DISPOSITION OF MUSCLE SHOALS

MARCH 3, 1927.—Referred to the House Calendar and ordered to be printed

Mr. James, from the Committee on Military Affairs, submitted the following

REPORT

[To accompany H. R. 16396 and 16614]

The Committee on Military Affairs, to which was referred sundry bills relating to Muscle Shoals, Ala., submit to the House a report containing the report of the subcommittee, which report was adopted by the full committee on March 3, 1927.

The chairman and members of the Military Affairs Committee of the House:

Your subcommittee appointed February 2, 1927, to consider H. R. 16396 and H. R. 16614, known, respectively, as the Reece bill and the Madden bill, both having reference to the disposition of Muscle Shoals, organized and proceeded to the discharge of its duties immediately after being appointed.

In considering the subject your subcommittee felt that the principal purpose of the Congress regarding Muscle Shoals is to safeguard the national defense, promote fertilizer production of substantial benefit to agriculture, and to secure the most beneficial public use of the power-generating facilities after the national defense and fertilizer manufacture purposes have been fully served. This purpose has been stressed in reports made on the subject by various committees of Congress, the joint commission, and the President of the United States.

Having in mind this fundamental purpose in its consideration of the two offers, your subcommittee also felt bound by the following limitations placed upon it by the full committee:

1. That the property shall at all times be subject to the absolute right and control of the Government for the production of nitrates or other ammunition components of munitions of war, and that nitrate plant No. 2 must be kept available therefor by the purchasers, lessees, or users of the property.

2. That the purchasers, lessees, or users of the property shall be obligated in the strictest terms to the manufacture and sale to the public of fertilizers in time of peace.
3. That any proposal for the purchase, lease, or use of the Muscle Shoals property of the United States Government must be for the entire property except the so-called Gorgas plan and the transmission line therefrom.

4. In the consideration of any offers for Muscle Shoals that it be a prerequisite that such offer contain a stipulation that the lessee, operating agency, or owner, as the case may be, be required to return to, or account for, to the Government either in cash or by way of reduction in the price of the fertilizer manufactured, the profits from the sale of power which would have been used in the manufacture of fertilizer in case there had been no discontinuance in the manufacture thereof; that the manufacture of fertilizer may be discontinued only when there shall be such excess accumulation of fertilizer stocks as shall be in excess of the reasonable or prospective demands for such fertilizer, and such manufacture shall be resumed upon reduction to a reasonable degree of such accumulated stock of fertilizer.

5. That any bid must contain a provision for the forfeiture of the power rights and fertilizer provisions if there is any failure to produce nitrates in the amount of at least 40,000 tons per year, provided that such forfeiture as may not be due to the neglect, misconduct or fault of the lessee shall not include the loss of the reasonable value of the property at the time of the forfeiture, but the lessee shall be reimbursed by the Government for the reasonable value of such property then and there belonging to the lessee and essential to the operation of the plants.

After full and careful consideration, including discussions on both propositions with representatives of the respective bidders, your subcommittee has reached the unanimous decision that neither of the offers is embodied in the two bids considered, either as originally introduced or as amended by representatives of the respective bidders following discussion in the subcommittee, meet all the fundamental principles hereinbefore enumerated and in their present forms neither sufficiently safeguards all the public interests involved.

Your subcommittee has agreed unanimously that the principle and limitations noted in this report should be held as fundamental and any proposed legislation submitted to Congress for consideration at the next session should contain provisions based on these fundamentals.

Your subcommittee is also of the opinion and submits to the committee that unless by the time Congress convenes for the Seventieth Congress a bid is received which more fully and satisfactorily meets the conditions and limitations set forth in this report, an effort should be made to secure an operating contract for the production of fertilizer at Muscle Shoals, and in default thereof this committee should give the matter of operation at Muscle Shoals by a Government corporation full and careful consideration.

The subcommittee unanimously agreed that the committee be advised that it is the sense of the subcommittee that no preliminary permit be granted by the Federal Power Commission at Cove Creek, or any other point which might affect the Muscle Shoals project, until after the expiration of the next session of Congress.

It was also unanimously agreed that the Secretary of War be requested to allot a sufficient amount from available funds for the Government engineers to make a preliminary investigation and survey of the Cove Creek Dam proposition, including borings, and that such work be actively prosecuted so that a report to Congress can be made thereon at the beginning of the next session. It is also the sense of your subcommittee that any money expended by the Government in this preliminary work, including borings at Cove Creek, should be repaid to the Government by any licensee to whom a license might hereafter be granted by the Federal Power Commis-
sion, in case the Government should not build the dam at Cove Creek.

It is recommended that the stenographic report of the hearing and discussions held by the subcommittee, together with data pertinent to the subject filed with the subcommittee, be printed with a proper index for the information of the committee and the Members of Congress.

For the information of the members of the committee there is made a part of this report the proposed legislation with original language eliminated or changed indicated by stricken-through type and new language inserted indicated by italics. Proposed amendments not agreed to by the representatives of the bidders will be found in the printed hearings.

W. Frank James.
Harry Wurzbach.
J. Mayhew Wainwright.
Noble J. Johnson.
Hubert F. Fisher.
W. C. Wright.
J. J. McSwain.

[H. R. 16396, Sixty-ninth Congress, second session]

IN THE HOUSE OF REPRESENTATIVES,
January 17, 1927.

Mr. Reece introduced the following bill; which was referred to the Committee on Military Affairs and ordered to be printed.

A BILL To provide for the preservation, completion, maintenance, operation, and use of the United States Muscle Shoals project for war, navigation, fertilizer manufacture, electric-power production, and other purposes, and, in connection therewith, the incorporation of the Farmers Federated Fertilizer Corporation, and the lease to it of the said project

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall constitute the charter of the Farmers Federated Fertilizer Corporation and a contract and lease by and between the United States of America and the said corporation covering the United States Muscle Shoals project, hereinafter sometimes referred to as the project, upon the terms and under the conditions as in this Act set forth. The United States Muscle Shoals project is here defined for the purposes of this Act as comprising Dam Numbered 2 and proposed Dam Numbered 3 and the electric generating plants in connection therewith (with the exception of locks and other appurtenances to navigation), nitrate plant numbered 1 in its entirety, including all lands, buildings, fixtures, and appurtenances on or connected with the reservation, nitrate plant numbered 2 in its entirety, including all lands, buildings, fixtures, and appurtenances on or connected with the reservation, the Waco Quarry in its entirety, including all lands, buildings, fixtures, and appurtenances on or connected with the reservation, and all other facilities for the generation and transmission of power, the procuring and preparation of raw materials, and for the manufacture of nitrates, sulphates, fertilizers, and other products in the district commonly known as the Muscle Shoals district, as well as
all materials, supplies, and construction machinery which are owned by the United States, now or later to be deposited on any of the above-mentioned reservations, together with any other like facilities which the United States may hereafter acquire, construct, and/or include in the leased project. Schedules more fully describing the confines of the project will be attached to the lease.

INCORPORATION OF THE FARMERS FEDERATED FERTILIZER CORPORATION

SEC. 2. There is hereby created and incorporated a corporation, under the name Farmers Federated Fertilizer Corporation, for the purposes and objects, and to have, possess, and exercise the powers, rights, privileges, and authorities, in this Act provided, and to exist for a period of fifty-five years from the passage of this Act, or until five years after the termination of operation by the corporation under terms of the lease of the Muscle Shoals project provided for in this Act, whichever may be the later date.

SEC. 3. In addition to the purposes, objects, rights, powers, and authorities elsewhere in this Act conferred upon the corporation, it shall have and possess the following: To exist and have succession by the name Farmers Federated Fertilizer Corporation for the period of its corporate existence; to adopt, use, and, at pleasure, alter a common or corporate seal; to sue and be sued and to complain and defend in any court of law or equity; to make, amend, repeal, and reenact by-laws, not inconsistent with the Constitution of the United States of America or with this Act, for the management of its property and business, the regulation and government of its affairs, the holding of meetings of its stockholders, directors, and committees, the certification, issue, transfer, and voting of its capital stock, the election, appointment, powers, duties, and terms of office of its directors, officers, committees, and agents, and the manner of filling vacancies and fixing and altering the number of its directors (not less than five); to appoint such officers, attorneys, agents, and other employees as the business of the corporation shall require, and to allow them suitable compensation; to make and enforce all contracts, and to acquire, hold, own, and dispose of all property, real, personal, and mixed, necessary, appropriate, convenient, or suitable in carrying on its business, including all processes, letters patent, formulas, and rights pertaining to or connected with the business of the corporation or available for use therewith; whether located at Muscle Shoals, Alabama, or elsewhere; to issue and dispose of its capital stock; to borrow money for its proper corporate purposes, and to issue and dispose of its bonds, notes, and other evidences of indebtedness therefor, bearing such rates of interest as the board of directors of the corporation may fix and determine; to engage in foreign trade in connection with or incident to its said business; to conduct its business, and to hold, purchase, convey, and otherwise dispose of, real, personal, and mixed property anywhere in the United States of America or elsewhere in connection with or incident to its said business; to have, possess, and exercise all purposes, objects, rights, powers, and privileges provided for in, or conferred upon it by, this Act, or requisite to carry out the provisions of this Act, and of the lease and contract provided for herein on its part to be observed or performed; to enter upon and take possession of
the Muscle Shoals project as lessee under and by virtue of this Act to the extent herein leased and during the term of the lease herein provided, and to construct, extend, and complete, maintain, manage, use, and operate the same and each and every part or portion thereof; and, upon receipt of the written approval of the Secretary of War, to replace, recondition, or reconstruct any structures, buildings, machines, or other equipment or facilities, not inconsistent with section 19 hereof and to do any act or thing that any other corporation or individual may or could do. The rights and powers of the corporation herein enumerated and such other rights and powers as are incident to the conduct of its business, are granted for the purpose of enabling the corporation as lessee to operate the power plants of the project and dispose of all the power which may be generated therein; to operate the plants for the fixation of nitrogen and manufacture, store, and sell fertilizers and/or fertilizer bases and/or explosive bases; to manufacture, process, and sell all by-products, excess, and waste produced or recoverable incident to the production of nitrates and fertilizers and/or fertilizer bases and/or explosive bases.

Sec. 4. The business of the corporation shall be managed and controlled by a board of directors and executive committee, if so provided in the by-laws, a president, a vice president, a secretary, a treasurer, and any such other officers and agents as the by-laws shall provide. The president and vice president shall be directors but the secretary and treasurer need not be directors. Any two offices, except that of president and vice president may be held by one person. A director of the corporation need not be a stockholder therein.

Sec. 5. John W. Newman, Versailles, Kentucky; A. P. Sandles, Ottawa, Ohio; and A. L. Sponsler, Hutchinson, Kansas, shall be, and are hereby, selected and designated as the incorporators of the corporation, and as such shall adopt its initial by-laws, shall prescribe the number of and elect the first board of directors, and take such other action as may be necessary to complete the organization of the corporation.

Sec. 6. If the by-laws of the corporation shall so provide, the board of directors may, by resolution, designate three or more of their number to constitute an executive committee, who, to the extent provided in said resolution or in the by-laws, shall have and may exercise the powers of the board of directors in the management and conduct of the business and affairs of the corporation between meetings of the board of directors, including the power to authorize the seal of the corporation to be affixed to all instruments which may require it.

Sec. 7. The corporation shall have such authorized capital stock, divided into such number of shares and into such class or classes, each class to have such par value or to be without par value, and to have and be subject to such preferences, privileges, limitations, and restrictions as to dividends, voting powers, or otherwise, as the by-laws of the corporation shall from time to time prescribe. After the adoption of initial by-laws by the incorporators, every provision inserted in the by-laws, dealing with the authorized capital stock of the corporation and the classification or reclassification thereof, shall be adopted, and shall be subject to alteration, amendment, or repeal only with the vote or consent of the majority of the shares outstanding at the time entitled under the by-laws to vote therefor. Until otherwise provided by the by-laws, the authorized capital stock of the corporation shall consist of—
Three hundred thousand shares of nonvoting 7 per centum cumulative preferred stock, of the par value of $100 per share, redeemable at the option of the corporation at any time after three years at not to exceed $110 per share and accrued dividends, and of which ten thousand shares are to be subscribed for, issued, and paid for in cash immediately upon the execution and delivery of the lease to the corporation. Three hundred thousand shares of common stock of the par value of $100 per share. Said preferred and common stock stocks may be issued from time to time and sold for cash at not less than par to such face amount as shall, in the judgment of the board of directors, be at the time necessary to provide the funds required by the corporation. It is estimated that funds required by the corporation in the operation of the project will be approximately $3,000,000 by the end of the third year of the lease and $5,000,000 by the end of the fifth year of the lease. As and when any shares of stock of whatever class are issued, the corporation shall file, within thirty days thereafter, with the Secretary of War, a certificate, signed and verified by its president or a vice president and by its treasurer or an assistant treasurer, stating the number of and describing the shares so issued and the consideration to the corporation therefor. All shares of stock of the corporation of whatever class, when issued, shall be fully paid and nonassessable in the hands of the holders.

Sec. 8. The corporation shall file with the Secretary of War, within thirty days after the adoption thereof, certified copy of its by-laws and of each and every alteration, amendment, repeal, or reenactment thereof. The corporation shall also, as and when requested by the Secretary of War, file with him a certified list showing the names and addresses of its stockholders and the number of shares of each class of stock respectively held. The corporation shall at all times keep on file with the Secretary of War certified reports showing the persons constituting its board of directors and the names of its president, secretary, and treasurer, and their respective addresses. The officers and directors of the corporation shall at all times be citizens and residents of the United States and the voting stock of the corporation shall be owned and held at all times by citizens of the United States.

Sec. 9. The principal office and place of business of the corporation shall be located at Muscle Shoals, Alabama. The corporation may have offices for the transaction of its business and hold meetings of its stockholders, directors, and committees at such place or places as the by-laws may designate or permit.

LEASE

Sec. 10. All of the property and rights, real, personal, and mixed, of whatever kind and character and wherever located, now or hereafter constructed by or for, or owned by, the United States of America in connection with or forming a part of, or for use in connection with, the Muscle Shoals project, and the rents, income, issues and earnings thereof, are, by virtue of this Act, and without further act or deed, leased to the Farmers Federated Fertilizer Corporation at the rental and upon the terms and provisions in this Act provided, together with full license for use of all processes, letters patent, formulas, shop practices, shop rights, and other rights appertaining to or connected with this project or available for use therewith, whether located at
Muscle Shoals, Alabama, or at other places, owned or controlled by the Government, United States, and/or which the United States has the lawful right to assign, the latter guaranteeing the corporation against any and all actions which may be instituted because of use of same; and also all records, statements, lists, maps, schedules, and the property described therein, connected with this project, and these, when receipted for by the corporation, shall be parts of the said lease and this Act as though written herein. The duration of this lease shall be fifty years from the date of passage of this Act, and at the expiration of such fifty-year period the further disposition of the properties as then constituted shall be by Act of Congress, but to insure the preservation of them as going properties the Secretary of War is authorized to negotiate and conclude an ad interim lease with the Farmers Federated Fertilizer Corporation upon terms and conditions similar in all respects to the provisions of this lease, except that its termination shall be at such date as the then new disposing Act of Congress shall establish.

