that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on August 15, 1997, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on August 28, 1997, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before August 20, 1997. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on August 25, 1997, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is August 22, 1997. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is September 5, 1997; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before September 5, 1997. On September 24, 1997, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before September 26, 1997, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: June 20, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–16675 Filed 6–24–97; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–396]

Certain Removable Electronic Cards and Electronic Card Reader Devices and Products Containing the Same; Notice of Change of Commission Investigative Attorney

Notice is hereby given that, as of this date, Kent R. Stevens, Esq. of the Office of Unfair Import Investigations is designated as the Commission investigative attorney in the above-cited investigation instead of William F. Heinze, Esq.

Dated: June 18, 1997.

Lynn I. Levine,

Director, Office of Unfair Import Investigations.

[FR Doc. 97–16676 Filed 6–24–97; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

U.S. v. Seminole Fertilizer Corporation; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the Middle District of Florida in *United States of America* v. *Seminole Fertilizer Corporation,* Civil No. 97–1507–CIV–T–17E.

The Complaint in the case alleges that Seminole restrained trade by entering into a secret bidding agreement with its chief rival for the purchase of an ammonia storage facility located in Tampa, Florida. The Complaint alleges that the agreement had the effect of eliminating Seminole as a viable competing bidder.

In the proposed Final Judgment, Seminole agrees not to enter into agreements with others illegally setting the price of fertilizer assets. Seminole also agrees not to submit joint bids for fertilizer assets without first notifying the seller of the asset and the person administering the sale of the asset that the bid has been jointly prepared.

Public Comments on the proposed Final Judgment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to John T. Orr, Chief, Atlanta Field Office, Antitrust Division, Department of Justice, Suite 1176, Richard B. Russell Federal Building, 75 Spring Street, S.W., Atlanta, Georgia 30303 (telephone: 404–331–7100).

Rebecca P. Dick,

Deputy Director of Operations, Antitrust Division.

Stipulation

Judge Elizabeth A. Kovachevich

It is stipulated by and between the undersigned parties that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties thereto, and venue of this action is proper in the Middle District of Florida, Tampa Division;

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), provided that Plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendant and by filing that notice with the Court;

3. In the event Plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to any party in this or in any other proceeding; and

4. This Stipulation and the Final Judgment to which it relates are for settlement purposes only and do not constitute an admission by Defendant in this or any other proceeding; that Section 1 of the Sherman Act, 15 U.S.C. 1, or any other provision of law, has been violated.

This 18th day of June, 1997.

Gary R. Trombley,

Attorney for Defendant, Trombley & Associates, P.A., P.O. Box 3356, Tampa, Florida 33601, (813) 229–7918.

Karen E. Sampson,

Belinda A. Barnett,

Attorneys for Plaintiff, U.S. Department of Justice, Antitrust Division, 75 Spring Street, S.W., Suite 1176, Atlanta, Georgia 30303, (404) 331–7100.

Final Judgment

Judge Elizabeth A. Kovachevich

Whereas plaintiff, United States of America, having filed its Complaint in this action on June 18, 1997, and plaintiff and defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law; and without this Final Judgment constituting any evidence against, or any admission by, any party with respect to any such issue of fact or law.

And whereas defendant has agreed to be bound by the provisions of this Final Judgment pending its approval by the Court.

Now, therefore, before any testimony is taken, and without trial or adjudication of any issue of fact or law, and upon the consent of the parties,

It is hereby ordered, adjudged and decreed as follows:

I

Jurisdiction

This Court has jurisdiction over the subject matter of this action, and over the person of the defendant, Seminole Fertilizer Corporation. The Complaint states a claim upon which relief may be granted against the defendant under Section 1 of the Sherman Act (15 U.S.C. 1).

II

Definitions

As used in this Final Judgment:

A. ''Defendant'' means Seminole Fertilizer Corporation and its affiliates, parents, subsidiaries, successors and assigns, directors, officers, managers, agents, and employees engaged in the fertilizer business, and any other person acting for or on behalf of them with respect to the fertilizer business.

