

**Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Recovery Liability Act**

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed partial consent decree in *United States v. The Glidden Company, et al.*, Civil Action No. 5:95 CV 1009, was lodged on May 31, 1996 with the United States District Court for the Northern District of Ohio. This proposed consent decree would resolve the United States' claims against The Glidden Company, one of two defendants in this case, for unreimbursed past costs incurred at the Bohaty Drum Site in Medina County, Ohio, pursuant Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9607, in return for a payment of \$60,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. The Glidden Company, et al.*, Civil Action No. 5:95 CV 1009, and the Department of Justice Reference No. 90-11-2-1108.

The proposed consent decree may be examined at the Office of the United States Attorney, Northern District of Ohio, 1800 Bank One Center, 600 Superior Avenue, East, Cleveland, Ohio, 44114-2600; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604-3590; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, 202-624-0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of \$4.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

*Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 96-14789 Filed 6-11-96; 8:45 am]

BILLING CODE 4410-01-M

**Notice of Lodging of Consent Decree Pursuant to the Clean Water Act**

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States of America v. Rueth Builders, Inc.*, Civ. No. 2:96-CV-66 (N.D. Ind.), was lodged with the United States District Court for the Northern District of Indiana on March 8, 1996. The proposed decree concerns alleged violations of the Clean Water Act, 33 U.S.C. 1311, as a result of the discharge of dredged and fill materials onto approximately 0.40 acres of wetlands by Rueth Buildings, Inc., in Dyer, Lake County, Indiana.

The Consent Decree provides for the payment of a \$10,000.00 civil penalty to the United States and permanently enjoins Rueth Builders, Inc. from taking any actions, or causing others to take any actions, which result in the discharge of dredged or fill material into waters of the United States, as defined by the Clean Water Act and regulations promulgated thereunder, except as in compliance with an individual permit issued pursuant to 33 U.S.C. 1344(a), or with any applicable general permit issued by the United States Army Corps of Engineers.

The Department of Justice will receive written comments relating to the consent decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, Attention: Steven E. Rusak, Trial Attorney, Environmental Defense Section, P.O. Box 23986, Washington, D.C. 20026-3986, and should refer to *United States of America v. Rueth Builders, Inc.*, DJ Reference No. 90-5-1-6-556.

The proposed consent decree may be examined at the Offices of the United States Attorney for the Northern District of Indiana, 507 State Street, Fourth Floor, Hammond, Indiana 46320; the office of Greg Carlson, Wetlands Enforcement Officer, Wetlands Division, Wetlands and Watershed Section, Wetlands Regulatory Unit, Region V of the United States Environmental Protection Agency, 77 W. Jackson Boulevard, 16th Floor, Chicago, Illinois, 60604, (312) 886-0124, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of \$2.75

for a copy of the consent decree with attachments.

Letitia J. Grishaw,

*Chief, Environmental Defense Section, Environment and Natural Resources Division, United States Department of Justice.*

[FR Doc. 96-14796 Filed 6-11-96; 8:45 am]

BILLING CODE 4410-01-M

**Antitrust Division**

**United States v. A&L Mayer Associates, Inc., et al. No. 96-CV-40-44 (E.D. Pa., Filed May 30, 1996); Proposed Final Judgment and Competitive Impact Statement**

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)-(h), that a proposed Final Consent Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the Eastern District of Pennsylvania in the above-captioned case.

On May 30, 1996, the United States filed a civil antitrust Complaint to prevent and restrain A&L Mayer Associates, Inc., A&L Mayer, Inc. and Fibras Saltillo, S.A. de C.V., from conspiring to fix prices and allocate the sales volume of tampico fiber imported and sold in the United States in violation of Section 1 of the Sherman Act (15 U.S.C. 1). Tampico fiber is a vegetable fiber grown in Mexico and used as a filler in industrial and consumer brushes.

The complaint alleges that the defendants agreed with unnamed co-conspirators to: (1) Fix the prices of tampico fiber imported into the United States; (2) fix the resale prices charged by their United States distributors; and (3) allocate tampico fiber sales between their distributors.

