

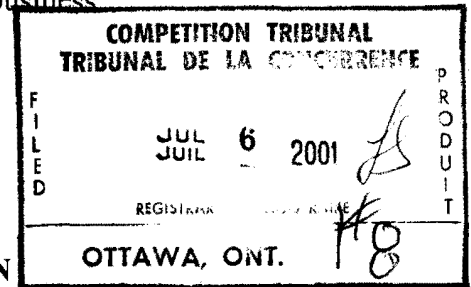
**THE COMPETITION TRIBUNAL**

**IN THE MATTER OF** an application by the Competition-missioner of Competition for an order pursuant to sections 92 and 105 of the Competition Act, R.S.C. 1985, c. C-34 as amended; and,

**AND IN THE MATTER OF** the proposed acquisition by Lafarge S.A. of Blue Circle Industries plc, a company engaged in the construction materials business

**BETWEEN:**

**THE COMMISSIONER OF COMPETITION**



**Applicant**

**- and -**

**LAFARGE S.A.**

**Respondent**

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**SUPPLEMENTARY AFFIDAVIT OF MICHAEL SULLIVAN**

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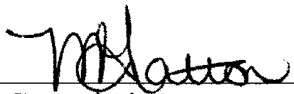
**I, Michael Sullivan**, of the City of Ottawa, the Province of Ontario, Public Servant, **MAKE OATH AND SAY:**

1. I am a Senior Competition Law Officer at the Competition Bureau, Mergers Branch responsible for the conduct and management of the investigation of the proposed acquisition by Lafarge S.A. ("Lafarge") of all of the shares of Blue Circle Industries plc

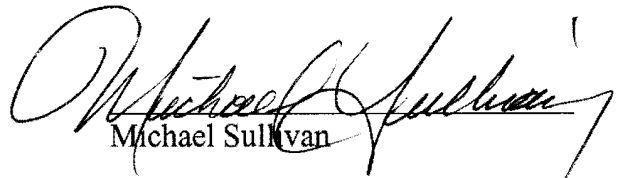
("Blue Circle") that it does not already own ("Acquisition").

2. I swear this affidavit for purposes of providing the Competition Tribunal with a status report on the ongoing efforts of the Respondent, Lafarge, to complete the Acquisition and to sell the "Affected Businesses" listed in Schedule "A" to the Interim Consent Order issued by McKeown J. on June 19, 2001 ("Interim Consent Order") and to the Draft Consent Order filed in the within Application (hereafter, the "Affected Businesses").
3. I am advised by counsel for Lafarge and verily believe that the Acquisition will become effective on or after July 11, 2001, following the completion of required proceedings in the British High Court. Attached as Exhibit "A" hereto is a true copy of a June 18, 2001 press release, issued by Lafarge, to that effect.
4. Lafarge has entered into an agreement to sell the "Affected Businesses" described as the "Great Lakes Package" and the "Great Lakes Aggregates Package" in Schedule "A" to the Interim Consent Order and to the Draft Consent Order, to S.A. Industrias Votorantim ("Votorantim"), a Brazilian company which is one of the largest cement producers in the world. The agreement to sell these businesses to Votorantim was accomplished in a manner consistent with the terms of the Draft Consent Order and the Commissioner has approved Votorantim as the purchaser of these businesses.
5. The sale to Votorantim is conditional on, amongst other customary conditions, approval of Votorantim as the purchaser by the Federal Trade Commission ("FTC"). As indicated in the June 18, 2001 News Release of the FTC, a true copy of which is attached hereto as Exhibit "B", the FTC's approval of Votorantim as the purchaser could be granted, at the earliest, by July 19, 2001 (i.e., 30 days following Lafarge's application of June 18, 2001 to the FTC for approval of the divestiture to Votorantim). As a consequence, it is conceivable that the divestiture of the above-referenced Affected Businesses could be completed prior to the Competition Tribunal's consideration of the within Application for a Consent Order, as expressly contemplated in paragraph 4 of the Draft Consent Order. However, the FTC is not required by statute or otherwise to approve the divestiture to Votorantim within a certain time frame. Therefore, it is also possible that when the Tribunal considers the within Application for a Consent Order, the FTC will not yet have provided its approval regarding the divestiture to Votorantim.
6. I am advised by counsel for Lafarge and verily believe that the Affected Businesses described as the "Other Aggregates Package" and the "Asphalt and Paving (Road Construction) Package" in Schedule "A" to the Interim Consent Order and to the Draft Consent Order were offered to and refused by Votorantim and are intended to be sold by way of auction, over the coming months. It is not, however, anticipated that such a sale(s) will occur prior to the Competition Tribunal's consideration of the within Application for a Consent Order.

