDERED that from the Agrium-CF Acquisition Date until the Ritzville Terminal Divestiture Date:

- A. Respondent Agrium shall:
1. take such actions as are necessary to maintain the viability and marketability of the Ritzville Terminal and Carseland Facility and to prevent the destruction, removal, wasting, deterioration, or impairment of the Ritzville Terminal and Carseland Facility, except for ordinary wear and tear;
 2. maintain the operations of the Ritzville Terminal and Carseland Facility in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance of the assets, as necessary) and/or as may be necessary to preserve the marketability, viability, and competitiveness of the Ritzville Terminal and Carseland Facility; and
 3. use its best efforts to preserve the existing relationships with suppliers, vendors, distributors, customers, governmental agencies, employees, and others having business relations with the Ritzville Terminal and Carseland Facility.
- B. Respondent Agrium's responsibilities shall include, but are not limited to, the following:

Order to Maintain Assets

1. Respondent Agrium shall not sell, transfer, encumber or otherwise impair the economic viability, marketability, or competitiveness of the Ritzville Terminal and Carseland Facility;
2. Respondent Agrium shall retain all of Respondent Agrium's rights, title, and interest in the Ritzville Terminal and Carseland Facility, until the Ritzville Terminal Divestiture Date;
3. Respondent Agrium shall maintain a work force at the equivalent or larger size, and with equivalent or better training and expertise, to what has been associated with the Ritzville Terminal and Carseland Facility as of the date Respondent Agrium signed the Consent Agreement;
4. Respondent Agrium shall not offer employees Related To the Ritzville Terminal and Carseland Facility other positions within Respondent Agrium or terminate employees Related To the Ritzville Terminal and Carseland Facility;
5. Respondent Agrium shall do nothing to prevent or discourage suppliers that, prior to the date on which the Consent Agreement was signed, supplied goods and services to the Ritzville Terminal and Carseland Facility from continuing to supply goods and services to the Ritzville Terminal and Carseland Facility;
6. Respondent Agrium shall provide the Ritzville Terminal and Carseland Facility with sufficient working capital to operate at least at current rates of operation, to meet all capital calls with respect to such business and to carry on, at least at their

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scheduled pace, all capital projects, business plans and promotional activities for the Ritzville Terminal and Carseland Facility;

7. Respondent Agrium shall ensure that the Ritzville Terminal is supplied with Anhydrous Ammonia on an ongoing basis as necessary and appropriate to ensure that the Ritzville Terminal will build up sufficient Anhydrous Ammonia supply to meet seasonal demand for Anhydrous Ammonia;
8. Respondent Agrium shall continue, at least at their scheduled pace, any additional expenditures for the Ritzville Terminal and Carseland Facility authorized prior to the date the Consent Agreement was signed by Respondent Agrium including, but not limited to, all distribution, marketing and sales expenditures;
9. Respondent Agrium shall provide such resources as may be necessary to respond to competition against the Ritzville Terminal and Carseland Facility and/or to prevent any diminution in sales of the Ritzville Terminal and Carseland Facility after the date on which Respondent Agrium signed the Consent Agreement and prior to the Ritzville Terminal Divestiture Date;
10. Respondent Agrium shall make available for use by the Ritzville Terminal and Carseland Facility funds sufficient to perform all routine maintenance and all other maintenance as may be necessary to, and all replacements of, the assets related to such business;
11. Respondent Agrium shall provide the Ritzville Terminal and Carseland Facility with such funds as are necessary to maintain the economic viability,

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marketability and competitiveness of the Ritzville Terminal and Carseland Facility;

12. Respondent Agrium shall provide such support services to the Ritzville Terminal and Carseland Facility as were being provided to the Ritzville Terminal and Carseland Facility as of the Agrium-CF Acquisition Date.
 13. Respondent Agrium shall provide all the Ritzville Terminal and Carseland Facility employees with reasonable financial incentives to continue in their positions consistent with past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of the Ritzville Terminal and Carseland Facility pending divestiture. Such incentives shall include a continuation of all employee benefits offered by Respondent Agrium until the Ritzville Terminal Divestiture Date has occurred, including regularly scheduled raises, bonuses, vesting of pension benefits (as permitted by law), and additional incentives as may be necessary to prevent any diminution of the Ritzville Terminal's competitiveness and the Carseland Facility's competitiveness.
- C. Respondent Agrium shall not interfere with the hiring or employing of the Ritzville Terminal employees as described in Paragraph VII of the proposed Decision and Order, and shall remove any impediments within the control of Respondent Agrium that may deter these employees from accepting employment with the Ritzville Terminal Acquirer including, but not limited to, any noncompete provisions of employment or other contracts with Respondent Agrium that would affect the ability or incentive of those individuals to be

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employed by the Ritzville Terminal Acquirer. In addition, Respondent Agrium shall not make any counteroffer to a Ritzville Terminal employee who receives a written offer of employment from the Ritzville Terminal Acquirer;

Provided, however, subject to the conditions of continued employment prescribed in this Order to Maintain Assets, this Paragraph II.F. shall not prohibit Respondent Agrium from continuing to employ any Designated Ritzville Employee under the terms of such employee's employment with Respondent Agrium prior to the date of the written offer of employment from the Ritzville Terminal Acquirer to such employee.

