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CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
BNS INC.; and
GIFFORD-HILL & COMPANY, INC.,
Defendants.

Civil No. 88-01452-R

FINAL JUDGMENT

Entered: August 25, 1988

Whereas, plaintiff, United States of America, having filed its Complaint herein on March 18, 1988, and plaintiff and defendants, by their respective attorneys, having 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 an admission by any party with respect to any issue of law or fact herein;

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

And Whereas, prompt and certain divestiture is the essence of this agreement and defendants have represented to plaintiff that

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1 the divestiture required below can and will be made and that
2 defendants will later raise no claims of hardship or difficulty as
3 grounds for asking the Court to modify any of the divestiture
4 provisions contained below;

5 Now, therefore, before the taking of any testimony, and
6 without trial or adjudication of any issue of fact or law herein,
7 and upon consent of the parties hereto, it is hereby ORDERED,
8 ADJUDGED, AND DECREED as follows:

9 I

10 JURISDICTION

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

15 II

16 DEFINITIONS

17 As used in this Final Judgment:

18 A. "Aggregate" means rock, sand and gravel suitable for
19 mixture in asphalt concrete, Portland cement concrete, or other
20 paving compounds or mixtures, or for other civil construction
21 purposes.

22 B. "Assets to be Divested" means all the assets identified
23 in Section IV.A below.

24 C. "Blue Diamond" means Blue Diamond Materials, a division
25 of Sully-Miller Contracting Co., a California corporation and a
26 wholly-owned subsidiary of Koppers Company, Inc., with its
27 principal place of business in Long Beach, California.

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1 D. The "Irwindale Aggregate District" means that area of Los
2 Angeles County and Orange County with the following boundaries:
3 on the west and southwest, the Pacific Ocean; on the northwest, a
4 line connecting the city centers of the City of Topanga Beach and
5 the City of Altadena; on the north, the crest of the San Gabriel
6 Mountain Range; and on the east and southeast, a line connecting
7 the city centers of the City of San Dimas, the City of Santa Ana,
8 and the City of Newport Beach.

9 E. "Koppers" means Koppers Company, Inc., a Delaware
10 corporation, with its principal place of business in Pittsburgh,
11 Pennsylvania.

12 F. "Section V Trustee" means the trustee referred to in
13 Section V.A of this Final Judgment.

14 III

15 APPLICABILITY

16 A. The provisions of this Final Judgment apply to the
17 defendants, to their successors and assigns, to their
18 subsidiaries, affiliates, directors, officers, managers, agents,
19 and employees, and to all other persons in active concert or
20 participation with any of them who shall have received actual
21 notice of this Final Judgment by personal service or otherwise.

22 B. Nothing contained in this Final Judgment shall suggest
23 that any portion of this Final Judgment is or has been created for
24 the benefit of any third party, and nothing herein shall be
25 construed to provide any rights to any third party.

26 C. Defendants shall require, as a condition of the sale or
27 other disposition of all or substantially all of their assets in
28 the Irwindale Aggregate District involved in the extraction,

1 processing and sale of aggregate, that the acquiring party or
2 parties agree to be bound by the provisions of this Final Judgment.

3 IV

4 DIVESTITURE OF ASSETS

5 A. Defendants are hereby ordered and directed to divest, to
6 an eligible purchaser or eligible purchasers, any and all interest
7 that they have or shall acquire in all of the real and personal
8 property used in the extraction, processing and sale of aggregate
9 at Blue Diamond's aggregate property located at Irwindale,
10 California.

11 B. Until the Assets to be Divested are divested, the trustee
12 appointed pursuant to this Court's Order of June 3, 1988, shall
13 manage and remain in control of the operation of the Assets to be
14 Divested, in accordance with the terms of such order, except that
15 defendants shall have access to whatever records and information
16 are necessary to effectuate the divestiture or are disclosed to
17 potential purchasers of the Assets to be Divested. Except as
18 superseded by Section V, the trustee referred to in this Section
19 IV.B shall participate in the divestiture process and shall
20 approve the purchaser or purchasers. The trustee referred to in
21 this Section IV.B shall continue to be paid by the defendants in
22 accordance with the agreement dated June 13, 1988, between that
23 trustee and the defendants, plus such other fees as are agreed to
24 between them.

