

CIVIL ACTION NO. 87 e 4280

FILED: May 11, 1987
Entered: August 6, 1987

Whereas plaintiff, United States of America, has filed its Complaint herein on May 11, 1987, and plaintiff and defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against, or any admission by, any party with respect to any issue of fact or law herein;

And Whereas the defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas prompt divestiture is the purpose of this Final Judgment;

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

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

II

Definitions

As used in this Final Judgment:

A. "Dow" means The Dow Chemical Company, each division, subsidiary or affiliate thereof, and each officer, director, employee, attorney, agent or other person acting for or on behalf of any of them.

B. "Ethyl" means Ethyl Corporation, each division, subsidiary or affiliate thereof, and each officer, director, employee, attorney, agent or other person acting for or on behalf of any of them.

C. "Defendants" means Dow and Ethyl.

D. "Asset purchase agreement" means the agreement between Dow and Ethyl dated September 11, 1986, whereby Ethyl agreed to purchase Dow's worldwide bromine and bromine derivatives business.

E. "Bromides" means bromide salts, specifically sodium bromide, calcium bromide, and zinc bromide, used in blending brominated clear brine fluids, which are clear brine fluids containing one or more bromides.

F. "Clear brine fluids" or "CBFs" means solids-free brine (i.e., salt) solutions used as weighting fluids during drilling, completion and workover operations on oil and gas wells.

G. "CBF business" means the following assets:

- (1) the Magnolia calcium bromide plant, as described in Section II.M.;
- (2) all other tangible assets solely dedicated, or anticipated to be solely dedicated, to Dow's business operation of researching, developing, engineering, testing, manufacturing, or selling bromides, which may be reasonably necessary for the purchaser to operate the Magnolia calcium bromide plant as a commercially viable, independent business operation; provided, however, that such assets do not include real property and stationary, nonmovable buildings located in or near Midland, Michigan, cash and checks on hand or on deposit, accounts and notes receivable or inventories of the CBF business;
- (3) The Crone Option, as defined in Section II.J. and described in Schedule 1 to this Final Judgment, and Dow's lease rights to subsurface minerals

in portions of the western one-half of Sections 8, 17, and 20 of Township 17 South, Range 21 West, Columbia County, Arkansas, constituting approximately seven hundred (700) acres adjoining the Crone Option area;

- (4) all intangible assets, wherever located (except that if the purchaser is Dead Sea, Dow may limit such assets to those applicable to North America), that relate in any way to the assets described in Sections II.G.(2) and II.G.(3), including but not limited to: exclusive, assignable rights to all proprietary technology and other proprietary business information solely dedicated to the tangible assets; nonexclusive rights to all related proprietary technology and other proprietary business information not solely dedicated to the tangible assets; nonexclusive rights to any available space included in rights-of-way or easements between the Magnolia calcium bromide plant and the Crone Option area that were held by Dow as of April 14, 1987; and Dow's lease rights to personal property, such as trucks, storage facilities and equipment. As to any nonassignable rights described in this Section II.G.(4), Dow shall grant licenses to such rights, on the same terms and conditions as

the licenses conveying such rights to the purchaser, to any person who is a successor to the purchaser's entire rights to the CBF business.

The assets described in this Section II.G. must be accompanied by a commitment by Dow to defend and indemnify the purchaser against any liability arising from or attributable in any way to any use of the assets by Dow at any time before the purchaser takes possession of them.

H. "CBF employees" means all of the employees listed in Schedule 2 to this Final Judgment.

I. "CBF-related employees" means all of the employees listed in Schedule 3 to this Final Judgment.

J. "Crone Option" means Dow's option to purchase rights to subsurface minerals from the persons listed in Schedule 1 to this Final Judgment, for the tracts of land described therein.

K. "Dead Sea" means Dead Sea Bromine Company Limited, each division, subsidiary or affiliate thereof, and each officer, director, employee, attorney, agent or other person acting for or on behalf of any of them.

