

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

20 PARTIES

FILED

APR 17 1997

U. S. DISTRICT COURT
EASTERN DISTRICT OF MO

STATE OF MISSOURI, ex rel. Jeremiah)
W. (Jay) Nixon, Attorney General,)

FILED

STATE OF ILLINOIS, ex rel. James E.)
Ryan, Attorney General,)

APR 25 1997

STATE OF IOWA, ex rel. Thomas J.)
Miller, Attorney General,)

U. S. DISTRICT COURT
E. DIST. OF MO.
ST. LOUIS

STATE OF OHIO, ex rel. Betty D.)
Montgomery, Attorney General, and)

4:97CV00687 SNL

STATE OF WISCONSIN, ex rel. James)
E. Doyle, Attorney General,)

No. _____

Plaintiffs,)

v.)

CARGILL, INC.,)

Defendant.)

CONSENT JUDGMENT

WHEREAS, the plaintiffs, the States of Missouri, Illinois, Wisconsin, Iowa and Ohio, have filed their Complaint herein on _____, and plaintiffs and defendant, by their respective attorneys, have consented to the entry of this Consent Judgment without trial or adjudication of any issue of fact or law herein, and without this Consent Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein; and

WHEREAS, defendant has agreed to be bound by the provisions of this Consent Judgment pending its approval by the Court; and

WHEREAS, the purpose of this Consent Judgment is prompt and certain supply to a purchaser or purchasers ("divestiture" of a supply arrangement) to assure that competition is not substantially lessened; and

WHEREAS, plaintiffs require defendant to make such a divestiture for the purpose of remedying the loss of competition as alleged in the Complaint; and

WHEREAS, defendant has represented to plaintiffs that the divestiture ordered herein can and will be made and that defendant will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW, THEREFORE, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

I. JURISDICTION

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendant under Section 7 of the Clayton Act as amended (15 U.S.C. § 18) and under applicable state laws.

II. DEFINITIONS

As used in this Consent Judgment:

A. "Cargill" means defendant Cargill Inc., a Delaware corporation with its headquarters in Wayzata, Minnesota, and includes its successors and assigns, its subsidiaries, and directors, officers, managers, agents, and employees.

B. "Bulk Deicing Salt Supply Agreement" means a seven-year agreement for the supply of bulk deicing salt from Louisiana rock salt assets of the defendant, the terms of which must provide for: (1) the acquirer's or acquirers' right to purchase 375,000 tons annually, (2) at a maximum price of \$15/ton f.o.b. mine, adjusted annually according to changes in the Producer Price Index, and (3) the following specifications: (a) chemical composition of not less than 96.0 percent sodium chloride, and (b) physical composition as follows:

| | |
|-----------------------------------|---------|
| Passing a 1/2 inch (12.5mm) sieve | 100% |
| Passing a 3/8 inch (9.5mm) sieve | 95-100% |
| Passing a No. 4 (4.75mm) sieve | 20-90% |
| Passing a No. 8 (2.36mm) sieve | 10-60% |
| Passing a No. 30 (600um) sieve | 0-10% |

The Bulk Deicing Salt Supply Agreement may include a force majeure clause providing for a full or partial shut-down of the defendant's Louisiana operations caused by events beyond the control of the defendant, provided, however, that in the event of a partial shut-down, the acquirer or acquirers are treated on at least an equal proportional basis with other purchasers of similar product from the defendant's Louisiana operations.

III. APPLICABILITY

A. The provisions of this Consent Judgment apply to the defendant, its successors and assigns, its subsidiaries, directors, officers, managers, agents and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Consent Judgment by personal service or otherwise.

B. Defendant shall require, as a condition of entering into the Bulk Deicing Salt Supply Agreement, that the acquirer or acquirers agree to be bound by the provisions of this Consent Judgment.

IV. DIVESTITURE

A. Defendant is ordered and directed, within one hundred fifty (150) days after filing of this Consent Judgment, to divest the Bulk Deicing Salt Supply Agreement to an acquirer or acquirers acceptable to the plaintiffs in their sole discretion. The plaintiffs shall be deemed to have exercised their discretion in favor of accepting the acquirer or acquirers unless three or more of them object in writing within the period set forth in Section VI for such objection. Defendant shall obtain all regulatory approvals necessary for such divestiture as expeditiously as possible. Plaintiffs, in their sole discretion, by a writing signed by three or more of them, may extend the time period for the divestiture for two 30-day periods of time, not to exceed 60 calendar days in total.