The proposed Final Judgment would prohibit the defendants from entering into any agreement or understanding with any other processor of tampico fiber or any of such processor's distributors for:

(1) Raising, fixing, or maintaining the price or other terms or conditions for the sale or supply of tampico fiber;

(2) Allocating sales volume, geographic markets or customers for tampico fiber;

(3) Taking concerted action to discourage or eliminate new entrants into the tampico fiber market; and

(4) Taking concerted action to restrict or eliminate the supply of tampico fiber to any customer.

The proposed Final Judgment would also prohibit the defendants from adhering to or adopting any resale

pricing policy and from terminating or threatening to terminate any distributor for that distributor's pricing.

Public comment is invited within the statutory sixty (60) day period. Such comments will be published in the Federal Register and filed with the Court. Comments should be addressed to Robert E. Connolly, Chief, Middle Atlantic Office, U.S. Department of Justice, Antitrust Division, The Curtis Center, 6th and Walnut Streets, Suite 650 West, Philadelphia, PA 19106 (telephone number 215-597-7405).

Rebecca P. Dick,

*Deputy Director of Operations.*

In the United States District Court for the Eastern District of Pennsylvania

United States of America, Plaintiff, v. A&L Mayer Associates, Inc.; A&L Mayer, Inc.; and Fibras Saltillo, S.A. DE C.V.; Defendants. Civil Action No. 96-CV-4044, Judge Jay C. Waldman.

#### Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

(1) The parties consent that a final judgment in the form hereto attached may be filed and entered by the Court at any time after the expiration of the sixty (60) day period for public comment provided by the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 (b)-(h), without further notice to any party or other proceedings, either upon the motion of any party or upon the Court's own motion, provided that plaintiff has not withdrawn its consent as provided herein;

(2) The plaintiff may withdraw its consent hereto at any time within said period of sixty (60) days by serving notice thereof upon the other party hereto and filing said notice with the Court;

(3) In the event the plaintiff withdraws its consent hereto, this stipulation shall be of no effect whatever in this or any other proceeding and the making of this stipulation shall not in any manner prejudice any consenting party to any subsequent proceedings.

Dated: May 31, 1996.

For the Plaintiff:

Anne K. Bingaman,

*Assistant Attorney General.*

Joel I. Klein,

*Deputy Assistant Attorney General.*

Rebecca P. Dick,

*Deputy Director of Operations.*

Robert E. Connolly,

*Chief, Middle Atlantic Office.*

For the Defendants:

A&L Mayer Associates, Inc.

A&L Mayer, Inc.

Fibras Saltillo, S.A. DE C.V.

Respectfully submitted,

Edward S. Panek.

Michelle A. Pionkowski.

Roger L. Currier.

Joseph Muoio,

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*Department of Justice, Middle Atlantic Office,*

*The Curtis Center, Suite 650W, 7th & Walnut Streets, Philadelphia, PA 19106, Tel.: (215) 597-7401.*

In the United States District Court for the Eastern District of Pennsylvania

United States of America, Plaintiff, v. A&L Mayer Associates, Inc.; and Fibras Saltillo, S.A. DE C.V., Defendants. Civil Action No. 96-CV-4044, Judge Jay C. Waldman.

#### Final Judgment

Plaintiff, the United States of America, filed its complaint on May 31, 1996. 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. This Final Judgment shall not be evidence against or an admission by any party to any issue of fact or law. Defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court.

THEREFORE, before the taking of any testimony and without trial or adjudication of any such issue of fact or law herein, and upon consent of the parties, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

#### I

##### *Jurisdiction*

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The complaint states a claim upon which relief may be granted against defendants under Section 1, of the Sherman Act, 15 U.S.C. § 1.

#### II

##### *Definitions*

As used in this final judgment:

A. "Agreement" means any contract, agreement or understanding, whether

oral or written, or any term or provision thereof.

B. "Person" means any individual, corporation, partnership, company, sole proprietorship, firm or other legal entity.

C. "Tampico fiber" is a natural vegetable fiber produced by the lechuguilla plant and grown in the deserts of northern Mexico. It is harvested by individual farmers, processed, finished and exported to the United States and worldwide where it is used as brush filling material for industrial and consumer brushes. It is available in natural white, bleached white, black, gray and a wide variety of mixtures.