L. "Disposal property" means the three injection wells described in Schedule 4 to this Final Judgment, finished pipelines and any other appurtenances relating to the injection wells, and sufficient nonexclusive rights-of-way or easements as may be reasonably necessary for the purchaser to construct such additional improvements as pipelines that might help the

purchaser to use or maximize the use of the disposal property and to have reasonable access to the disposal property and any additional improvements. The property described in this Section II.L. must be accompanied by a commitment by defendants to defend and indemnify the purchaser against any liability arising from or attributable in any way to any use of the property at any time before the purchaser takes possession of it. If the purchaser conveys property to Ethyl pursuant to Section IX.D.(2), the purchaser must commit to defend and indemnify Ethyl against any liability arising from or attributable in any way to any use of the conveyed property by the purchaser.

M. "Magnolia calcium bromide plant" means the Dow tangible and intangible assets that were designed or constructed for use in the production of calcium bromide in or near Magnolia, Arkansas, including but not limited to exclusive, assignable rights to all proprietary technology and other proprietary business information solely dedicated to the assets or the operation of the assets and nonexclusive rights to all related proprietary technology and other business information not solely dedicated to the assets or the operation of the assets. Unless Dow shall give its prior consent, which Dow shall not withhold if the purchaser offers reasonable terms and conditions, the exclusive and nonexclusive rights described in this Section II.M. may be limited to the use of the pertinent technology or other business information in connection with the researching, developing, engineering,

testing, manufacturing, or selling of bromides and brominated CBFs. Unless Dow shall give its prior consent, the assignability of any such assignable rights described in this Section II.M. may be limited to an assignment to any person who is a successor to the purchaser's entire rights to the Magnolia calcium bromide plant. As to any nonassignable rights described in this Section II.M., Dow shall grant licenses to such rights, on the same terms and conditions as the licenses conveying such rights to the purchaser, to any person who is a successor to the purchaser's entire rights to the Magnolia calcium bromide plant.

N. "Person" means any natural person, corporation, association, firm, partnership, or other business or legal entity.

O. "Purchaser" means a person obtaining ownership of assets pursuant to this Final Judgment and any successor to, or assignee of, all or substantially all of the assets obtained by the purchaser pursuant to this Final Judgment.

P. "Qualified purchaser" means a prospective purchaser for whom it is demonstrated to plaintiff's satisfaction that:

- (1) the purchase is for the purpose of competing effectively in the production and sale of bromides;
- (2) the prospective purchaser has the managerial, operational, and financial capability to compete effectively in the manufacture and sale of bromides; and

- (3) the prospective purchaser can reasonably be anticipated to operate the CBF business in a responsible and lawful manner.

III

A. The provisions of this Final Judgment shall apply to defendants, each of their successors and assigns, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. Except for Section IV.E., with respect to prospective purchasers, and Sections II.M., VIII., IX., X., XI., and XIII., with respect to the purchaser, nothing herein contained shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

C. Each defendant shall require, as a condition of the sale of all or substantially all its assets or stock, that the acquiring party agree to be bound by the provisions of this Final Judgment.

IV

A. Dow is hereby ordered and directed to divest to a qualified purchaser, if any, all of its direct and indirect ownership and control of the CBF business.

B. Dow may divest less than all of the CBF business but only with the written approval of the plaintiff. In the event that the plaintiff approves a sale to a purchaser pursuant to

this Section IV.B., such sale shall fully discharge Dow's obligation to divest the CBF business under Section IV.A.

C. The divestiture shall be made to the qualified purchaser that offers the highest price for the CBF business. The divestiture shall not be made to Ethyl or to Great Lakes Chemical Corporation or to any division, subsidiary or affiliate (including Arkansas Chemicals, Inc.) of Great Lakes Chemical Corporation and shall not be made, without plaintiff's permission, to any other producer of bromides.

D. Until the divestiture contemplated by Section IV.A. is completed, Dow:

- (1) may, at its option, operate all or part of the CBF business as a going business;
- (2) shall take all steps necessary to assure that the CBF business is fully maintained in operable condition at the current capacity configuration;
- (3) shall take all steps necessary to assure that none of its proprietary technology and other proprietary business information specific to the CBF business is transferred, or otherwise becomes known or available, to Ethyl or any other person, except as provided in this Final Judgment;
- (4) shall take no steps, other than ceasing operations, with respect to the CBF business that in any way would negatively affect the purchaser's ability to operate the CBF business,

regardless of any actual or possible negative impact on Ethyl's or Dow's profits;

- (5) shall maintain and adhere to normal repair and maintenance schedules for the CBF business and at least preserve and adhere to such schedules as they existed on December 1, 1986;
- (6) shall refrain from altering or selling any assets of the CBF business, other than in the ordinary course of business;
- (7) shall refrain from taking any action that would jeopardize the sale of the CBF business as a viable competitor in any market in which it participated in 1986;
- (8) shall not terminate or reduce one or more current employment, salary, or benefit agreements for any CBF-related employees without prior approval of plaintiff.