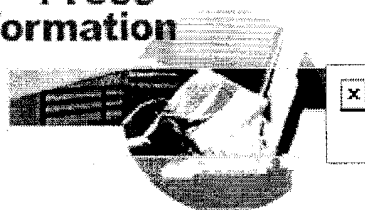
SWORN BEFORE ME, at the City of Hull,  
in the Province of Quebec,  
this 5 day of July 2001.

  
A Commissioner



  
Michael Sullivan

## Press Information



## Press releases

THIS IS EXHIBIT "A" TO THE  
 AFFIDAVIT OF Michael Sullivan  
 SWORN BEFORE ME THIS 5<sup>th</sup> DAY  
 OF July 20 01  
 M. Hutton  
 COMMISSIONER FOR OATHS

• Press release of 6/18/2001



### LAFARGE / BLUE CIRCLE APPROVAL BY THE US FEDERAL TRADE COMMISSION (FTC)

Lafarge is pleased to announce that the Federal Trade Commission (FTC) of the United States of America has cleared the acquisition by Lafarge of Blue Circle Industries PLC.

This acquisition was already cleared by the European Commission on 1st March 2001 and, subject to a divestment undertaking, by the Canadian Competition Bureau on 11th April 2001.

In North America the divestment undertakings required by the Canadian Competition Bureau and by the FTC include in the Great Lakes area two cement plants (Bowmanville and St Marys), a grinding station, several cement shore terminals and various concrete, aggregates and asphalt/paving assets.

Such requirement is already largely satisfied by an agreement recently made with Votorantim for the sale of most of these assets for USD 727 million.

A lime plant in Alabama and another cement terminal in New York State are also being sold pursuant to these divestment undertakings.

As a result of the clearance of the FTC, the scheme of arrangement is expected to become effective on 11th July 2001, after the sanction of the High Court scheduled on that date. The trading of Blue Circle shares shall therefore be suspended one day before and their de-listing should take place one day after such sanction. Blue Circle shareholders are being informed through a circular requesting them to return by 6th July 2001, the form of election for the consideration to be paid for their shares. This consideration shall be received by them no later than 25th July 2001.

With the acquisition of Blue Circle, Lafarge, world leader in building materials, will also become the leading cement manufacturer worldwide with an annual capacity of over 150 million tonnes.

[Retour en haut de page](#)



THIS IS EXHIBIT "B" TO THE  
 AFFIDAVIT OF Michael Sullivan  
 SWORN BEFORE ME THIS 5th DAY  
 OF July 20 01  
 Commissioner for Oaths

Federal Trade Commission  
 600 Pennsylvania Avenue, NW  
 Washington, DC 20580

For Release: June 18, 2001

## FTC Clears Merger of Lafarge S.A. and Blue Circle Industries

### *Three Divestitures Required to Ensure Competition in Cement and Lime Industries*

The Federal Trade Commission accepted a proposed consent order on June 15, 2001 designed to remedy the anticompetitive effects of the merger of Lafarge S.A. (Lafarge) and Blue Circle Industries PLC (Blue Circle), two leading companies in the North American cement and lime markets. Through the order, which is subject to public comment and final approval, the companies would be required to divest Blue Circle's cement business serving the Great Lakes Region (including all or parts of Ohio, Michigan, Illinois, Wisconsin and New York); Blue Circle's cement business in the Syracuse, New York area; and Blue Circle's lime business in the southeast United States.

The Syracuse cement business will be divested to Glens Falls Lehigh Cement Company (Glens Falls). The other assets will be divested to a Commission-approved acquirer. The Commission has also accepted an order to hold separate and maintain assets, which requires the companies to hold assets to be divested as separate entities and maintain them as viable, competitive and ongoing operations until the divestitures are completed.

The proposed divestitures were developed in coordination with the Canadian Competition Bureau, which had required divestitures as a condition of approving the merger. "By working together, the two agencies were able to protect consumers' interests," said Michael E. Antalics, Deputy Director of the Commission's Bureau of Competition.