D. "Resale price" means any price, price floor, price ceiling, price range, or any mark-up, formula or margin of profit relating to tampico fiber sold by distributors.

#### III

##### *Applicability*

A. This final judgment applies to each of the defendants and to their officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this final judgment by personal service or otherwise.

B. Each defendant shall require, as a condition of any sale or other disposition of all, or substantially all, of its stock or assets used in the manufacture and/or sale of tampico fiber, that the acquiring party/parties agree to be bound by the provisions of this final judgment, and that such agreement be filed with the Court.

#### IV

##### *Prohibited Conduct*

As to tampico fiber imported into or sold in the United States, each defendant is enjoined and restrained from:

A. directly or indirectly entering into, adhering to, maintaining, furthering, enforcing or claiming any rights under any contract, agreement, arrangement, understanding, plan, program, combination or conspiracy with any other processor of tampico fiber or any of such processor's distributors for:

(1) raising, fixing, or maintaining the prices or other terms or conditions for the sale or supply of tampico fiber;

(2) allocating sales volumes, geographic markets or customers for tampico fiber;

(3) taking concerted action to discourage or eliminate new entrants into the tampico fiber market; and

(4) taking concerted action to restrict or eliminate the supply of tampico fiber to any customer;

B. directly or indirectly entering into, adhering to, maintaining, furthering, enforcing or claiming any right under any contract, agreement, understanding, plan or program with any distributor to fix or maintain the prices at which tampico fiber sold by defendants may be resold or offered for sale by any distributor;

C. directly or indirectly adopting, promulgating, suggesting, announcing or establishing any resale pricing policy for tampico fiber;

D. threatening any distributor with termination or terminating any distributor on the basis of that distributor's pricing; or discussing with any present or potential distributor any decision regarding termination of any other distributor for any reason directly or indirectly related to the latter distributor's resale pricing; provided, however, that nothing herein shall prohibit any defendant from terminating a distributor for any reason other than the distributor's resale pricing; and

E. participating or engaging directly or indirectly through any trade association, organization or other group in any activity which is prohibited in IV (A)-(D) above.

## V

### *Permitted Communication*

Other than Section IV(A) of this Final Judgment, nothing contained in this final judgment shall prohibit a defendant from negotiating, arranging or communicating with another processor of tampico fiber, or any of such processor's distributors or with any agent, broker or representative of such processor or distributor solely in connection with *bona fide* proposed or actual purchases of tampico fiber from, or sale of tampico fiber to, that processor or distributor.

## VI

### *Compliance Program*

Each defendant shall establish within thirty (30) days of entry of this final judgment and shall thereafter for so long as it or its employees are engaged in the manufacture or sale of tampico fiber, maintain a program to insure compliance with this final judgment, which program shall include at a minimum the following:

A. designating an Antitrust Compliance Officer responsible, on a continuing basis, for achieving compliance with this final judgment and promptly reporting to the

Department of Justice any violation of the final judgment;

B. within sixty (60) days after the date of entry of this final judgment, furnishing a copy thereof to each of its own, its subsidiaries', and its affiliates' (1) officers, (2) directors, and (3) employees or managing agents who are engaged in, or have responsibility for or authority over, the pricing of tampico fiber; and advising and informing each such person that his or her violation of this final judgment could result in a conviction for contempt of court and imprisonment and/or fine;

C. within seventy five (75) days after the date of entry of this final judgment, certifying to the plaintiff whether it has designated an Antitrust Compliance Officer and has distributed the final judgment in accordance with Sections VI (A) and (B) above;

D. within thirty (30) days after each such person becomes an officer, director, employee or agent of the kind described in Section VI (B), furnishing to him or her a copy of this final judgment together with the advice specified in Section VI (B);

E. annually distributing the final judgment to each person described in Sections VI (B) and (D);

F. annually briefing each person described in Sections VI (B) and (D) as to defendants's policy regarding compliance with the Sherman Act and with this final judgment, including the advice that such defendant will make legal advice available to such persons regarding any compliance questions or problems;

G. annually obtaining (and maintaining) from each person described in Sections VI (B) and (D) a certification that he or she:

(1) has read, understands and agrees to abide by the terms of this final judgment;

(2) has been advised of and understands the company's policy with respect to compliance with the Sherman Act and the final judgment;

(3) has been advised and understands that his or her non-compliance with the final judgment may result in conviction for criminal contempt of court and imprisonment and/or fine; and

(4) is not aware of any violation of the final judgment that has not been reported to the Antitrust Compliance Officer; and

H. on or about each anniversary date of the entry of the final judgment, submitting to the plaintiff an annual declaration as to the fact and manner of its compliance with this final judgment.