25 C. Unless plaintiff otherwise consents, divestiture under
26 Section IV.A, or by the trustee appointed pursuant to Section V,
27 shall be accomplished in such a way as to satisfy plaintiff, in
28 its sole determination, that the Assets to be Divested can and

1 will be operated by the purchaser or purchasers as a viable,
2 ongoing business, engaged in the extraction, processing and sale
3 of aggregate. Divestiture under Section IV.A, or by the Section V
4 trustee, shall be made to a purchaser or purchasers for whom it is
5 demonstrated to plaintiff's satisfaction that (1) the purchase is
6 for the purpose of competing effectively in the extraction,
7 processing and sale of aggregate and (2) the purchaser or
8 purchasers has or have the managerial, operational, and financial
9 capability to compete effectively in the extraction, processing
10 and sale of aggregate.

11 D. Nothing in this Final Judgment shall preclude defendants
12 from entering into one or more contracts with the purchaser or
13 purchasers for the purpose of supplying aggregate from the Assets
14 to be Divested to defendants for the production of asphalt
15 concrete, Portland cement concrete, or other aggregate-based
16 products, provided, however, that defendants shall not enter into
17 any such supply contracts, or into any discussions or
18 negotiations, preliminary or otherwise, relating to such supply
19 contracts, with the purchaser or purchasers, until after the
20 divestiture required by this Final Judgment has been completed,
21 unless the plaintiff otherwise consents.

22 E. Defendants shall take all reasonable steps to accomplish
23 quickly the divestiture contemplated by this Final Judgment.

24 V

25 APPOINTMENT OF TRUSTEE

26 A. In the event that defendants have not divested all of
27 their interest required by Section IV.A by January 1, 1989, the
28 Court shall, on application of the plaintiff, appoint a trustee to

1 effect the remainder of the divestiture required by Section IV.A.
2 The trustee appointed pursuant to this Section V may or may not be
3 the same individual who was appointed trustee pursuant to this
4 Court's Order of June 3, 1988. After the appointment of this
5 Section V trustee becomes effective, only such trustee shall have
6 the right to sell the assets required to be divested pursuant to
7 Section IV.A. The Section V trustee shall have the power and
8 authority to accomplish the divestiture at the best price then
9 obtainable upon a reasonable effort by such trustee, subject to
10 the provisions of Section VI of this Final Judgment, and shall
11 have such other powers as the Court shall deem appropriate.
12 Defendants shall not object to a sale by the Section V trustee on
13 any grounds other than such trustee's malfeasance. Any such
14 objections by defendants must be conveyed in writing to plaintiff
15 and the Section V trustee within fifteen (15) days after such
16 trustee has provided the notice required under Section VI.

17 B. If defendants have not divested all of their interest
18 required by Section IV.A by December 1, 1988, plaintiff and
19 defendants shall immediately notify each other in writing of the
20 names and qualifications of not more than two (2) nominees for the
21 position of the Section V trustee who shall effect the required
22 divestiture. The parties shall attempt to agree upon one of the
23 nominees to serve as such trustee. If the parties are able to
24 agree on such trustee within thirty (30) days of the exchange of
25 names, plaintiff shall notify the Court of the person upon whom
26 the parties agreed, and the Court shall appoint such person as the
27 Section V trustee. If the parties are unable to agree within that
28 time period, plaintiff shall furnish the Court the names of each

1 party's nominees. The Court may hear the parties as to the
2 qualifications of the nominees and shall appoint one of the
3 nominees as the Section V trustee.

4 C. The Section V trustee shall serve at the cost and expense
5 of defendants, on such terms and conditions as the Court may
6 prescribe, and shall account for all monies derived from the sale
7 of the assets sold by the Section V trustee and all costs and
8 expenses so incurred. After approval by the Court of the
9 Section V trustee's accounting, including fees for its services,
10 all remaining money shall be paid to defendants and the trust
11 shall then be terminated. The compensation of the Section V
12 trustee shall be based on a fee arrangement providing such trustee
13 with an incentive based on the price and terms of the divestiture
14 and the speed with which it is accomplished.

15 D. Defendants shall use their best efforts to assist the
16 Section V trustee in accomplishing the required divestiture. Such
17 trustee and any consultants, accountants, attorneys, and other
18 persons retained by such trustee shall have full and complete
19 access to the personnel, books, records, and facilities of the
20 Assets to be Divested, and defendants shall develop financial or
21 other information relevant to such assets as the Section V trustee
22 may request, subject to reasonable protection for trade secret or
23 other confidential research, development, or commercial
24 information. Defendants shall take no action to interfere with or
25 impede the Section V trustee's accomplishment of the divestiture.