E. Subject to the provisions set out in Section IV.F.,
Dow shall:

- (1) furnish to all bona fide prospective purchasers who so request all pertinent information regarding the CBF business and the advice, assistance and services defendants shall provide pursuant to Sections VIII. and IX.D.;
- (2) provide such information to the plaintiff at the time it furnishes such information to any other person;

(3) permit all bona fide prospective purchasers to have access to Dow personnel who have had responsibilities for any part of Dow's CBF business, and to make such inspection of the physical assets of the CBF business, and any and all financial and operation records, documents, and information as may be relevant to a divestiture under Section IV.A.

F. Dow may refuse to furnish or grant any prospective purchaser access to the assets of the CBF business or to any confidential or proprietary information relating to the CBF business, unless such person shall have executed an appropriate confidentiality agreement that shall prohibit such person from disclosing or using (except for purposes of evaluating the acquisition of the assets to be divested pursuant to the terms of this Final Judgment, or unless such person purchases the assets to be divested pursuant to the terms of this Final Judgment) any confidential information of Dow for a period of ten (10) years from the date of the confidentiality agreement.

V

A. Oppenheimer & Co., Inc. shall act as a trustee with full power and authority to carry out the divestiture ordered in Section IV.A. at such price and on such terms as are then obtainable upon a reasonable effort by the trustee, subject to the provisions of Section VI., and shall have such other powers as the Court deems appropriate. Only the trustee, and not

defendants, shall have the right to effect divestiture under Section IV.A., but defendants shall use all reasonable efforts to assist the trustee in accomplishing a divestiture. Except as permitted in the next sentence, Ethyl and Dow may not object to a proposed divestiture pursuant to this Final Judgment, but Ethyl and Dow may provide plaintiff with any views or information (in addition to information that the plaintiff may request pursuant to Section VI.) that may be pertinent to plaintiff's evaluation of a proposed divestiture. Dow shall not object to a sale by the trustee on any grounds other than malfeasance. Any such objection by Dow must be conveyed in writing to the plaintiff and the trustee within fifteen (15) days after the trustee has notified Dow of the proposed sale.

B. The trustee shall commence efforts to find a bona fide prospective purchaser and to effect a divestiture immediately after the date of the filing of the Complaint in this civil action. The trustee shall at all times use its best efforts to effect divestiture of the CBF business. Each defendant shall promptly notify the trustee of any contact it has had with any person that has made an offer or expressed an interest or desire to acquire the CBF business together with full details of the same.

C. The trustee shall serve at the cost and expense of Dow and shall account for all monies derived from a sale of the CBF business and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including

fees for its services, all remaining monies shall be paid to Dow and the trust shall be terminated. The compensation of the trustee shall be 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. The trustee shall have full and complete access to the personnel, books, records, and facilities of the defendants related to the CBF business, and Dow shall develop such financial or other information relevant to the CBF business as the trustee may request. Defendants shall take no action to interfere with or impede the trustee's efforts to accomplish a divestiture.

E. In an effort to accomplish a divestiture, the trustee shall make known in the United States and elsewhere, by usual and customary means, the availability of the CBF business for sale. The trustee shall notify any person making an inquiry regarding the possible purchase of the CBF business that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. The trustee, with defendants' cooperation, also shall furnish to all bona fide prospective purchasers who so request, and subject to confidentiality assurances of the type specified in Section IV.F., all pertinent information and inspections regarding the CBF business. At the time it furnishes such information to any person, the trustee shall notify plaintiff of the name, address, and telephone number of the person to whom the information was provided.

