



violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having determined to accept the executed Consent Agreement and to place such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues the following Order to Maintain Assets:

1. Respondent Occidental Petroleum Corporation is a publicly traded company, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 10889 Wilshire Boulevard, Los Angeles, California 90024-4201.

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

3. The Federal Trade Commission has jurisdiction of New J7Dminghf TDac0008 Tj22.7p5tlSn7rroll

subsidiaries, including Occidental Chemical Corporation (“OxyChem”) and Basic Chemicals Company, LLC, divisions, groups and affiliates controlled by Occidental Petroleum Corporation, and the respective directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns of each.

- B. “Respondent Vulcan” or “Vulcan” means Vulcan Materials Company, a corporation, its directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns; its joint ventures, including Vulcan Chloralkali LLC, subsidiaries, divisions, groups and affiliates controlled by Vulcan Materials Company, and the respective directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns of each.
- C. “ERCO” means ERCO Worldwide (USA) Inc., a corporation organized and doing business under the laws Delaware, with its executive offices at 302 The East Mall, Suite 200, Toronto, Ontario, Canada, M9B 6C7, and which is a subsidiary of Superior Holdings (USA) Inc. which is a subsidiary of Superior Plus, Inc. (a Canadian company).
- D. “Commission” means the Federal Trade Commission.
- E. “Acquirer” means either ERCO or any other entity that receives the prior approval of the Commission to acquire the Port Edwards Assets pursuant to Paragraphs II or V of the Decision and Order in this matter.
- F. “Acquisition” means the proposed acquisition by Respondent Oxy of three chloralkali plants and related assets in Geismar, Louisiana, Port Edwards, Wisconsin, and Wichita, Kansas, from Vulcan pursuant to and as described in the Asset Purchase Agreement

- L. “Designated Vulcan Staff” means those persons, or persons filling the positions, identified in Confidential Appendix A to this Order and the Decision and Order in this matter.
- M. “Dual Contract Customer” means an Assigned Contract Customer who, at the time this Order is issued, is supplied either KOH or potassium carbonate, by contract or otherwise, by Respondent Oxy and is listed in Confidential Appendix C to this Order to Maintain Assets.
- N. “ERCO Acquisition Agreement” means the April 11, 2005, Asset Purchase and Sale Agreement, with amendments, attachments, exhibits, and schedules, between Basic Chemicals Company, LLC, and ERCO Worldwide (USA) Inc. attached as Confidential Appendix B to the Decision and Order in this matter.
- O. “Effective Date of Divestiture” means the date on which Respondents (or a Divestiture Trustee) divests to the Acquirer the Port Edwards Business completely and as required by Paragraphs II or V of the Decision and Order in this matter.
- P. “Governmental Entity” means any Federal, state, local or non-U.S. government or any court, legislature, governmental agency or governmental commission or any judicial or regulatory authority of any government.
- Q. “Person” means any individual, partnership, association, company or corporation.
- R. “Port Edwards Assets” means the chlorine, KOH (potassium hydroxide), caustic soda (sodium hydroxide), hydrochloric acid, and potassium carbonate manufacturing facility, located at 100 State Highway 73, Port Edwards, Wisconsin, 54469, and includes:
1. all tangible and real assets used in the operation of the facility, including any leasehold, ownership, fee, or any other interest in real estate at the facility grounds in Port Edwards, Wisconsin, and in the production or distribution of the products produced at the facility, and includes, but is not limited to,
    - a. the main plants;
    - b. rail cars, trucks, and other vehicles owned by Respondents related to the transportation and distribution of products produced or used in the facility; and
    - c. raw materials, work-in-process inventories, stores and spares, inventories, packaging materials, finished goods inventories, finished goods in transit to offsite storage or to customers, and offsite inventory.
  2. all books, records, and documents, including but not limited to electronically stored documents and records produced in an electronically readable form, together with all necessary instructions and software, or access to software licenses to the Acquirer, relating to the facility and to the production, marketing, distribution, or sale of products produced at the facility; *PROVIDED*,

*HOWEVER*, that if any such books, records, or documents also include matters not related to the facility or products produced at the facility, then only those portions of the books records and documents that relate to the facility or the products produced at the facility shall be included;