SEC. 11. The corporation shall pay an annual rental (see section 644) for all of the leased property in completed condition as hereinafter provided; said rental to be taken from paid out of the receipts from the sale of power, commencing with the calendar year following the placing in commercial operation of Dam Numbered 2 with eight generating units, at the rate of $22.29 per kilowatt-year of eight thousand seven hundred and sixty kilowatt-hours for all primary power generated and sold outside of the corporation from any and all power plants included in the leased property project. A kilowatt-year shall be taken as eight thousand seven hundred and sixty kilowatt-hours and all calculations of the rental shall be made at such corresponding unit price per kilowatt-hour for the primary power sold. Primary power, as heretofore mentioned, is hereby defined to be all and any power which could be generated for eight thousand hours per year from the present actual river flow together with such portion of added power generated by the hydroelectric plants which would be brought up to the standard of continuous power by means of the use of any storage reservoirs and in addition such other continuous power as would be generated by the hydroelectric plants in combination with the steam plants of the leased property. No hydro-power installations or other controlling works to be operated independently from those of the present project shall be constructed or maintained above contemplated Dam Numbered 3 on the Tennessee River or its tributaries that will impair the efficiency or availability of the hydro-power development at Dam Numbered 2 or that contemplated to be constructed and known as Dam Numbered 3. Any development by the corporation above contemplated Dam Numbered 3 shall only be undertaken at the option of said corporation.

SEC. 12. If in any calendar year the receipts from the sale of power are not sufficient to pay the full gross rental due for that year and all other operating expenses, and all general and miscellaneous expenses allocated to the power division, and including the actual expenditures for maintenance and repairs, then for such calendar year the said rental shall be reduced by the amount of the deficit; and the corporation shall not in subsequent years be required to make up such deficit.
SEC. 13. Any and all by-products, excess, and waste produced or recoverable from the processes used for the production of nitrates and fertilizers and/or fertilizer bases shall belong to the corporation for its own use and benefit and shall not in any way be credited to the cost of manufacturing fertilizers and/or fertilizer bases. Any cost of further treatment, refinement, or manufacture of such by-products, excess, and waste to make the same commercially salable shall be at the expense of the corporation, and all costs of plant and investment and all working capital incident to such further treatment or manufacture shall be the obligation of the corporation, except as mentioned in section 16 herein, and shall not be included in or considered in arriving at the cost of fertilizers and/or fertilizer bases.

SEC. 14. All letters patent, processes, and formulas now or hereafter discovered at the leased property or laboratories of the Government United States, for and in connection with fertilizers and/or fertilizer bases, shall be the property of the Government United States, but the right of the lessee to the free use of such letters patent, formulas, and processes shall be included in the leased property and those which may be discovered at the leased premises by the lessee shall be held from publication in the same manner as other Government United States processes of like character; the Government United States having the right to use the same direct at all times without charge. All letters patent, processes, and formulas discovered and controlled by the incorporators of this corporation, prior to the passage of this Act, which may be used in connection with the manufacture of products at this project, shall be and remain the property of the incorporators individually; the Government United States having the right to use the same direct at all times without charge during the life of said lease, in connection with the manufacture of explosive bases.

SEC. 15. Inasmuch as the corporation in its fertilizer division is to produce and deliver in the control of the farmers board, as defined in section 38 of this Act, fertilizers and/or fertilizer bases without any profit, the corporation shall be exempt from Federal tax of any kind whatsoever now enacted or later to be enacted.

SEC. 16. If plant numbered 1 or plant numbered 2, or parts of either, or other plants or parts of same, or facilities are not required or fully used for the manufacture and storage of fertilizers and/or fertilizer bases, the corporation may make use of such plants, parts, and facilities for its own purposes not inconsistent with their regular use or restoration for war uses.

SEC. 17. Upon the termination of operations by the corporation under terms of the said lease, as heretofore defined in section 10, the entire project shall be returned to the Government United States in good condition and repair, the period of use duly considered, and any moneys then in the fertilizer fund, salvage fund, research fund, emergency fund, and renewal and replacement funds shall be paid to the Government United States.

SEC. 18. The corporation is hereby authorized, with the approval of two of the three representatives of the United States upon the board of industrial development (hereinafter defined) to sell, transfer, rent, or otherwise dispose of any fixtures, materials, supplies, or other similar property pertaining to the project at the time of taking over the lease, which said board shall determine at any time to be not
needed for the construction, maintenance, and operation of the project, or for war, military, or navigation purposes, giving good and indefeasible title in fee simple to the purchasers thereof. The net consideration received upon any such sale or other disposition by the corporation, except moneys received for rents, shall be credited to a salvage fund, and said fund shall form part of the leased property and may be used by the corporation in the manufacture of fertilizers and/or fertilizer bases and/or explosive bases, or for the purchase of other useful property for the project. Upon the termination of operations by the corporation under terms of the lease, said fund, as then constituted, shall be turned over to the Government United States. The corporation shall have the right to subrent or sublease any of the real property contained in the project consistent with the provisions of this Act, provided that any such subrenting or subleasing for a period of more than one year shall have the written approval of the Secretary of War.

Sec. 19. The decision of the Secretary of War shall be final in all matters pertaining to the nitrate plants or changes therein, as such changes may affect the use of the same for war purposes, preparedness for war, or other military purposes.

Sec. 20. The corporation may construct at its own cost any additional buildings, structures, or facilities and equipment at any location on the project and for any use, with the approval of the board of industrial development, and the same shall remain the property of the corporation. Upon the termination of operations by the corporation under terms of the lease the Government United States may purchase such property from the corporation at its appraised value not to exceed the actual cost thereof, or, should the United States not so purchase within two years, at the option of the corporation, the latter may remove the same; but if the lease is terminated by the Government United States prior to its expiration by reason of any default by the corporation in complying with the terms of the lease, then the Government United States shall, as penalty for such default by the corporation, acquire without cost all facilities of any nature installed by the corporation upon the leased premises.

Sec. 21. The corporation shall have the power and authority to purchase, construct, appropriate, enter upon, or otherwise acquire, use, own, maintain, and operate any property or right, real or personal, tangible or intangible, which may, in the judgment of the board of directors, be necessary or desirable to accomplish the purposes of this Act, including any water and/or flowage rights and lands along such portions of the Tennessee River and its tributaries above Dam Numbered 1 as are necessary or desirable for the development of water storage and/or water power and the regulation of the flow of such river and tributaries. In case the owner of any such property or right and the corporation are unable to agree upon the damage or compensation to be paid for such property or right, or in case, by reason of the absence or legal incapacity of such owner, no such agreement can be made, the corporation shall have the right to acquire such property or right by the exercise of the right of eminent domain in the district court of the United States or in the State courts for the district in which said property or right, or the
property in respect whereof such right is desired, may be located, except that it is specifically provided that there shall be no exercise of the right of eminent domain granted in this Act with respect to hydroelectric plants installed prior to the passage of this Act under permit of the Federal Power Commission. In all cases where the parties can not agree as aforesaid, the corporation shall tender a bond with sufficient security to the party claiming or entitled to any damage, or to the attorney or agent of any absent person, or to the guardian, committee, or other representative of anyone under any person of legal capacity incapacity, the condition of which bond shall be that the corporation will pay or cause to be paid such amount of damages as the party shall be entitled to recover, if the amount thereof shall have been agreed upon or assessed in the manner provided for by this section: Provided, however, That in case the party or parties claiming or entitled to damages refuse or do not accept the bond as tendered, the corporation shall then give the party written notice of the time when the same shall be presented for filing in court, and thereafter the corporation may present said bond to the court having jurisdiction, and if approved, the bond shall be filed in said court for the benefit of those interested and recovery may be had thereon for the amount of damages thereafter assessed, if the same is not paid. Upon the tender and acceptance of such bond or the filing thereof as aforesaid, if not accepted, the corporation shall have the power to enter upon and take possession of the property condemned. The practice and procedure in any action or proceeding for the purpose aforesaid and for the assessment of the damages that any such owner shall be entitled to receive, instituted in the district court of the United States, shall conform as nearly as may be with the practice and procedure in similar actions in the courts of the State where the property aforesaid is situated. At the termination of operations by the corporation under terms of the lease the Government United States may purchase property acquired by the corporation under the conditions of this section at its appraised value not to exceed the actual cost thereof to the corporation.

Sec. 22. The corporation shall not sell, transfer, or license any of the letters patent, processes, and formulas forming a part of the leased property, nor shall the corporation sell, transfer, or assign this lease or the leased property, except as otherwise provided in section 18 herein. Nothing in this section shall apply to the letting or subletting of construction contracts.

Sec. 23. The Secretary of War is hereby authorized to enter into and execute such agreements with the corporation, consistent with the provisions of this Act, as will provide for omissions, if any, or as may be necessary in order to carry out the purpose of this Act.

POWER DIVISION

Sec. 24. The power needed in the manufacture of fertilizers and/or fertilizer bases and/or explosive bases shall be furnished by the power division of the corporation and only the actual cost of producing and delivering such power, which includes repairs and renewals, but and no rentals shall be charged to fertilizer production and the accrue or be paid for such power. The corporation, the research board, and the farmers board (both of which boards are hereinafter defined), shall endeavor to discover or perfect processes and methods of manufac-
tare and operation that will enable the corporation to produce fertilizers and/or fertilizer bases, using the cheapest classification of power consistent with maximum over-all economy.

SEC. 25. The corporation may sell all of the electricity generated by any and all power plants included in the leased project, which is not actually used in the manufacture of fertilizers and/or fertilizer bases and/or explosive bases. The rates to be charged by the corporation for electricity shall be subject to the general regulations of any State commission or other governmental body at the time having jurisdiction in the premises. For the purpose of determining the rate base, but for no other purpose, the corporation shall be deemed the owner in fee simple of all such property of the project as is used or useful in connection with the generation and distribution of electricity, including the dams, but exclusive of the locks and navigation facilities connected therewith. Certain current will be supplied to the Government United States, free of charge, for navigation as set forth in section 68 herein.

SEC. 26. In order to use more completely and advantageously the power resources of the project, and if necessary for the purpose of giving wider distribution of electric power, the corporation is hereby authorized to use any amount in the salvage fund, provided in section 18 of this Act, and/or moneys offered by the farmers board from the fertilizer fund, to construct for the Government United States such transmission lines—including appurtenant substations, transformers, and other works—as in the judgment of the board of industrial development may be necessary and desirable, under the same terms and conditions as other construction work mentioned herein. Any transmission lines which may be so constructed shall immediately become a part of the leased property and shall be returned to the Government United States at the same time and under similar conditions as the other leased property of this project, upon the termination of operations by the corporation under terms of the said lease.

SEC. 27. The corporation may enter into agreements with the owners of electric generating stations and/or transmission lines, now or hereafter constructed, to bring about the exchange of power wherever the same can be advantageously done; may enter into contracts with persons, partnerships, corporations, municipalities, districts, and individual States of the United States of America for the joint construction and use of transmission lines and may organize, join with, or associate with, a superpower or other organization for the better distribution of electric energy through a combination of sources of supply or transmission systems or operating organizations, as and when such agreements or contracts, in the opinion of the board of directors of the corporation, can be advantageously made.

FERTILIZER DIVISION

SEC. 28. The corporation shall manufacture fertilizers and/or fertilizer bases as a separate department or division of the project, and shall make no profit and incur no loss in such fertilizer division.

SEC. 29. The “cost” of fertilizers and/or fertilizer bases shall include all items of expense and charge incident thereto, including provision for taking care of past deficits or previous unintended profits, to the end that no profit or loss will result to that division of the corporation.
SEC. 30. During the first year of production of fertilizers and/or fertilizer bases, the corporation shall furnish the farmers board with as reliable an estimation of the cost of production thereof as circumstances will permit, and thereafter shall report regularly, and at such times and in such form as the farmers board may reasonably prescribe, the actual cost of production.

SEC. 31. The methods or processes to be initiated for the production of fertilizers and/or fertilizer bases shall be recommended by the board of research, in accordance with the terms of this Act. The extent of the production will be specified by the farmers board (see section 40 hereof) and predicated on the expenditures for construction as specified in sections 55, 46 and 64, 55 hereof. The quantity shall be measured in tons of fixed nitrogen content of finished fertilizers and/or fertilizer bases, and will be at least forty thousand tons annually after the fourth year of operation, unless requested by resolution of the farmers board, conveyed to the corporation in writing, to curtail the production. The corporation agrees to further extend the quantity of fertilizers produced under this plan after consideration of the market demand and authorization of the farmers board and only dependent on the requirements of the Government’s by the United States to its plants for such production, which additions may, if found desirable by joint action of the farmers board and the board of industrial development, be financed from the fertilizer fund hereinafter defined.

SEC. 32. All maintenance, repairs, renewals, and replacements on the plants and equipment solely incident to this division shall be made by the corporation, and such expense shall be considered as part of the cost of production.

SEC. 33. As an incentive to perfecting processes and formulas and to discovery of more efficient business and manufacturing methods and to cheapening in any other way the cost of the product the corporation shall be allowed and paid, as a bonus, an amount equal to 50 per centum of any such reduction in the production cost in each calendar year over the production cost of the preceding year, commencing after the contemplated changes in the nitrate plants are made and in use, which changes are to be made immediately; the amounts so paid to the corporation, if any, to be determined by the Secretary of Agriculture for each calendar year, are to become an item of production cost, anything in section 28 herein to the contrary notwithstanding.

CONTROLLING BOARDS

SEC. 34. A Board of Industrial Development shall be constituted, as hereinafter provided, to consist of an executive officer of the corporation, who shall be the chairman thereof, the Secretary of War or a person appointed by him, the Secretary of Agriculture or a person appointed by him, the Secretary of Commerce or a person appointed by him, and three others (who may be employed or retained by the corporation) appointed by the directors of the corporation. Each member shall serve for a term of one year, and any vacancy in the board, whether caused by death, resignation, or expiration of term of any member, or for any other reason, shall be filled in like manner. No member of the board shall receive any compensation for his services as a member thereof. The board shall, for the guidance of the corporation—
(a) Confer with the Secretary of War, and work out, and from time to time whenever necessary or advisable, amend, alter, or supplement a general plan covering the war uses of the project, particularly as to the use thereof by the corporation being at all times subject to the use of the Government United States in time of war; and subject to such plan.

(b) Confer with the Secretary of Agriculture, and work out, and from time to time whenever necessary or advisable, amend, alter, or supplement a general plan covering the fertilizer uses of the project; and the corporation shall observe and conform to the provisions of such plans; and subject to the foregoing plans.

(c) Confer with the Secretary of Commerce, and work out, and from time to time whenever necessary or advisable, amend, alter, or supplement recommendations for the development of the industrial activities on the project and within transmission distance thereof, and as to classes of industry best suited to the locality, taking into consideration the industrial and commercial life of the Nation as a whole.

