

**HANDWRITTEN REVISIONS
BY JUDGE NOTED BELOW.
ADDITIONS AS BOLD,
DELETIONS AS STRIKETHROUGH**

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil No.: 99-519- CIV- J-20A
)	
v.)	
)	
FLORIDA ROCK INDUSTRIES, INC.;)	Filed:
HARPER BROS., INC.;)	
COMMERCIAL TESTING, INC.; and)	
DANIEL R. HARPER,)	
)	
Defendants.)	
)	

HOLD SEPARATE STIPULATION AND ORDER

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I. DEFINITIONS

As used in this Hold Separate Stipulation and Order:

A. "Florida Rock" means defendant Florida Rock Industries, Inc., a Florida corporation headquartered in Jacksonville, Florida, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

B. "Harper Bros." means defendant Harper Bros., Inc., a Florida corporation headquartered in Fort Myers, Florida, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

C. "Testing" means defendant Commercial Testing, Inc., a Florida corporation headquartered in Fort Myers, Florida, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

D. "Daniel R. Harper" means defendant Daniel R. Harper, an individual who resides in Fort Myers, Florida and is the Chairman of the Board and majority stockholder of Harper Bros. and the majority stockholder of Testing.

E. "Aggregate" means crushed stone and gravel produced at quarries, mines, or gravel pits used to manufacture asphalt concrete and ready mix concrete. "Stone products" refer to any products produced at an aggregate quarry.

F. "Silica sand" means sand that is naturally occurring and not produced at an aggregate quarry (known as "manufactured sand"). Silica sand is used to produce specific types of ready mix concrete used in Florida Department of Transportation highway projects and commercial construction projects.

G. "Asphalt concrete" means a paving material produced by combining and heating asphalt cement (also referred to in the industry as "liquid asphalt" or "asphalt oil") with aggregate.

H. "Ready mix concrete" means a building material used in the construction of buildings, highways, bridges, tunnels, and other projects that is produced by mixing a cementing material (commonly portland cement) and aggregate with sufficient water to cause the cement to

set and bind. Silica sand is combined with aggregate to produce specific types of ready mix concrete required for certain construction projects.

I. "Southwest Florida" means Charlotte, Lee, and Collier Counties and Sarasota County south of State Route 780 in Florida. The City of Sarasota, Florida is located in Sarasota County, and the City of Fort Myers, Florida is located in Lee County.

J. "Alico Road Quarry" means Florida Rock's Alico Road, Lee County, Florida quarry located at 11840 Alico Road, Fort Myers, Florida that produces aggregate and stone products, encompassing the north and south operations, inclusive of:

(1) all rights, titles, and interests, including all leasehold and renewal rights, in the Alico Road Quarry, and related maintenance facilities and administration buildings including, but not limited to, all real property and aggregate and stone products reserves, capital equipment, fixtures, inventories, trucks and other vehicles, licenses, stone crushing equipment, power supply equipment, scales, interests, permits, assets or improvements related to the production, distribution, and sale of aggregate and stone products at the Alico Road Quarry; and

(2) all intangible assets, including aggregate and stone products reserve testing information, technical information, leases, know-how, safety procedures, quality assurance and control procedures, customer lists and credit records, contracts to supply third parties aggregate and stone products, associated with the Alico Road Quarry.

K. “Palmdale Sand Mine” means Harper Bros.’ Palmdale, Glades County, Florida sand mine located at 5200 U.S. 27, Northwest, Palmdale, Florida that produces silica sand, inclusive of:

- (1) all rights, titles, and interests, including all leasehold and renewal rights, in the Palmdale Sand Mine, and related maintenance facilities and administration buildings including, but not limited to, all real property and silica sand reserves, capital equipment, fixtures, inventories, trucks and other vehicles, licenses, sand washing equipment, power supply equipment, scales, interests, permits, assets or improvements related to the production, distribution, and sale of silica sand at the Alico Road Quarry; and
- (2) all intangible assets, including silica sand reserve testing information, technical information, know-how, leases, safety procedures, quality assurance and control procedures, customer lists and credit records, and contracts to supply third parties silica sand associated with the Palmdale Sand Mine.