B. ''Fertilizer asset'' means any asset used principally in the manufacture, processing, production, storage, distribution, or sale of fertilizer or ammonia.

C. ''Fertilizer business'' means the manufacturing, processing, production, storage, distribution, or sale of fertilizer or ammonia.

D. ''Jointly determined bid'' or ''joint bid'' means any combining, pooling, or supplementing of resources, money, or property in connection with an actual or proposed offer for property which is to be sold through a bid process.

E. ''Person'' means any individual, association, cooperative, partnership, corporation, or other business or legal entity.

III

Applicability

This Final Judgment shall apply to defendant, including each of its directors, officers, managers, agents, employees, affiliates, parents, subsidiaries, and successors and assigns engaged now or in the future in the fertilizer business, and to all other persons in active concert or participation with defendant in the fertilizer business who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

Prohibited Conduct

Defendant is enjoined and restrained from:

A. Directly, indirectly, or through any joint venture, partnership, or other device, entering into, attempting to enter into, organizing or attempting to organize, implementing or attempting to implement, or soliciting any agreement, understanding, contract, or combination, either express or implied, with any other person:

1. To submit any jointly determined bids for the acquisition of any fertilizer asset located in the United States; or

2. To illegally set or establish the price or other terms and conditions of any bids for the acquisition of any fertilizer asset located in the United States;

B. Directly, indirectly, or through any joint venture, partnership, or other device, communicating or inquiring about any intentions, decisions, or plans to refrain from bidding or to bid, including any intentions, decisions, or plans regarding any actual or proposed bid amounts, for the acquisition of any fertilizer asset located in the United States, where such communication or inquiry is to:

1. Any other person that is known or reasonably should be known by defendant to be a potential bidder on the sale of that fertilizer asset; or

2. Any other person that has announced an intention to bid on the sale of that fertilizer asset; and

C. Directly, indirectly, or through any joint venture, partnership, or other device, requesting, suggesting, urging, or advocating that any other person not bid on, or suggesting that it would not be profitable, desirable, or appropriate for any other person to bid on, the sale of any fertilizer asset located in the United States.

V

Limiting Conditions

A. Nothing in Section IV (A) and (B) shall prohibit defendant from entering an agreement, understanding, contract, or combination with any other person to submit any jointly determined bids for the acquisition of any fertilizer asset located in the United States so long as the purpose or effect is not to eliminate or suppress competition and where before or at the time of submitting any such jointly determined bids, defendant:

1. Discloses to the seller of the asset and the person administering the sale of the asset that a jointly determined bid is being submitted, the nature of the joint bid arrangement, and with whom the joint bid is being submitted; and

2. Does not, without disclosing to the seller in advance of the sale, violate any of the terms or conditions for bidding imposed by the seller of the asset or violate any of the terms or conditions for bidding imposed by the person administering the sale of the asset.

B. Section IV (B) and (C) shall not apply to communications to

shareholders, potential purchasers of substantially all of the defendant's stock or assets, lenders, creditors, or subcontractors, who are not competitors, where such communications are limited to the context of such relationship.

VI

Notification

Defendant currently is not engaged in the fertilizer business. If defendant re-enters and engages in the fertilizer business at any time during the term of this Final Judgment, then within thirty (30) days of such re-entry, defendant shall cause to be delivered, by certified letter or its equivalent, a copy of this Final Judgment to all persons with whom defendant then is engaged in a partnership, joint venture, or other similar relation in the fertilizer business, and to all persons with whom defendant then is engaged in discussions or negotiations regarding the possible submission of a joint bid for the acquisition of any fertilizer asset.

VII

Compliance

A. In view of the fact that defendant is not currently engaged in the fertilizer business, all of defendant's compliance obligations under Section VII of this Final Judgment are suspended until such time as defendant re-enters and engages in the fertilizer business during the term of this Final Judgment.

