

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,)	
)	Case No. 1 : 03CV02486
<i>Plaintiff,</i>)	
)	
v.)	JUDGE: Gladys Kessler
)	
DNH INTERNATIONAL SARL,)	DECK TYPE: ANTITRUST
DYNO NOBEL, INC.,)	
EL PASO CORPORATION, and)	DATE STAMP: 12/02/2003
COASTAL CHEM, INC.,)	
)	
<i>Defendants.</i>)	
)	

HOLD SEPARATE STIPULATION AND ORDER

I. Definitions

As used in this Hold Separate Stipulation and Order:

A. “DNH” means defendant DNH International Sarl, a Luxembourg corporation with its headquarters in Oslo, Norway, its successors and assigns, and its subsidiaries (including defendant Dyno Nobel, Inc.), divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. “El Paso” means El Paso Corporation, a Delaware corporation with its headquarters in Houston, Texas, and its successors and assigns, its subsidiaries, divisions (including defendant Coastal Chem, Inc.), groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. “IGAN” means industrial grade ammonium nitrate which, when mixed with fuel oil, forms an explosive known as ANFO.

D. “Geneva Production Asset” means, unless otherwise noted, DNH’s 50 percent membership interest in Geneva Nitrogen, LLC, a Delaware limited liability company which owns an IGAN production facility located at 1165 North Geneva Road, Vineyard, Utah 84601, including all of DNH’s rights, titles, and interests in the following:

1. the tangible assets of the Geneva facility and the real property on which the Geneva facility is situated; any facilities used for research, development, engineering or other support to the Geneva facility, and any real property associated with those facilities; manufacturing and sales assets relating to the Geneva facility, including capital equipment, vehicles, supplies, personal property, inventory, office furniture, fixed assets and fixtures, materials, on- or off-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations issued by any governmental organization relating to the Geneva facility; all contracts, agreements, leases, commitments, and understandings pertaining to the operations of the Geneva facility; supply agreements; all customer lists, accounts, and credit records; and other records maintained by DNH in connection with the operations of the Geneva facility; and
2. the intangible assets of the Geneva facility, including all patents, licenses and sublicenses, intellectual property, trademarks, trade names, service marks, service names, technical information, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of

materials and substances, quality assurance and control procedures, design tools and simulation capability, and all manuals and technical information DNH provides to its employees, customers, suppliers, agents or licensees in connection with the operations of the Geneva facility.

E. “Battle Mountain Production Asset” means, unless otherwise noted, all of El Paso’s rights, titles, and interests in the IGAN production facility located in Battle Mountain, Nevada, including:

1. all tangible assets of the Battle Mountain facility and the real property on which the Battle Mountain facility is situated; any facilities used for research, development, engineering or other support to the Battle Mountain facility, and any real property associated with those facilities; manufacturing and sales assets relating to the Battle Mountain facility, including capital equipment, vehicles, supplies, personal property, inventory, office furniture, fixed assets and fixtures, materials, on- or off-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations issued by any governmental organization relating to the Battle Mountain facility; all contracts, agreements, leases, commitments, and understandings pertaining to the operations of the Battle Mountain facility; supply agreements; all customer lists, accounts, and credit records; and other records maintained by El Paso in connection with the operations of the Battle Mountain facility; and

2. all intangible assets of the Battle Mountain facility, including all patents, licenses and sublicenses, intellectual property, trademarks, trade names, service marks, service names, technical information, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, and all manuals and technical information El Paso provides to its employees, customers, suppliers, agents or licensees in connection with the operations of the Battle Mountain facility.

II. Objectives

The Final Judgment filed in this case is meant to ensure the prompt divestiture by Defendants of the Geneva Production Asset or, in the alternative, the Battle Mountain Production Asset for the purpose of ensuring the establishment of a viable competitor in the IGAN industry capable of competing effectively to produce IGAN for sale in Western North America and to remedy the anticompetitive effects that the United States alleges would otherwise result from DNH's acquisition of defendant Coastal Chem, Inc.'s IGAN production facilities in Battle Mountain, Nevada and Cheyenne, Wyoming. This Hold Separate Stipulation and Order ensures that, prior to such divestiture, the Geneva Production Asset and the Battle Mountain Production Asset are operated as competitively independent, economically viable, and ongoing business concerns, that will remain independent and uninfluenced by the consummation

of that acquisition, and that competition is maintained during the pendency of the ordered divestiture.