II. OBJECTIVES

The **Proposed** Final Judgment filed in this case is meant to ensure Florida Rock’s prompt divestitures of the Alico Road Quarry and the Palmdale Sand Mine for the purpose of maintaining viable competitors in the sale of aggregate and silica sand in Southwest Florida to remedy the effects that the United States alleges would otherwise result from Florida Rock’s proposed acquisition of Harper Bros. This Hold Separate Stipulation and Order ensures, prior to such divestiture, that the Alico Road Quarry and the Palmdale Sand Mine that are being divested

be maintained as an independent, economically viable, ongoing business concern, and that competition is maintained during the pendency of the divestiture.

III. JURISDICTION AND VENUE

The 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 Middle District of Florida.

IV. HOLD SEPARATE PROVISIONS

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

A. Florida Rock shall preserve, maintain, and operate the Alico Road Quarry and the Palmdale Sand Mine assets as an independent competitor with management, sales and operations held entirely separate, distinct and apart from those of Florida Rock. Florida Rock shall not coordinate its production, marketing or sale of silica sand and aggregate or stone products with that produced by the Alico Road Quarry and the Palmdale Sand Mine assets. Within thirty (30) days of the entering of this Order, Florida Rock will inform the United States of the steps taken to comply with this provision.

B. Florida Rock shall take all steps necessary to ensure that: (1) the Alico Road Quarry and Palmdale Sand Mine assets will be maintained and operated as an independent, ongoing, economically viable and active competitor in the production and sale of silica sand and aggregate and stone products in Southwest Florida; (2) management of the Alico Road Quarry and the Palmdale Sand Mine assets will not be influenced by Florida Rock; and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making associated with the Alico Road Quarry and the Palmdale Sand Mine assets will be kept separate

and apart from the aggregate and stone products business of Florida Rock. Florida Rock's influence over the Alico Road Quarry and the Palmdale Sand Mine assets shall be limited to that necessary to carry out Florida Rock's obligations under this Hold Separate Stipulation and Order and the Final Judgment.

C. Florida Rock shall use all reasonable efforts to maintain and increase sales of silica sand and aggregate and stone products by the Alico Road Quarry and the Palmdale Sand Mine assets, and shall maintain at 1998 or previously approved levels, whichever are higher, promotional, advertising, sales, technical assistance, marketing and merchandising support for silica sand and aggregate and stone products produced or sold by the Alico Road Quarry and the Palmdale Sand Mine assets.

D. Florida Rock shall provide sufficient working capital to maintain the Alico Road Quarry and the Palmdale Sand Mine assets as economically viable, competitive, and ongoing businesses.

E. Florida Rock shall take all steps necessary to ensure that the Alico Road Quarry and the Palmdale Sand Mine assets are fully maintained in operable condition at no lower than their current rated capacity configurations, and shall maintain and adhere to normal repair and maintenance schedules for the Alico Road Quarry and the Palmdale Sand Mine assets.

F. Florida Rock 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 of the Alico Road Quarry and Palmdale Sand Mine assets.

G. Florida Rock 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 every four weeks or every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of the Alico Road Quarry and Palmdale Sand Mine assets.

H. Except in the ordinary course of business or as is otherwise consistent with this Hold Separate Stipulation and Order, defendants shall not hire, transfer or terminate, or alter any current employment or salary agreements for any Florida Rock or Harper Bros. employees who (i) on the date of the signing of this Agreement, work at the Alico Road Quarry and the Palmdale Sand Mine or (ii) are members of the management committee referenced in Section IV(I) of this Order.

I. Until such time as the Alico Road Quarry and the Palmdale Sand Mine assets are divested, the assets shall be managed by Fred Buckner. Mr. Buckner shall have complete managerial responsibility for the Alico Road Quarry and the Palmdale Sand Mine, subject to the provisions of this Order and the Final Judgment. In the event that Mr. Buckner is unable to perform his duties, Florida Rock shall appoint, subject to the United States' approval, a replacement within ten (10) working days. Should Florida Rock fail to appoint a replacement acceptable to the United States within ten (10) working days, the United States shall appoint a replacement.

J. Florida Rock 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 to a suitable purchaser.

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

Dated: May __25__, 1999

FOR PLAINTIFF UNITED STATES:

_____/s/_____
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FOR DEFENDANTS HARPER
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O R D E R

APPROVED FOR ENTRY and ORDERED¹ this 27th day of May, 1999, at Jacksonville, Florida.

_____/s/_____
UNITED STATES DISTRICT JUDGE

¹ **Final Judgement and Proposed Final Judgement mean the same thing.**