B. If and when defendant re-enters the fertilizer business during the term of this Final Judgment, within thirty (30) days of re-entry defendant is ordered to establish and maintain for as long as it engages in the fertilizer business an antitrust compliance program which shall include designating an Antitrust Compliance Officer with responsibility for accomplishing the antitrust compliance program and with the purpose of achieving compliance with this Final Judgment. The Antitrust Compliance Officer shall, on a continuing basis, supervise the review of the current and proposed activities of the defendant to ensure that it complies with this Final Judgment. The Antitrust Compliance Officer shall be responsible for accomplishing the following activities:

1. Distributing, within ninety (90) days of the date of defendant's re-entry in the fertilizer business, a copy of this Final Judgment to all officers and directors, and any person who otherwise manages defendant with respect to the fertilizer business;

2. Distributing in a timely manner a copy of this Final Judgment to any person who succeeds to a position described in Section VII (B)(1);

3. Briefing annually defendant's officers and directors engaged in the fertilizer business on the meaning and requirements of this Final Judgment and the antitrust laws;

4. Obtaining annually from each officer or employee designated in Section VII(B)(1) and (2) a written certification that he or she: (a) Has read, understands, and agrees to abide by the term of this Final Judgment; (b) understands that failure to comply with this Final Judgment may result in conviction for criminal contempt of court; and (c) is not aware of any violation of the Final Judgment that has not been reported to the Antitrust Compliance Officer;

5. Maintaining a record of recipients from whom the certification required by Section VII(B)(4) has been obtained; and

6. Distributing in a timely manner, and in all cases before entering any agreement, understanding, contract, or combination to submit a joint bid and before making the notification to the required parties under Section V, above, a copy of this Final Judgment to any person with whom the defendant enters into discussions or negotiations for the possible submission of a joint bid for the acquisition of any fertilizer asset.

C. Defendant is also ordered to file with this Court and serve upon plaintiff, within ninety (90) days after the date of defendant's re-entry in the fertilizer business, an affidavit as to the fact and manner of its compliance with this Final Judgment.

D. If defendant's Antitrust Compliance Officer learns of any violations of this Final Judgment, defendant shall forthwith take appropriate action to terminate or modify the activity so as to assure compliance with this Final Judgment.

VIII

Plaintiff Access

A. For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, duly authorized representatives of the plaintiff shall, upon written request by the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant, be permitted:

1. Access during the defendant's office hours to inspect and copy all records and documents in its possession or control relating to the fertilizer business specifically described in this Final Judgment; and

2. Subject to the reasonable convenience of defendant and without restraint or interference from defendant, to interview the defendant's officers, employees, or agents engaged in the fertilizer business, who may have counsel present, regarding the defendant's fertilizer business.

B. Upon written request by the Assistant Attorney General in charge of the Antitrust Division, the defendant shall submit such written reports, under oath if requested, relating to the fertilizer business concerning matters contained in this Final Judgment as may be requested, subject to any legally recognized privilege.

C. No information or documents obtained by the means provided in this Section VIII shall be divulged by the plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendant to plaintiff, defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendant marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then 20 days' notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which that defendant is not a party.

IX

Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling either of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance herewith, and to punish any violations of its provisions. Nothing in this provision shall give standing to any person not a party to this Final Judgment to seek any relief related to it.

X

Term

This Final Judgment will expire on the tenth anniversary of its date of entry.