3. an exclusive right to all intellectual property used solely in the operation of the facility or in the production, marketing, distribution, or sale of the products produced at the facility, and a non-exclusive right to all other intellectual property used in the operation of the facility and in the production, marketing, distribution, or sale of the products produced at the facility;
4. all licenses and permits used in the operation of the facility and in the production, marketing, distribution, or sale of the products produced at the facility;
5. at the Acquirer's option, all contracts, agreements, and understandings, other than Shared Customer Contracts and Shared Terminal Contracts, relating to the manufacture, transportation, storage, terminaling, marketing, distribution, or sale of the products produced at the facility, which includes but is not limited to:
  - a. agreements under which the facility receives potassium and sodium salts, electricity, natural gas, and carbon dioxide or other inputs at or for the facility;
  - b. agreements for services provided to the facility, including, but not limited to, rail, trucking, capital maintenance, and technology;
  - c. agreements and contracts with customers for products produced exclusively by the facility;
  - d. agreements and contracts with terminals for products produced exclusively by the facility;
6. all joint ventures relating to the operation of the facility and the production, marketing, distribution, or sale of the products produced at the facility;
7. all plans (including proposed and tentative plans, whether or not adopted), specifications, drawings, and other assets (including the non-exclusive right to use patents, know-how, and other intellectual property relating to such plans) related to the operation of the facility;
8. existing easements and rights of way;
9. related facilities required for the operation or the storage of products produced or used at the facility including, but not limited to, truck, rail, and pipeline facilities, including truck and rail racks, for the receipt and delivery of products produced or used at the facility;

10. approximately 34 acres of land located at 100 State Highway 73, Port Edwards, Wisconsin, 54469, on which the Port Edwards facility sits, including the parcels described in Schedule 2.1(a) to the ERCO Acquisition Agreement;
  11. all licenses, permits, contracts, agreements, and understandings relating to the ownership and operation of the facility.
- S. “Potash Contract” means the Product Supply Agreement entered into on March 15, 2005, between PCS Sales (USA), Inc. and OxyChem for the supply of potassium chloride chicklets.
- T. “Shared Customer Contracts” means contracts under which customers receive

- D. Respondents shall, at the option of the Acquirer, and as part of the Divestiture Agreement, enter into one or more transition agreements for the short-term provision of services provided by Respondents to the Acquirer.
- E. Respondents and Respondents's employees shall not receive, or have access to, or use or continue to use any Confidential Business Information about the Port Edwards Assets or about the production, transportation, delivery, storage, distribution, marketing, and sale of products of the Acquirer from the Port Edwards facility except:
1. As otherwise allowed in this Order to Maintain Assets or the Decision and Order in this matter;
  2. As provided for in a transition services agreement;
  3. As consented to by the Acquirer for provision to Respondent Vulcan;
  4. As required by law;
  5. To the extent that necessary information is exchanged in the course of consummating the Acquisition;
  6. In negotiating agreements to divest assets pursuant to the Decision and Order in this matter and engaging in related due diligence;
  7. In complying with this Order to Maintain Assets or the Decision and Order in this matter;
  8. To the extent necessary to allow Respondents to comply with the requirements and obligations of the laws of the United States and other countries;
  9. In defending legal claims, investigations or enforcement actions threatened or brought against or related to the Port Edwards Assets;
  10. In obtaining legal advice.

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

- F. For Shared Customer Contracts, Respondents shall, no later than the Effective Date of Divestiture of the Port Edwards Assets and as part of the Divestiture Agreement, assign Shared Customer Contracts in whole or in part, or contribute to the Acquirer additional customer contracts held by them, or modify the Shared Customer Contracts or other customer contracts held by them, to insure that, as a result of the divestiture and as part of the Divestiture Agreement, the Acquirer receives:

1. customers of comparable financial strength as measured by credit rating or some other similar widely accepted measure;
  2. customers requiring delivery to locations at distances similar to or shorter than the delivery distances for products from the Port Edwards facility prior to the divestiture and consistent with the historical delivery distances for products delivered by the Port Edwards facility;
  3. customers requiring quantities similar to or exceeding the quantities of product delivered by the Port Edwards facility prior to the divestiture and consistent with historical amounts of product delivered by the Port Edwards facility; and
  4. customer contracts of similar or longer lengths of time for the products delivered by the Port Edwards facility prior to the divestiture.
- G. Respondents shall, no later than the Effective Date of Divestiture of the Port Edwards Assets, at the option of the Acquirer, and as part of the Divestiture Agreement, assign Shared Terminal Contracts in whole or in part, modify current Shared Terminal Contracts or enter into new terminal contracts to insure that, as a result of the divestiture, the Acquirer receives:
1. the same terminals as, or terminals of a quality similar to, those retained by Respondent Oxy;
  2. terminal space equal to or exceeding the capacity of terminal space used for products delivered by the Port Edwards facility prior to the divestiture and consistent with historical amounts of products delivered by the Port Edwards facility;
  3. terminal contracts of similar or longer lengths of time that existed for the products delivered by the Port Edwards facility prior to the divestiture; and
  4. terminal capacity in locations similar to the locations used for products delivered by the Port Edwards facility prior to the divestiture.
- H. Respondents shall:
1. not receive Confidential Business Information about the transportation, delivery, storage, distribution, marketing, and sale of product by the Acquirer at a terminal owned by Respondents and used by the Acquirer, *PROVIDED, HOWEVER*, individual employees of the Respondents may receive and use Confidential Business Information only to the extent required for the operation of a Terminaling Agreement or to the extent necessary to allow Respondents to



Confidential Business Information to the Respondents or to any third party except for the purposes set forth this paragraph.

2. include in any Terminaling Agreement:
  - a. a provision prohibiting Respondents or any employee of Respondents from receiving Confidential Business Information about the transportation, delivery, storage, distribution, marketing, and sale of product by the Acquirer at a terminal owned by Respondents and used by the Acquirer, except at otherwise provided in this Paragraph II.H.; and
  - b. a provision consistent with the proviso in Paragraph II.H.1., above, regarding non-disclosure of Confidential Business Information.
- I. The purposes of this Order to Maintain Assets are: (1) to ensure the continuation of the Port Edwards Assets as a going concern in the same manner in which it conducted business as of the date the Consent Agreement is signed; (2) assure that no Confidential Business Information relating to the Port Edwards Assets is exchanged between

authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the Order and in consultation with the Commission, including, but not limited to:

- a. Assuring that Respondents expeditiously comply with all of their obligations and performs all of their responsibilities as required by this Order to Maintain Assets and the Decision and Order in this matter;
  - b. Monitoring Terminating Agreements;
  - c. Monitoring any transition services agreements;
  - d. Assuring that Confidential Business Information is not received or used by Respondents or Acquirer, except as allowed in this Order to Maintain Assets and the Decision and Order in this matter;
4. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.
  5. The Monitor shall serve until December 31, 2006.
  6. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondents's personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondents's compliance with their obligations under the Order to Maintain Assets and the Decision and Order in this matter. Respondents shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondents's compliance with the Order.
  7. The Monitor shall serve, without bond or other security, at the expense of Respondents on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of the Respondents, such consultants, 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.
  8. Respondents shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Monitor.

9. The Monitor Agreement shall state that within one (1) month from the date the Monitor is appointed pursuant to this paragraph, and every sixty (60) days thereafter, the Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under the Order.
10. Respondents may require the Monitor and each of the Monitor's consultants,

carbonate (if the contract assigned to the Assigned Contract Customer was for potassium carbonate) including, but not limited to, making offers pursuant to a “meet or release” or “competitive price” or similar clause in customer contracts. *PROVIDED, HOWEVER*, Respondent Oxy may discuss the terms of Respondent Oxy’s contract or supply with a Dual Contract Customer, but shall not otherwise solicit an Assigned Contract Customer as prohibited by this Paragraph VI. *PROVIDED, FURTHER, HOWEVER*, if an Assigned Contract Customer is no longer under contract with the Acquirer, this Paragraph VI no longer applies to Respondent Oxy in relation to that Assigned Contract Customer.

## V.

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

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

## VI.

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

**VII.**

**IT IS FURTHER ORDERED** that, for the purpose of determining or securing

**CONFIDENTIAL APPENDIX A**

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

**CONFIDENTIAL APPENDIX B**

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

**CONFIDENTIAL APPENDIX C**

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