F. Thirty (30) days from the date of the filing of the Complaint in this civil action and every thirty (30) days thereafter until a divestiture has been completed, the trustee shall submit a confidential report to the parties and the Court setting forth the trustee's efforts to accomplish a divestiture. If the trustee has not accomplished such divestiture within one hundred and eighty (180) days after the date of the filing of the Complaint in this civil action, the trustee shall thereupon promptly file with the Court a report setting forth: (1) the trustee's effort to accomplish a divestiture, (2) the reasons, in the trustee's judgment, why a divestiture has not been accomplished, and (3) the trustee's recommendations. The trustee shall at the same time furnish such report to the parties, which shall each have the right to be heard and to make additional recommendations consistent with this Final Judgment. The Court shall thereafter enter such orders as it shall deem appropriate, which shall include extending the term of the trustee's appointment if the trustee is in active negotiations with a prospective purchaser or if the Court finds that either or both of the defendants have failed to comply with their obligations under this Final Judgment, or, in the alternative, shall include an order: (1) deeming this Final Judgment to have been fully complied with by the efforts made by the trustee through such date, (2) vacating at the time of the order Sections IV., V., VII., VIII., IX. and XI. of this Final Judgment, and (3) vacating the remainder of this Final Judgment two (2) years after the date of the order.

VI

At least thirty (30) days prior to the scheduled closing date of the proposed divestiture pursuant to Section IV.A., the trustee shall notify the plaintiff and defendants of the proposed divestiture. The notice shall set forth the details of the proposed transaction and, for each person not previously identified who offered or expressed an interest or desire to acquire any ownership interest in the CBF business, the name, address, and telephone number of that person together with full details of that person's interest or desire to acquire such ownership interest. Within fifteen (15) days after receipt of notice of the proposed divestiture, the plaintiff may request from defendants and the proposed purchaser additional information concerning the proposed divestiture. Each defendant and the proposed purchaser shall furnish the additional information requested from it within twenty (20) days of the receipt of the request, unless plaintiff shall agree to extend the time. Until plaintiff certifies in writing that it is satisfied that the proposed purchaser has provided the additional information requested from it, the divestiture shall not be consummated. Within thirty (30) days after receipt of the notice or within fifteen (15) days after receipt of the additional information from defendants and the proposed purchaser, whichever is later, unless defendants shall agree to extend the time, plaintiff shall notify in writing defendants and the trustee if it objects or does not object to the

proposed divestiture. If plaintiff does not object, the divestiture may be consummated, subject only to Dow's right to object to the sale under the provision in Section V.A. Upon objection by the plaintiff, the proposed divestiture shall not be consummated unless approved by the Court. Upon objection by Dow under Section V.A., the proposed divestiture shall not be consummated unless approved by the Court. The one hundred and eighty (180) day time period set forth in Section V.F. shall be tolled from the time either the plaintiff or Dow files with the Court such an objection to the proposed divestiture, until the conclusion of any Court proceeding relating to such objection. In any such proceeding involving any objection by Dow, Dow shall have the burden of proof.

VII

Neither defendant shall finance without the plaintiff's permission all or any part of the purchase of the CBF business pursuant to the divestiture.

VIII

A. Not later than thirty (30) days after the closing date of the divestiture, Dow shall take, at its own expense, all steps, listed in Schedule 5 to this Final Judgment, that it has identified as of March 25, 1987, as actions to improve the operating efficiency of the Magnolia calcium bromide plant at the current capacity and product quality configuration.

B. Upon the request of the purchaser, Dow shall use its best efforts to provide in an expedient manner, at any time within a period not to exceed four (4) years from the closing date of the divestiture, such advice and engineering, management and contracting services as the purchaser may seek or specify in an effort to enhance the operational capabilities (including capacity, efficiency and product quality) of the Magnolia calcium bromide plant.

C. Upon the request of the purchaser, defendants shall use their best efforts to provide in an expedient manner, at any time within a period not to exceed four (4) years from the closing date of the divestiture, such advice and engineering, management and contracting services of defendants' personnel (specifically excluding the provision of equipment, machinery, construction materials, supplies and other tangible property), as the purchaser may seek or specify in connection with the operation of the CBF business, with respect to any or all of the following:

- (1) drilling production and reinjection brine wells;
- (2) constructing pipelines for transporting brine, natural gas and waste materials;
- (3) advising the purchaser in negotiating for and obtaining certain property rights, including such rights-of-way or easements as may be reasonably necessary for the construction and maintenance of wells and pipelines;

- (4) constructing facilities for the treatment, storage and disposal of waste;
- (5) constructing facilities necessary for the pretreatment of brine, including but not limited to wellhead equipment for separating brine from hydrogen sulfide, natural gas or other minerals, a stripping facility, a sodium hydrosulfide facility (or "NaSH unit"), an amine facility (or "sweetener"), and pipes for carrying materials to and from the pretreatment facilities.

