

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

UNITED STATES OF AMERICA and
STATE OF TENNESSEE,

Plaintiffs,

v.

VULCAN MATERIALS COMPANY,

SPO PARTNERS II, L.P.,

and

AGGREGATES USA, LLC,

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. “Acquirer” means Blue Water Industries, or another entity to which Defendants divest the Divestiture Assets.

B. “Vulcan” means Defendant Vulcan Materials Company, a corporation headquartered in Birmingham, Alabama, its successors and assigns, and its subsidiaries,

divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. “Aggregates USA” means Defendant Aggregates USA, a corporation headquartered in Indianapolis, Indiana, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. “Blue Water Industries” means Blue Water Industries LLC, a wholly owned subsidiary of Blue Water Industries Holdings LLC, headquartered in Palm Beach, Florida, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. “Divestiture Assets” means:

1. Abingdon, Virginia Area

Aggregates USA’s quarry located at 21339 & 21490 Gravel Lake Rd., Abingdon, Virginia 24210;

2. Tri-Cities, Tennessee Area

- a. Aggregates USA’s quarry located at 350 W. Fourth Ave., Watauga, Tennessee 37694;
- b. Aggregates USA’s quarry located at 210 Judger Ben Allen Rd., Elizabethton, Tennessee 37643;
- c. Aggregates USA’s quarry located at 4175 Marbleton Rd., Unicoi, Tennessee 37692;
- d. Aggregates USA’s quarry located at 164 Asphalt Plant Rd., Jonesborough, Tennessee 37659; and
- e. Aggregates USA’s quarry located at 736 Centenary Rd., Blountville, Tennessee 37617;

3. Knoxville, Tennessee Area

- a. Aggregates USA's quarry at 2107 Big Hill Road, Lenoir City, Tennessee 37772;
- b. Aggregates USA's quarry at 2303 Gov. John Sevier Hwy., Knoxville, Tennessee 37914;
- c. Aggregates USA's quarry at 9600 Mascot Rd., Mascot, Tennessee 37806;
- d. Aggregates USA's quarry at 1949 E Raccoon Valley Rd., Heiskell, Tennessee 37754;
- e. Aggregates USA's quarry at 605 Cherokee Explosives Rd., Rutledge, Tennessee 37861;
- f. Aggregates USA's quarry at 450 and 461 Rocktown Road, Jefferson City, Tennessee 37760;
- g. Aggregates USA's quarry at 1001 Park St., New Market, Tennessee 37820;
- h. Aggregates USA's quarry at 1550 Quarry Road, New Market, Tennessee 37820;
- i. Aggregates USA's Coy Stone Plant at 345 E. Broadway Blvd., Jefferson City, Tennessee 37760;
- j. Aggregates USA's Coster Yard at 224 Heiskell Ave., Knoxville, Tennessee 37917; and
- k. Aggregates USA's Young Yard at 1977 West Andrew Johnson Highway, Strawberry Plains, Tennessee 37871.

4. all tangible assets used at the quarries and yards listed in Paragraphs

I(E)(1)-(3), including, but not limited to, all manufacturing equipment, tooling, and fixed assets, mining equipment, aggregate reserves, personal property, inventory, office furniture, materials, supplies, on- or off-site warehouses or storage facilities, and other tangible property and all

assets used in connection with the facilities listed in Paragraphs I(E)(1)-(3); all licenses, permits, and authorizations issued by any governmental organization relating to the facilities listed in Paragraphs I(E)(1)-(3); all contracts, agreements, teaming arrangements, leases (including renewal rights), commitments, certifications and understandings, including sales agreements and supply agreements relating to the facilities listed in Paragraphs I(E)(1)-(3); all customer lists, contracts, accounts, and credit records; all repair and performance records and all other records relating to the facilities listed in Paragraphs I(E)(1)-(3); and

5. all intangible assets used in the production and sale of aggregate at the quarries and yards listed in Paragraphs I(E)(1)-(3), including but not limited to, all contractual rights, patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names, technical information, computer software (including dispatch software and management information systems) and related documentation, 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, all manuals and technical information Defendants provide to their own employees, customers, suppliers, agents, or licensees, and all data (including aggregate reserve testing information) concerning the facilities listed in Paragraphs I(E)(1)-(3).

II. OBJECTIVES

The Final Judgment filed in this case is meant to ensure Defendants' prompt divestiture of the Divestiture Assets for the purpose of establishing a viable competitor in the production and sale of DOT-qualified coarse aggregate in certain parts of Abingdon, Virginia; Knoxville,

Tennessee; and Tri-Cities, Tennessee in order to remedy the effects that the Plaintiffs allege would otherwise result from Vulcan's acquisition of Aggregates USA. This Hold Separate Stipulation and Order ensures, prior to such divestitures, that the Divestiture Assets remain independent, economically viable, and ongoing business concerns that will remain independent and uninfluenced by Defendants, and that competition is maintained during the pendency of the ordered divestitures.

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 District of Columbia. Defendants waive service of summons of the Complaint.

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 ("APPA") 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 agree to arrange, at their expense, publication as quickly as possible of the newspaper notice required by the APPA, which shall be drafted by the United States in its sole discretion. The publication shall be arranged no later than three (3) business days after

Defendants' receipt from the United States of the text of the notice and the identity of the newspaper within which the publication shall be made. Defendants shall promptly send to the United States (1) confirmation that publication of the newspaper notice has been arranged, and (2) the certification of the publication prepared by the newspaper within which the notice was published.

C. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry 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 of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment. The United States shall have the full rights and enforcement powers in the proposed Final Judgment, including Section X, as though the same were in full force and effect as the final order of the Court.

D. 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.

E. 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.

F. In the event (1) the United States has withdrawn its consent, as provided in Paragraph IV(A) above, or (2) 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.

G. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that Defendants will later 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 divestitures required by the Final Judgment have been accomplished:

A. Defendants shall preserve, maintain, and continue to operate the Divestiture Assets as independent, ongoing, economically viable competitive businesses, with management, sales and operations of such assets held entirely separate, distinct and apart from those of Defendants' other operations. Defendants shall not coordinate their production, marketing, or terms of sale of any products with those produced by or sold under any of the Divestiture Assets. Within twenty (20) days after the entry of the Hold Separate Stipulation and Order, Defendants will inform the United States of the steps Defendants have taken to comply with this Hold Separate Stipulation and Order.

B. Defendants shall take all steps necessary to ensure that (1) the Divestiture Assets will be maintained and operated as independent, ongoing, economically viable and active competitors in the production and sale of DOT-qualified coarse aggregate; (2) management of the Divestiture Assets will not be influenced by Defendants; and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning the production, distribution, engineering, development, sale, or servicing of products by or under any of the Divestiture Assets will be kept separate and apart from Defendants' other

operations.

C. Defendants shall use all reasonable efforts to maintain and increase the sales and revenues of the products produced by or sold via the Divestiture Assets, and shall maintain at 2017 or previously approved levels for 2018, whichever are higher, all promotional, advertising, sales, technical assistance, marketing and merchandising support for the Divestiture Assets.

D. Defendants shall provide sufficient working capital and lines and sources of credit to continue to maintain the Divestiture Assets as economically viable and competitive, ongoing businesses, consistent with the requirements of Paragraphs V(A) and (B).

E. Defendants shall take all steps necessary to ensure that the Divestiture Assets are fully maintained in operable condition at no less than their current capacity and sales, and shall maintain and adhere to normal repair and maintenance schedules for the Divestiture Assets.

F. Defendants shall not, except as part of the divestitures 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 Divestiture Assets.

G. Defendants 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 Divestiture Assets.

H. Defendants shall take no action that would jeopardize, delay, or impede the sale of the Divestiture Assets.

I. Defendants' employees with primary responsibility for the production, operation,

distribution, and sale of DOT-qualified coarse aggregates at the Divestiture Assets shall not be transferred or reassigned to other areas within the company except for transfer bids initiated by employees pursuant to Defendants' regular, established job posting policy. Defendants shall provide the United States with ten (10) calendar days' notice of such transfer.

J. Defendants shall appoint, subject to the approval of the United States, a person or persons to oversee the Divestiture Assets, and who will be responsible for Defendants' compliance with this section. This person shall have complete managerial responsibility for the Divestiture Assets, subject to the provisions of this Final Judgment. In the event such person is unable to perform his duties, Defendants shall appoint, subject to the approval of the United States, a replacement within ten (10) working days. Should Defendants fail to appoint a replacement acceptable to the United States within this time period, the United States shall appoint a replacement.

K. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestitures pursuant to the Final Judgment to an Acquirer acceptable to the United States.

VI. DURATION OF HOLD SEPARATE AND ASSET PRESERVATION OBLIGATIONS

Defendants' obligations under Section V of this Hold Separate Stipulation and Order shall remain in effect until (1) consummation of the divestitures required by the proposed Final Judgment or (2) until further order of the Court. If the United States voluntarily dismisses the

Complaint in this matter, Defendants are released from all further obligations under this Hold Separate Stipulation and Order.

Dated: December 22, 2017

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA

Handwritten signature of Jay D. Owen in blue ink, written over a horizontal line.

Jay D. Owen
United States Department of Justice
Antitrust Division
Defense, Industrials, and Aerospace Section
450 Fifth Street, N.W., Suite 8700
Washington, DC 20530
Tel.: (202) 598-2987
Fax: (202) 514-9033
Email: jay.owen@usdoj.gov

FOR PLAINTIFF STATE OF TENNESSEE:

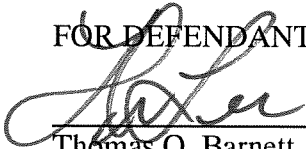
HERBERT H. SLATERY III
Attorney General and Reporter

A handwritten signature in blue ink, appearing to read "Victor J. Domen, Jr.", is written over a horizontal line.

VICTOR J. DOMEN, JR.
Senior Counsel
Office of the Tennessee Attorney General
500 Charlotte Avenue
Nashville, TN 37202
Phone: 615-(253)-3327
vic.domen@ag.tn.gov

Dated: December 22, 2017

FOR DEFENDANT VULCAN MATERIALS COMPANY:



Thomas O. Barnett

Anne Lee

Covington & Burling LLP

One CityCenter

850 Tenth Street, NW

Washington, DC 20001-4956

Tel: (202) 662-5407

Fax: (202) 778-5535

Email: tbarnett@cov.com

FOR DEFENDANT AGGREGATES USA:

Steven L. Holley

Sullivan & Cromwell LLP

125 Broad Street

New York, NY 10004-2498

Tel: (212) 558-4737

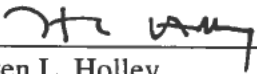
Fax: (212) 558-3588

Email: holleys@sullcrom.com

FOR DEFENDANT VULCAN MATERIALS COMPANY:

Thomas O. Barnett
Anne Lee
Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
Tel: (202) 662-5407
Fax: (202) 778-5535
Email: tbarnett@cov.com

FOR DEFENDANT AGGREGATES USA/ SPO PARTNERS II, L.P.



Steven L. Holley
Sullivan & Cromwell LLP
125 Broad Street
New York, NY 10004-2498
Tel: (212) 558-4737
Fax: (212) 558-3588
Email: holleys@sullcrom.com

ORDER

IT IS SO ORDERED by this Court, this ____ day of _____.

United States District Judge