Sec. 35. A board of research, to consist of five members, shall be appointed by the Secretary of Agriculture, and shall be selected from the staff of the Nitrogen Research Laboratory, Bureau of Soils, or other technical forces under his jurisdiction, or otherwise available, as well as the technical staff of the corporation, except that the corporation shall be entitled at all times during the term of the lease to representation by two members on said board. The corporation shall supply from the research fund, hereinafter provided for, $150,000 per annum toward the maintenance of the Nitrogen Research Laboratory, as and when a like amount is contributed by the Government United States for the same purpose. The members of said board and the term of office of each member shall be one year, and all vacancies shall be filled and successors appointed by the Secretary of Agriculture, provided that at all times at least two members thereof shall be representatives recommended by the corporation. Each member of said board, other than the representatives of the corporation, shall receive such compensation as shall be fixed by the Secretary of Agriculture, the same to be approved by subject to the approval of the farmers board and paid out of the fertilizer fund.

Sec. 36. The board of research shall, as promptly as possible after the passage of this Act, recommend processes and formulas for use by the corporation on the project for the production of fertilizers and/or fertilizer bases and the nature and extent of the changes, additions, and extensions to the nitrate and other plants, and shall have advisory powers in the completion of such construction and placing of same in operation, and thereafter shall, through continued research and experimentation, recommend or advise as to changes, betterments, and substitutions required in connection with the processes and formulas to be employed by the corporation.

Sec. 37. Any action of this board which affects the nitrate portions of the plant shall be submitted for review to the Secretary of War, and, unless disapproved by him within thirty days thereafter, shall become available to the corporation as though with his approval.

Sec. 38. A farmers board, to consist of not more than five members shall be appointed by the Secretary of Agriculture, of which board
he, or one of his assistants, shall be a member and shall act as chairman of which the Secretary of Agriculture shall be ex officio a member, shall consist in addition to said Secretary of not more than five members, whose whole time shall be devoted to the work of the board, and who shall be appointed by the President by and with the advice and consent of the Senate. The remaining said five members shall be appointed by him for one year, and the board originally selected by him shall include one representative from each of the following associations, or their successors, or others representing farmers' welfare:

- American Farm Bureau Federation.
- The National Grange.
- National Farmers' Union.
- National Council of Cooperative Marketing Associations.

The Secretary of Agriculture, President, by and with the advice and consent of the Senate, shall fill all vacancies, by appointment, and the representatives on said board shall, in so far as possible, during the term of said lease be identified with said associations or their successors, or branches of the farm industry, or organizations nationally interested in the farmers' welfare. Compensation not to exceed $10,000 a year shall be paid to each member of the board at the direction of the Secretary of Agriculture, and such compensation shall be paid from the fertilizer fund. The Secretary of Agriculture shall receive no additional compensation for his service on this board.

Sec. 39. The said board shall hire employ a secretary whose whole time shall be devoted to the work of the board and the gathering of data for its use in the marketing and distribution of fertilizers and/or fertilizer bases to the farmers of the United States, and the salary and necessary expenses of said secretary shall be paid from the fertilizer fund, the salary not to exceed the sum of $20,000 $10,000 per annum. The expenses will include an office for said secretaty at Muscle Shoals and the necessary clerical help.

Sec. 40. The farmers board shall have the power to establish, from time to time, the minimum quantity of fertilizers and/or fertilizer bases to be produced. The said farmers board shall pay the corporation, from time to time, from any moneys in its possession or control, for the fertilizers and/or fertilizer bases, placed in their control, an amount equal to the cost as stated in the warehouse receipts upon presentation and delivery of same, and shall have full power and authority with active corporation by the corporation to prescribe and carry out the methods and policies to be used in the marketing and distribution of the fertilizers and/or fertilizer bases. The farmers board shall request the corporation, by written resolution, to curtail the production of fertilizers and/or fertilizer bases, whenever there are insufficient moneys available to the said board to take up the warehouse receipts for such products. Any expense in carrying out the said methods and policies shall be considered as an item of final cost of said products.

Construction

Sec. 41. If the foundations of the Dam Numbered 2 shall prove defective, and/or any of its equipment or the power house shall in any way be defective or unsatisfactory, after the completion of all the work incident to a complete, operative hydroelectric project, and after all operative and other usual tests have been made, then the
Government United States shall make all repairs, changes, or replacements at its expense to make the same an efficient, safe, and complete operative hydroelectric project, and the corporation shall take over the hydroelectric project at Dam Numbered 2 within sixty days thereafter and shall place the same in commercial operation as promptly as possible.

Sec. 42. The existing steam-electric plant at nitrate plant numbered 2 shall be given an operative test by the United States, and any repairs, renewals, and replacements necessary to place it in an efficient operating condition shall be made by the Government; United States, and when completed in such condition, it shall be taken over by the corporation.

Sec. 43. The corporation shall be notified in advance as to each such test and be permitted to have representatives present, and shall be furnished with all data and information as to the results of each such test.

Sec. 44. In case any other item of the leased property, when delivered into the possession of the corporation, shall be in need of any repairs, renewals, or replacements; the same shall be made by the Government at its expense, and if not so made promptly the corporation shall have the right to make the same and the Government shall furnish or reimburse to the corporation all funds requisite therefor used or useful in connection with the generation and distribution of electricity and/or in the manufacture and/or handling of fertilizers and/or fertilizer bases and/or explosive bases, shall be deemed by the Board of Industrial Development to be in need of any repairs, renewals, or replacements, the same shall be made by the United States.

Sec. 45. The corporation shall, upon notice in writing in each case from the Secretary of War, act as agent for the Government for the designing and construction of each of any of several items of uncompleted work referred to in section 55 herein; or for any other construction work of the Government incident to the project now planned or hereafter to be planned; and in any such event the corporation shall, as soon as possible after receipt of such notice, submit to the Secretary of War plans and specifications for such work and estimate of the cost thereof.

Sec. 46. If the Secretary of War shall elect to have the corporation so act for the Government, the corporation shall in each case act as a Government engineering, construction, and purchasing department, and shall as such and for such capacities at all times be subject to instructions from the Secretary of War. As engineers, the corporation shall make or cause to be made all necessary studies; recommend the type and character of equipment and of construction required; and prepare plans and specifications for material, equipment, and construction work; and the estimate of the cost thereof. The corporation shall follow the usual commercial practice, without advertising for bids unless it shall so elect.

Sec. 47. All actions of the corporation, as defined in section 46 herein, and all contracts and orders for such construction for the Government which are handled or placed by the corporation; payrolls and other obligations resulting therefrom; shall be in the name of the United States Government by the corporation as agent; and the corporation shall not thereby assume any financial liability under or by reason of such obligations.
Sec. 48. The corporation shall be paid a fixed fee equal to 6 per centum of the estimated cost of such work, which estimated cost shall be agreed upon by the Secretary of War and the corporation prior to the commencement of work. Such estimated cost shall include the following items, whether commitments therefor or expenditures are made or to be made by the Government or by the corporation for the Government:

(a) The cost of all property, real, personal, and mixed; rights, royalties; material, machinery, equipment, labor, tools, plant, and equipment purchased and the rental of any equipment hired; salaries and expenses of all officers and employees of the corporation for that portion allocated to construction work; and all expenses of office and office help and supplies for such officers and employees; in connection with exploration, investigation, preliminary and final engineering or designing, in the choice of materials and purchase of same; equipment and supplies; and the inspection thereof at the works or elsewhere.

(b) The cost of expert and consulting services, including all legal services and expenses incident thereto.

(c) The cost of traveling and incidental expenses.

(d) Other expenditures made directly, incident to this work, but not including interest during construction.

Installments of the said fee shall be paid monthly to the corporation on the basis of 6 per centum of the actual expenditures made during the preceding month until 90 per centum of the total fixed fee shall have been paid, and the remaining 10 per centum shall be paid on completion of the work. If material change in the scope of the work shall be ordered by the Secretary of War at any time after the determination of the amount of the said fee, the amount of said fee shall be increased by an amount equal to 6 per centum of the estimated additional cost of such additional work. The amount of the said fee shall not be changed because of any difference between the actual cost and the estimated cost.

Sec. 49. The corporation shall make all payments incident to the construction work executed by it, for the account of the Government out of funds supplied to the corporation. All such payments shall be under such regulations as the Secretary of War may prescribe, and the Government shall reimburse the corporation each month for its expenditures for Government work made during the preceding month.

Sec. 50. All correspondence, records, vouchers, and books of account of the corporation relating to the construction work shall at all reasonable times be open to the inspection of the Secretary of War or his authorized representative.

Sec. 51. The Secretary of War shall have a representative inspector on the construction work at all times, and any official communication from him to the corporation, or any of its agents, shall be made in writing; and such communication shall be deemed an official communication of the Secretary of War. In case of disagreement, the decision of the Secretary of War shall be final as to the results to be accomplished.

Sec. 52. If at any time the Secretary of War shall become dissatisfied with the manner in which any construction work is being executed or shall for any reason wish to discontinue such work, he
shall have the right, after ten days' notice in writing, to terminate the employment of the corporation as agent on such work and to take possession of such work and material for the construction thereof and complete the same. In case the Secretary of War shall take such action, the corporation shall, before possession is so taken, receive in payment for its services all installments of the fixed fee which shall have become due or accrued to it in connection with such work, reimbursement for all funds expended by it in connection therewith; and a release from the Government of all responsibility incident to such work. The approval by the Secretary of War of any expenditure made by the corporation shall be final.

Sec. 53 45. The changes and additions to the nitrate plants to manufacture fertilizer and/or fertilizer bases shall be commenced not later than one year after this Act becomes a law by the Government or by the corporation for the Government United States and as soon as recommendations have been made by the board of research and the plans and specifications for the same have been made and the estimated cost thereof shall have been agreed upon and the construction shall proceed with reasonable diligence.

Sec. 54. The corporation, if directed by the Secretary of War in writing, shall construct for the Government all storage dams and/or power plants or other works desired by the Government and designed for the regulation and augmentation of this project or its extensions and not mentioned in this Act, under the same terms and conditions as mentioned for other construction work, as described in section 46 hereof.

Sec. 55 46. The following items of uncompleted work are considered necessary for the proper development of the project and will be constructed by the United States in accordance with a schedule and plans to be determined by approved by the Secretary of War after consultation with the boards of research and industrial development jointly, and will be included in the lease herein made, and the necessary appropriations are hereby made from moneys otherwise unexpended in the Treasury authorized. The items designated as uncompleted work are as follows:

(a) Changes and additions to the nitrate plants for their up-to-date use in the manufacture of fertilizers and/or fertilizer bases.

(b) Completion of Dam Numbered 2 with its full-power equipment of eighteen generating units.

(c) Construction of Dam Numbered 3 with its full-power equipment and electric transmission tie line to Dam Numbered 2.

(d) Additions to the generating capacity of the steam electric plant located at nitrate plant numbered 2 to bring the total generating capacity up to at least one hundred and twenty thousand kilowatts; such additions to be in the form of steam, gas, oil, or other form of electric generating equipment; the form and location of which being subject to the approval of the board of industrial development.

(e) Construction of Cove Creek Dam, at the site on the Clinch River, with its full power equipment.

Sec. 56 47. The time of commencing work under item (a) shall be as defined in section 53 45, and the items (b), (c), (d), and (e) shall be as defined in section 55 46.
SEC. 48. After the completion of requisite tests, showing each item mentioned in section 46 hereof to be safe, satisfactory, and complete for operating conditions, they shall be taken over by the corporation and thereupon become part of the leased property.

SEC. 49. Immediately upon the enactment of this bill, it shall become a law and the incorporators heretofore denominated shall have a period of six months thereafter in which to take over such portions of the leased property as at that time would be in functioning order and shall continue from that period until the entire project has been transferred as defined elsewhere herein.

SPECIAL FUNDS

SEC. 50. RESEARCH FUND.—The corporation shall deduct $300,000 annually from the rental, during the operation by the corporation under terms of the lease, for the purpose of a research fund, to be used under the direction of the corporation as provided in section 35 hereof, and additionally to partially reimburse the corporation for research work carried on other than that by the research board, but incident to the further development of the industrial, chemical, and/or power phases of the project. Any balance in the said fund at the termination of operations by the corporation under terms of the lease shall be paid to the Government United States.

SEC. 51. EMERGENCY FUND.—The corporation shall deduct annually the sum of $100,000 from the rental, during the operation by the corporation under terms of the lease, and set aside for an emergency fund, to be used by the corporation for extraordinary repairs, renewals, or replacements, of any part of the hydroelectric any portion of the United States Muscle Shoals project, made necessary by some cause other than ordinary operation and customary depreciation, but directly incident to the operation of the hydroelectric any portion of the project. Any such repairs or replacements which may be necessary prior to, or at any time in excess of the accumulated fund, and all restorations of any part or parts of the project necessary because of floods, fires, explosions, or other causes not directly incident to the operation of the hydroelectric any portion of the project, shall be made by the corporation for the Government, under the same terms and conditions as other construction work provided for in this Act the United States. Any balance in the said fund at the termination of operations by the corporation under terms of the lease shall be paid to the Government United States.

SEC. 52. FERTILIZER FUND.—The annual net rental herein provided would, if treated as amortization payments and placed at compound interest, be sufficient to retire more than the total expenditures made and to be made of the project by the Government, but, inasmuch as a large part of this expenditure has been made directly incident to the World War and can and should be considered as part of the cost of that war, and as much of this project is, under this Act, to be preserved for the Government's use in any future war, and in the meantime, if utilized, to aid in the national problem of improving the productivity of the soil, the total investment in war and fertilizer facilities can and should be carried by the Government without burdening such use with the cost of interest. Therefore such rental, in excess of amounts otherwise indicated or specified,
The rental remaining after deduction of the amounts authorized in this Act shall be used directly to increase the production facilities and/or cheapen the cost of fertilizers and/or fertilizer bases and for the other purposes specified in this Act, by the corporation depositing such net rentals each year as due in a separate fund designated as fertilizer fund. The farmers board shall, from moneys in its possession or control make equal annual payments to the Treasury of the United States (a) beginning at the end of the sixth year after date of lease, in amounts sufficient to amortize, if such payments are accumulated together with 4 per centum interest compounded annually until one hundred years after date of lease, the net capital expenditures made prior to date of lease, by the United States for the Muscle Shoals project as defined in this Act, and (b) beginning at the end of the sixth year after date of completion of each additional facility for the Muscle Shoals project after date of lease, in amounts sufficient to amortize, if such payments are accumulated together with 4 per centum interest compounded annually until one hundred years after date of lease, the net capital expenditures made by the United States for such additional facility.

Sec. 62. Withdrawals from the fertilizer fund by the corporation will be made only as and when and for the purposes specified herein and by approval of the farmers’ board.

Sec. 63. The farmers board may each year direct the corporation by resolution to withdraw and use all or any part of said fertilizer fund as a credit against the cost of fertilizers and/or fertilizer bases in such manner as it may decide, except as otherwise specified herein.

Sec. 64. If at any time the farmers board determine that all or any part of the then balance in the fertilizer fund is not needed for assisting the production and marketing of the fertilizer products on such basis as will encourage the purchase and use by the farmers, or that the interests of the Government United States will be better protected by such action, said board may instruct the corporation to use any part of the moneys in the said fertilizer fund in the extension of this project, or establishment of other plants at other locations to pay any part thereof into the Treasury of the United States. Any balance in the said fertilizer fund at the termination of operations by the corporation under terms of the lease shall be paid to the Government United States.