XI

Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____

Court approval subject to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

United States District Judge

Competitive Impact Statement

Judge Elizabeth A. Kovachevich

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States submits this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry with the consent of Seminole Fertilizer Corporation in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

On June 18, 1997 the United States filed a civil antitrust complaint alleging that defendant and others conspired unreasonably to restrain competition in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The Complaint alleges that defendant, Norsk Hydro USA Inc. (''Norsk USA''), and Farmland Industries, Inc. (''Farmland'') met on March 5, 1992, and discussed sharing pipeline capacity and the cost of bidding on an ammonia tank and pipeline interest, hereinafter referred to as the Tampa Facility. At the conclusion of the meeting, defendant, Norsk USA, and Farmland reached a tentative agreement, which was later reduced to writing. The Complaint also alleges that on March 9 and March 10, 1992, defendant and Norsk USA discussed the terms of the agreement by telephone on several occasions and that they executed the written agreement two hours before the scheduled auction of the Tampa Facility on March 12, 1992. The agreement provided that defendant would give bid support of up to $2.5 million to Norsk USA, if necessary, to defeat a competing bid. In exchange, Norsk USA agreed to give defendant increased pipeline capacity if Norsk USA was the successful bidder.

This agreement had the effect of eliminating defendant, Norsk USA's chief rival, as a viable competing bidder for the Tampa Facility. Almost immediately after signing the agreement, defendant stated that it was no longer going to attend the auction of the Tampa Facility. At the auction on the afternoon of March 12, there were no bids for the Tampa Facility other than the one previously submitted by Norsk USA.

On ____, the United States and defendant filed a Stipulation by which they consented to the entry of a proposed Final Judgment following compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h). The proposed Final Judgment, as will be discussed in detail in Section IV.A., would order defendant to refrain from soliciting, entering, or attempting to enter any agreement to submit any jointly determined bids for the acquisition of any fertilizer asset (as defined in the Final Judgment) located in the United States with any other person that is known or reasonably should be known to defendant to be a potential bidder on the sale of that fertilizer asset. The Final Judgment would also enjoin defendant from soliciting, entering, or attempting to enter any agreement to set or establish the price or other terms and conditions of any bids for the acquisition of any fertilizer asset located in the United States.

II

Description of Defendant

Defendant, a wholly owned subsidiary of Tosco Corporation, sold all of its assets in May 1993. Before its assets were sold, defendant maintained its corporate offices in Stamford, Connecticut, and was a manufacturer and distributor of phosphatic fertilizer. It operated production and storage facilities in central Florida, near Tampa.

III

The Tampa Facility and Events Leading Up to the Alleged Violation

A. The Tampa Facility

The Tampa Facility, which consists of an ammonia terminal located in the Port of Tampa, Florida, and a one-half interest in a pipeline system connected to the ammonia terminal,[1] is used for storing, handling, and delivering anhydrous ammonia, one of the raw materials used in the manufacture of phosphatic fertilizers. Located on approximately 17½ acres of land leased from the Tampa Port Authority, the Tampa Facility has a single tank with a 35,000 metric ton storage capacity. It services five nearby phosphatic fertilizer plants,[2] where the ammonia is combined with phosphoric acid to create diammonium phosphate. The Tampa Facility is able to service by truck or rail other phosphatic fertilizer plants not connected to it. During the early 1990's the Tampa Facility was owned by the Royster Company (''Royster''), now known as Mulberry Phosphates, Inc. (''MPI'').

B. The Bankruptcy of Royster and the Failed Auction

Royster was a manufacturer of phosphatic fertilizers and related products for the domestic and export markets. Its principal facilities included a plant for the production of diammonium phosphate, located in Mulberry, Florida, and the Tampa Facility. Royster filed for bankruptcy protection on April 8, 1991, after months of experiencing financial hardships. Under the reorganization plan submitted to the Bankruptcy Court, Royster proposed to liquidate certain assets, including its Tampa Facility. Shortly after news of the potential sale of the Tampa Facility went public, Norsk USA and defendant separately expressed interest in acquiring it. After extensive negotiations with Royster officials, Norsk USA agreed to purchase the property for $15.5 million and executed an asset purchase agreement for the property on September 25, 1991. The agreement guaranteed Royster the right to purchase a continuing supply of ammonia from the terminal for its Mulberry plant and contained a through-put provision that permitted it to put the ammonia through the pipeline from the terminal to the plant. In November of that same year, the Bankruptcy Court ordered that the Tampa Facility be sold by auction and that bids be taken against Norsk USA's offer of $15.5 million. The auction was scheduled for March 12, 1992. It was not until the auction was announced that a third Company, CF Industries (''CF''),[3] publicly expressed any interest in acquiring that Tampa Facility.