## VII

### *Inspection and Compliance*

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 a defendant made to its principal office, be permitted:

(1) access, during office hours of such defendant, 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, which may have counsel present, relating to any matters contained in this final judgment; and

(2) subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, employees and agents of such defendant, 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 a defendant's principal office, such defendant 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 VII of the final judgment 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 to plaintiff, such defendant 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 such defendant 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 prior to divulging such material in any legal processing (other than a grand jury

proceeding) to which such defendant is not a party; and

E. nothing set forth in this final judgment shall prevent the Antitrust Division from utilizing other investigative alternatives, such as Civil Investigative Demand process provided by 15 U.S.C. §§ 1311-1314 or a federal grand jury, to determine if the defendant has complied with this final judgment.

## VIII

### *Retention of Jurisdiction*

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 violations hereof.

## IX

### *Ten-Year Expiration*

This final judgment will expire on the tenth anniversary of its date of entry.

## X

### *Public Interest*

Entry of this final judgment is in the public interest.

Dated: \_\_\_\_\_

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UNITED STATES DISTRICT JUDGE

In the United States District Court for the Eastern District of Pennsylvania

United States of America, Plaintiff, v. A&L Mayer Associates, Inc.; A&L Mayer, Inc.; and Fibras Saltillo, S.A. DE C.V., Defendants.  
Civil Action No. 96-CV-4044, Judge Jay C. Waldman.

### Competitive Impact Statement

Pursuant to Section 2 of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b), the United States files this Competitive Impact Statement relating to the proposed final judgment as to *United States v. A&L Mayer Associates, Inc., et al.*, submitted for entry in this civil antitrust proceeding.

## I

### *Nature and Purpose of the Proceedings*

On \_\_\_\_\_, the United States filed a civil antitrust complaint alleging that under Section 4 of the Sherman Act, as amended, 15 U.S.C. § 4, the above-named defendants combined and conspired with others from at least as early as January 1990 to April 1995, to lessen and eliminate competition in the sale of tampico fiber in the United

States, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. A companion criminal information against A&L Mayer Associates, Inc. was filed on \_\_\_\_\_. The civil complaint alleges that as part of the conspiracy, the defendants and co-conspirators among other things:

(a) fixed the prices at which tampico fiber was imported into the United States;

(b) fixed the resale prices for tampico fiber charged by their exclusive United States distributors; and

(c) allocated sales between such distributors.

The complaint seeks a judgment by the Court declaring that the defendants engaged in unlawful combinations and conspiracies in restraint of trade in violation of the Sherman Act. It also seeks an order by the Court to enjoin and restrain the defendants from any such activities or other activities having a similar purpose or effect in the future.

The United States and defendants have stipulated that the proposed final judgment may be entered after compliance with the APPA, unless the United States withdraws its consent.

The Court's entry of the proposed final judgment will terminate this civil action against these defendants, except that the Court will retain jurisdiction over the matter for possible further proceedings to construe, modify or enforce the judgment, or to punish violations of any of its provisions.

## II

### *Description of the Practices Giving Rise to the Alleged Violations of the Antitrust Laws*

As defined in the complaint, tampico fiber is a natural vegetable fiber produced by the lechuguilla plant and grown in the deserts of northern Mexico. It is harvested by individual farmers, processed, finished and exported worldwide, where it is used as brush filling material for industrial and consumer brushes. It is available in natural white, bleached white, black, gray and a wide variety of mixtures.