Sec. 65. Renewal and replacement fund (power division).—The corporation shall deduct amounts each year from the rental to provide for renewals and replacements of the hydroelectric and other electric generating, controlling, and transmission portions of the leased property incident to the operation thereof. The annual charge, to cover renewals and replacements, to be used for the purpose of setting up this fund, shall be not more than 3 per centum of the total cost, exclusive of navigation facilities, of Dam Numbered 2 with power house and all appurtenances, Dam Numbered 3 with power house and all appurtenances, and any and all other hydroelectric, controlling, and transmission installations now or later a part of the project, and the replacement value of the steam plant at nitrate plant numbered 2, and actual cost of other thermic plants now or later a part of the project. This is a composite rate made up of varying rates for the different portions of the project. Any balance in this fund at the termination of operations by the corporation under terms of the lease shall be paid to the Government United States.
SEC. 66 57. RENEWAL AND REPLACEMENT FUND (FERTILIZER DIVISION).—The corporation shall set aside such amounts for renewals and replacements of the plants and equipment solely incident to the fertilizer division as may be ordered by the farmers board for the purpose of setting up a renewal and replacement fund, and these amounts shall be considered as part of the cost of fertilizer production. All renewals and replacements shall be paid from this fund unless otherwise provided by the Government United States or by the farmers board. Obsolescence of plant and equipment shall be cared for by the corporation setting aside annually, as part of the cost of fertilizer production, sums, as determined by the corporation in collaboration with the research board, sufficient to keep the fertilizer division fully abreast of the most economic developments of the industry. All maintenance and repairs on the plants and equipment solely incident to the fertilizer division shall be made by the corporation and such expense shall be considered as part of the cost of production. Any balance in this fund at the termination of operations by the corporation under terms of the lease shall be paid to the Government United States.

SEC. 67 58. COMPOUND INTEREST.—All funds which are set aside by the corporation may be deposited in any bank or banks approved by the Secretary of the Treasury which, in the judgment of the corporation, considering safety and all other conditions, will permit of the accumulation at compound interest.

NAVIGATION

SEC. 68 59. The corporation shall furnish free of charge to the Government United States all power and lighting current necessary for the operation of the navigation facilities forming part of adjacent to the leased property, the quantity to be determined by the Secretary of War when each of such facilities are ready for operation. This current, not being sold, is not subject to rental payments thereon.

SEC. 69 60. The Government United States may have first call on any excess power at the disposal of the corporation for use as additional facilities in navigation and shall pay for same at the regular rates charged for such class or classes of power.

SEC. 70 61. The Government United States shall furnish and pay for all labor, supervision, operation, maintenance, repairs, and depreciation connected with the navigation of highway facilities.

SEC. 71 62. The Secretary of War shall have a representative located at Muscle Shoals continuously, with power to regulate navigation through the locks at Dams Numbered 2 and 3 within such hours and at such times as will materially conserve the water for use when it can be disposed of as power to the best advantage, or for accumulation above the dams.

FINANCE

SEC. 72 63. The Secretary of Agriculture is hereby authorized and shall include manufactured fertilizers and/or fertilizer bases among the commodities eligible for storage under the provisions of the United States Warehouse Act (Thirty-ninth United States Statutes at Large, page 436, as amended July 25, 1919, and February 23, 1923), and to make such rules and regulations under authority of said Act as he may deem necessary.
SEC. 73 64. The Secretary of Agriculture is hereby authorized and shall issue warehouse certificates receipts for all fertilizers and/or fertilizer bases produced and placed in storage by the corporation, which certificates receipts shall be guaranteed by the Government United States and which shall bear on their faces, as the value of such materials, the cost of same as defined in this Act; and the warehouse utilized for the purpose of storing such materials shall be under Government United States license and supervision in the same manner as provided in the United States Warehouse Act above described. Any costs, commissions, fees, interest, and other expenses incident to such storage and/or the issue and use of such warehouse certificates receipts shall become a part of the cost of fertilizers and/or fertilizer bases as defined in section 29 hereof.

SEC. 74 65. The farmers board shall have the power and is hereby authorized to execute its negotiable notes, drafts, bills of exchange, or other obligations in order to finance the movement of fertilizers and/or fertilizer bases through warehouses licensed under the United States Warehouse Act, and all amendatory Acts thereto, and shall have power to negotiate with and deliver its said obligations to Federal intermediate credit banks or other banking institutions for such purposes.

SEC. 75 66. The Federal intermediate credit banks shall be hereby empowered and may advance money, discount or purchase any note, draft, bill of exchange, or other obligation executed by the farmers' board as defined in this Act, and may take as collateral security to such obligations, in whole or in part, negotiable warehouse receipts for fertilizers and/or fertilizer bases issued by warehousemen licensed under the United States Warehouse Act, and all Acts amendatory thereto, and said banks may advance to the said farmers' board 90 per centum of the face value of the said receipts so attached as collateral security. The said warehouse receipts shall be issued for fertilizers and/or fertilizer bases, which said fertilizers and/or fertilizer bases shall be offered for sale through the farmers board to farmers or farmers' organizations.

SEC. 76 67. Any capital required by the corporation and not otherwise provided for shall be acquired through the sale of its own securities, entirely independent from responsibility or action of the Government United States.

SEC. 77 68. That portion of the expenses of the corporation in any calendar year, which is not in its nature directly allocated to its various divisions of the project, shall be allocated to such divisions in the ratio of the total expenditures of money in each such division in such calendar year.

SEC. 78 69. The account books of the corporation shall at all times be kept so that the elements of any one of the various divisions of the project may be easily segregated from other divisions, and the project, for accounting purposes, shall be divided into the following divisions:
(a) Construction division.
(b) Power division.
(c) Fertilizer division.
(d) Utilization division (all other activities of the corporation).
All books of account, vouchers, and records of the corporation shall be open at all reasonable times to the inspection and audit of the Secretary of the Treasury or his authorized representative.

GOVERNMENT RECAPTURE IN TIME OF WAR

SEC. 79 70. The President of the United States may in time of war, or when in his judgment war is imminent, take over the entire project and the whole or any part of the organization of the corporation and the same shall be returned to the corporation in as good condition as when taken over as soon as the President shall determine that the project is no longer needed for such purpose.

SEC. 80 71. In the event of such taking over by the President, the term of the lease and the term of the charter of the corporation shall be automatically extended for an additional time equal to the period during which the project shall be taken over and retained by the Government United States.

SEC. 81 72. In case the project is so taken over, all rental and all payments into the special funds in this Act provided, and all obligations of the corporation to the Government United States shall be abated during the period in which the project is retained by the Government United States, without liability on the part of the corporation to make good the abated payments and obligations which may have been omitted during such period.

SEC. 82 73. During such period the Government United States, as full compensation to the corporation for the use of the project and all losses and damages sustained by the corporation by such taking over, shall pay to the corporation an amount equal to the sum of the following as and when the same shall become due and payable or shall be incurred by the corporation:

(a) All liabilities of the corporation accrued or accruing during the period of Government United States use, including interest: Provided, That the refunding of maturing capital liabilities of the corporation shall be deemed satisfaction of this clause exclusive of the interest.

(b) The expenses of the corporation in maintaining whatever part of its plant and organization is not taken over and compensated for by the Government United States.

(c) All taxes accrued or accruing for such period, if any, due to any taxing authority.

(d) All dividends on the corporation's preferred stock outstanding at the beginning of such taking over, and accrued or accruing during such period.

(e) Yearly amounts equal to the amounts which the corporation has been setting aside into sinking funds to retire its obligations, of which the corporation has planned to set aside for this purpose at a predetermined time or times.

(f) A fair return on all money invested by the corporation; such return to be equal to the average cost to the corporation of such moneys obtained from the sale of its securities and an equivalent rate on such moneys obtained from the sale of common stock, and from this amount shall be deducted all interest and dividend payments provided for in subdivisions (a), (b), (e), (d), and (e).

SEC. 83 74. If any breach of any of the covenants in this Act and agreement contained, on the part of either party, be alleged by the
other, or if any difference shall arise at any time between the parties hereto in relation to the construction of this Act and agreement, or the due performance of any of the covenants thereof, the question shall be submitted to arbitration. All questions or disputes relating to any matters or things under this Act shall be submitted to arbitration in the following manner: The Secretary of War shall name an arbitrator and the Farmers Federated Fertilizer Corporation shall name an arbitrator, and the judge of the United States district court in which the principal part of the Muscle Shoals properties are located, shall name an umpire, and the board of arbitrators thus constituted, shall thereupon proceed to determine the matter in dispute. In any case in which arbitration is resorted to, the party aggrieved or moving in the matter shall give to the other party written notice of its desire to have an arbitration, in which it shall state generally its grievance, and name an arbitrator; the other party shall thereupon name an arbitrator within thirty days after the receipt of such notice. Then the Secretary of War and the Farmers Federated Fertilizer Corporation shall join in the application to the United States district judge to name an umpire as aforesaid. The board of arbitrators constituted as herein set out, shall proceed to determine the matter in dispute as well as adjudge the costs of the arbitration, and shall make its award in writing. In case either party does not accept or act on the award of these arbitrators then in that case the procedure shall be as in section 84 75 of this Act. Any decision as to any clause, sentence, paragraph, section, or part of this Act so arbitrated or adjudged, shall not affect any other clause, sentence, paragraph, section, or part of this Act, but such award shall be confined in its operation to the clause, sentence, paragraph, section, or part of this Act directly involved in the controversy in which such award shall have been rendered, and shall not affect or invalidate any other clause, sentence, paragraph, section, or part of this Act. No resort to the arbitration provision of this Act shall be had in relation to the right of the United States to recapture the plant in time of war as provided in sections 79, 80, 81, and 82 70, 71, 72, and 73 of this Act.

Sec. 84 75. In the event of the failure of arbitration, as provided in section 83 74, to settle any dispute between the United States and the corporation, then the district court of the United States for any district shall have jurisdiction to hear and determine all claims of the United States against the corporation, and of the corporation against the United States, under this Act, the lease, or the contract herein.

Sec. 85 76. The corporation shall not at any time be obliged to manufacture, handle, or store on the project any war material or supplies of an explosive nature, but, subject to instructions as given from time to time by the Secretary of War, the corporation shall produce explosive bases for the Government incident to the operation of the fertilizer division, and/or store such explosive bases and other war materials or supplies not of an explosive nature, for the United States fertilizer division as herein provided, and shall be compensated therefor the facilities and financing to be provided by the United States.

Sec. 86 77. If any clause, sentence, paragraph, section, or part of this Act, shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall be confined
in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered, and shall not affect or invalidate any other clause, sentence, paragraph, section, or part of this Act.

SEC. 87. Before executing the lease herein described the President of the United States of America shall be satisfied that the lessee will be able to make due financial provisions for the performance of the obligations of said lease.

SEC. 88. Appropriations necessary to carry out each and every one of the provisions of this Act on the part of the Government of the United States are hereby authorized and made.

SEC. 89. All laws and parts of laws in conflict herewith shall be, and the same hereby are, repealed.

SEC. 90. This Act shall take effect immediately.

H. R. 16614, Sixty-ninth Congress, second session

IN THE HOUSE OF REPRESENTATIVES,

January 24, 1927

Mr. MADDEN introduced the following bill; which was referred to the Committee on Military Affairs and ordered to be printed:

A BILL To authorize and direct the Secretary of War to execute a lease with Air Nitrates Corporation and American Cyanamid Company, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of War is hereby authorized and directed, for and on behalf of the United States of America, to execute and enter into with Air Nitrates Corporation, a corporation organized and existing under the laws of the State of New York, and American Cyanamid Company, a corporation organized and existing under the laws of the State of Maine, the following lease:

This indenture, made in triplicate this day of , 192 , by and between the United States of America (hereinafter called the lessor) acting by and through the Secretary of War, duly authorized so to do by Act of Congress approved on the day of , 192 , and Air Nitrates Corporation, a corporation organized and existing under and by virtue of the laws of the State of New York, with offices at Five hundred and eleven Fifth Avenue, New York City (hereinafter called the lessee), witnesseth:

That in consideration of the sum of $1 paid by the lessee to the lessor, the receipt whereof is hereby acknowledged, of the rents to be paid and of the mutual covenants, stipulations, conditions, and agreements herein contained to be kept and performed by the parties, the lessor has granted, demised, and leased and by these presents doth grant, demise, and lease unto the lessee for the possession, use, operation, advantage, and enjoyment, under and consistent with the
terms hereof, of the lessee and its successors and assigns, all the properties constituting what is generally known and designated as the "Muscle Shoals development" including all structures, plants, buildings, machinery, tools and equipment, franchises, rights, powers, and privileges for the construction, maintenance, use, and operation thereof, as well as all lands, tenements, easements, servitudes, rights of way, riparian rights, and the appliances, fixtures, and appurtenances thereunto belonging (as now or hereafter constituted and supplemented during the term of this lease by the acquisitions, constructions, and improvements hereinafter described) and embracing (but without in any way limiting the generality of the foregoing):

(1) Dam Numbered 2 with its lands, water rights, power house, structures, and facilities, which shall include installed electrical generating equipment sufficient to generate there two hundred and forty thousand horsepower, all its hydroelectric and operating apparatus, appurtenances, accessories and facilities, trackage, transmission lines, telephone and telegraph lines, an electrical tie connection of a capacity of not less than one hundred and twenty thousand horsepower at suitable voltage connecting properly the power house at Dam Numbered 2 with the steam power plant at United States nitrate plant numbered 2, the necessary transformers and switching apparatus and all lands, buildings, housing, easements, rights of way, and riparian rights appurtenant thereto and/or owned, controlled or hereafter acquired by the lessor for or in connection with said dam and power plant, but excluding and excepting from the property hereby demised and leased the locks and navigation facilities and such housing as the Chief of Engineers of the United States Army Secretary of War shall designate by notice in writing to the lessee given within sixty days from the date hereof, as being required for the housing of lock operators;

(2) Subject to the provisions of Article D hereof, Dam Numbered 3 with its lands, water rights, power house, structures, and facilities, which shall include installed electrical generating equipment sufficient to generate there two hundred and fifty thousand horsepower, all its hydroelectric and operating apparatus, appurtenances, accessories and facilities, trackage, transmission lines, telephone and telegraph lines, an electrical tie connecting the switch house at Dam Numbered 2 with said power house, of a capacity equal to the generating capacity installed in said power house, the necessary transformers and switching apparatus, and all lands, buildings, housing, easements, rights of way, and riparian rights appurtenant thereto and/or owned, controlled or hereafter acquired by the lessor for or in connection with said dam and power plant, but excluding and excepting from the property hereby demised and leased the locks and navigation facilities and such housing as said Chief of Engineers Secretary of War shall designate by notice in writing to the lessee given at the time of the delivery of possession of said Dam Numbered 3, completed, as being required for the housing of lock operators;