On December 18, 1991, the Bankruptcy Court issued an order approving bidding procedures in connection with the proposed sale of the Tampa Facility. Any third party offer had to: (1) Be substantially similar to the one contained in the Norsk USA Asset Purchase Agreement; (2) be at least $1 million more than the Norsk USA offer of $15.5 million; (3) include an offer to enter into a through-put agreement with Royster; and (4) include a confidentiality agreement with Royster and Norsk USA regarding disclosure of the terms of the Royster/Norsk USA

[1] Defendant owned the other one-half interest in the pipeline, along with a separate ammonia terminal (consisting of two ammonia tanks) that also was connected to the pipeline.

[2] If defendant had been successful in acquiring the Tampa Facility, it would have been the exclusive supplier to those five plants.

[3] CF is a cooperative which has been a major participant in the fertilizer business since the mid-1960's and has operated world-scale phosphatic fertilizer plants in Florida since 1969.

Through-put Agreement. In addition, the Order required that the third party deposit $1 million in escrow no later than the time at which it submitted an offer. The money deposited was to remain in escrow pending the earlier of (a) the closing of the sale to the third party if its offer was approved by the Bankruptcy Court or (b) the entry of an order approving the sale of the Tampa Facility to either Norsk USA or another third party bidder. After depositing the $1 million, the third party was entitled to receive documents setting forth the results of the inspection of the Tampa Facility's tank, the cost of repair, the terms of the Royster/Norsk USA Through-put Agreement, and the terms of any through-put agreements submitted by any other third parties.

In February 1992, CF deposited $1 million in escrow. Defendant made its escrow deposit on March 9, 1992, three days before the auction. At the time of the auction, there were four bidders who were qualified to bid: Norsk USA, CF, defendant, and Superfos Investments Limited (''Superfos'').[4] CF informed Royster shortly before the auction that it would not be bidding, because of environmental concerns raised by a just-completed study it had done. Only Norsk USA appeared at the auction site on the afternoon of March 12 to bid on the Tampa Facility. There having been no new bids tendered, Norsk USA's standing offer of $15.5 million was accepted, pending approval by the Bankruptcy Court. In a meeting later that afternoon to finalize the details of the sale before a March 13 court hearing, Royster representatives discovered that Norsk USA and defendant had executed a joint bidding agreement approximately two hours before the auction was scheduled to begin.

At the hearing the following day, Royster representatives advised the Bankruptcy Court of the agreement between defendant and Norsk USA. The Bankruptcy Court deferred ratification of the sale and ordered discovery to be taken. A few days later, the Bankruptcy Court received two anonymous communications regarding the bidding agreement. One communication was a letter alleging that defendant had agreed to backstop Norsk USA's bid and that defendant's bid supplement was leaked to CF, causing them to withdraw. The letter pinpointed Steve Yurman, defendant's president, as the villain in the alleged deal. The other communication was one of defendant's internal memoranda written by Yurman describing the terms of the March 12 agreement. After reviewing the information obtained during discovery in light of the anonymous correspondence, the Bankruptcy Court, at a hearing on March 20, refused to ratify the sale of the Tampa Facility to Norsk USA and ordered that a second auction be held. At the second auction, on June 17, 1992, CF and Norsk USA submitted bids, and CF won the Tampa Facility with a final bid of $21.6 million. (By the time of the second auction, CF had been able to resolve its environmental concerns.)