- D. The purposes of this Paragraph II are to: (1) preserve the Ritzville Terminal and Carseland Facility as a viable, competitive, and ongoing business independent of Respondent Agrium until the divestiture required by the Decision and Order is achieved; (2) prevent interim harm to competition pending the relevant divestitures and other relief; and (3) help remedy any anticompetitive effects of the proposed Agrium-CF Acquisition as alleged in the Commission's Complaint.

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

- A. From the Agrium-CF Acquisition Date until the Ritzville Terminal Divestiture Date, Respondent Agrium shall hold the Ritzville Held Separate Business separate, apart, and independent of Respondent Agrium. To hold the Ritzville Held Separate Business separate, Respondent Agrium shall, among other things:

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1. Not offer CF employees Related To the Ritzville Held Separate Business positions with Respondent Agrium (other than continuing employment at the Ritzville Terminal).
 2. Do nothing to prevent or discourage suppliers that, prior to the Ritzville Terminal Divestiture Date, supplied goods and services to the Ritzville Terminal from continuing to supply goods and services to the Ritzville Terminal.
- B. At any time after the Terra Ritzville Termination Date, the Commission may appoint a Hold Separate Trustee to assure that the Ritzville Held Separate Business is held separate from Respondent Agrium.
1. The Commission shall select the Hold Separate Trustee, subject to the consent of Respondent Agrium, which consent shall not be unreasonably withheld. If Respondent Agrium has not opposed, in writing, including the reasons for opposing, the selection of a proposed Hold Separate Trustee within five (5) business days after notice by the staff of the Commission to Respondent Agrium of the identity of any proposed Hold Separate Trustee, Respondent Agrium shall be deemed to have consented to the selection of the proposed Hold Separate Trustee.
 2. Not later than five (5) business days after appointment of the Hold Separate Trustee, Respondent Agrium shall execute an agreement that, subject to the prior approval of the Commission, confers on the Hold Separate Trustee all the rights and powers necessary to permit the Hold Separate Trustee to perform his duties and responsibilities, pursuant to this Hold Separate

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Order and consistent with the purposes of this Hold Separate Order.

3. Not later than ten (10) business days after appointment of the Hold Separate Trustee, Respondent Agrium shall, pursuant to the Hold Separate Trustee Agreement, transfer to the Hold Separate Trustee all rights, powers, and authorities necessary to permit the Hold Separate Trustee to perform his/her duties and responsibilities, pursuant to this Hold Separate Order and consistent with the purposes of the Decision and Order.
4. Respondent Agrium shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Hold Separate Trustee:
 - a. The Hold Separate Trustee shall have the responsibility, consistent with the terms of this Hold Separate Order and the Decision and Order, for monitoring the organization of the Ritzville Held Separate Business; for managing the Ritzville Held Separate Business through the Managers; for maintaining the independence of the Ritzville Held Separate Business; and for monitoring Respondent Agrium's compliance with its obligations pursuant to the Orders.
 - b. Subject to all applicable laws and regulations, the Hold Separate Trustee shall have full and complete access to all personnel, books, records, documents and facilities of the Ritzville Held Separate Business or to any other relevant information as the Hold Separate Trustee may reasonably request including, but not limited to, all documents and records kept

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by Respondent Agrium in the ordinary course of business that relate to the Ritzville Held Separate Business. Respondent Agrium shall develop such financial or other information as the Hold Separate Trustee may request and shall cooperate with the Hold Separate Trustee. Respondent Agrium shall take no action to interfere with or impede the Hold Separate Trustee's ability to monitor Respondent Agrium's compliance with the Orders or otherwise to perform his/her duties and responsibilities consistent with the terms of this Hold Separate Order.

- c. The Hold Separate Trustee shall have the authority to employ, at the cost and expense of Respondent Agrium, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Hold Separate Trustee's duties and responsibilities.
- d. The Commission may require the Hold Separate Trustee, and Persons hired by the Hold Separate Trustee, to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with performance of the Hold Separate Trustee's duties.
- e. Respondent Agrium may require the Hold Separate Trustee, and Persons hired by the Hold Separate Trustee, to sign a confidentiality agreement prohibiting the disclosure of any Confidential Business Information gained as a result of his or her role as Hold Separate Trustee to anyone other than the Commission.

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- f. Thirty (30) days after the appointment of the Hold Separate Trustee pursuant to this Paragraph III.B., and every thirty (30) days thereafter until the Hold Separate Order terminates, the Hold Separate Trustee shall report in writing to the Commission concerning the efforts to accomplish the purposes of this Hold Separate Order. Included within that report shall be the Hold Separate Trustee's assessment of the extent to which the businesses comprising the Ritzville Held Separate Business are meeting (or exceeding) their projected goals as are reflected in operating plans, budgets, projections or any other regularly prepared financial statements.
- g. If the Hold Separate Trustee ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate Order, the Commission may appoint a substitute Hold Separate Trustee consistent with the terms of this paragraph, subject to the consent of Respondent Agrium, which consent shall not be unreasonably withheld. If Respondent Agrium has not opposed, in writing, including the reasons for opposing, the selection of the substitute Hold Separate Trustee within five (5) business days after notice by the staff of the Commission to Respondent Agrium of the identity of any substitute Hold Separate Trustee, Respondent Agrium shall be deemed to have consented to the selection of the proposed substitute trustee. Respondent Agrium and the substitute Hold Separate Trustee shall execute a new Hold Separate Trustee Agreement, subject to the approval of the Commission, consistent with this Paragraph

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III.B.

