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U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA, Plaintiff,	)	
v.	)	CASE NO. 97-1507-CIV-T-17E
SEMINOLE FERTILIZER CORPORATION, Defendant.	)	Entered: September 19, 1997

FINAL JUDGMENT

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

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

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

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

I.

JURISDICTION

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

II.

DEFINITIONS

As used in this Final Judgment:

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

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

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

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

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

III.

APPLICABILITY

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

IV.

PROHIBITED CONDUCT

Defendant is enjoined and restrained from:

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

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

2. To illegally set or establish the price or other terms and conditions of any bids for the acquisition of any

fertilizer asset located in the United States;

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

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

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

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

V.

LIMITING CONDITIONS

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

the time of submitting any such jointly determined bids, defendant:

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

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

B. Section IV(B) and (C) shall not apply to communications to shareholders, potential purchasers of substantially all of the defendant's stock or assets, lenders, creditors, or subcontractors, who are not competitors, where such communications are limited to the context of such relationship.

VI.

NOTIFICATION

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

defendant then is engaged in discussions or negotiations regarding the possible submission of a joint bid for the acquisition of any fertilizer asset.

VII.

COMPLIANCE

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

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

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

who otherwise manages defendant with respect to the fertilizer business;

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

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

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

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

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

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

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

VIII.

PLAINTIFF ACCESS

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

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

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

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

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

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

IX.

RETENTION OF JURISDICTION

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

X.

TERM

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

XI.

PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

DATED: SEPTEMBER, 1997.

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

UNITED STATES DISTRICT JUDGE

ELIZABETH A. KOVACHEVICH
UNITED STATES DISTRICT JUDGE