C. Evidence of Collusion

On February 26, 1992, representatives of defendant, Norsk USA, and Farmland met at the Rihga Royal Hotel in New York to discuss an alleged ''joint venture'' proposal by defendant. The proposal involved Norsk USA buying the Tampa Facility and keeping the interest in the pipeline, but possibly selling the tank to CF. The meeting concluded with no agreements being reached.

The same parties met again on March 5, 1992, at the same hotel. They primarily discussed sharing pipeline capacity and the cost of bidding on the terminal. Specifically, Norsk USA, Farmland, and defendant proposed that Norsk USA and defendant enter into an agreement whereby defendant would supplement Norsk USA's bid and consent to Royster's transfer of its pipeline interest to Norsk USA in return for Norsk USA giving defendant extra pipeline capacity.[5] A tentative agreement was reached and Norsk USA indicated that it would have its attorneys reduce the agreement to writing and send defendant a draft to review. Norsk USA sent the first written draft to defendant on March 6, and on March 9 and March 10 representatives of Norsk USA and defendant discussed, via telephone on several occasions, the terms of the draft agreement.

On the morning of March 12, officials of Farmland, Norsk USA, Tosco, and defendant, along with their attorneys, met in Tampa, Florida, at the law offices of MacFarlane Ferguson, Norsk USA's local counsel, to resume negotiating the details of the proposed agreement. After hours of negotiations, the parties agreed, in part, that (a) defendant would supplement Norsk USA's bid up to $2.5 million and consent to Royster's assignment of its one-half interest in the pipeline lease to Norsk USA and (b) Norsk USA, in return, would give defendant the right to use an extra 40,000 tons of the pipeline's capacity. Almost immediately after signing the agreement, defendant stated that it was no longer attending the auction.

One of defendant's representatives appeared at the auction moments before it started and advised Royster that it was withdrawing from the bidding. Later that evening, representatives of Norsk USA and defendant talked by telephone and agreed to instruct their counsel to confer with one another to prepare for the court hearing the next day.

In this case, there was virtually no evidence of covert activity, which indicated that the subjects of the investigation were not aware of, or did not appreciate, the full consequences of their actions. This lack of covertness is one of the main reasons this case is being filed civilly rather than criminally. *See* Antitrust Division Manual, Section III.E., at III–12 (October 18, 1987) (Second Edition).

IV

Explanation of Proposed Final Judgment

A. Prohibited Conduct

Section IV. A. enjoins defendant from directly, indirectly, or through any joint venture, partnership, or other device, entering into, attempting to enter into, organizing or attempting to organize, implementing or attempting to implement, or soliciting any agreement, understanding, contract, or combination, either express or implied, with any other person: (1) To submit any jointly determined bids for the acquisition of any fertilizer asset located in the United States; or (2) to illegally set or establish the price or other terms and conditions of any bids for the acquisition of any fertilizer asset located in the United States.

Paragraph B. of Section IV. also enjoins defendant from directly, indirectly, or through any joint venture, partnership, or other device, communicating or inquiring about any intentions, decisions, or plans to refrain from bidding or to bid, including any intentions, decisions, or plans regarding any actual or proposed bid amounts, for the acquisition of any fertilizer asset located in the United States, where such communication or inquiry is to (1) any other person that is known or reasonably should be known by defendant to be a potential bidder on the sale of that fertilizer asset or (2) any other person that has announced an

[4] Since Superfos was a major creditor of Royster, the Bankruptcy Court exempted Superfos from the $1 million escrow requirement and gave it permission to submit a credit bid. Thus, Superfos could deduct from its bid offer the amount it was owed by Royster.

[5] As owner of the other one-half interest in the Tampa Facility's pipeline lease, defendant already had the right to use 450,000 tons of the pipeline's 900,000 ton capacity.

intention to bid on the sale of that fertilizer asset.

Paragraph C. of Section IV. enjoins the defendant from directly, indirectly, or through any joint venture, partnership, or other device, requesting, suggesting, urging, or advocating that any other person not bid on, or suggesting that it would not be profitable, desirable, or appropriate for any other person to bid on, the sale of any fertilizer asset located in the United States.

