

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Action No. 64-39
v.	)	
	)	Civil - Tampa
AMERICAN CYANAMID COMPANY, ARMOUR AND	)	
COMPANY, W. R. GRACE & CO., INTERNATIONAL	)	Entered: October 28, 1965
MINERALS & CHEMICAL CORPORATION, SWIFT &	)	
COMPANY, and AMERICAN AGRICULTURAL	)	
CHEMICAL COMPANY,	)	
	)	
Defendants.	)	

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on February 17, 1964, and amendments thereto on April 27, 1964, and the plaintiff and the consenting defendants, by their respective attorneys, having severally consented to the entry of this Final Judgment herein, without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting evidence or an admission by any party with respect to any such issue;

NOW, THEREFORE, before the taking of any testimony herein, and without trial or adjudication of any issues 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 of the subject matter of this action and of the defendants consenting hereto. The complaint states a claim upon which relief may be granted against those defendants under Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

## II

As used in this Final Judgment:

(A) "Phosphate rock" means rock or pebble containing calcium phosphate which is mined by the defendants, among others, and which is used or sold for use as fertilizer or in the manufacture of fertilizer for its available phosphate content;

(B) "Producer" means a person, corporation, or other legal entity which mines and sells phosphate rock;

(C) "Escalation clause" means a provision in a contract for the sale of phosphate rock which gives either party to the contract the right to change the price to be paid in accordance with a predetermined ration to changes in the cost of fuel oil or labor;

(D) "Reopening provision" means a provision in a contract for the sale of phosphate rock which prescribes a specified calendar date or dates upon which the seller may propose a price increase, subject to the conditions and with the resulting consequences specified in the provision; and

(E) "Standard one-year contract" means a contract for the sale of phosphate rock which by its provisions will terminate in approximately 12 months and which (1) is used by a consenting defendant for more than 25% by number of its customers, or (2) is printed on its order forms or price lists.

## III

The provisions of this Final Judgment applicable to any consenting defendant shall apply also to each of its subsidiaries, successors and assignees and to their respective officers, directors, agents, servants and employees, and to all persons in active concert or participation with any such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise. For the purpose of this Final Judgment, a consenting defendant, its subsidiary and affiliated companies, and their officers, directors, agents, servants and employees shall, when acting as such, be considered to be one person.

IV

(A) Each of the consenting defendants is enjoined and restrained from entering into or carrying out any contract, agreement, or understanding with any other producer of phosphate rock to fix or maintain the price or other terms or conditions for the sale of phosphate rock to any third person.

(B) Each of the consenting defendants is enjoined and restrained for a period of ten (10) years from the date of entry of this decree from discussing with any other producer of phosphate rock what changes, if any, will be made in the sale price of phosphate rock to a third party because of changes in the cost to such producers of fuel oil or labor utilized in the production of phosphate rock.

(C) Each of the consenting defendants is enjoined and restrained for a period of five (5) years from the date of entry of this decree from including in any of its standard one-year contracts either an escalation clause or a reopening provision, or both.

(D) Each of the consenting defendants is enjoined and restrained for a period of one (1) year from the date of entry of this decree from carrying out or enforcing any provision of a contract for the sale of phosphate rock entered into after the date of the decree which constitutes either an escalation clause or a reopening provision, or both, except upon the specific request of a particular buyer.

V

Within sixty (60) days of the entry of this Final Judgment, each of the consenting defendants is ordered and directed individually and independently:

(A) To review, determine and establish its prices and other terms and conditions of sale for phosphate rock, on the basis of its independent judgment; provided, however, that compliance with the provisions of this paragraph V(A) and (B) shall not be required if within such a 60-day period

an affidavit is filed with this Court (with a copy to the Assistant Attorney General in charge of the Antitrust Division) stating that the defendant, prior to the effective date of this Final Judgment but subsequent to February 17, 1964, has reconsidered its prices for phosphate rock, withdrawn its then effective price list, if any, and issued new price lists, if any are used, for the sale of phosphate rock based upon its independent judgment in accordance with the requirements of this paragraph; nothing contained in this paragraph or elsewhere in this decree shall operate or be construed to operate to prevent any defendant from negotiating or modifying or otherwise changing the prices announced in accordance with this subparagraph (A);

(B) To withdraw its then current price lists, if any, and adopt and publish price lists, if any are used, arrived at pursuant to subparagraph (A) above.

#### VI

This Final Judgment shall be construed as relating only to commerce within the United States, its territories and possessions, and not to export sales or sales for export. It shall be in full force and effect for twenty (20) years commencing with the date on which it is entered, and nothing herein contained shall thereafter be construed to limit the application of the antitrust laws to any practice included in or exempted from this Final Judgment.

#### VII

For the purpose of determining or securing compliance with this Final Judgment duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any consenting defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(A) Access during the office hours of such defendant to books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant to the extent that same relate to any of the subject matters contained in this Final Judgment; and

(B) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers or employees of said defendant, who may have counsel present, regarding any such matters; provided that defendant shall have the right to require that a stenographic record be made of the interview and the right to a copy of any transcript of such interview.

Upon such written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, said defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment. No information obtained by the means provided for in this Section shall be divulged by any representative of the Department of Justice to any person except 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 for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

#### VIII

Jurisdiction is retained 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 thereof, and for the enforcement of compliance therewith and the punishment of violations thereof.

Dated: October 28, 1965

/s/ Joseph P. Lieb