- C. Respondent Agrium shall enter into management agreements with one or more persons, approved by Commission staff, to be Managers of the Ritzville Held Separate Business, (1) at any time after the Agrium-CF Acquisition Date and before the Ritzville Terminal Divestiture Date, at the request of Commission staff, or (2) no later than five (5) business days after the appointment of the Hold Separate Trustee.
1. Respondent Agrium shall, pursuant to the management agreements, transfer all rights, powers, and authorities necessary to manage and maintain the Ritzville Held Separate Business, to the Managers.
 2. The Managers shall report directly and exclusively to the Hold Separate Trustee, if one is appointed, or otherwise to Commission staff, and shall manage the Ritzville Held Separate Business independently of the management of Respondent Agrium. The Managers shall not be involved, in any way, in the operations of the other businesses of Respondent Agrium during the term of this Hold Separate Order.
 3. The Managers shall have no financial interests (other than existing options and interests in securities of Respondent Agrium) affected by Respondent Agrium's revenues, profits or profit margins, except that the compensation of the Managers for managing the Ritzville Held Separate Business may include economic incentives dependent on the financial performance of the Ritzville Held Separate Business if there are also sufficient incentives for the Managers to

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operate the Ritzville Held Separate Business at no less than current rates of operation (including, but not limited to, current rates of production and sales) and to achieve the objectives of this Hold Separate Order.

4. The Managers shall make no material changes in the present operation of the Ritzville Held Separate Business except with the approval of the Hold Separate Trustee, in consultation with the Commission staff, or Commission staff.
5. The Managers shall have the authority, with the approval of the Hold Separate Trustee or Commission staff, to remove employees and replace them with others of similar experience or skills. If any person ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate Order, the Managers, in consultation with the Hold Separate Trustee or Commission staff, may request Respondent Agrium to, and Respondent Agrium shall, appoint a substitute person, which person the Managers shall have the right to approve.
6. In addition to those employees within the Ritzville Held Separate Business, the Managers may employ such Persons as are reasonably necessary to assist the Managers in managing the Ritzville Held Separate Business.
7. The Commission staff or the Hold Separate Trustee, in consultation with the Commission staff, shall be permitted, to remove the Manager(s) for cause. Within fifteen (15) days after such removal of the Manager(s), Respondent Agrium shall appoint replacement Manager(s), subject to the approval of the Commission, on the same terms and conditions as provided in Paragraph II.C.2 of this Hold Separate Order.

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8. In the event that the Manager(s) cease(s) to act as Managers, then Respondent Agrium shall select substitute Manager(s), subject to the approval of the Hold Separate Trustee, if appointed, and Commission staff, and transfer to the substitute Manager(s) all rights, powers and authorities necessary to permit the substitute Manager(s) to perform his/her/their duties and responsibilities, pursuant to this Hold Separate Order.
- D. No later than five (5) days after the appointment of the Hold Separate Trustee, Respondent Agrium shall circulate to employees of the Ritzville Held Separate Business a copy of this Hold Separate Order and the Consent Agreement with the Commission's press release and analysis to aid public comment.
 - E. The purposes of this Paragraph III are to: (1) preserve the Ritzville Held Separate Business as a viable, competitive, and ongoing business independent of Respondent Agrium until the divestiture required by the Decision and Order is achieved; (2) assure that no Confidential Business Information is exchanged between Respondent Agrium and the Ritzville Held Separate Business, except in accordance with the provisions of this Hold Separate Order; (3) prevent interim harm to competition pending the relevant divestitures and other relief; and (4) help remedy any anticompetitive effects of the proposed Agrium-CF Acquisition as alleged in the Commission's Complaint.

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

- A. From the Agrium-CF Acquisition Date until the

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Ritzville Terminal Divestiture Date:

1. Respondent Agrium shall not permit any of its employees, officers, or directors to be involved in the operations of the Ritzville Held Separate Business, unless otherwise authorized by this Hold Separate Order.
2. Respondent Agrium, and Respondent Agrium's or CF's personnel operating the Ritzville Held Separate Business, shall retain and maintain all Confidential Business Information of the Ritzville Held Separate Business on a confidential basis, separate and apart from Respondent Agrium and, except as is requested by Respondent Agrium for purposes of the divestiture of the Ritzville Terminal as required by the Decision and Order, in this matter, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to Respondent Agrium or with Respondent Agrium's personnel.
3. Respondent Agrium shall not, directly or indirectly, receive, disclose, or use any Confidential Business Information Related To the Ritzville Terminal to any Person except the Ritzville Terminal Acquirer or other persons specifically authorized by the Ritzville Terminal Acquirer to receive such information, or than as necessary to comply with the following:
 - a. the requirements of the Orders
 - b. applicable laws and regulations.
4. Respondent Agrium shall not provide, disclose or otherwise make available, directly or indirectly,

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any such Confidential Business Information related to the marketing or sales of the Ritzville Terminal to Respondent Agrium's employees associated with Respondent Agrium's Anhydrous Ammonia sales in the PNW.