The complaint further alleges that the defendant corporations accounted for aggregate United States sales of tampico of approximately \$10 million during the period January of 1990 through April of 1995. During the period of time covered by the complaint the defendants sold and shipped substantial quantities of tampico fiber in a continuous and uninterrupted flow of interstate commerce from the processing facility of Fibras Saltillo, S.A. de C.V. in Mexico through A&L Mayer Associates, Inc., with offices in New York, to their

exclusive United States distributor and the distributor's customers throughout the United States, including those located in the Eastern District of Pennsylvania. Similarly, the complaint alleges that non-defendant co-conspirators sold and shipped additional substantial quantities of tampico fiber in a continuous and uninterrupted flow of interstate commerce from another processing facility in Mexico through their exclusive United States distributor to customers through the United States, including those located in the Eastern District of Pennsylvania.

The complaint alleges that the defendants engaged in three forms of concerted action and states three causes of action: (1) an agreement to fix import prices, (2) an agreement to fix resale prices, and (3) an agreement to allocate sales. Essentially, the complaint alleges that defendants and their co-conspirators fixed the prices at which tampico fiber was sold to their two exclusive United States distributors, agreed on resale prices with those two distributors and agreed to a percentage allocation of sales volume between those distributors.

The defendants and their co-conspirators went far beyond suggesting resale prices for their distributors. Resale price sheets were provided to the two United States distributors by the defendants and co-conspirators. As a condition of becoming and remaining a United States distributor of tampico, one of these distributors agreed by written contract with one of the defendants to sell at the prices listed on the price sheet. From at least January 1990 on, both of the two exclusive United States' distributors of tampico had identical price sheets supplied by the defendants and co-conspirators, and the majority of sales were made by those distributors at these list prices or other agreed upon prices.

The use of resale price maintenance by the defendants and co-conspirators was designed to and had the effect of monitoring and enforcing the horizontal price-fixing and sales volume allocation agreements between the defendants and co-conspirators. The defendants' conduct had the effect of lessening or eliminating competition between the two United States distributors of tampico in order to maintain prices at artificially high and non-competitive levels.

In furtherance of the conspiracy, the defendants and their co-conspirators, among other things, periodically met, discussed and agreed to new import and resale prices for tampico fiber, and met, discussed and compared the annual

sales volumes of their United States distributors to ensure they were at or about the percentages the defendants and co-conspirators had agreed upon for each.

### III

#### *Explanation of the Proposed Final Judgment*

The United States and the defendants have stipulated that a final judgment, in the form filed with the Court, may be entered by the Court at any time after compliance with the APPA, 15 U.S.C. § 16 (b)–(h). The proposed final judgment provides that the entry of the final judgment does not constitute any evidence against or an admission by any party with respect to any issue of fact or law. Under the provisions of Section 2(e) of the APPA, entry of the proposed final judgment is conditioned upon the Court finding that its entry will be in the public interest.

The United States has filed a criminal information charging A&L Mayer Associates, Inc. and unnamed co-conspirators with a conspiracy to fix the prices and allocate sales of tampico fiber imported into and sold in the United States, in violation of the Sherman Act (15 U.S.C. § 1).

The United States does not routinely file both civil and criminal cases involving the same underlying conduct. It is appropriate to do so in this case, however, because of the extent of the control of the market by a small number of companies conspiring to eliminate price competition in the sale of tampico fiber in the United States through a comprehensive scheme of fixing the price of imported tampico, allocating sales volumes between their exclusive distributors, and dictating the prices at which those distributors resold tampico fiber within the United States.

The proposed final judgment contains two principal forms of relief. First, the defendants are enjoined from repeating the behavior which characterized the tampico fiber conspiracy and from certain other conduct that could have similar anticompetitive effects. Second, the proposed final judgment places affirmative burdens on the defendants to pursue a compliance program directed toward avoiding a repetition of the tampico fiber conspiracy.

#### *A. Prohibited Conduct*

Section IV of the proposed final judgment broadly enjoins each defendant from conspiring to fix prices, allocate sales, discourage new entrants, or otherwise restrict or eliminate the supply of tampico fiber sold to any customer in the United States, (IV (A));

from engaging in any conduct to set or control the resale prices of any distributor to their customers (IV (B), (C) and (D)); and from joining any group whose aims or activities are prohibited by Sections IV (A)–(D) of the final judgment (IV (E)). Specifically, as regards tampico fiber sold in the United States, Sections IV (A)–(E) of the proposed final judgment provide as follows.