B. The divestiture pursuant to this Section IV, or by the trustee appointed pursuant to Section V, shall be accomplished in such a way as to satisfy plaintiffs, in their sole discretion, that the Bulk Deicing Salt Supply Agreement can and will be used by an acquirer or acquirers as part of a viable, ongoing business engaged in the sale and distribution of bulk deicing salt. The divestiture, whether pursuant to Section IV or V, shall be made (1) to an acquirer or acquirers that in the sole judgment of plaintiffs, has the capability and intent of competing effectively, and has the managerial, operational and financial capability to compete effectively as a seller of bulk deicing salt, and (2) pursuant to agreements the terms of which shall not, in the sole judgment of plaintiffs, interfere with the ability of any acquirer or acquirers to compete effectively. The plaintiffs shall be deemed to have exercised their discretion or judgment in favor of accepting the proposed acquirer or acquirers and agreements proposed by defendant unless three or more of them object in writing within the period set forth in Section VI for such

objection.

C. In accomplishing the divestiture ordered herein, defendant promptly shall make known, by usual and customary means, the availability of the Bulk Deicing Salt Supply Agreement. It shall inform any person making a bona fide inquiry regarding a possible purchase that the sale is being made pursuant to this Consent Judgment and provide such person with a copy of this Consent Judgment. Defendant also shall offer to furnish to all bona fide prospective acquirers, subject to customary confidentiality assurances, all information regarding the Bulk Deicing Salt Supply Agreement customarily provided to a potential acquirer of a long-term supply agreement, except such information that is subject to attorney-client privilege or attorney work-product privilege. Defendant shall permit bona fide prospective acquirers to have access to personnel and to make such inspection of the assets, and any and all financial, operational or other documents and information as is customary in negotiating a long-term supply agreement.

V. APPOINTMENT OF TRUSTEE

A. In the event that the defendant has not divested the Bulk Deicing Salt Supply Agreement within the applicable time period specified in Section IV above, the Court shall appoint, on application of the plaintiffs, a trustee selected by the plaintiffs to effect the divestiture of the assets.

B. After the trustee's appointment has become effective, only the trustee shall have the right to divest that portion of the Bulk Deicing Salt Supply Agreement that has not been timely divested. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Section IV of this Consent Judgment, and shall have such other powers as the Court shall deem

appropriate. The trustee shall have the power and authority to hire at the cost and expense of defendant any attorneys or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals or agents shall be solely accountable to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to plaintiffs, in their sole judgment, and shall have such other powers as this Court shall deem appropriate. The plaintiffs shall be deemed to have exercised their judgment in favor of accepting the purchaser proposed by the trustee unless three or more of them object in writing. Defendant shall not object to the divestiture of the Bulk Deicing Salt Supply Agreement by the trustee on any grounds other than the trustee's malfeasance. Any such objection by defendant must be conveyed in writing to plaintiffs and the trustee no later than fifteen (15) calendar days after the trustee has provided the notice required under Section VII of this Consent Judgment.

C. The trustee shall serve at the cost and expense of defendant on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining monies shall be paid to defendant, and the trustee's services shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divestiture and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Defendant shall take no action to interfere with or impede the trustee's

accomplishment of the divestiture of any assets, and shall use its best efforts to assist the trustee in accomplishing the required divestiture, including best efforts to effect all necessary regulatory approvals. Subject to a customary confidentiality agreement, the trustee shall have full and complete access to the personnel, books, records and facilities related to the Bulk Deicing Salt Supply Agreement and defendant shall develop such financial or other information as may be necessary for the divestiture of these assets. Defendant shall permit prospective acquirers of the assets to have access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and information as may be customary in negotiating a long-term supply agreement.

E. After its appointment becomes effective, the trustee shall file monthly reports with defendant, plaintiffs, and the Court, setting forth the trustee's efforts to accomplish divestiture of the assets as contemplated under this Consent Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Bulk Deicing Salt Supply Agreement, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the relevant Bulk Deicing Salt Supply Agreement.

F. Within six (6) months after its appointment has become effective, if the trustee has not accomplished the divestiture required by Section IV of this Consent Judgment, the trustee

shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations, provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such reports to plaintiffs and defendant which shall each have the right to be heard and to make additional recommendations. The Court shall thereafter enter such orders as it shall deem appropriate to accomplish the purpose of this Consent Judgment, which shall, if necessary, include extending the term of the trustee's appointment.

VI. NOTIFICATION

Within two (2) business days following execution of a binding agreement to divest, including all contemplated ancillary agreements (e.g. financing), to effect the divestiture pursuant to Sections IV and V of the Consent Judgment, defendant or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiffs of the proposed divestiture. If the trustee is responsible for effecting the divestiture, it shall similarly notify defendant. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to acquire the Bulk Deicing Salt Supply Agreement, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiffs of such notice, any one or more of the plaintiffs may request from the defendant, the proposed acquirer or acquirers, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed acquirer, and any other potential acquirer. The defendant and the trustee shall furnish

any additional information requested within fifteen (15) calendar days of the receipt of the request. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after plaintiffs have been provided the additional information, whichever is later, plaintiffs shall provide written notice to defendant and the trustee, if there is one, stating whether or not they object to the proposed divestiture. If three or more plaintiffs fail to object within the period specified, or if plaintiffs provide written notice to defendant and the trustee if there is one, that they do not object, then the divestiture may be consummated, subject only to defendant's limited right to object to the sale under Section V(B) of this Final Judgment. A divestiture proposed under Section IV shall not be consummated if three or more plaintiffs object to it. Upon objection by three or more plaintiffs, or by defendant under the proviso in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. FINANCING

Defendant is ordered and directed not to finance all or any part of any purchase by any acquirer made pursuant to Sections IV and V of this Consent Judgment without the prior written consent of three or more plaintiffs; provided, however, defendant may sell to the acquirer or acquirers on terms requiring payment net thirty (30) days from date of shipment.