D. Upon request of the purchaser, defendants shall use their best efforts to make available, at a reasonable time and place and for a period not to exceed four (4) years from the closing date of the divestiture, those CBF employees and other qualified technical personnel employed by the defendants to assist the purchaser in its efforts to operate and maximize the profitability of the CBF business.

E. If the purchaser elects to relocate the Magnolia calcium bromide plant to some other location, upon request of the purchaser made within three (3) years from the closing date of the divestiture, defendants shall use their best efforts to make available, at a reasonable time and place and until two hundred (200) days following the request, qualified technical personnel to advise the purchaser on transferring and reassembling the production equipment. In the event that the purchaser chooses to transfer the Magnolia calcium bromide

plant to some other location pursuant to this Section VIII.E., and at the request of the purchaser, the time periods provided for in Sections VIII.B., VIII.C., VIII.D., VIII.G. and IX.D. shall be tolled from the time the purchaser requests assistance in relocating the facility until such time as the relocated facility is operable, but the tolling shall not exceed one (1) year.

F. The purchaser, at its option, may request advice, assistance or services under Sections VIII.C., VIII.D. and VIII.E. from either or both defendants, and the purchaser in all cases may enforce the obligations created by Sections VIII.C., VIII.D., and VIII.E. against either or both defendants, jointly or individually, except that neither defendant may be required to engage the services of third parties, hire employees, or develop or acquire new capabilities to provide any such requested advice, assistance or services.

G. If, pursuant to the divestiture, the purchaser acquires any assets of the CBF business that are located in or near Midland, Michigan, Dow shall use its best efforts, for a period not to exceed one (1) year from the closing date of the divestiture, to assist the purchaser in removing such assets from Midland to a location to be designated by the purchaser.

H. The purchaser may request advice, assistance or services pursuant to Sections VIII.B., VIII.C., VIII.D., VIII.E. and VIII.G. by providing notice to the defendant from which advice, assistance or services are requested at least

twenty (20) days before the defendant must begin providing the requested advice, assistance or services. In the event of an emergency relating to the Magnolia calcium bromide plant, the defendants shall use their best efforts to provide the requested advice, assistance or services as soon as possible. The total number of man-hours of advice, assistance and services that the defendants may be required to provide under Sections VIII.B., VIII.C., and VIII.D. to any purchaser other than Dead Sea shall not exceed seventeen thousand (17,000) hours. If the purchaser is Dead Sea, the total number of man-hours of advice, assistance and services that the defendants may be required to provide under Section VIII. shall not exceed five thousand (5,000) hours. The advice, assistance and services made available to the purchaser pursuant to Sections VIII.B., VIII.C., VIII.D., VIII.E. and VIII.G. shall be subject to the following limitations:

- (1) the first two hundred (200) man-hours of such advice, assistance and services shall be provided at no cost to the purchaser;
- (2) the remainder of such advice, assistance and services shall be provided at cost, determined in accordance with generally accepted accounting principles;
- (3) if the purchaser is Dead Sea, any such advice, assistance and services, including the first two hundred (200) man-hours, shall be provided at fair market value;

- (4) with respect to CBF employees, the total number of man-hours of advice, assistance and services that the defendants may be required to provide shall not exceed fifteen thousand (15,000) hours;
- (5) with respect to CBF employees, six (6) months from the date that any requested advice, assistance or services are first provided to the purchaser, the defendants shall not thereafter be required to provide the advice, assistance or services of more than three (3) CBF employees at any one time;
- (6) with respect to persons other than CBF employees, the total number of man-hours of advice, assistance and services that each defendant may be required to provide shall not exceed two thousand five hundred (2,500) hours;
- (7) other than CBF employees, no individual employee of either defendant shall be required to provide advice, assistance or services for more than one-third ($1/3$) of the individual's normal working hours in any three (3) month period;
- (8) all such advice, assistance and services shall be provided with the good faith belief that it is sound, reliable and representative of current technology known to the defendant providing such advice, assistance or services; however, such

- advice, assistance and services shall be provided without warranty of any kind, express or implied;
- (9) any controversy concerning the cost (or with respect to Dead Sea, the fair market value) or the number of man-hours of such advice, assistance or services shall be settled by arbitration.