Section IV(A) of the proposed final judgment enjoins the defendants from directly or indirectly agreeing with any other processor of tampico fiber or such processor's distributors to (1) Raise, fix, or maintain the prices or other terms or conditions for the sale or supply of tampico fiber; (2) allocate sales volumes, geographic markets or customers for tampico; (3) discourage or eliminate new entrants in the tampico fiber market; and (4) restrict or eliminate the supply of tampico fiber to any customer.

Section IV(B) of the proposed final judgment enjoins the defendants from directly or indirectly entering into, adhering to, maintaining, furthering, enforcing or claiming any right under any contract, agreement, understanding, plan or program with any distributor to fix or maintain the prices at which tampico fiber sold by defendants may be resold or offered for sale by an distributor.

Section IV(C) of the proposed final judgment enjoins the defendants from directly or indirectly adopting, promulgating, suggesting, announcing or establishing any resale pricing policy for tampico fiber.

Section IV(D) of the proposed final judgment enjoins the defendants from threatening any distributor with termination or terminating any distributor for that distributor's pricing; or discussing with any present or potential distributor any decision regarding termination of any other distributor for any reason directly or indirectly related to the latter distributor's resale pricing; provided, however, that nothing herein shall prohibit any defendant from terminating a distributor for any reasons other than the distributor's pricing.

Section IV (E) of the proposed final judgment enjoins the defendants from participating or engaging, directly or indirectly through any trade association, organization or other group, in any activity which is prohibited in Sections IV (A)–(D) of the proposed final judgment.

#### *B. Permitted Communications*

The only exception to the board prohibitions of Section IV of the proposed final judgment is contained in

Section V and concerns any necessary negotiations, arrangements or communications with another processor or such processor's distributors or any agent, broker or representative of such processor or distributor in connection with *bona fide* proposed or actual purchases of tampico fiber from or sales of tampico fiber to that processor or distributor.

#### *C. Defendants' Affirmative Obligations*

Section VI requires that within thirty (30) days of entry of the final judgment, the defendants adopt or pursue an affirmative compliance program directed toward ensuring that their employees comply with the antitrust laws. More specifically, the program must include the designation of an Antitrust Compliance Officer responsible for compliance with the final judgment and reporting any violations of its terms. It further requires that each defendant furnish a copy of the final judgment to each of its officers and directors and each of its employees who is engaged in or has responsibility for or authority over pricing of tampico fiber within sixty (60) days of the date of entry, and to certify that it has distributed those copies and designated an Antitrust Compliance officer within seventy-five (75) days. Copies of the final judgment also must be distributed to anyone who becomes such an officer, director or employee within thirty (30) days of holding that position and to all such individuals annually.

Furthermore, Section VI require each defendant to brief each officer, director and employee engaged in or having responsibility over pricing of tampico fiber as to the defendant's policy regarding compliance with the Sherman Act and with the final judgment, including the advice that his or her violation of the final judgment could result in a conviction for contempt of court and imprisonment and/or fine and that the defendant will make legal advice available to such persons regarding compliance questions or problems. The defendants annually must obtain (and maintain) certifications from each such person that the aforementioned briefing, advice and a copy of the final judgment were received and understood and that he or she is not aware of any violation of the final judgment that has not been reported to the Antitrust Compliance Officer. Finally, each defendant must submit to the plaintiff an annual declaration as to the fact and manner of its compliance with the final judgment.

Under Section VII of the final judgment, the Justice Department will have access, upon reasonable notice, to

the defendants' records and personnel in order to determine defendants' compliance with the judgment.

#### *D. Scope of the Proposed Judgment*

##### (1) Persons Bound by the Decree

The proposed judgment expressly provides in Section III that its provisions apply to each of the defendants and each of their officers, directors, agents and employees, subsidiaries, successors and assigns and to all other persons who receive actual notice of the terms of judgment.

In addition, Section III of the judgment prohibits each of the defendants from selling or transferring all or substantially all of its stock or assets used in its tampico fiber business unless the acquiring party files with the Court its consent to be bound by the provisions of the judgment.

##### (2) Duration of the Judgment

Section IX provides that the judgment will expire on the tenth anniversary of its entry.