5. Respondent Agrium shall institute procedures and requirements to ensure that:
 - a. Confidential Business Information Related to the Ritzville Terminal is not provided to, or obtained by, Respondent Agrium's employees associated with Respondent Agrium's Anhydrous Ammonia sales in the PNW;
 - b. Respondent Agrium employees with access to Confidential Business Information Relating To the Ritzville Terminal do not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information in contravention of this Hold Separate Order; and
 - c. Respondent Agrium's employees associated with Respondent Agrium's Anhydrous Ammonia sales in the PNW do not solicit, access or use any Confidential Business Information that they are prohibited under this Hold Separate Order from receiving for any reason or purpose.
- B. From the Terra Ritzville Termination Date until the Ritzville Terminal Divestiture Date, Respondent Agrium shall require any Persons with access to Confidential Business Information Relating To the Ritzville Terminal to enter into agreements, within ten (10) days after the date the Terra Divestiture

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Termination Date, not to disclose any Confidential Business Information Relating To the Ritzville Terminal to Respondent Agrium or to any third party except as otherwise permitted by this Hold Separate Order. Copies of such agreements shall be retained by Respondent Agrium, and provided to the Commission and the Hold Separate Trustee, if appointed.

- C. The purposes of this Paragraph IV are to: (1) preserve the Ritzville Held Separate Business as a viable, competitive, and ongoing business independent of Respondent Agrium until the divestiture required by the Decision and Order is achieved; (2) assure that no Confidential Business Information is exchanged between Respondent Agrium and the Ritzville Held Separate Business, except in accordance with the provisions of this Hold Separate Order; (3) prevent interim harm to competition pending the relevant divestitures and other relief; and (4) help remedy any anticompetitive effects of the proposed Agrium-CF Acquisition as alleged in the Commission's Complaint.

V.

IT IS FURTHER ORDERED that from the date Respondent Agrium signs the Consent Agreement until the Marseilles Terminal Divestiture Date:

- A. Respondent Agrium shall:
1. take such actions as are necessary to maintain the viability and marketability of the Marseilles Terminal and to prevent the destruction, removal, wasting, deterioration, or impairment of the Marseilles Terminal, except for ordinary wear and tear;
 2. maintain the operations of the Marseilles Terminal

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in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance of the assets, as necessary) and/or as may be necessary to preserve the marketability, viability, and competitiveness of the Marseilles Terminal; and

3. use its best efforts to preserve the existing relationships with suppliers, vendors, distributors, customers, governmental agencies, employees, and others having business relations with the Marseilles Terminal.
- B. Respondent Agrium's responsibilities shall include, but are not limited to, the following:
1. Respondent Agrium shall not sell, transfer, encumber or otherwise impair the economic viability, marketability, or competitiveness of the Marseilles Terminal;
 2. Respondent Agrium shall retain all of Respondent Agrium's rights, title, and interest in the Marseilles Terminal, until the Marseilles Terminal Divestiture Date;
 3. Respondent Agrium shall maintain a work force at the equivalent or larger size, and with equivalent or better training and expertise, to what has been associated with the Marseilles Terminal as of the date Respondent Agrium signed the Consent Agreement;
 4. Respondent Agrium shall not offer employees Related To the Marseilles Terminal other positions within Respondent Agrium or terminate employees Related To the Marseilles Terminal;

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5. Respondent Agrium shall do nothing to prevent or discourage suppliers that, prior to the date on which the Consent Agreement was signed, supplied goods and services to the Marseilles Terminal from continuing to supply goods and services to the Marseilles Terminal;
6. Respondent Agrium shall provide the Marseilles Terminal with sufficient working capital to operate at least at current rates of operation, to meet all capital calls with respect to such business and to carry on, at least at their scheduled pace, all capital projects, business plans and promotional activities for the Marseilles Terminal;
7. Respondent Agrium shall ensure that the Marseilles Terminal is supplied with Anhydrous Ammonia on an ongoing basis as necessary and appropriate to ensure that the Marseilles Terminal will build up sufficient Anhydrous Ammonia supply to meet seasonal demand for Anhydrous Ammonia;
8. Respondent Agrium shall continue, at least at their scheduled pace, any additional expenditures for the Marseilles Terminal authorized prior to the date the Consent Agreement was signed by Respondent Agrium including, but not limited to, all distribution, marketing and sales expenditures;
9. Respondent Agrium shall provide such resources as may be necessary to respond to competition against the Marseilles Terminal and/or to prevent any diminution in sales of the Marseilles Terminal after the date on which Respondent Agrium signed the Consent Agreement and prior to the Marseilles Terminal Divestiture Date;

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10. Respondent Agrium shall make available for use by the Marseilles Terminal funds sufficient to perform all routine maintenance and all other maintenance as may be necessary to, and all replacements of, the assets related to such business;
 11. Respondent Agrium shall provide the Marseilles Terminal with such funds as are necessary to maintain the economic viability, marketability and competitiveness of the Marseilles Terminal;
 12. Respondent Agrium shall provide such support services to the Marseilles Terminal as were being provided to the Marseilles Terminal as of the date the Consent Agreement was signed by Respondent Agrium.
 13. Respondent Agrium shall provide all the Marseilles Terminal employees with reasonable financial incentives to continue in their positions consistent with past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of the Marseilles Terminal pending divestiture. Such incentives shall include a continuation of all employee benefits offered by Respondent Agrium until the Marseilles Terminal Divestiture Date has occurred, including regularly scheduled raises, bonuses, vesting of pension benefits (as permitted by law), and additional incentives as may be necessary to prevent any diminution of the Marseilles Terminal's competitiveness.
- C. Respondent Agrium shall not interfere with the hiring or employing of the Marseilles Terminal employees as

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described in Paragraph VII of the proposed Decision and Order, and shall remove any impediments within the control of Respondent Agrium that may deter these employees from accepting employment with the Marseilles Terminal Acquirer including, but not limited to, any noncompete provisions of employment or other contracts with Respondent Agrium that would affect the ability or incentive of those individuals to be employed by the Marseilles Terminal Acquirer. In addition, Respondent Agrium shall not make any counteroffer to a Marseilles Terminal employee who receives a written offer of employment from the Marseilles Terminal Acquirer.