I. For each CBF-related employee:

- (1) no later than twenty (20) days before the closing date of the divestiture, Dow shall identify the employee to the purchaser and shall provide the purchaser, on a confidential basis and as permitted by law, with information disclosing the employee's job description (if any), salary or wages and other benefits, and any other information that the employee may authorize to be disclosed;
- (2) upon the request of the purchaser at any time within a period not to exceed ninety (90) days from the closing date of the divestiture, Dow shall provide the purchaser with an opportunity, during regular office hours, to meet in private with the employee for the purpose of discussing the purchaser's potential hiring of the employee, and Dow shall encourage the employee to participate in any such meeting with the purchaser.

J. As soon as practicable and in accordance with applicable law, but no later than one and one-half (1 1/2) years after the closing date of the divestiture, if the purchaser maintains, or within one (1) year after such closing has adopted, a defined benefit plan that is qualified under Section 401 (a) of the Internal Revenue Code of 1986 ("the Purchaser's plan"), Ethyl shall cause a transfer of assets from the Retirement Income Plan for the Employees of Ethyl Corporation and the Ethyl Corporation Retirement Income Plan for the Hourly Employees at Magnolia, Arkansas ("the Ethyl plans") to the Purchaser's plan. The amount to be transferred shall equal the portion of the Transferred Amount (as defined in the Asset purchase agreement) applicable to those CBF employees who terminate their employment with Ethyl in order to accept employment with the purchaser within ninety (90) days of the closing date of the divestiture. No assets shall be transferred, however, unless the Purchaser's plan recognizes employee service with Dow prior to the closing date of the divestiture for all purposes. If the closing date of the divestiture occurs before the transfer of assets to the Ethyl plans from the Dow Chemical Company Employees' Retirement Plan ("the Dow plan"), then in lieu of a transfer to the Purchaser's plan from the Ethyl plans, Dow shall cause the transfer to the Purchaser's plan of assets contemplated by this Section VIII.J. The defendants, the Dow plan and the Ethyl plans shall have no further obligations with respect to the CBF employees'

pension or other employee benefits following a transfer of assets from the Ethyl plans or the Dow plan to the Purchaser's plan in accordance with this Section VIII.J.

K. Ethyl shall only be required to disclose to the purchaser proprietary technology or other proprietary business information pursuant to this Section VIII. if such technology or information relates to the assets included in the CBF business or if such disclosure is necessary for Ethyl to fulfill its obligations under Section VIII.C., but nothing herein shall be construed to require Ethyl to disclose proprietary technology or other proprietary business information of persons other than Ethyl (except Dow) if Ethyl is contractually bound not to disclose such technology or information.

IX

A. Ethyl is hereby enjoined from:

- (1) acquiring any direct or indirect ownership or control of all or any part of the CBF business without prior approval of the plaintiff;
- (2) taking any action that would restrict the purchaser's reasonable access to all or any part of the CBF business or any disposal facilities used in connection with the operation of the CBF business;
- (3) taking any action for the purpose of preventing the purchaser from constructing pipelines for use in connection with the operation of the CBF

business along the most direct and reasonable routes.

B. For each CBF employee and CBF-related employee that Ethyl may hire:

- (1) Ethyl shall use its best efforts to make the employee available to Dow, under such terms and conditions as Ethyl and Dow may agree among themselves or, in the absence of such an agreement, as the Court may prescribe, for such time and at such place as may be reasonably necessary for Dow to fulfill its obligations under Sections VIII.A. and VIII.B.;
- (2) except for CBF-related employees, prior to the closing date of the divestiture, Ethyl shall not, without prior approval of the plaintiff, relocate, offer to relocate, or suggest the possibility of relocating the employee to any location other than Magnolia, Arkansas;
- (3) no later than twenty (20) days before the closing date of the divestiture, Ethyl shall identify the employee to the purchaser and shall provide the purchaser, on a confidential basis and as permitted by law, with information disclosing the employee's job description (if any), salary or wages and other benefits, and any other information that the employee may authorize to be disclosed;

(4) upon the request of the purchaser at any time within a period not to exceed ninety (90) days from the closing date of the divestiture, Ethyl shall provide the purchaser with an opportunity, during regular office hours, to meet in private with the employee for the purpose of discussing the purchaser's potential hiring of the employee, and Ethyl shall encourage the employee to participate in any such meeting with the purchaser.

