

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
Pamela Jones Harbour
William E. Kovacic
J. Thomas Rosb

In the Matter of

AGRIUM INC .,
a corporation.

Docket No. C-4277

ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS

The Federal Trade Commission (“FTC”)

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 Order (“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 waives and other provisions as required by the Commission’s Rules; and

The Commission, after 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, 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 Order 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 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 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, e

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 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, 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, bonus vesting and pension benefits (as

permitted by law), and additional incentives may be necessary to prevent any diminution of the Ritzville Terminal's competitiveness and the Caseland Facility's competitiveness.

- C. Respondent Agrium shall not interfere with the hiring or employing of the Ritzville Terminal employees as described in Paragraph VI 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 noncompetitive provisions of employment or other contracts with Respondent Agrium that would affect the ability or incentive of those individuals to be 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 I.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 purpose of this Paragraph I are to: (1) preserve the Ritzville Terminal and Caseland 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:
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 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

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 ~~Aug~~, 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

powers and authorities necessary to permit the substituted 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 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,

- 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, 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 I

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;
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 to Respondent Agrium as may be necessary to ensure the successful operation of the Marseilles Terminal.

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 purpose 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.

also include the Confidential Business Information Relating to the 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 Relating 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

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 of Respondent Agrium of the identity of any proposed Monitor, Respondent 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 Respondent Agrium and either the Ritzville Terminal Acquirer or the Marseilles Terminal Acquirer.

Agrium has not opposed, in writing, including the reasons for opposing the selection of a pr

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 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 Maseilles Terminal Divestiture Date; or
 - 3. the day after the Commission otherwise directs that this Hold Separate Order is terminated.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: December 22, 2009