#### *Effect of the Proposed Judgment on Competition*

The prohibition terms of Section IV of the judgment are designed to ensure that each defendant will act independently in determining the prices, and terms and conditions at which it will sell or offer to sell tampico fiber, and that there will be no conspiratorial restraints (horizontal or vertical) in the tampico fiber market. The affirmative obligations of Sections VI and VII are designed to insure that each corporate defendant's employees are aware of their obligations under the decree in order to avoid a repetition of behavior that occurred in the tampico fiber industry during the conspiracy period. Compliance with the proposed judgment will prevent price collusion, allocation of sales, markets and customers, concerted activities in restricting new entrants and customers, and resale price restraints by each of the defendants with each other and with other tampico fiber processors and/or distributors.

#### IV

#### *Remedies Available to Potential Private Plaintiffs*

After entry of the proposed final judgment, any potential private plaintiff who might have been damaged by the alleged violation will retain the same right to sue for monetary damages and any other legal and equitable remedies which he/she may have had if the proposed judgment had not been entered. The proposed judgment may not be used, however, as *prima facie*

evidence in private litigation, pursuant to Section 5(a) of the Clayton Act, as amended, 15 U.S.C. § 16(a).

#### V

#### *Procedures Available for Modification of the Proposed Consent Judgment*

The proposed final judgment is subject to a stipulation between the government and the defendants which provides that the government may withdraw its consent to the proposed judgment any time before the Court has found that entry of the proposed judgment is in the public interest. By its terms, the proposed judgment provides for the Court's retention of jurisdiction of this action in order to permit any of the parties to apply to the Court for such orders as may be necessary or appropriate for the modification of the final judgment.

As provided by the APPA (15 U.S.C. § 16), any person wishing to comment upon the proposed judgment may, for a sixty-day (60) period subsequent to the publishing of this document in the Federal Register, submit written comments to the United States Department of Justice, Antitrust Division, Attention: Robert E. Connolly, Chief, Middle Atlantic Office, Suite 650 West, 7th and Walnut Streets, Philadelphia, Pennsylvania 19106. Such comments and the government's response to them will be filed with the Court and published in the Federal Register. The government will evaluate all such comments to determine whether there is any reason for withdrawal of its consent to the proposed judgment.

#### VI

#### *Alternative to the Proposed Final Judgment*

The alternative to the proposed final judgment considered by the Antitrust Division was a full trial of the issues on the merits and relief. The Division considers the substantive language of the proposed judgment to be of sufficient scope and effectiveness to make litigation on the issues unnecessary, as the judgment provides appropriate relief against the violations alleged in the complaint.

#### VII

#### *Determinative Materials and Documents*

No materials or documents were considered determinative by the United States in formulating the proposed Final Judgment. Therefore, none are being filed pursuant to the APPA, 15 U.S.C. § 16(b).

Dated: May 31, 1996.

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Respectfully submitted,

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#### **Notice Pursuant to the National Cooperative Research and Production Act of 1993, Center for Emissions Control, Inc.**

Notice is hereby given that, on May 8, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), the Center for Emissions Control, Inc. ("CEC") filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notification was filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, CEC advised that Diversey Corporation, Cincinnati, OH; Edjetech Services, Inc., Wellington, OH; Grace Container Products, Lexington, MA; Midbrook Products, Inc., Jackson, MI; Precision Machined Products Association, Brecksville, OH; and REM Sales, Inc., East Granby, CT, have become members. Additionally, Acurex, Inc.; Air Canada; AT&T Corporation; Bethlehem Steel Corporation; Bristol-Meyers Squibb Company; Brulin & Company, Inc.; Camco International, Inc.; Chattanooga Group, Inc.; Connor Formed Metal Products Inc.; Delta Omega Technologies, Inc.; Detrex Corporation; Dunlee, Inc.; Environsolv, Inc.; Exxon Chemical Canada, Inc.; Foamex Products, Inc.; Glidco Organics Corporation; Hahn and Kolb, Inc.; HCC Industries/Hermetic Seal Corporation; Kelsey-Hayes Corporation; Mill Creek Company, Inc.; Oakite Products, Inc.; Occidental Chemical Corporation; Quess Industries, Inc.; Ranco, Inc.; Safety Kleen Equipment System, Inc.; Shell