C. Ethyl shall take all steps necessary to assure that:

- (1) it does not receive, except as a result of arm's length bargaining with the purchaser conducted after the divestiture has been accomplished, any proprietary technology or other proprietary business information specific to the CBF business, other than the technology and other information that Ethyl may already have received prior to February 13, 1987;
- (2) no proprietary technology and other business information specific to the CBF business that Ethyl may have received prior to February 13, 1987, is further disseminated within Ethyl or used to compete with the purchaser of the CBF business.

D. Upon the request of any purchaser other than Dead Sea, Ethyl shall enter into a supply agreement with the purchaser.

The terms of the supply agreement shall be subject to the plaintiff's approval, and shall include the following provisions:

- (1) a provision obligating Ethyl, for a period not to exceed three and one-half (3 1/2) years from the closing date of the divestiture, to provide, at the location of the Magnolia calcium bromide plant as of April 14, 1987, from the developed and undeveloped portions of the brine field held by Dow as of the date of consummation of the Asset purchase agreement, all of the purchaser's requirements of pretreated brine ready for use in the purchaser's production of bromides, except that, in any calendar year or portion thereof, Ethyl need not provide more pretreated brine than the purchaser would require if it were to operate the Magnolia calcium bromide plant at approximately sixty (60) percent of the original design capacity;
- (2) a provision obligating Ethyl to convey to the purchaser the disposal property for the consideration of \$10.00, with the provision that, within ninety (90) days after either the termination of the supply agreement or the purchaser's permanent abandonment of the disposal property for use in the disposal of spent brine, whichever is the first to occur, the purchaser

shall convey and Ethyl shall purchase the disposal property, together with such improvements as pipelines, but specifically excluding holding ponds or any improvements located on the real property listed in Schedule 6 to this Final Judgment that the purchaser may elect to convey, on equivalent terms and conditions as the property was conveyed to the purchaser and for the consideration of \$10.00 plus the lesser of (a) the cost of such improvements to the purchaser less depreciation or (b) the reasonable replacement cost of improvements of like utility less depreciation (both as determined in accordance with generally accepted accounting principles) of any improvements that the purchaser elects to convey to Ethyl, except that Ethyl shall not be required to purchase any property or improvements that are at the time of the proposed conveyance contaminated as determined in accordance with, or not operable in conformance with, all applicable federal and state environmental law;

- (3) a provision obligating Ethyl, for a period not to exceed nine (9) months from the closing date of the divestiture, to provide all of the purchaser's requirements of calcium bromide,

sodium bromide and zinc bromide for resale (and not for storage or inventory accumulation) by the purchaser;

- (4) a provision that the supply by Ethyl of pretreated brine and bromides pursuant to Sections IX.D.(1) and IX.D.(3) shall be at cost, as determined in accordance with generally accepted accounting principles, such cost to be invoiced monthly by Ethyl, upon terms of payment of net ten (10) days, with interest charged against delinquent amounts at five (5) percent per annum above the Federal Reserve Discount Rate at the time of the delinquency;
- (5) a provision stating that in the event of a breach by either party of any of its obligations under the supply agreement, in addition to actual damages, the damaged party shall be entitled to any other appropriate relief, such as the right of specific performance;
- (6) a provision stating that any controversy between Ethyl and the purchaser relating to the performance of Ethyl's or the purchaser's obligations under the supply agreement shall be settled by arbitration.