III. Jurisdiction and Venue

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

IV. Compliance With and Entry of Final Judgment

A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date the Defendants signed this Stipulation, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Hold Separate Stipulation and Order.

D. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event (1) the United States has voluntarily dismissed its Complaint herein, (2) withdrawn its consent, as provided in Section IV.A. above, or (3) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

F. Defendants represent that the divestiture ordered in the proposed Final Judgment can and will be made, and that they later will raise no claim of mistake, hardship, or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

V. Hold Separate Provisions

Until the divestiture required by the Final Judgment has been accomplished:

A. DNH shall preserve, maintain, and continue to operate the Geneva Production Asset and the Battle Mountain Production Asset as separate, independent, ongoing, economically viable competitive businesses, with management, sales, and operations held entirely separate, distinct, and apart from each other and from DNH's other operations. Within twenty (20) days after the entry of this Hold Separate Stipulation and Order, DNH shall inform the United States of the steps DNH has taken to comply with this Hold Separate Stipulation and Order.

B. DNH shall take all steps necessary to ensure that (1) the Geneva Production Asset and the Battle Mountain Production Asset each is maintained and operated as a separate,

independent, ongoing, economically viable, and active competitor in the IGAN industry, (2) the management of the Geneva Production Asset and the management of the Battle Mountain Production Asset will not be influenced by each other or by DNH, and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning the Geneva Production Asset and the Battle Mountain Production Asset will be kept separate, distinct, and apart from each other's operations and from DNH's other operations.

DNH's influence over the Geneva Production Asset and the Battle Mountain Production Asset shall be limited to that necessary to carry out its obligations under this Hold Separate Stipulation and Order.

C. DNH shall use all reasonable efforts to maintain and increase sales and revenues of the Geneva Production Asset and the Battle Mountain Production Asset and shall maintain at 2003 levels or previously approved levels for 2004, whichever are higher, all promotional, advertising, sales, technical assistance, marketing, and merchandising support for each of the Geneva Production Asset and the Battle Mountain Production Asset.

D. DNH shall provide sufficient working capital and lines and sources of credit to continue to maintain the Geneva Production Asset and the Battle Mountain Production Asset each as ongoing, economically viable and competitive businesses, consistent with the requirements of Sections V.A. and V.B.

E. DNH shall take all steps necessary to ensure that the Geneva Production Asset and the Battle Mountain Production Asset each is fully maintained in operable condition at no less than the capacity and sales levels that existed as of the date DNH signs this Hold Separate

Stipulation and Order, and shall maintain and adhere to normal repair and maintenance schedules for the Geneva Production Asset and the Battle Mountain Production Asset.

F. DNH shall not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge, or otherwise dispose of any assets of the Geneva Production Asset or the Battle Mountain Production Asset, provided, however, that nothing in this Section V.F. shall prohibit DNH from selling inventory in the ordinary course of business.

G. DNH shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of the Geneva Production Asset and of the Battle Mountain Production Asset.

H. Defendants shall take no action that would jeopardize, delay, or impede the sale of the Geneva Production Asset or the Battle Mountain Production Asset.

I. Until DNH acquires the Battle Mountain Production Asset, El Paso shall take all steps necessary to ensure that the Battle Mountain Production Asset is maintained and operated as an ongoing, economically viable, and active competitor in the IGAN industry, and El Paso shall not change the management, sales, or operations of the Battle Mountain Production Asset or relocate it within El Paso. Within twenty (20) days after the entry of this Hold Separate Stipulation and Order, El Paso shall inform the United States of the steps El Paso has taken to comply with this Hold Separate Stipulation and Order, unless DNH acquires the Battle Mountain Production Asset before the conclusion of that twenty (20) day period.

J. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestiture pursuant to the Final Judgment.

K. This Hold Separate Stipulation and Order shall remain in effect until consummation of the divestiture required by the proposed Final Judgment or until further order of the Court.

FOR PLAINTIFF
UNITED STATES OF AMERICA

/s/
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Date: December 2, 2003

ORDER

IT IS SO ORDERED ON THIS ____ DAY OF _____, 2003.

United States District Judge

EXHIBIT A
PROPOSED FINAL JUDGMENT