Provided, however, subject to the conditions of continued employment prescribed in this Hold Separate Order, this Paragraph V.C. shall not prohibit Respondent Agrium from continuing to employ any Marseilles Terminal employee under the terms of such employee's employment with Respondent Agrium prior to the date of the written offer of employment from the Marseilles Terminal Acquirer to such employee.

- D. The purposes of this Paragraph V are to: (1) preserve the Marseilles Terminal as a viable, competitive, and ongoing business until the divestiture required by the Decision and Order is achieved; (2) prevent interim harm to competition pending the relevant divestitures and other relief; and (4) help remedy any anticompetitive effects of the proposed Agrium-CF Acquisition as alleged in the Commission's Complaint.

VI.

IT IS FURTHER ORDERED that from the Agrium-CF Acquisition Date until the Marseilles Terminal Divestiture Date:

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- A. Respondent Agrium, and Respondent Agrium's employees operating the Marseilles Terminal, shall retain and maintain all Confidential Business Information of the Marseilles Terminal on a confidential basis, separate and apart from Respondent Agrium's other businesses. Except as is requested by Respondent Agrium for purposes of the divestiture of the Marseilles Terminal as required by the Decision and Order, in this matter, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to Respondent Agrium's other businesses or with Respondent Agrium's personnel at Respondent Agrium's other businesses (except to the extent such communications are for human resources, legal, or accounting purposes in the ordinary course of business for the Marseilles Terminal's employees).
- B. Respondent Agrium shall not, directly or indirectly disclose any Confidential Business Information Related To the Marseilles Terminal except to the Marseilles Terminal Acquirer or other persons specifically authorized by the Marseilles Terminal Acquirer to receive such information, or than as necessary to comply with the following:
 - 1. the requirements of the Orders
 - 2. applicable laws and regulations.
- C. Respondent Agrium shall not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information Related To the marketing or sales of the Marseilles Terminal to Respondent Agrium's employees not otherwise associated with Respondent Agrium's Anhydrous Ammonia sales in the Illinois-Iowa Area (which shall

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also include the CF Anhydrous Ammonia terminals in the Illinois-Iowa Area after the Agrium-CF Acquisition).

- D. Respondent Agrium shall institute procedures and requirements to ensure that:
1. Confidential Business Information Related to the Marseilles Terminal is not provided to, or obtained by, Respondent Agrium's employees not otherwise associated with Respondent Agrium's Anhydrous Ammonia sales in the Illinois-Iowa Area;
 2. Respondent Agrium employees with access to Confidential Business Information Relating To the Marseilles Terminal do not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information in contravention of this Hold Separate Order; and
 3. Respondent Agrium's employees associated with Respondent Agrium's Anhydrous Ammonia sales in the Illinois-Iowa Area (including the CF Anhydrous Ammonia terminals after the Agrium-CF Acquisition) do not solicit, access or use any Confidential Business Information that they are prohibited under this Hold Separate Order from receiving for any reason or purpose.
- E. From the Terra Marseilles Termination Date until the Marseilles Terminal Divestiture Date, Respondent Agrium shall require any Persons with access to Confidential Business Information Relating To the Marseilles Terminal to enter into agreements, within ten (10) days after the date the Terra Marseilles Termination Date, not to disclose any Confidential Business Information Relating To the Marseilles Terminal to Respondent Agrium or to any third party

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except as otherwise permitted by this Hold Separate Order. Copies of such agreements shall be retained by Respondent Agrium, and provided to the Commission and the Monitor, if appointed.

- F. The purposes of this Paragraph VI are to: (1) preserve the Marseilles Terminal as a viable, competitive, and ongoing business until the divestiture required by the Decision and Order is achieved; (2) assure that no Confidential Business Information Relating To the Marseilles Terminal is used or disclosed by Respondent Agrium except in accordance with the provisions of this Hold Separate Order; (3) prevent interim harm to competition pending the relevant divestitures and other relief; and (4) help remedy any anticompetitive effects of the proposed Agrium-CF Acquisition as alleged in the Commission's Complaint.

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

- A. At any time after the Terra Marseilles Termination Date or the Terra Ritzville Termination Date, the Commission may appoint a Monitor to assure that Respondent Agrium expeditiously complies with all of its obligations and performs all of its responsibilities as required by the Orders.
- B. The Commission shall select the Monitor, subject to the consent of Respondent Agrium, which consent shall not be unreasonably withheld. If Respondent Agrium has not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within five (5) business days after notice by the staff of the Commission to Respondent Agrium of the identity of any proposed Monitor, Respondent

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Agrium shall be deemed to have consented to the selection of the proposed Monitor.