VIII. AFFIDAVITS

A. Within twenty (20) calendar days of the filing of this Consent Judgment and every thirty (30) calendar days thereafter until the divestiture has been consummated, whether pursuant to Section IV or Section V of this Consent Judgment, defendant shall deliver to plaintiffs an affidavit as to the fact and manner of defendant's compliance with Section IV or V of this Consent Judgment. Each such affidavit shall include, inter alia, the name, address and telephone

number of each person who, at any time after the period covered by the last such report, was contacted by defendant, or its representatives, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or made an inquiry about acquiring, any interest in the Bulk Deicing Salt Supply Agreement, and shall describe in detail each contact with any such person during that period. Each affidavit shall also include a description of the efforts that defendant has taken to solicit a buyer for the relevant assets.

B. Defendant shall preserve all records of all efforts made to divest the Bulk Deicing Salt Supply Agreement.

IX. NOTICE

Notice to the plaintiffs as required herein shall be given to the following:

Penny Newman
Assistant Attorney General
3100 Broadway, Suite 609
Kansas City, MO 64111
Fax: 816-889-5006

Don R. Sampen
Assistant Attorney General
100 W. Randolph, 13th Fl.
Chicago, IL 60601
Fax: 312-814-5079

Kevin O'Connor
Assistant Attorney General
1233 W. Washington Ave., 4th Fl.
Madison, WI 53707-7857
Fax: 608-267-2223

Kathleen Keest
Assistant Attorney General
1300 E. Walnut
Des Moines, IA 50319
Fax: 515-281-6771

Mitchell Gentile
Assistant Attorney General
30 E. Broad St., 16th Fl.
Columbus, OH 43215
Fax: 614-466-8226

X. COMPLIANCE INSPECTION

For the purpose of determining or securing compliance with the Consent Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of any one or more plaintiffs shall, upon written request and on reasonable notice to defendant made to its principal offices, be permitted:

(1) Access during office hours of defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of defendant, who may have counsel present, relating to any matters contained in the Consent Judgment; and

(2) Subject to the reasonable convenience of defendant and without restraint or interference from defendant, to interview directors, officers, employees and agents of defendant, who may have counsel present, regarding any such matters.

B. Upon the written request of any one or more plaintiffs, defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Consent Judgment as may be requested.

C. No information or documents obtained by the means provided in Section VIII or this Section X shall be divulged by any representative of the plaintiffs to any person other than a duly authorized representative of the plaintiffs except in the course of legal proceedings for the

purpose of securing compliance with this Consent Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by the defendant to plaintiffs, and the defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c) (7) of the Federal Rules of Civil Procedure, and the defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c) (7) of the Federal Rules of Civil Procedure," then ten (10) calendar days' notice shall be given by plaintiffs to the defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the defendant is not a party.

XI. ATTORNEYS FEES

Within thirty (30) days of the entry of this Consent Judgment, the defendant shall pay the plaintiffs their attorneys fees in the following amounts:

| <u>State</u> | <u>Amount</u> |
|--------------|---------------|
| Missouri | \$15,000 |
| Illinois | \$ 9,000 |
| Wisconsin | \$ 9,000 |
| Iowa | \$ 9,000 |
| Ohio | \$13,000 |

Payment shall be made by check payable to the "Attorney General for the State of _____" and transmitted to the persons set forth under Section IX, unless the defendant is otherwise advised by a plaintiff.

XII. RETENTION OF JURISDICTION

Jurisdiction is retained by this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation or modification of any

provisions of this Consent Judgment, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

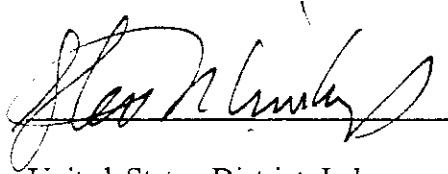
XIII. TERMINATION

Unless this Court grants an extension, the Consent Judgment will expire upon the seventh anniversary of the date of its entry.

XIV. PUBLIC INTEREST

Entry of this Consent Judgment is in the public interest.

Dated 4/25/94

A handwritten signature in black ink, appearing to read "Steven R. ...", is written over a horizontal line.

United States District Judge