(3) United States nitrate plant numbered 2 (as officially known and designated on the records of the War Department of the United States) including its sixty thousand kilowatt steam power plant, the Waco limestone quarry with equipment therefor, and all lands, buildings, housing, easements, rights of way, materials, trackage,
transmission lines, telephone and telegraph lines, fixtures, apparatus, tools, supplies, appurtenances, accessories and facilities, such existing service equipment as the Chief of Ordnance of the United States Army Secretary of War shall certify by notice in writing to the lessee given within sixty days from the date hereof as belonging thereto, and the sulphuric acid units now in storage on the premises, but not including the platinum catalyzers for use in the manufacture of nitric acid which shall be retained by the lessor and the lessee shall in no way be responsible therefor; and

(4) United States nitrate plant numbered 1 (as officially known and designated on the records of the War Department of the United States) including its power house and transmission line to United States nitrate plant numbered 2 and all lands, buildings, housing, easements, rights of way, materials, trackage, transmission lines, telephone and telegraph lines, fixtures, apparatus, tools, supplies, appurtenances, accessories and facilities; as respects the properties described in paragraphs (1), (3) and (4) above for and during the term of fifty years beginning on the date of delivery to the lessee of possession of said properties and thence ensuing and fully to be completed, and as respects the properties described in paragraph (2) above for and during the term beginning on the day of delivery to the lessee of possession of the said properties completed and thence ensuing and until the end of the aforesaid term of fifty years, upon the terms and conditions contained in this lease and to that end the parties hereto respectively covenant and agree as follows, namely:

A. The lessee will pay to the lessor as rental therefor within fifteen days after the end of each fiscal year (which is hereby defined to begin July 1) of the lease term except as herein otherwise stated:

(1) From the aforesaid delivery of possession of the properties described in paragraphs (1), (3), and (4) of the granting clauses hereof (a) a sum equal to interest at the rate of 4 per centum per annum upon the total of all sums expended by the lessor upon the acquisition and construction of Dam Numbered 2, with its lands, water rights, power house, structures and facilities, as hereinabove described, and its locks and navigation facilities, exclusive of expenditures and obligations paid or incurred by the lessor prior to May 31, 1922, and (b) annual amounts sufficient, if continued for one hundred years, to amortize on a basis of 4 per centum interest compounded annually, the entire amount (without deduction of expenditures and obligations paid or incurred prior to May 31, 1922) so expended, except that such payments of said sum as aforesaid and amortization combined for the first six years from the aforesaid delivery of possession shall be at the rate of $200,000 per year, and that the difference between such $200,000 per year and the full amount of said sum aforesaid and amortization (with simple interest on such difference at the rate of 4 per centum per annum) shall be paid in annual installments commencing not later than the end of the thirty-fifth year of the lease term, each such installment to be equal to at least one-fifteenth of the principal sum of such difference and interest thereon to the date of payment:

(2) From delivery of possession of said Dam Numbered 3 completed (a) a sum equal to interest at the rate of 4 per centum per annum upon the total of all sums expended by the lessor upon the acquisition and construction of Dam Numbered 3, with its lands,
water rights, power house, structures, and facilities, as hereinabove described, and its locks and navigation facilities, less the sum of $6,000,000, and (b) annual amounts sufficient if continued for one hundred years, to amortize on a basis of 4 per centum interest compounded annually, the entire amount (without deduction of such $6,000,000) so expended, except that such payments of said sum aforesaid and amortization combined for the first three years from such delivery of possession of said Dam Numbered 3 shall be at the rate of $160,000 per year, and that the difference between such $160,000 per year and the full amount of such interest and amortization (with simple interest on such difference at the rate of 4 per centum per annum) shall be paid in annual installments commencing not later than the thirty-fifth year of the lease term, each such installment to be equal to at least one-fifteenth of the principal sum of such difference and interest thereon to the date of payment;

[Estimated cost of the construction of Dam No. 3 with 165,000 installed horsepower, $32,000,000.—House Doc. 463, 69th Cong.]

(3) During the term of the lease of said Dam Numbered 2, $35,000,000 annually, in installments quarterly in advance for repairs and maintenance of such dam and its locks and for operation of said locks irrespective of the actual cost thereof;

(4) From such delivery of such possession of said Dam Numbered 3, $20,000 annually, in installments quarterly in advance, for repairs and maintenance of such dam and its locks, and for operation of said locks irrespective of the actual cost thereof; and

(5) The lessee will supply to the lessor, free of all charge during the period of the lease of Dam Numbered 2, to be delivered at any point on its lock grounds designated by said Chief of Engineers Secretary of War by notice in writing to the lessee, electric power necessary for the operation and lighting of its said locks, and will supply to the lessor from such delivery of such possession of said Dam Numbered 3, to be delivered at any point on its lock grounds designated by said Chief of Engineers Secretary of War by notice in writing to the lessee, electric power necessary for the operation and lighting of its said locks.

If the lessee be deprived of possession of any portion of the demised properties for any part of a fiscal year, the total payments to be made by way of rental by the lessee for such fiscal year for the demised properties shall be reduced so that the rental to be paid, with respect to that portion of the properties of which the lessee is deprived of possession, shall be the same proportion of the total yearly rental of such portion of the demised properties, as the time, during which the lessee enjoyed possession during such fiscal year of that portion of the properties of which it was deprived, is of one year.

In case the lessee shall be deprived of the possession of any part of the demised properties pursuant to the provisions of subdivision (3) of Article E hereof, the payments to be made by the lessee by way of rental hereunder shall thereupon be reduced proportionately as may, subject to the provisions of Article N hereof, be agreed upon between said Chief of Engineers Secretary of War and the lessee.

B. In addition to the payments above covenanted to be made the lessee covenants and agrees that it will—

(1) At its own cost and expense complete the steam power plant connected with said United States nitrate plant numbered 2 by
installing such additional electrical generating and other equipment as will increase the generating capacity of said plant up to at least ninety thousand kilowatts according to plans and specifications therefor to be approved by said Chief of Engineers Secretary of War;

(2) In accordance with plans and specifications which have been or may be prepared or approved by said Chief of Engineers Secretary of War and out of funds which the lessor hereby covenants and agrees promptly to make available for that purpose, install in the power house of said Dam Numbered 2, with reasonable promptness after such funds are so made available, such additional electrical-generating units, together with necessary hydroelectric and operating appurtenances, accessories and facilities as will increase the generating capacity of the equipment of said Dam Numbered 2 up to approximately six hundred thousand horsepower, at the cost and expense of the lessor and without profit to the lessee, each such additional generating unit to be the property of the lessor and included in the leased property upon which rental by way of interest and amortization shall be paid to the lessor from the time of its completed installation, such additional rental to be paid in the manner and at the rates provided in subdivision (1) of Article A hereof; and

(3) Pay to the lessor a royalty of 5 cents per long ton upon all limestone removed by the lessee or its agents from the said Waco limestone quarry, such payments to be made on or before the tenth day of each month for the quantity of such limestone so removed during the preceding month.

C. The lessor covenants and agrees to maintain and keep in repair (as determined by said Chief of Engineers Secretary of War, subject to the provisions of Article N hereof) said dams and locks. The operation of said locks shall be exclusively that of the lessor and the lessee shall not be responsible for any loss, damage or injury resulting from faulty design or construction of the dams, their gates and locks, or negligent operation of said locks. In the event the lessor fails to maintain and keep in repair said dams and locks, the lessee may, upon giving notice to the lessor, make any and all necessary repairs to said dams and locks at the cost and expense of the lessor, and the lessee may deduct and retain out of the payments to be made by it by way of rental hereunder all such sums as it shall pay on account of said repairs. The lessee covenants and agrees to maintain and keep in repair the spillway gates and power houses (substructures and superstructures) and the machinery and appliances appurtenant to the power houses, and the operation thereof shall be exclusively that of the lessee and the lessee shall not be responsible for any loss, damage or injury resulting from negligent operation thereof. The lessee further covenants and agrees to comply with and observe all local sanitary laws and regulations in respect to its operation of said power developments. In the event the lessee at any time during the first five years of the term of this lease, fails to maintain and keep in repair the spillway gates and power houses (substructures and superstructures) and the machinery and appliances appurtenant to the power houses, the lessor may, upon giving notice to the lessee, make any and all necessary repairs to such spillway gates, power houses, machinery and appliances, at the cost and expense of the lessee.

D. The lessor covenants and agrees to acquire and construct with reasonable promptness the dam generally known as
designated as Dam Numbered 3 and described in paragraph (2) of the granting clauses hereof, with the lands, water rights, privileges, power house, structures, fixtures, apparatus, and facilities necessary for the construction, operation, and maintenance of the same as hereinafter provided, and to complete the same within eight years from the date hereof. Said dam shall be of such dimensions and specifications, and have a power house and such installations and equipment for the generation of electric power, as will take full reasonable advantage of the flow and fall of the Tennessee River for utilization of the water power of said river to the best advantage thereof in view of the other water-power developments that may be located on said river and/or its tributaries, as determined by said Chief of Engineers Secretary of War; and the said dam shall not be constructed in such a way as will materially impair or detract from the use and enjoyment by the lessee of the other properties, or any of them, demised to it by this lease. The total of the sums expended by the lessor in the acquisition and construction of the properties described in paragraph (2) of the granting clauses hereof shall be deemed to be, for the purpose of calculating the payments to be made by the lessee under Article A hereof, the sums actually so expended, but not exceeding $32,500,000 (including the locks and navigation facilities), unless such amount be increased by mutual agreement between said Chief of Engineers Secretary of War and the lessee.

E. In order to secure the purposes of the lessor as respects national defense the lessee covenants and agrees—

1) To maintain during the term of this lease said United States nitrate plant numbered 2 in at least the equivalent of the condition (except that the lessee may remove limestone from said Waco quarry upon payment of the royalty as hereinabove provided) in which it shall be turned over to the lessee at the commencement of the lease term in respect of effective capacity for manufacture of ammonium nitrate, available in suitable buildings, until such time as the Congress of the United States shall declare that such maintenance is no longer deemed necessary in the interest of national defense;

2) To maintain during the term of this lease the buildings of said United States nitrate plant numbered 1 in the condition (ordinary and reasonable wear and tear and damage by force majeure excepted) in which they shall be turned over to the lessee at the commencement of the lease term, but the lessee shall have the right during the lease term to alter and remodel such buildings and to remove, remodel, substitute, and alter the machinery and equipment contained therein;

3) To Upon demand of the President of the United States, to surrender, whenever war exists, or whenever in his judgment of the President of the United States it is imminent and the needs of national defense require, the leased properties, in whole or in part, to the lessor upon its demand for its war uses during the period of such emergency, upon such just and reasonable compensation to the lessee by way of suspension of payments or obligations hereunder and/or otherwise, as may be subject to the provisions of Article N hereof, be fixed and determined by the District Court of the United States for the Northern District of Alabama in accordance with the provisions of Article N hereof; the leased properties to be returned to
the lessee upon the termination of the war in at least the equivalent of their condition when so surrendered: Provided, That the lessee shall in no way be responsible for any loss, deterioration, damage, or injury of or to person or property, whether or not resulting in death, occurring by reason of such possession and/or use of the surrendered properties during the period of such surrender; and

(4) At all times after the third year of the lease term, to the end that operation in case of war shall be under the direction of a trained force, to retain in its employ at least one superintendent and one or more foremen of each manufacturing department of said United States nitrate plant numbered 2 for fixation of atmospheric nitrogen, or employ substitutes therefor, until such time as the Secretary of War shall certify in writing that continued maintenance of such force is not deemed necessary in the interest of national defense.

F. In order to secure the purposes of the lessor in respect of the utilization of the demised properties in times of peace for the fixation of atmospheric nitrogen and the production of a concentrated fertilizer and its sale to farmers in the United States at reasonable prices; the lessee covenants and agrees that it will—

(1) Produce or cause to be produced at said United States nitrate plant numbered 2 and/or said United States nitrate plant numbered 1, ammonium phosphate or other nitrogenous concentrated fertilizer suitable for use by the farmers both through direct application to the soil and through home-mixing, and containing at least 40 per centum by weight of plant food in the form of ammonia and/or phosphoric acid and/or potash. The production of such concentrated fertilizer will be commenced at said United States nitrate plant numbered 2 by using the cyanamid process. Before the expiration of the second year of the lease term the lessee will make such alterations as are found necessary by the lessee upon inspection and test of the said nitrate plant and will build the necessary phosphoric acid and ammonium phosphate plants to produce annually a quantity of such concentrated fertilizer containing not less than ten thousand net tons of fixed nitrogen and not less than forty thousand net tons of plant food in the form of ammonia and/or phosphoric acid and/or potash. The term “net tons” as used in this article is hereby defined to mean tons of two thousand pounds each. The first unit of the plant for production of such concentrated fertilizer will be operated at full capacity not later than in the third year of the lease term and the product will be offered for sale in the manner hereinafter provided. At any time thereafter when the lessee has for three successive fiscal years succeeded in selling approximately the full product of such first unit at cost plus 8 per centum (as provided in subdivision (2) of this article) the lessee will, upon written request of the farmer board hereinafter described, provide and place in operation a second unit of sufficient size so that there shall be then a total capacity for annual production of such concentrated fertilizer containing at least twenty thousand net tons of fixed nitrogen and at least eighty thousand net tons of plant food in the form of ammonia and/or phosphoric acid and/or potash. When at any time thereafter the lessee has for three successive fiscal years succeeded in selling approximately the combined full product of such first two units at cost plus 8 per centum (as provided in subdivision (2) of this article) the lessee will, subject to the provisions of Article T hereof, upon written request of the said farmer board, provide and place in operation a third unit of
sufficient size so that there shall be then a total capacity for annual production of such concentrated fertilizer containing at least thirty thousand net tons of fixed nitrogen. At any time thereafter when the lessee has for three successive fiscal years succeeded in selling \textit{approximately} the combined full product of such first three units at cost plus 8 per centum (as provided in subdivision (2) of this article) the lessee will, upon request of said farmer board, provide and place in operation a fourth unit of sufficient size so that there shall be then a total capacity for annual production of such concentrated fertilizer containing at least forty thousand net tons of fixed nitrogen. At any time thereafter when the lessee has for three successive fiscal years succeeded in selling \textit{approximately} the combined full product of such first four units at cost plus 8 per centum (as provided in subdivision (2) of this article) the lessee will, upon request of the farmer board, increase the annual production of fixed nitrogen to forty-eight \textit{fifty} thousand net tons, the amount of such annual production in excess of said forty thousand net tons of fixed nitrogen to be produced in the form of such concentrated fertilizer or, at the option of the lessee, in the form of nitrogenous fertilizer containing at least 30 per centum by weight of plant food in the form of ammonia and/or phosphoric acid and/or potash, and to be offered for sale under the provisions of subdivision (2) of this article. The lessee throughout the term of this lease will annually produce a quantity of such concentrated fertilizer equal to the plant capacity for such production as the same shall exist from time to time as above stated, except when the nitrogen is required for national defense or when satisfaction of market demands is insured through the maintenance in storage of an unsold quantity of such concentrated fertilizers equal to at least 25 per centum of the annual capacity of said first unit: \textit{Provided}, That whenever said stock in storage shall fall below said 25 per centum such production shall be resumed. Such concentrated fertilizer so maintained in storage shall be in the form of ammonium phosphate unless upon written request of the lessee the farmer board hereinafter described shall approve such concentrated fertilizer so maintained in storage being in some other form, such approval to be evidenced by a resolution of said farmer board to be made a part of the record of its proceedings hereinafter provided for. Nothing herein contained shall deprive the lessee of the privilege of anticipating from time to time the production of, and the increases above mentioned in plant capacity for production of, such concentrated fertilizers.