- C. Not later than five (5) business days after appointment of the Monitor, Respondent Agrium 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 perform his duties and responsibilities, pursuant to the Orders and consistent with the purposes of the Orders.
- D. Not later than ten (10) business days after appointment of the Monitor, Respondent Agrium shall, pursuant to the Monitor Agreement, transfer to the Monitor all rights, powers, and authorities necessary to permit the Monitor to perform his duties and responsibilities, pursuant to this Hold Separate Order and consistent with the purposes of the Orders.
- E. Respondent Agrium 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 Respondent Agrium's compliance with the terms of the Orders, 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 Orders and in consultation with the Commission including, but not limited to:
 - a. Assuring that Respondent Agrium expeditiously complies with all of its obligations and performs all of its responsibilities as required by the Orders; and
 - b. Monitoring any agreements between

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Respondent Agrium and either the Ritzville Terminal Acquirer or the Marseilles Terminal Acquirer.

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 Respondent Agrium'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 Respondent Agrium's compliance with its obligations under the Orders. Respondent Agrium 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 Respondent Agrium's compliance with the Orders.
4. The Monitor shall serve, without bond or other security, at the expense of Respondent Agrium on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Respondent Agrium, such consultants, 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. Respondent Agrium shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out

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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 gross negligence, malfeasance, willful or wanton acts, or bad faith by the Monitor.

6. The Monitor Agreement shall provide 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 Respondent Agrium of its obligations under the Orders.
 7. Respondent Agrium 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.
- F. 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.
- G. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor:

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1. The Commission shall select the substitute Monitor, subject to the consent of Respondent Agrium, which consent shall not be unreasonably withheld. If Respondent Agrium has 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 Respondent Agrium of the identity of any proposed Monitor, Respondent Agrium shall be deemed to have consented to the selection of the proposed Monitor.
 2. Not later than ten (10) days after appointment of the substitute Monitor, Respondent Agrium 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 Respondent Agrium's compliance with the relevant terms of the Orders in a manner consistent with the purposes of the Orders.
- H. 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 Orders.
- I. A Monitor appointed pursuant to this Hold Separate Order may be the same person appointed as the Monitor pursuant to the Decision and Order, and as the Divestiture Trustee pursuant to the relevant provisions of this Hold Separate Order and the Decision and Order.

VIII.

Order to Maintain Assets

IT IS FURTHER ORDERED that within thirty (30) days after the date this Hold Separate Order becomes final, and every sixty (60) days thereafter until Respondent Agrium has fully complied with its obligations under Paragraphs II.A. or II.B., and Paragraphs III.A. or III.B. of the related Decision and Order in this matter, Respondent Agrium shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Hold Separate Order and the related Decision and Order; *provided, however*, that, after the Decision and Order in this matter becomes final, the reports due under this Hold Separate Order shall be consolidated with, and submitted to the Commission at the same time as, the reports required to be submitted by Respondent Agrium pursuant to Paragraph IX of the Decision and Order.

IX.

IT IS FURTHER ORDERED that Respondent Agrium shall notify the Commission at least thirty (30) days prior to any proposed:

- A. dissolution of the Respondent Agrium;
- B. acquisition, merger or consolidation of Respondent Agrium; or
- C. other change in the Respondent Agrium, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order to Maintain Assets.

X.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order to Maintain Assets, and subject to any legally recognized privilege, and upon

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written request and upon five (5) days notice to Respondent Agrium, Respondent Agrium shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

- A. access, during business office hours of Respondent Agrium 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 Respondent Agrium related to compliance with this Order to Maintain Assets, which copying services shall be provided by Respondent Agrium at its expense; and
- B. to interview officers, directors, or employees of Respondent Agrium, who may have counsel present, regarding such matters.

XI.

IT IS FURTHER ORDERED that this Hold Separate Order shall terminate on the earlier of:

- A. Three (3) days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. The latter of:
 - 1. the day after the Ritzville Terminal Divestiture Date; or
 - 2. the day after the Marseilles Terminal Divestiture Date; or

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3. the day after the Commission otherwise directs that this Hold Separate Order is terminated.

By the Commission.

**ANALYSIS OF THE AGREEMENT CONTAINING
CONSENT ORDERS TO AID PUBLIC COMMENT****I. Introduction**

The Federal Trade Commission (“Commission” or “FTC”) has accepted, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from Agrium Inc. (“Agrium”), that will completely remedy the anticompetitive effects that would likely result from Agrium’s proposed acquisition of CF Industries Holdings, Inc. (“CF”). Under the terms of the Consent Agreement, Agrium is required to, among other things, divest anhydrous ammonia (“AA”) terminals in Ritzville, Washington, and Marseilles, Illinois to Terra Industries Inc. (“Terra”) or another Commission-approved purchaser. Agrium is also required to divest its rights to market and distribute the AA produced by Rentech at Rentech’s East Dubuque, Illinois manufacturing plant back to Rentech.

The proposed Consent Agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement, and will decide whether it should withdraw from the proposed Consent Agreement, modify it, or make it final.

Analysis to Aid Public Comment

II. Description of the Parties and the Proposed Acquisition

Agrium, a Calgary, Alberta-based company, is a major supplier of agricultural products and services in North and South America. It is also a leading global producer, distributor, and marketer of three primary groups of fertilizers: nitrogen, phosphate, and potash, as well as control release fertilizers and micronutrients. Agrium's operations in North America include four nitrogen fertilizer manufacturing plants and ten fertilizer storage and distribution terminals. Agrium's total net sales in 2008 were approximately \$10 billion.

CF Industries Holdings, Inc. is headquartered in Deerfield, Illinois, and is the holding company for CF Industries, Inc., a major producer and distributor of nitrogen and phosphate fertilizers. CF owns two nitrogen fertilizer manufacturing plants and twenty-two fertilizer storage and distribution terminals in North America. Its customers include cooperatives and independent fertilizer retailers primarily located in the eastern and western cornbelt states. CF's total net sales in 2008 were approximately \$3.9 billion.