X

A. The purchaser of the CBF business must consent to be bound by the provisions of this Final Judgment.

B. If the purchaser acquires the disposal property, the purchaser shall make a reasonable effort to enter into an agreement with Ethyl providing for the use of the disposal property (including any improvements thereto) in coordination with the operation of the developed and undeveloped portions of the brine field held by Dow as of the date of consummation of the Asset purchase agreement, except that the purchaser shall not agree to use the disposal property in a manner that: (1) conflicts with federal or state environmental law; (2) would be more costly than the purchaser's minimum cost of compliance with all federal or state laws if the property were used in the absence of an agreement; or (3) would otherwise impose any limits on the purchaser's production of bromides.

C. In the event of a divestiture, Ethyl and the purchaser each shall exercise reasonable efforts in the operation of its respective business in and around the Magnolia, Arkansas area to minimize disruption to the physical operation of the other's business in and around such area, provided, however, that this Section X.C. shall not be construed to impose any obligations or to immunize any conduct that might in any way reduce competition between Ethyl and the purchaser or tend to frustrate accomplishment of any other purposes of this Final Judgment.

D. Ethyl and the purchaser of the CBF business must consent to the inclusion of mutually enforceable covenants running with the real property listed in Schedule 6 to this Final Judgment, such covenants to be enforceable by Ethyl

(which for purposes of the covenants shall include any successor to, or assignee of, all or substantially all of the Magnolia, Arkansas, assets conveyed to Ethyl under the Asset purchase agreement) or by the purchaser, to the effect that:

- (1) if the purchaser proposes to convey such property to a bona fide purchaser who does not intend to use the property in connection with the researching, developing, engineering, testing, manufacturing or selling of bromides, the purchaser shall give Ethyl the right to acquire the property by meeting or exceeding the provisions of the offer that the purchaser proposes to accept;
- (2) if the purchaser moves the Magnolia calcium bromide plant from its location at the date of consummation of the Asset purchase agreement to another location and does not intend to use the real property listed in Schedule 6 in connection with operations of a chemical manufacturing facility in the Magnolia, Arkansas, area, and if Ethyl conducts at the time of the move any operations on the Magnolia, Arkansas, real property conveyed to Ethyl under the Asset purchase agreement, the purchaser shall sell to Ethyl and Ethyl shall purchase from the purchaser the real property listed in Schedule 6, together

with any remaining improvements thereon that have related to the operation of a chemical manufacturing facility, at the fair market value of such property based upon the average of three (3) appraisals, of which one appraisal each shall be obtained by Ethyl and the purchaser, and the third provided by an appraiser mutually acceptable to the first two appraisers; provided, however, that Ethyl shall not be required to purchase such property if at the time of the proposed conveyance to Ethyl the property is contaminated as determined in accordance with, or not operable in conformance with, all applicable federal and state environmental law.

XI

A. At the time of the divestiture, the defendants shall enter into a reasonable arbitration agreement with the purchaser concerning controversies to be settled by arbitration pursuant to this Final Judgment. The agreement shall provide that:

- (1) any arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. § 1, et seq.;
- (2) any controversy to be settled by arbitration shall be submitted to the American Arbitration Association;
- (3) any such controversy shall be settled by arbitration in accordance with the Commercial

Arbitration Rules of the American Arbitration Association, and the Expedited Procedures of the Commercial Arbitration Rules shall be followed at least with respect to the requirements for notice, appointment of the arbitrator, and the time period (after the conclusion of any hearings) in which the arbitrator must make an award;

- (4) any award made pursuant to any arbitration shall be final and binding on the parties to the arbitration.

B. When any controversy is submitted to arbitration, Dow or Ethyl, whichever is a party to the arbitration, shall promptly notify plaintiff in writing of the controversy being arbitrated and shall promptly serve a copy of the final award on plaintiff.

XII

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

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant or to the purchaser made to its principal office, be permitted:

- (1) Access during the office hours of such defendant or purchaser to inspect and copy all books,

ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant or purchaser, who may have counsel present, relating to any matters contained in this Final Judgment; and

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

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to any defendant or to the purchaser's principal office, such defendant or purchaser shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section XII. shall be divulged by any representative of the Department of Justice 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 a defendant or purchaser to plaintiff, such defendant or

purchaser 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 said defendant or purchaser 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) days notice shall be given by plaintiff to such defendant or purchaser prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XIII

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

XIV

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

XV

Entry of this Final Judgment is in the public interest.


UNITED STATES DISTRICT JUDGE

Dated: August 12, 1987