If at any time during the term of this lease the lessee shall suspend the production of such concentrated fertilizer, no profit shall accrue to the lessee from the sale of power made available to it through such suspension, but for and during such suspension all profits from the sale of such power over and above the cost thereof (as provided in subdivision (2) of this article) shall be expended \textit{credited} by the lessee as the Secretary of War, in his discretion and to carry out as near as may be the purposes of this lease, shall direct after receiving the recommendation of said farmer board to the cost of such concentrated fertilizer (as provided in subdivision (2) of this article); and in case the lessee, its subsidiary and/or allied corporations shall utilize any power so made available, such power so utilized shall be deemed, for the purposes of this provision, to have been sold to the lessee and/or such companies at the fair market value thereof as the
same shall be fixed and determined by said farmer board, subject to the provisions of Article N hereof;

(2) Such concentrated fertilizer will be offered for sale to farmers and other consumers in the United States at a maximum selling price free on board factory consisting of the fair actual cost (as hereinafter defined) of manufacture and sale, plus 8 per centum thereof. Such cost shall include—

(a) All direct expenses incurred in manufacture and sale of such concentrated fertilizer, including the cost (as hereinafter defined) of power used in such manufacture.

It shall be understood and agreed that in determining cost, there shall be deducted any discounts, rebates, or refunds accruing in connection with the concentrated fertilizer business, any miscellaneous receipts from sale of scrap or residue produced in the operation of the concentrated fertilizer business, and the market value, if any, as raw materials before any subsequent processing thereof, of any by-products produced in the course of the manufacture of such concentrated fertilizer and sold either as such raw materials or after further processing.

It shall be understood and agreed that the lessee shall have the right to purchase, for the manufacture of such concentrated fertilizer, materials, supplies and/or equipment not reasonably capable of being produced at either of said nitrate plants, from American Cyanamid Company, a corporation organized and existing under and by virtue of the laws of the State of Maine, its subsidiary and/or allied companies, at the fair market price thereof, provided said price shall have been approved, subject to the provisions of Article N hereof, by resolution of said farmer board.

(b) All indirect expenses properly incident to the manufacture and sale of such concentrated fertilizer.

(c) Fire, liability, and any other insurance.

(d) Taxes (except Federal income and profit taxes)

(e) Any expenses for research ordered by said farmer board (as provided in subdivision (4) of this article).

(f) All expenses of administration of the concentrated fertilizer business, including legal expenses properly incidental thereto.

(g) All expenses of maintenance of such part of said nitrate plants, or either of them, as shall be utilized in the manufacture of such concentrated fertilizer.

(h) Depreciation and obsolescence at the rate of 10 per centum per annum of the lessee's total expenditures and expenses, for construction and/or installation and/or acquisition of buildings and equipment used in the manufacture of such concentrated fertilizer, and for acquisition, construction, and/or installation of property for the replacement of presently existing property hereafter used in such manufacture, and for any additions, extensions, and/or betterments that may be made from time to time to any property used in such manufacture either existing at the date hereof or which may subsequently be constructed and/or acquired, all such buildings and equipment becoming the property of the lessor pursuant to the provisions of subdivision (2) of Article H hereof on the termination of the lease.

It shall be understood and agreed that as a part of such total expenditures and expenses there shall be included interest at the rate of 6 per centum per annum during construction upon monthly balances of expenditures for construction.
It shall be understood and agreed that at no time shall the provision for accrued depreciation and obsolescence over and above the total of expenditures made therefrom for renewals and replacements of the buildings and equipment provided at the expense of the lessee exceed the total original cost of all the properties depreciated, and that no depreciation or obsolescence whatever shall be charged in respect of the property built and provided at the cost and expense of the lessor. If any part of the balance of the provision for depreciation be withdrawn from the concentrated fertilizer business, such part so withdrawn shall cease, from the date of such withdrawal, to be considered as capital invested in the concentrated fertilizer business for the purpose of computing interest on the capital invested in such concentrated fertilizer business.

(i) Interest at the rate of 6 per centum per annum on capital invested in the concentrated-fertilizer business, except balances of expenditures for construction on which interest has hereinbefore been provided for and except borrowed money.

It shall be understood and agreed that the lessee shall keep departmental accounts which shall at all times show the proportion of its capital invested in such concentrated-fertilizer business.

(j) Interest actually paid (from which shall be deducted interest earned on bank balances) on money borrowed by the lessee and used or held for the purposes of such concentrated-fertilizer business, the gross interest on such borrowed money not to exceed 6 per centum per annum.

(k) Cost of the farmer board and its members as provided in subdivision (6) of this article.

(l) Unless otherwise provided for in, or precluded by, specific provisions of this lease, any expenditure made or obligation incurred, at fair current prices, for the specific purpose of performing the acts and things required to be performed by the lessee in connection with the preparation for manufacture, manufacture of, storage, distribution and sale of such concentrated fertilizer under this lease, which can be reasonably construed, as of the time incurred, to have been necessary in connection with such performance, shall be considered items of cost.

It shall be understood and agreed, however, that in order to arrive at a normal cost, preliminary costs of “tuning up” of manufacturing plant, demonstrating through cooperation of agricultural experiment stations, county agricultural agents, and farmers, the use on various crops of the concentrated fertilizer produced (as provided in subdivision (1) of this article) on the leased premises, and other initial and preliminary expenses made and incurred during the period after the commencement of this lease and prior to operation of the first unit of the plant for manufacture of such concentrated fertilizer and properly incident to the concentrated-fertilizer business, shall be carried as deferred charges and distributed equally in the cost of such concentrated fertilizer over the first five years of production after the operation of such first unit at full capacity has commenced; and that similar initial and preliminary expenses made and incurred in connection with the putting into operation of the second and each subsequent unit of the plant for manufacture of such concentrated fertilizer shall likewise be carried as deferred charges and distributed equally in the cost of such concentrated fertilizer over the first five years of production after the operation at full capacity of each unit, respectively.
In case the lessee and/or any sublessee of the said lessee shall utilize any part of the nitrate properties for purposes other than the manufacture of such concentrated fertilizer, the expense of maintenance and operation of such part of such properties when so utilized shall not be included in the cost of such concentrated fertilizer, and any profits obtained by the lessee and/or said sublessee through such utilization shall not be credited to the cost of such concentrated fertilizer.

There shall not be included in the cost of such concentrated fertilizer any royalties paid or payable on any processes utilized in the manufacture of such concentrated fertilizer, which are now owned or which may hereafter be acquired by said American Cyanamid Company and/or by any subsidiary and/or allied corporation of said American Cyanamid Company; nor shall there be included in the cost of such concentrated fertilizer any royalties upon inventions or discoveries made through and in the course of research provided for in subdivision (4) of this article.

There shall not be included in the cost of such concentrated fertilizer any compensation paid to any person holding the office of president, vice president, secretary, or treasurer or any other corporate office in said American Cyanamid Company, nor any compensation paid to any person holding like office in any subsidiary or allied corporation of said company; but this provision shall not be deemed to exclude from such cost compensation paid to any officer employed only by a corporation engaged exclusively in the manufacture of such concentrated fertilizer under this lease.

In computing the cost of all electric power used in the manufacture of such concentrated fertilizer—

(a) The term “primary power” shall mean power that is continuously available, and produced wholly by water or by water supplemented by steam. All other power produced wholly by water shall be deemed to be “secondary power.”

(b) The cost per horsepower year of primary power used in the manufacture of such concentrated fertilizer shall be deemed to be the total average cost per horsepower year of all primary power produced by the lessee upon and by means of the property covered by this lease during the fiscal year.

(c) The cost per kilowatt-hour of any secondary power used in the manufacture of such concentrated fertilizer shall be deemed to be the average cost per kilowatt-hour of all secondary power produced by the lessee upon and by means of the property covered by this lease during the fiscal year.

In computing the cost of primary power there shall be included—

(a) All expense of administration and all rentals, payments, contributions, expenses and expenditures of the lessee paid and/or accrued, whether in the form of power or of cash, for maintenance and operation of the dams, power houses, locks, gates and navigation facilities and/or for interest and/or amortization upon the lessor’s investment in the dams, power houses, locks, gates and navigation facilities, except expenditures for rental by way of interest and amortization upon the lessor’s investment in equipment not used in the production of primary power.

(b) All interest, amortization, reasonable depreciation, and other proper fixed charges relating to that part of the power development
acquired, constructed, and/or purchased at the cost and expense of the lessee, and used in the production of primary power (whether or not exclusively so used).

(c) The cost of production by the lessee of power by steam to supplement the hydroelectric power development in the production of primary power.

(d) The cost of maintaining auxiliary steam-power plants in stand-by condition and costs of stand-by crews of operators therefor.

(e) The cost to the lessee of any power purchased by it to supplement the hydroelectric power development in the production of primary power, whether such purchase be for payment of cash or for power given by the lessee in exchange for other or different power.

(f) Unless otherwise provided for in, or precluded by, specific provisions of this lease, any expenditure made or obligation incurred at fair current prices for the specific purpose of performing the acts and things required to be performed by the lessee in connection with the production of such primary power under this lease, which can be reasonably construed, as of the time incurred, to have been necessary in connection with such performance, shall be considered items of cost.

In computing the cost of secondary power there shall be included:

(a) All items properly charged in the accounts of the lessee as the cost of power and not included in the cost of primary power, including fixed charges relating to any part of the power development not used as aforesaid in the production of primary power.

No purchase of power by the lessee shall cause an increase in the average cost per unit of power charged against the manufacture of such concentrated fertilizer and no profit shall accrue to the lessee upon any part of the power (or upon items included in the cost thereof) used in the manufacture of such concentrated fertilizer, other than the said 8 per centum upon the cost of such concentrated fertilizer, and the lessee shall use secondary power for the manufacture of such concentrated fertilizer whenever in the judgment of the lessee secondary power is available for such purpose and its use will reduce the cost of such concentrated fertilizer.

The average cost of power charged by the lessee in each year as part of the expense of manufacture of such concentrated fertilizer shall not exceed the average lowest selling price for that year charged to said American Cyanamid Company and its subsidiary and/or allied corporations and/or any other consumers by the lessee for power, of the same class and kind utilized for purposes other than the manufacture of such concentrated fertilizer.

There shall be included in the cost of primary power in each fiscal year such amounts as shall be paid for such fiscal year by the lessee as rental by way of interest and amortization, in accordance with the terms of Article A hereof, and not any different amounts which may have accrued during such fiscal year and part of which (as provided in Article A hereof) shall have been deferred to subsequent years; and such amounts so deferred shall be charged against the cost of primary power in the years when payments of such deferred amounts are made in accordance with the terms and provisions of Article A hereof.

It is the intention of the parties to this agreement that in computing cost there shall be no duplication, and to that end it is agreed that any
item included in cost under any one provision of this subdivision (2) of Article F shall not be included as an item of cost under any other provision of this subdivision (2) of Article F.

(3) Each year the fair actual cost of producing and selling such concentrated fertilizer shall be estimated in the first instance by the lessee for the purpose of fixing the selling prices at which such concentrated fertilizer shall be offered for sale, but shall finally be determined annually by a reputable firm of certified public accountants to be chosen in the following manner: On or before the 1st day of April of each year, the lessee shall nominate to said farmer board three such firms. Said farmer board shall select one of the three so nominated, or, if no one of the three be satisfactory to it, said farmer board shall in turn, on or before the 1st day of May next following nominate to the lessee three such firms. On or before the 1st day of June next following such nomination one of the said three firms shall be selected by the lessee, or, if no one of said three firms be satisfactory to it, the then President of the United States shall designate promptly in writing one of said six firms and it shall act. For the fiscal year ending June 30 next following, such firm of certified public accountants shall examine the books and accounts of the lessee relating to the manufacture and sale of such concentrated fertilizer, and shall certify to said farmer board and to the lessee what was the actual cost of such concentrated fertilizer, as provided in subdivision (2) of this article, and the prices (being such cost plus 8 per centum) at which such concentrated fertilizer should have been sold to farmers and other purchasers during such fiscal year, but the accountants shall not certify or make public in any manner the details of the cost of such concentrated fertilizer, except that the accountants shall, upon the request of said farmer board, furnish to said farmer board the details of sales and general administrative expense. Upon receipt of the certificate of the accountants stating the actual cost and the prices at which such concentrated fertilizer should have been sold, in case any farmer or other purchaser shall have paid to the lessee for such concentrated fertilizer, a sum greater than such price, the amount of such excess payment shall be promptly refunded to said purchaser by the lessee. Such certificate of the accountants shall be final and conclusive on all parties hereto, said farmer board and purchasers of such concentrated fertilizer, subject only to the provisions of Article N hereof;

(4) The lessee will establish on the leased premises as a part of the group of plants devoted to the manufacture of such concentrated fertilizer a laboratory for chemical research in fields of interest to agriculture, such as the production of nitrogen, phosphoric acid, and potash (either separately or in combination with other materials), in improved concentrated forms, and will expend upon such research annually such amount, not exceeding $1 per ton of such concentrated fertilizer produced and sold during the preceding fiscal year under the provisions of subdivision (1) of this article, as shall be determined by said farmer board, the cost and expense of such research to be charged to and included in the cost of such concentrated fertilizer, and the lessee shall employ, so far as reasonably practicable, such improved processes developed by such research as in its judgment will reduce the cost of such concentrated fertilizer;

(5) The distribution of such concentrated fertilizer to farmers and other consumers shall be subject to such reasonable regulations as
may be prescribed by said farmer board. Such regulations shall be adopted or revised at annual meetings of said farmer board, to take place on or before June 30, of each year, and the regulations so adopted or revised shall take effect on the 1st day of January next following. It shall be entirely in the discretion of said farmer board whether any such regulations shall be adopted or amended in any one year. Such regulations shall apply solely to distribution and shall not require the lessee to extend credit to purchasers; and

(6) Said farmer board shall consist of not more than nine voting members, two of whom (who need not be farmers) shall be appointed by the lessee, and seven of whom shall be appointed through nomination by the President of the United States from lists submitted by national farm organizations and confirmation by the Senate. In addition to the voting members the President shall designate a representative of the Bureau of Markets of the Department of Agriculture, or its legal successor, to serve upon such board in an advisory capacity but without a vote. The voting members appointed by the lessee shall serve at the pleasure of the lessee, which shall appoint their successors. The voting members nominated by the President and approved by the Senate shall be chosen in the following manner: On or before the 1st day of September in the year 1927 and thereafter whenever a vacancy occurs, the American Farm Bureau Federation, the National Grange, and the Farmers' Educational and Cooperative Union of America, or their successor or successors, as leading representative farm organizations, national in fact, shall each designate to the President of the United States, in writing, not less than five nor more than ten candidates for voting membership on said board. The President shall nominate to the Senate at its then existing or next regular session a sufficient number of the candidates so designated to fill all the vacancies in said board, the candidates so nominated to be selected by the President in such a manner, so far as he finds practicable, as that representation shall be given to each of the above-mentioned organizations or their successors and that not more than one member of the board shall be a resident of any one State. Such nominations shall be subject to confirmation by the Senate, and if the Senate shall not confirm a sufficient number to fill all vacancies, the President shall make additional nominations from among candidates designated as hereinabove provided, until the Senate shall have confirmed a sufficient number. If any controversy shall arise as to the existence or successorship of any such organization or whether it be national in fact, it shall be determined by the Secretary of Agriculture; and if one or more of the above-mentioned farm organizations or their successors, by reason of expiration of charter or ceasing to function or failing to maintain an organization, national in fact, or for any other reason, shall decline, fail or neglect to make such designation of candidates, as above provided, the Secretary of Agriculture shall make such designations for the organization or organizations so declining, failing, or neglecting to make the same; but a failure in any one year to make such designations shall not deprive any of the said farm organizations or their successors of the right and privilege to make such designations in future years. On all such questions the decision of the Secretary of Agriculture shall be in writing and final and conclusive on all persons and organizations. The terms of office of the members of the said board first appointed shall commence on the first day of January, 1928. Two
of the seven members first appointed on the nomination of the President shall be designated by him to serve for a period of two years, two for a period of four years, and three for a period of six years; and their successors shall serve for six-year terms. The members of the said board shall receive a per diem compensation to be fixed by the Secretary of Agriculture, and shall be reimbursed for their actual and necessary expenses in attending to the business of the board, such compensation and expenses, and all actual and necessary expenses of the board itself, to be paid by the lessee and charged to the cost of producing such concentrated fertilizer. The said board shall appoint and employ a permanent secretary and such other employees as it shall deem necessary to serve at its pleasure, and shall fix the compensation of such secretary and employees to be paid in like manner by the lessee and charged in like manner to the cost of production of such concentrated fertilizer. Said permanent secretary shall keep an accurate record of the proceedings of said board, and the same shall be published annually as a report to Congress.