On February 25, 2009, Agrium publicly announced that it had submitted a proposal to CF's board of directors to acquire CF for a total consideration of approximately \$3.6 billion. Since then, Agrium has repeatedly extended its tender offer and CF's Board of Directors has consistently rejected these offers. Most recently, Agrium increased its offer to approximately \$4.95 billion. This offer will expire on January 22, 2010. If CF accepts Agrium's tender offer, Agrium will hold 100 percent of the voting securities of CF, and CF will become a wholly owned subsidiary of Agrium.

III. The Proposed Complaint

The proposed complaint alleges that Agrium's acquisition of CF, if consummated, may substantially lessen competition or tend to create a monopoly in the distribution and sale of AA in the

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Pacific Northwest (“PNW”) and two geographic areas in Northern Illinois 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. Specifically, the acquisition would eliminate actual, direct, and substantial competition between Agrium and CF in the relevant markets; increase Agrium’s ability to exercise market power unilaterally in the relevant markets; and substantially increase the level of concentration in the relevant markets and enhance the probability of coordination in the two markets in Northern Illinois.

AA is one of the three major forms of nitrogen fertilizer with the other two being urea and urea ammonia nitrate (“UAN”). Of the three nitrogen-based fertilizers, AA has the highest nitrogen content at 82 percent, while urea and UAN have 46 percent and 28 to 32 percent nitrogen content, respectively. AA also tends to be the least expensive nitrogen fertilizer on a per pound of nitrogen basis. Thus, AA can often be the most cost effective means to deliver nitrogen to the soil.

When deciding which type of nitrogen fertilizer to use, customers consider soil and topographical characteristics, equipment, and weather. AA is the most cost effective and efficient to use in dry areas where the topsoil is relatively thin. In moist conditions, there is a danger that AA will leach into the water table, thus becoming less effective, and that the heavy machinery required to apply AA would damage the field.

AA is applied as a fertilizer directly by injecting or “knifing” it into the soil. This process requires specialized equipment to transport, store, and apply the fertilizer. Customers who use AA have already made significant investments to acquire the necessary infrastructure and application equipment. Switching away from AA thus would require customers to: (a) abandon the investments they have already made to use AA; and (b) make additional investments to obtain the necessary infrastructure and application equipment to apply other nitrogen products. These investments are costly and switching from AA to one of the other

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nitrogen-based fertilizers would be time-consuming. Thus, existing customers are not likely to shift away from using AA.

The proposed complaint alleges that the three geographic areas in which to analyze the competitive effects of the transaction are the PNW and two adjacent areas in Northern Illinois. AA is transported from its site of production or from import terminals by barge, pipeline, rail, and truck to fertilizer storage terminals or, in limited situations, directly to fertilizer retailers. From there, AA is delivered by truck to local fertilizer retailers, where it is stored in smaller scale storage tanks. The fertilizer retailers pump liquid AA from their storage tanks into smaller mobile nurse tanks. These nurse tanks are then towed to a farmer's field and hitched behind a tractor for application. Because fertilizer application seasons are highly compressed, fertilizer retailers expect a timely and reliable source of AA supply to meet customer demand during the peak of application season. As transportation costs can make it difficult for terminal owners to be price competitive and profitable, AA distributors must have adequate terminals or storage facilities within 100 to 140 miles of customer locations.

In the PNW, Agrium and CF are the only major suppliers of AA. Thus, the proposed acquisition would reduce the number of significant AA suppliers in the PNW from 2 to 1. In the two areas in Northern Illinois, Agrium and CF are two of only three significant suppliers of AA. As a result, the proposed acquisition would reduce the number of major AA suppliers in those areas from three to two.

As stated in the proposed complaint, entry would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of this acquisition. A new entrant would need: (1) sufficient AA storage capacity to supply customers; (2) a proper distribution infrastructure; and (3) a secure source of AA for the storage facility. For a new entrant to satisfy each of these steps requires significant sunk costs, onerous regulatory approvals

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and local permitting, and technical expertise. This does not take into account the cost and time it takes to achieve a significant market impact. Thus, it is unlikely that new entry or fringe expansion from another supplier would be timely, likely, or sufficient enough to thwart anticompetitive harm from the proposed acquisition.

IV. The Terms of the Agreement Containing Consent Orders

The Consent Agreement will remedy the Commission's competitive concerns about the proposed acquisition and preserve competition in each of the relevant markets. Under the terms of the Consent Agreement, Agrium would be required to divest: (1) the CF Ritzville, Washington AA terminal; (2) its Marseilles, Illinois AA terminal; and (3) its rights to market the AA produced by Rentech at Rentech's East Dubuque, Illinois, manufacturing plant. Agrium plans to divest the Ritzville and Marseilles terminals to Terra, but the proposed Decision and Order provides for a divestiture to another purchaser with a source of AA if Terra is unable to accomplish the divestitures. The Order also provides that Rentech will receive the rights to distribute and market the AA produced in its own manufacturing facility in East Dubuque. Pursuant to a settlement agreement between Agrium and the Canadian Competition Bureau, Terra will acquire a 50 percent interest in Agrium's nitrogen fertilizer production plant in Carseland, Alberta. The Carseland divestiture will give Terra an unencumbered supply of AA for the Ritzville, Washington terminal.