B. Compliance Program and Certification

The Final Judgment acknowledges that defendant currently is not engaged in the fertilizer business and, as a result, suspends all of defendant's compliance obligations under Section VII. of the Final Judgment until such time as defendant re-enters and engages in the fertilizer business during the term of the Final Judgment. If and when defendant re-enters the fertilizer business during the term of the Final Judgment, within thirty (30) days of re-entery defendant must establish and maintain for as long as it engages in the fertilizer business an antitrust compliance program which shall include designating an Antitrust Compliance Officer with responsibility for accomplishing the compliance program. The Antitrust Compliance Officer is required to, on a continuing basis, supervise the review of the current and proposed activities of the defendant to ensure that it is in compliance with the program. The Antitrust Compliance Officer is also required to (1) distribute a copy of the Final Judgment to all officers and directors, and any person who otherwise manages defendant with respect to the fertilizer business, (2) distribute in a timely manner copy of the Final Judgment to any person who succeeds to a position described in Section VII.B.1. of the Final Judgment, (3) brief annually defendant's officers and directors engaged in the fertilizer business on the meaning and requirements of the Final Judgment and the antitrust laws, and (4) obtain annually from each officer or employee designated in Section VII.B.1 and 2. of the Final Judgment a written certification that he or she: (a) Has read, understands, and agrees to abide by the terms of the Final Judgment; (b) understands that failure to comply with the Final Judgment may result in conviction for criminal contempt of court; and (c) is not aware of any violation of the Final Judgment that has not been reported to the Antitrust Compliance Officer.

Moreover, defendant is required to distribute in a timely manner a copy of the Final Judgment to any person with whom the defendant enters into discussions or negotiations for the possible submission of a joint bid for the acquisition of any fertilizer asset and file with this Court and serve upon plaintiff, within ninety (90) days after the date of defendant's re-entry in the fertilizer business, an affidavit as to the fact and manner of its compliance with this Final Judgment. Defendant is also required to take appropriate action to terminate or modify any activities it uncovers that violate any provision of the Final Judgment.

V

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may being suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust actions under the Clayton Act. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any private lawsuit that may be brought against the defendant.

VI

Procedures Available for Modification of the Proposed Final Judgment

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments to John T. Orr, Chief, Atlanta Field Office, U.S. Department of Justice, Antitrust Division, 75 Spring Street, S.W., Suite 1176, Atlanta, Georgia, 30303, within the 60-day period provided by the Act. These comments, and the Department's responses, will be filed with the Court and published in the **Federal Register**. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry.

VII

Alternative to the Proposed Final Judgment

The Department considered, as an alternative to the proposed Final Judgment, litigation seeking comparable equitable relief. In the view of the Department of Justice, a trial would involve substantial cost to the United States and is not warranted because the Proposed Judgment provides relief that will remedy the violations of the Sherman Act alleged in the Complaint of the United States.

VIII

Determinative Materials and Documents

No materials and documents described in Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b), were used in formulating the proposed Final Judgment.

Date: _____

Respectfully submitted,

Karen E. Sampson,

Belinda A. Barnett,

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Charles Milton Waller, D.D.S. Denial of Application

On February 25, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Charles Milton Waller, D.D.S., of Parkville, Missouri, notifying him of an opportunity to show cause as to why DEA should not deny his application, dated June 6, 1995, for a DEA Certificate of Registration as a practitioner pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in the State of Missouri. The order also notified Dr. Waller that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The DEA received a signed receipt indicating that the order was received by Dr. Waller on March 4, 1997. No request for a hearing or any other reply was received by the DEA from Dr. Waller or anyone purporting to represent him in this matter. Therefore, the Acting Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Waller is deemed to have waived his hearing right. After considering the relevant material from the investigative file in this matter, the Acting Deputy Administrator now enters his final order