The said board shall meet at the call of the Secretary of Agriculture and at least once each year at Washington in the District of Columbia or at Muscle Shoals in the State of Alabama or at such other place or places as the Secretary of Agriculture shall designate.

G. The lessee covenants and agrees that the electric power obtained by it from said demised premises, to the extent that said power is not required for such production of said concentrated fertilizer and/or such operation and lighting of said locks and/or is not used by any in local industry, for the production of other electrochemicals and/or electroessential electrometals, essential or useful to the national defense and/or by the lessee or said American Cyanamid Company and/or a subsidiary corporation of either of said corporations, in local industry at or near Muscle Shoals, will be disposed of by the lessee for use in local industry and/or for the purpose of distribution (subject to the applicable State and Federal laws) for general, domestic, industrial and commercial use, and the lessee may enter into contracts for the construction and/or use of transmission lines with persons, corporations, municipalities, districts, counties and individual States of the United States in Alabama and other States to which such electric power may reasonably be transmitted.

H. Upon the termination of this lease, or of any renewal or extension thereof, for any cause whatsoever—

(1) The lessor shall take any steam power plants or any additions or extensions thereto, transmission lines, or other electric or hydroelectric installations or extensions erected or installed on the leased premises by the lessee at its expense during the period of the lease and pay to the lessee therefor such fair value as, subject to the provisions of Article N hereof, shall be fixed by agreement between the Secretary of War and the lessee, which fair value shall in no case exceed actual cost less reasonable depreciation;

(2) All buildings, machinery, equipment, fixtures, facilities, appurtenances and improvements not embraced in subdivision (1) of this Article, which shall have been installed at said United States nitrate plant numbered 1 and/or said United States nitrate plant numbered 2 by the lessee, at its own cost and expense, and used in the manufacture of such concentrated fertilizer, shall be and become the property of the lessee without any payment therefor to the lessor; and
(3) All manufacturing plants, machinery, equipment, facilities, appurtenances, and improvements, and structures placed or erected on the leased premises by the lessee or its subtenants, not embraced in subdivisions (1) and (2) of this article, shall not become the property of the lessor, but may be removed from the leased premises by the lessee or its subtenants at the termination of this lease or any renewal or extension thereof, or within a reasonable time thereafter.

I. The lessor covenants and agrees that it owns, by good and marketable title, free from all defects and encumbrances, the aforesaid demised properties and has full right and power to make this lease thereof, except that it does not now own the properties described in paragraph (2) of the granting clauses hereof. The lessor further covenants and agrees that the properties demised and described in paragraphs (1), (3), and (4) of the granting clauses hereof constitute all such lands, rights, easements, and servitudes as may be necessary for the construction, operation, and maintenance of said dams and power houses. The lessor also covenants and agrees that in case the title to the said lands, rights, easements, and servitudes shall be found defective or encumbered, or said lands, rights, easements, and servitudes be found insufficient within the meaning of the covenants herein contained, the lessor, at its own cost and expense, shall and will remedy and remove such defects or encumbrances and make good any such insufficiency. The lessor covenants and agrees to acquire the properties described in paragraph (2) of the granting clauses hereof by good and marketable title, free from all defects and encumbrances, including all such lands, rights, easements, and servitudes as may be necessary for the construction, operation, and maintenance of said Dam Numbered 3 and its power house when the same is constructed, operated, and maintained in accordance with the terms and provisions of this lease; and, upon the completion of said Dam Numbered 3, the said properties so purchased and acquired, except the locks and navigation facilities, shall ipso facto, and without any further conveyance or assignment, become and be a part of the properties demised by this lease; and, upon the completion of said Dam Numbered 3, the said properties so purchased and acquired, except the locks and navigation facilities, shall ipso facto, and without any further conveyance or assignment, become and be a part of the properties demised by this lease and, as such, subject to all the applicable terms and provisions of this lease for and during the balance of the unexpired said term of fifty years hereinabove mentioned and described, as fully and completely as though specifically leased and demised by this lease. It is mutually agreed that in the event of any litigation, attacking the title or possession of the property, rights, privileges, and franchises demised, the lessor shall defend such litigation at its own cost and expense, but the lessee may, at its own cost and expense, be represented by its counsel in any such litigation and in the event of any litigation involving the title or possession of the property, rights, privileges, and franchises herein demised and which are reasonably essential to the performance of the obligations assumed by the lessee by the terms of this lease, the lessee shall be relieved from said obligations pending the termination of such litigation.

The lessor also covenants and agrees that it will at any time, upon the request of the lessee, and at the lessor's cost and expense, execute and deliver to the lessee any and all such other or further instruments and assurances in the law for the better granting, demising, and securing to the lessee the said franchises, rights, privileges, easements, real estate, and property by this lease granted and demised, or intended so to be, or to describe accurately the said
properties, or any of them, intended to be embraced in this lease, the
description thereof hereinbefore given being wholly general and to
be thus supplemented, which the lessee or its counsel learned in the
law shall reasonably advise and require. The lessor covenants and
agrees to keep and perform all the terms and conditions hereof on
its part to be kept and performed, in manner and form as the same
are herein set forth.

The lessor covenants and agrees to deliver Dam Numbered 2 and
its power plant to the lessee in good operating order and condition
and promptly to replace any of its structures and/or equipment
which, within thirty days from the date hereof, may prove to have
been defective in design, material, or workmanship for the purpose
or operation for which the same was intended. In case the lessor
fails or refuses to replace promptly any such defective structures
and/or equipment, the lessee may, upon giving notice to the lessor,
replace the same at the cost and expense of the lessor, and in such
event the lessee may deduct and retain out of the payments to be
made by it by way of rental hereunder all such sums as it shall pay
or incur on account of such replacements: Provided, however, That
nothing contained herein shall render the lessor liable for damages
or delays to the lessee on account of any such defective structures
and/or equipment.

The lessor further covenants and agrees that it will not itself,
or by permit or license authorize or empower any third party to
construct, operate, or maintain any dam or dams on the Tennessee
River and/or its tributaries, in such form or manner as will ma-
terially impair or detract from the full use and enjoyment by the
lessee of the properties, or any of them, demised to the lessee by this
lease.

J. The lessor covenants and agrees that the lessee, during the term
of this lease and during any extension or extensions thereof, upon
keeping and performing the terms and conditions hereof on its part
to be kept and performed, shall have quiet and peaceable possession
and enjoyment of the properties herein demised, without let, hin-
drance, molestation, or disturbance from anyone whatsoever. If the
lessee shall fail duly to keep and perform this covenant, or if the
lessee, or the Congress of the United States, or the Secretary of War,
or other officer acting on behalf of the lessor in relation thereto, shall
refuse to keep or perform any of the promises provided in this lease
to be performed by the lessor, upon the ground that said promise is
invalid or without authority, or in any respect ultra vires, or if the
lessee shall fail to perform any of said promises upon such ground,
the lessee shall be entitled to terminate this lease upon not less than
ninety days' previous notice to the lessor to that effect, and upon
and after such termination the lessee shall be relieved of all obliga-
tions hereunder.

K. The lessee covenants and agrees that it will, during the term
of this lease, do or cause to be done, the things necessary or proper
to keep in full force and effect its corporate existence, rights, and
franchises. And the lessee covenants and agrees that, should it or
any of its subsidiary corporations or said American Cyanamid Com-
p any or any subsidiary corporation of said American Cyanamid Com-
p any engaged in the manufacture of such concentrated fertilizer on the
leased premises cease to be an American-controlled corporation, that
fact shall be deemed to constitute a default in the terms of this lease.
The lessee also covenants and agrees that it shall and will indemnify, protect, and save harmless the lessor against any and all claims, demands, expenses, damages, losses, liabilities, judgments, and costs in the prosecution and defense of any action or legal proceeding for or on account of or in connection with damage to property or injury to person (including death) due solely to the action or alleged negligence or misconduct of the lessee or any of its sublessees or the agents, employees, or contractors of such lessee or any of such sublessees, which may arise during the term of this lease in or about the construction, installation, maintenance, use, management, possession, or operation by the lessee of any of the properties which the lessee in and by this lease agrees to maintain and operate or any of the facilities which under the provisions of this lease it is obligated to construct, install, operate, or maintain; and the lessee shall assume the defense, compromise, or other disposition of any claim, demand, suit, action, or legal proceeding that may be made or brought against the lessor for or on account of or in connection with any such damage or injury.

The lessee does hereby further covenant and agree that it will not assign this lease without the consent of the lessor, such consent to be evidenced by an Act of the Congress, and that at the expiration of the term of this lease or of any renewal or extension thereof, or other sooner termination, it will and shall peaceably surrender, transfer, return, and deliver up to the lessor the aforesaid demised premises.

L. Neither party to this lease shall be held responsible for any loss, damage, injury, delay, or failure of performance, occasioned by the act or omission of the other party, its officers, agents, or employees, or by force majeure or any cause or causes reasonably beyond the control of the party exercising ordinary care and not attributable to its fault or neglect, including ice, earthquake, movement of earth or rock, flood, drought, or other action of the elements, famine, pestilence, strikes and suspensions of labor, war, riot, civil commotion, order of any court, and unavoidable casualty. Except as otherwise provided in this lease, the lessee shall not be required to repair or restore, for or on account of any such loss, damage, injury, or delay, and shall be entitled to an apportionment or suspension of the terms and conditions of this lease to an amount and extent reasonably commensurate with the curtailment or prevention thereby of its use and enjoyment of this lease and said demised properties.

M. Subject to the provisions of Articles E and F hereof, the lessee shall, during the continuance of this lease and during any extension or extensions thereof, have the full and exclusive use, possession, control, enjoyment, and operation of the demised premises, together with the electric power generated thereon, and shall be entitled to enjoy the benefits and advantages thereof, including (1) the right to use the said demised premises for all lawful purposes and to construct, operate, and maintain thereon any structure, equipment, or apparatus which the lessee may deem desirable or convenient, the same, subject to the provisions of Article H hereof, to remain the property of the lessee and to be removable by it within a reasonable time after the termination of this lease; (2) the right to alter, enlarge, rebuild, and reconstruct any of the structures, equipment, or apparatus now or hereafter belonging to the lessor and on the demised premises, save as in this lease otherwise expressly provided; and (3) the right to remove limestone from said Waco quarry, provided, always, that the amount of limestone in said quarry reasonably
mineable and suitable for the manufacture of ammonium nitrate be not reduced below fifteen million long tons, the estimated amount of such limestone required to operate said United States nitrate plant numbered 2 for a period of fifty years at its present capacity as respects the manufacture of ammonium nitrate.

N. In case a dispute arise as to this lease or any of its terms, or any act done or omitted to be done under or with respect to it, or any of the properties now or hereafter embraced in it, or as to whether a default has occurred or its removal been made or bona fide begun, or in case the parties hereto fail to reach an agreement or determination in any respect in which they should or must agree in order to the proper carrying out of this lease or any part thereof, as contemplated by its terms, any party hereto injuriously affected thereby may, upon written notice to the other parties hereto of its intention so to do, apply by petition to the District Court of the United States for the Northern District of Alabama, or its successor as then constituted (which is hereby given original jurisdiction to hear and determine the matter under such rules and procedure as it may adopt for the purpose which rules and procedure shall conform, as far as practicable, to the rules and procedure then governing proceedings in equitable causes) for a judicial ascertainment and determination of the controversy as well as to fix and determine the just and reasonable compensation to the lessee for the lessor's possession and/or use of the surrendered premises during an emergency as provided by the provisions of subdivision (3) of Article E hereof. The court shall grant such relief as, after ascertaining the facts and hearing the parties, it may consider proper. The decision of said court shall be in writing, and from it any party thereto may appeal to the Circuit Court of Appeals for the Fifth Judicial Circuit (or its successor as then constituted) under the statutes and rules then governing appeals between said courts in equitable causes. Any order or judgment rendered by either of said courts shall allow a reasonable time from the entry thereof for compliance therewith.

O. The lessee covenants and agrees that it will within sixty days after the date hereof duly increase its authorized capital to at least $50,000,000 to of which at least $10,000,000 in cash shall be paid in in cash as required. At least $10,000,000 in cash shall be provided by the lessee as required but before the expiration of the third year of the lease term. And the lessee will so arrange and provide that such other cash funds as may be necessary for its performance of this lease will be available to it as and when required for that purpose.

P. It is further mutually agreed that in case the lessee shall at any time or times hereafter during the term of this lease fail or omit to keep and perform the covenants and agreements herein contained on its part to be kept and performed, or any of them, and shall continue in default in respect to the performance of such covenant or agreement, for the period of ninety days, then and in either and every such case the lessor may give notice to the lessee, specifying such default and requiring its removal; and thereupon, if the lessee does not with reasonable promptness after the giving of such notice commence and complete the removal of said default, it shall be lawful for the lessor, at its option, to proceed in accordance with the provisions of Article N hereof for an order declaring this lease terminated, to the same extent as if the term thereof had expired, and said court is hereby given original jurisdiction to hear and deter-
mine the same and to give such other and further relief as the case may require.

Q. This lease and all the covenants, conditions, stipulations, promises, and agreements herein contained shall extend to and be binding upon and inure to the benefit and run in favor of the parties and their respective successors and assigns.