The Order to Hold Separate and Maintain Assets requires Agrium to maintain the assets to be divested and operate the Ritzville Terminal independently until the respective divestitures are completed.

A. Key Provisions of the Decision and Order

The proposed Decision and Order will allow for effective divestiture of the key assets that today allow CF to provide an

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independent competitive presence to Agrium in the relevant markets, and therefore will preserve the market structure. Paragraph II of the Decision and Order provides that Agrium divest the Ritzville Terminal and Carseland Facility Interest to Terra within forty-five days of Agrium's acquisition. This paragraph further states that in the event that the Ritzville Terminal divestiture cannot be made to Terra, Agrium will have one-hundred-twenty days from the date the Decision and Order becomes final to divest these assets to a Commission-approved acquirer that has a secure and stable, independent, long-term source of AA.

Paragraph III of the Decision and Order provides that Agrium divest the Marseilles Terminal to Terra within forty-five days of Agrium's acquisition of CF. If this does not occur, the Order requires that Agrium divest the Marseilles Terminal to a Commission-approved acquirer within one-hundred-twenty days from the date the Decision and Order becomes final. Paragraph IV requires Agrium to terminate its rights to distribute AA produced by Rentech pursuant to the Agrium/Rentech Distribution Agreement no later than five days after Agrium acquires CF.

The Decision and Order defines the scope of the assets to include the attributes of an ongoing business, such as necessary real property, tangible personal property, inventories, contracts, records of the business, accounts receivable permits, and all applicable regulatory registrations, permits, and applications. Pursuant to Paragraphs II.G and III.G of the proposed Decision and Order, Agrium also is required to provide necessary transition services to Terra or another Commission-approved acquirer. The purpose of this provision is to allow for a smooth transition of the terminal operations to the acquirer.

Paragraph V of the proposed Decision and Order requires that the Parties keep private, except where necessary under the agreement, confidential business information related to the

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divested terminals. Paragraph VI of the proposed Decision and Order provides for appointment of a divestiture trustee. Paragraph VII of the Decision and Order provides mechanisms for the retention of Ritzville Terminal and Marseilles Terminal employees by the Commission-approved acquirer.

Paragraph VIII of the proposed Decision and Order requires that the Parties provide the Commission with “advance written notification” of any intent to acquire assets or interests in terminals that store AA in any area affected by the proposed divestitures. Paragraphs IX-X define reporting obligations. Paragraph XI requires Agrium to provide the Commission access to company information and employees for purposes of determining or securing compliance with the Decision and Order. Paragraph XII states that the Decision and Order shall terminate ten years after the date on which the Order becomes final.

B. Key Provisions of the Order to Hold Separate and Maintain Assets

The Order to Hold Separate and Maintain Assets (“Hold Separate Order”) requires that Agrium maintain the Marseilles Terminal, Ritzville Terminal, and Carseland Facility assets until such time as the assets are divested. The Hold Separate Order requires that Agrium establish a system to maintain confidential information until the divestitures are completed. It also gives the Commission the option to appoint a Monitor to ensure that Agrium complies with all of its obligations and performs all of its responsibilities as required by the Decision and Order and the Hold Separate Order. The Hold Separate Order incorporates the traditional provisions that allow the Monitor broad oversight of the assets, and requires the Monitor to report to the Commission on a regular basis. The Hold Separate Order also requires Agrium to maintain the Ritzville Terminal assets as an independent business pending divestiture. After the acquisition, the Commission can require Agrium to appoint a Manager to run the terminal on an independent basis pending the divestiture of the assets. Finally, the Hold Separate Order allows the Commission

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to appoint a Hold Separate Trustee to operate the assets if the assets are not divested by the deadline set by the Commission.

The purpose of this analysis is to invite public comment on the proposed Consent Agreement, in order to aid the Commission in its determination of whether to make the proposed Consent Agreement final. This analysis is not intended to constitute an official interpretation of the proposed Consent Agreement nor is it intended to modify the terms of the proposed Consent Agreement in any way.

Complaint

IN THE MATTER OF

POLYPORE INTERNATIONAL, INCCOMPLAINT AND INITIAL DECISION IN REGARD TO ALLEGED
VIOLATIONS OF SEC. 5(A) OF THE FEDERAL TRADE COMMISSION
ACT AND SEC. 7 OF THE CLAYTON ACT

Docket No. 9327; File No. 081 0131
Filed, September 9, 2008 — Decision, March 1, 2010

This order addresses the acquisition by Polypore of Microporous Holding Corporation. The acquisition reduced competition for battery separators in several markets. The decision remedies the anticompetitive effects by requiring the complete divestiture of Microporous.

Participants

For the *Commission*: Stephen Antonio, Joel Christie, Steven Dahm, Benjamin Gris, J. Robert Robertson, Priya Viswanath, and Christian Woolley.

For the *Respondents*: Melanie Dubis, Deborah L. Edney, Sarah Fulton Hutchins, John F. Graybeal, Katie C. Miller, William L. Rikard, Jr., Adam Shearer, Eric D. Welsh, and Brian R. Weyhrich, Parker Poe Adams & Bernstein, LLP.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and of the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission (the "Commission"), having reason to believe that respondent Polypore International, Inc. ("Daramic"), a Delaware corporation subject to the jurisdiction of the Commission having its principal place of business in North Carolina, entered into an agreement, in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, pursuant to which Daramic purchased 100 percent of the stock of Microporous Holding Corporation, the parent