26 E. After its appointment, the Section V trustee shall file
27 monthly reports with the parties and the Court setting forth such
28 trustee's efforts to accomplish the divestiture ordered under this

1 Final Judgment. If the Section V trustee has not accomplished
2 such divestiture within six (6) months after its appointment, the
3 Section V trustee shall thereupon promptly file with the Court a
4 report setting forth (1) such trustee's efforts to accomplish the
5 required divestiture, (2) the reasons, in the trustee's judgment,
6 why the required divestiture has not been accomplished, and
7 (3) the trustee's recommendations. The Section V trustee shall at
8 the same time furnish such report to the parties, who shall each
9 have the right to be heard and to make additional recommendations
10 consistent with the purpose of the trust. The Court shall
11 thereafter enter such orders as it shall deem appropriate in order
12 to carry out the purpose of the trust, which may, if necessary,
13 include extending the trust and the term of the Section V
14 trustee's appointment.

15 VI

16 NOTIFICATION

17 A. Defendants or the Section V trustee, whichever is then
18 responsible for effecting the divestiture required herein, shall
19 notify the plaintiff of any proposed divestiture required by
20 Section IV or V of this Final Judgment. If the Section V trustee
21 is responsible, it shall similarly notify defendants. The notice
22 shall set forth the details of the proposed transaction and list
23 the name, address, and telephone number of each person not
24 previously identified who offered or expressed an interest or
25 desire to acquire any ownership interest in any of the Assets to
26 be Divested, together with full details of the same. Within
27 fifteen (15) days after receipt of the notice, the plaintiff may
28 request additional information concerning the proposed

1 divestiture, the proposed purchaser, and any other potential
2 purchaser. Defendants or the Section V trustee shall furnish the
3 additional information within fifteen (15) days of the receipt of
4 the request. Within thirty (30) days after receipt of the notice
5 or within fifteen (15) days after receipt of the additional
6 information, whichever is later, plaintiff shall notify in writing
7 defendants and the Section V trustee, if there is one, if it
8 objects to the proposed divestiture. If the plaintiff fails to
9 object within the period specified, or if the plaintiff notifies
10 in writing defendants and the Section V trustee, if there is one,
11 that it does not object, then the divestiture may be consummated,
12 subject only to defendants' limited right to object to the sale
13 under Section V.A. Upon objection by the plaintiff or by
14 defendants under Section V.A, the proposed divestiture shall not
15 be accomplished unless approved by the Court.

16 B. Thirty (30) days from the date of entry of this Final
17 Judgment and every thirty (30) days thereafter until the
18 divestiture has been completed, defendants shall deliver to
19 plaintiff a written report as to the fact and manner of compliance
20 with Section IV of this Final Judgment. Each such report shall
21 include, for each person who during the preceding thirty (30) days
22 made an offer, expressed an interest or desire to acquire, entered
23 into negotiations to acquire, or made an inquiry about acquiring
24 any ownership interest in any of the Assets to be Divested, the
25 name, address, and telephone number of that person and a detailed
26 description of each contact with that person during that period.
27 Defendants shall maintain full records of all efforts made to
28 divest the Assets to be Divested.

1 VII

2 FINANCING

3 Defendants shall not finance all or any part of any purchase
4 made pursuant to Sections IV or V of this Final Judgment without
5 the prior consent of the plaintiff.

6 VIII

7 PRESERVATION OF ASSETS

8 Subject to the duties of the trustee under Section IV.B:

9 A. Defendants shall preserve, hold, and continue to operate
10 as a going business the Assets to be Divested, with its assets,
11 management and operations separate, distinct and apart from those
12 of defendants, unless plaintiff otherwise consents. Defendants
13 shall use all reasonable efforts to maintain the Assets to be
14 Divested as a viable and active competitor in the market for
15 aggregate in the Irwindale Aggregate District.

16 B. Defendants shall not sell, lease, assign, transfer or
17 otherwise dispose of, or pledge as collateral for loans (except
18 such loans as are currently outstanding or replacements or
19 substitutes therefor), the Assets to be Divested, except that such
20 component as is replaced in the ordinary course of business with a
21 newly purchased component may be sold or otherwise disposed of,
22 provided the newly purchased component is so identified as a
23 replacement component for an Asset to be Divested.

24 C. The provisions of Sections VIII.A and VIII.B include but
25 are not limited to: preserving all plants and equipment used for
26 the extraction and processing of aggregate and their right and
27 ability to operate at the site(s) where they are located;
28 preserving all air pollution and operating permits (including

1 proceeding with such application or operation as is necessary to
2 renew such permits or make permanent any temporary permits); and
3 preserving all administrative and support facilities. These
4 provisions do not preclude the sale in the ordinary course of
5 business of the aggregate as may be produced by the Assets to be
6 Divested.

7 D. Defendants shall provide and maintain sufficient working
8 capital to maintain the Assets to be Divested as a viable, ongoing
9 business.