R. Any notice to or demand upon the lessor shall be deemed to have been sufficiently given or served on the lessor, for all the purposes hereof, if mailed, postage prepaid, to the then Secretary of War, Washington, District of Columbia. Any notice to or demand upon the lessee shall be deemed to have been sufficiently given or served on the lessee, for all the purposes hereof, if mailed, postage prepaid, to the lessee at its office in the Borough of Manhattan, city, county, and State of New York, or to such other address as shall be furnished by the lessee by written notice to the lessor. Any notice to or demand upon said American Cyanamid Company shall be deemed to have been sufficiently given or served on said American Cyanamid Company for all the purposes hereof, if mailed, postage prepaid, to the said American Cyanamid Company at its office, 511 Fifth Avenue, city, county, and State of New York, or such other address as shall be furnished by said American Cyanamid Company by written notice to the lessor.

S. It is mutually understood and agreed that the lessee may, for the more convenient performance and execution of any of the terms and provisions of this lease required to be performed and executed by the lessee, organize or cause to be organized one or more corporations (herein referred to as a “subsidiary corporation”), under and by virtue of the laws of one of the United States: Provided, That all of the authorized voting stock (other than any directors’ qualifying shares) of any such corporation shall be owned by the lessee: And provided further, That the lessee and said American Cyanamid Company shall, notwithstanding its such formation and use of any such subsidiary corporation, continue fully responsible for the performance or carrying out of all of the terms or provisions of this lease. Any notice or demand properly given to or served on the lessee shall be deemed to include notice to or demand upon any such subsidiary corporation.

T. The lessor covenants and agrees to acquire and construct with reasonable promptness Cove Creek Dam, to be constructed upon the Cove Creek site on the Clinch River located approximately eight miles in a direct line north of Clinton, unless the Congress of the United States shall within five years from the date hereof declare that such construction thereof is not desirable in the public interest in the State of Tennessee.

The term “dam,” as used in this article, is hereby defined to mean and be deemed to include, except as otherwise expressly stated, all lands, water rights, dams, flumes, spillways, sluices, reservoirs, power houses, fixtures, structures, facilities, generators, machinery, hydroelectric and operating appliances, apparatus, appurtenances, accessories and facilities, trackage, transmission lines, telephone and telegraph lines, plants, buildings, erections, housings, poles, wires, easements, rights of way, riparian rights, locks and navigation facilities, appurtenant thereto and/or owned, controlled, or acquired for or in connection therewith.

Said Cove Creek Dam shall have a height of approximately two hundred and twenty-five feet, a power house and hydroelectric
installations and equipment for the generation of at least two hundred thousand horsepower, and be of such dimensions and specifications, as determined by said Chief of Engineers Secretary of War, as will take full reasonable advantage of the flow and fall of the Clinch River for the utilization of the water power of said river to the best advantage thereof in view of the other water power developments that may be located on said river and on the Tennessee River; and the said dam shall not be constructed in such a way as will materially impair or detract from the use and enjoyment by the lessee of the other properties, or any of them, demised to it by this lease.

In case said Cove Creek Dam shall be so acquired and constructed by the lessor during the term of this lease, the said dam, Cove Creek Dam, except its locks and navigation facilities (if any), shall ipso facto, upon its completion, and without any further conveyance or assignment, become and be a part of the properties demised by this lease and, as such, subject to all the applicable terms and provisions of this lease for and during the balance of the unexpired said term of fifty years hereinabove mentioned and described, as fully and completely as though specifically leased and demised by this lease; but nevertheless the lessor shall, from time to time, execute and deliver to the lessee any and all such other or further instruments and assurances in the law for the better granting, demising, and securing to the lessee the said dam which the lessee or its counsel learned in the law shall reasonably advise and require.

In case said Cove Creek Dam shall become a part of the demised properties by virtue of the terms and provisions of this article, the The lessee, in addition to the payments to be made by it under Article A hereof, will pay to the lessor as rental therefor for the said Cove Creek Dam, from the time said dam shall be completed and made available by the lessor to the lessee hereunder—

(a) A sum equal to interest at the rate of 4 per centum per annum upon the total of all sums expended by the lessor upon the acquisition and construction of said dam, less such amount of such expenditure as shall be determined by agreement between said Chief of Engineers Secretary of War and the lessee, and in case they can not agree, by proceedings in accordance with the provisions of Article N hereof, to be properly applicable to the cost of any navigation facilities appurtenant thereto, as distinguished from power purposes of said dam;

(b) Annual amounts sufficient, if continued for one hundred years, to amortize on a basis of 4 per centum interest, compounded annually, the entire amount so expended by the lessor upon the acquisition and construction of said dam;

Provided, That the total of the sums expended by the lessor upon the acquisition and construction thereof shall, for the purpose of calculating the payments to be made by the lessee by way of rental for said dam, be deemed to be the sum actually so expended, but not exceeding $20,000,000 (exclusive of its locks and navigation facilities) and $5,000,000 for any locks and navigation facilities appurtenant thereto, unless such amounts be increased by mutual agreement between said Chief of Engineers Secretary of War and the lessee; and

(c) $50,000 annually, in installments quarterly in advance, for repairs and maintenance of said dam and for operation of its locks, irrespective of the actual cost thereof.

(c) An amount annually, in installments quarterly, equal to the actual cost during the preceding fiscal year paid by the lessor for repairs and
maintenance of said dam and for operation of its locks (if any): Provided, however, That said sum so to be paid by the lessee shall in no case exceed $50,000 in any one fiscal year.

In the event From the time said Cove Creek Dam shall become a part of the demised premises, as aforesaid be completed and made available by the lessor to the lessee hereunder, the lessee will, during the term of this lease, supply to the lessor, free of all charge, electric power necessary for the operation and lighting of its locks; the same to be delivered at any point on its lock grounds designated by said Chief of Engineers Secretary of War.

The lessor covenants and agrees to acquire, by good and marketable title, free from all defects and encumbrances, all such lands, rights, easements and servitudes as may be necessary for the construction, operation, and maintenance of said dam and to complete the construction thereof in good faith and with reasonable diligence in accordance with said plans and specifications, and all such lands, rights, easements and servitudes shall ipso facto, upon completion of said Cove Creek Dam, and without any further conveyance or assignment, become and be a part of the properties demised by this lease.

In case the Congress of the United States within said five year period shall elect not to acquire and construct said Cove Creek Dam as aforesaid; the lessee may, within ninety days after a declaration to that effect, cause to be filed with the Federal Power Commission an application for a preliminary permit to enable a subsidiary corporation, to be organized by the lessee under the laws of one of the United States and empowered to engage in the business of developing, generating, transmitting, and distributing electric power, to secure the data and perform the acts required by section 9 of the Federal Water Power Act, with a view to acquiring and obtaining a license to construct, operate, and maintain, in accordance with the terms and provisions of said Act, said Cove Creek Dam; and thereupon the said commission shall issue such a preliminary permit forthwith.

The said subsidiary corporation shall have a period of three years from the date of such preliminary permit within which to make examinations and surveys; prepare maps, plans, specifications, and estimates for the acquisition, construction, operation, and maintenance of said Cove Creek Dam; and during such period said subsidiary corporation shall have and enjoy priority in applying for a license under the terms of said Act to acquire, construct, operate, and maintain said dam. If within said period of three years the said subsidiary corporation shall elect to construct said dam, it shall promptly apply for such license under the terms of said Act to construct, operate, and maintain said dam; subject to the applicable State and Federal laws. Thereupon, in accordance with plans and specifications approved by said Chief of Engineers and the Secretary of War and which shall be well adapted to develop, conserve, and utilize in the public interest the navigation and the water-power development of such region, the said commission shall issue to the said subsidiary corporation a license to acquire, construct, operate, and maintain the said dam which shall confer upon said subsidiary corporation all the rights and privileges of said Act.

Anything in this lease to the contrary notwithstanding, the lessee shall not be required to provide and place in operation a third unit for the production of such concentrated fertilizer in accordance with
the provisions of subdivision (1) of Article F hereof until the lessor shall have completed the construction of said Cove Creek Dam and the same shall have become a part of the demised premises, pursuant to the provisions of this article, or, three years have elapsed after a license to construct, operate, and maintain said dam shall have been granted in accordance with the terms and provisions of this article to said subsidiary corporation.

Anything in this lease to the contrary notwithstanding, if said Cove Creek Dam shall not become a part of the demised premises pursuant to the provisions of this article within ten years after the date hereof, then and from such ten years after the date hereof until such time as said Cove Creek Dam shall become a part of the demised premises, the lessee shall pay to the lessor in respect of said dam numbered 3 a sum equal to interest at the rate of 2 per centum per annum upon the principal amount to be computed as in subdivision (2) of Article A hereof provided, in lieu of the payment at the rate of 4 per centum per annum in said subdivision (2) of Article A provided; but, upon said Cove Creek Dam becoming a part of the demised premises, said lessee shall resume payment of said sum equal to interest at the rate of 4 per centum per annum as in said subdivision (2) of Article A provided.

U. The lessee will, within ninety days after the date hereof, cause to be organized under the laws of one of the United States a subsidiary corporation, empowered to engage in the business of developing, generating, transmitting, and distributing electric power, and will cause said subsidiary corporation to file, within ninety days after its organization, with the Federal Power Commission an application for a preliminary permit to enable said subsidiary corporation to secure the data and perform the acts required by section 9 of the Federal Water Power Act, with a view to acquiring and obtaining a license to construct, operate, and maintain, in accordance with the terms and provisions of said Act, except as herein otherwise provided, the following dams, to wit: (1) Senator Dam, to be constructed upon the Senator site on the Clinch River, above the mouth of the Emery River; (2) Melton Hill Dam, to be constructed upon the Melton Hill site on the Clinch River, in Anderson and Knox counties; (3) Clinton Dam, to be constructed upon the Clinton site on the Clinch River, near Clinton, all of said sites being located in the State of Tennessee; and thereupon the said commission shall issue such a preliminary permit forthwith.

The said subsidiary corporation shall have a period of five three years from the date of such preliminary permit within which to make examinations and surveys, prepare maps, plans, specifications, and estimates for the acquisition, construction, operation, and maintenance of any one or more of said dams; and during such period said subsidiary corporation shall have and enjoy priority in applying for a license under the terms of said Act to acquire, construct, operate, and maintain any one or more of said dams. If within said period of five three years the said subsidiary corporation shall elect to acquire and construct any one or more of the said dams, it shall promptly apply for such a license under the terms of said Act to construct, operate, and maintain such dam or dams subject to the applicable State and Federal laws. Thereupon, in accordance with plans and specifications approved by said Chief of Engineers and the Secretary of War and which shall be well adapted to develop, conserve, and utilize in the public interest the navigation and the water-
power development of such region, the said commission shall issue
to the said subsidiary corporation a license to acquire, construct,
operate, and maintain the dam or dams specified in said application,
which shall confer upon said subsidiary corporation all the rights and
privileges of said Act: Provided, however, That said subsidiary corpo-
ration shall not be required to pay, under and pursuant to the terms
and provisions of subsection (f) of section 10 of said Act, to the
lesser any annual charges for interest, maintenance, and depreciation
on said Cove Creek Dam on account of the said subsidiary corpora-
tion's use and operation, as licensee under said Act, of any dam or
dams mentioned and described in this article.

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SEC. 10. That all licenses issued under this Act shall be on the following
conditions:

(f) That whenever any licensee hereunder is directly benefited by the con-
struction work of another licensee, a permittee, or of the United States of a
storage reservoir or other headwater improvement, the commission shall require
as a condition of the license that the licensee so benefited shall reimburse the
owner of such reservoir or other improvements for such part of the annual
charges for interest, maintenance, and depreciation thereon as the commission
may deem equitable. The proportion of such charges to be paid by any licensee
shall be determined by the commission.

Whenever such reservoir or other improvement is constructed by the United
States the commission shall assess similar charges against any licensee directly
benefited thereby, and any amount so assessed shall be paid into the Treasury
of the United States, to be reserved and appropriated as a part of the special
fund for headwater improvements as provided in section 17 hereof.

V. In this indenture has intervened said American Cyanamid
Company, which, pursuant to a resolution duly adopted by its board
of directors on the day of , 192 , a copy of which duly
certified by its Secretary under its corporate seal, is hereto annexed,
hereby for itself and its successors and assigns waives the royalties
hereinbefore described and guarantees the performance by the lessee
of all obligations placed upon said lessee by this lease.

In witness whereof the parties hereto and said American Cyanamid
Company have caused their respective corporate names to be here-
under subscribed and their respective corporate seals to be here-
affixed and attested by officers duly authorized so to do.

[SEAL.]

UNITED STATES OF AMERICA,

By -----------------------------
Secretary of War.

Attest:
[SEAL.]

AIR NITRATES CORPORATION,

By -----------------------------
Its President.

Attest:
[SEAL.]

Its Secretary.

[SEAL.]

AMERICAN CYANAMID COMPANY,

By -----------------------------
Its President.

Attest:
[SEAL.]

Its Secretary.
SEC. 2. That all officers, agents, and agencies of the United States of America mentioned or referred to in said lease and all other proper officers, agents, and agencies of the United States of America, are hereby authorized and directed, for and on behalf of the United States of America, to do all such acts as are provided in said lease to be done by them or by the United States of America, and all other acts which may be necessary or appropriate to carry out the terms and provisions of said lease in the manner and form therein set forth: Provided, however, That before the Secretary of War shall execute said lease on behalf of the United States of America, he shall be furnished with the following documents: (1) A verified certificate that at lawfully convened meetings of the holders of stock entitled to vote and the board of directors of said Air Nitrates Corporation proper resolutions were duly passed authorizing and directing its president and its secretary to execute said lease on its behalf; and (2) a verified certificate that at lawfully convened meetings of the holders of stock entitled to vote and the board of directors of said American Cyanamid Company proper resolutions were duly passed reciting that (a) said lease is for the use and advantage of said American Cyanamid Company and that (b) said American Cyanamid Company is an American controlled corporation and owns and controls all the capital stock (other than directors' qualifying shares) of said Air Nitrates Corporation, and authorizing and directing the president and secretary of said American Cyanamid Company to intervene in and execute said lease on its behalf thereby waiving the royalties therein described and guaranteeing the performance by said Air Nitrates Corporation of all obligations placed upon said Air Nitrates Corporation by said lease. All of said documents shall be preserved by the Secretary of War and copies thereof shall be inserted in his next annual report.

SEC. 3. That original jurisdiction to hear and determine any controversy arising under or with respect to this Act or under or with respect to said lease, and to fix and determine the just and reasonable compensation for the possession and/or use of the demised properties during the period of an emergency as provided therein, is hereby conferred upon the United States District Court for the Northern District of Alabama, and that appellate jurisdiction of any such controversy or determination as provided in said lease is hereby conferred upon the United States Circuit Court of Appeals for the Fifth Judicial Circuit, subject to review by the Supreme Court of the United States according to law.

SEC. 4. That all appropriations necessary to carry out the provisions of said lease are hereby authorized.

SEC. 5. That all Acts or parts of Acts in conflict herewith are hereby repealed.

SEC. 6. That this Act may be cited as the "Muscle Shoals Act of 1927."

SEC. 7. That this Act shall take effect immediately.