10 E. Defendants shall provide and maintain sufficient lines
11 and sources of credit to maintain the Assets to be Divested as a
12 viable, ongoing business.

13 F. Defendants shall preserve the Assets to be Divested,
14 except those replaced with newly acquired assets in the ordinary
15 course of business, in a state of repair equal to their state of
16 repair as of the date of defendants' acquisition of control of
17 Koppers.

18 G. Defendants shall identify separately all assets or
19 replacements for or proceeds therefrom that were used in the
20 extraction, processing and sale of aggregate at the Assets to be
21 Divested prior to defendants' acquisition of control of Koppers.

22 H. Defendants shall maintain on behalf of the Assets to be
23 Divested, in accordance with sound accounting practice, separate,
24 true and complete financial ledgers, books and records reporting
25 the profit and loss and liabilities of the Assets to be Divested
26 on a monthly and quarterly basis.

27 I. Defendants shall refrain from terminating or reducing one
28 or more current employment, salary, or benefit agreements for one

1 or more management, engineering, or other technical personnel
2 employed in connection with the Assets to be Divested, except in
3 the ordinary course of business, without the prior approval of
4 plaintiff.

5 J. Defendants shall refrain from taking any action that
6 would have the effect of reducing the scope or level of
7 competition between the Assets to be Divested and other producers
8 of aggregate in the Irwindale Aggregate District, without the
9 prior approval of plaintiff.

10 K. Defendants shall refrain from taking any action that
11 would jeopardize the sale of the Assets to be Divested as a viable
12 going concern.

13 IX

14 COMPLIANCE INSPECTION

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

18 A. Duly authorized representatives of the Department of
19 Justice, including consultants and other persons retained by the
20 Department, shall, upon the written request of the Attorney
21 General or of the Assistant Attorney General in charge of the
22 Antitrust Division, and on reasonable notice to defendants made to
23 their principal offices, be permitted:

24 1. access during office hours to inspect and copy
25 all books, ledgers, accounts, correspondence, memoranda,
26 and other records and documents in the possession or
27 under the control of defendants, which may have counsel

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1 present, relating to any matters contained in this Final
2 Judgment; and

3 2. subject to the reasonable convenience of
4 defendants and without restraint or interference from
5 them, to interview their officers, employees, and agents,
6 who may have counsel present, regarding any such matters.

7 B. Upon the written request of the Attorney General or of
8 the Assistant Attorney General in charge of the Antitrust Division
9 made to defendants at their principal offices, defendants shall
10 submit such written reports, under oath if requested, with respect
11 to any of the matters contained in this Final Judgment as may be
12 requested.

13 C. No information or documents obtained by the means
14 provided in this Section IX shall be divulged by any
15 representative of the Department of Justice to any person other
16 than a duly authorized representative of the Executive Branch of
17 the United States, except in the course of legal proceedings to
18 which the United States is a party (including grand jury
19 proceedings), or for the purpose of securing compliance with this
20 Final Judgment, or as otherwise required by law.

21 D. If at the time information or documents are furnished by
22 defendants to plaintiff, defendants represent and identify in
23 writing the material in any such information or documents for
24 which a claim of protection may be asserted under Rule 26(c)(7) of
25 the Federal Rules of Civil Procedure, and defendants mark each
26 pertinent page of such material, "subject to claim of protection
27 under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then
28 plaintiff shall give ten (10) days notice to defendants prior to

1 divulging such material in any legal proceeding (other than a
2 grand jury proceeding) to which defendants are not a party.

3 X

4 RETENTION OF JURISDICTION

5 Jurisdiction is retained by this Court for the purpose of
6 enabling any of the parties to this Final Judgment to apply to
7 this Court at any time for such further orders and directions as
8 may be necessary or appropriate for the construction,
9 implementation, or modification of any of the provisions of this
10 Final Judgment, for the enforcement of compliance herewith, and
11 for the punishment of any violations hereof.

12 XI

13 TERMINATION

14 This Final Judgment will expire on the second anniversary of
15 the completion of the divestiture required herein.

16 XII

17 PUBLIC INTEREST

18 Entry of this Final Judgment is in the public interest.

19 Dated: 8-24-88

20
21
22 Honorable Manuel L. Real
Chief Judge
23 United States District Court

24 Presented Pursuant to Superseding Entry attest and certify on 8-26-88
25 Stipulation Re Proposed Final Judgment by: that the foregoing document is a full, true
26 and correct copy of the original on file in
27 my office, and in my legal custody.

26 Howard J. Parker
27 Howard J. Parker
28 Attorney for the United States By Vicki Paul G. Deputy

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