### **Parties to the Proposed Merger**

Lafarge, a French corporation with global operations manufacturing and selling cement and other building materials, is one of the top three cement manufacturers in the world. It also has an ownership interest in a joint venture with Carmeuse North America Group B.V. (Carmeuse) to manufacture and sell lime. Blue Circle, based in England, also manufactures and sells cement worldwide. It is one of the top five cement manufacturers in North America, and participates in a joint venture with Chemical Lime Company (Chemical) to manufacture and sell lime. On January 8, 2001,

#### Related Documents:

[Canadian press release](#)

File No. 001 0112  
 Docket No. C-4014  
 In the Matter of LaFarge S.A.

[Complaint](#) [PDF 13KB]

[Order to Hold Separate and Maintain Assets](#) [PDF 92KB]

[Consent Agreement](#) [PDF 16KB]

[Proposed Decision and Order](#) [PDF 88KB]

[Analysis to Aid Public Comment](#) [PDF 11KB]

[Trustee Letter](#) [PDF 11KB]



Lafarge and Blue Circle announced their intention to merge, though an agreement in which Lafarge will pay Blue Circle shareholders approximately \$3.8 billion in cash for the 75 percent of Blue Circle's outstanding voting stock that Lafarge does not already own.

### **The Commission's Complaint**

According to the Commission's complaint, the merger as proposed would violate Section 7 of the Clayton Act and Section 5 of the FTC Act by illegally reducing competition in the U.S. markets for cement and lime. Cement is a construction raw material that is mixed with water to form concrete. It is made by combining calcium, silicon, aluminum, iron and other raw materials. Cement manufacturers quarry, crush and grind these raw materials, burn them in kilns at high temperatures and grind the resulting pellets into a fine powder. Lime is used in many ways in the steel industry, typically to remove impurities, and in other industries. It is made by quarrying and grinding limestone and burning it in kilns at high temperatures.

The complaint defines three geographic areas for which the merger was analyzed: 1) the market for cement in the province of Ontario, Canada; all of Michigan; and the coastal markets around Lake Superior, Lake Michigan, Lake Erie and Ontario, including Green Bay and Milwaukee, Wisconsin; Chicago, Illinois; Cleveland, Ohio; and Buffalo, New York (the Great Lakes Region); 2) the market for cement in the region within a 70-mile radius of Syracuse, New York, including the metropolitan areas of Syracuse, Utica, Rome, Elmira and Binghamton (the Syracuse Region); and 3) the market for lime in Alabama, Georgia and Florida (the Southeast Region).

The complaint contends that the markets for cement in the Great Lakes Region and Syracuse Region, as well as the market for lime in the Southeast Region, are highly concentrated, and that the merger would substantially increase this concentration. In the Great Lakes Region, Lafarge and Blue Circle currently have a combined 47 percent share of the cement market. After the transaction, the top four firms in the region would control 91 percent of the market. In the Syracuse Region, the companies currently have a combined market share of 68 percent, and after the merger, the merged entity and another company would control all of the cement market in this region. In the Southeast Region, if the merger proceeds, the Blue Circle/Lafarge entity and the Carmeuse joint venture together with the Blue Circle/Lafarge and Chemical joint venture would control 85 percent of the lime market.

According to the complaint, the merger would likely eliminate direct competition between Lafarge and Blue Circle, would increase the likelihood of coordinated interaction among the remaining firms in the market, and would result in increased prices for cement and lime. Entry by a new competitor, the Commission contends, would be neither timely, likely nor sufficient to offset these adverse competitive effects.

**Terms of the Proposed Consent Order**

Under the terms of the proposed consent order, the anticompetitive effects of the merger would be addressed through three divestitures. First, Lafarge would divest Blue Circle's cement business in the Great Lakes Region to a Commission-approved buyer within 180 days of the merger's consummation. Second, Lafarge would divest Blue Circle's cement terminal serving the Syracuse Region to Glens Falls no later than 20 days after the merger closes. Finally, Blue Circle would be required to obtain total ownership of its lime joint venture from Chemical and Lafarge would then be required to divest Blue Circle's lime business in the Southeast Region to a Commission-approved buyer within 180 days of the merger's consummation. Lafarge would be required to wait until the Blue Circle/Chemical joint venture is unwound before consummating the merger. In each case, if the companies do not complete the divestitures within the time periods specified in the order, the FTC could appoint a trustee to sell the assets.

The proposed consent order also contains an Order to Hold Separate and Maintain Assets that would require Lafarge and Blue Circle to hold Blue Circle's Great Lakes Region cement business and Southeast Region lime business separate from the rest of their operations until Lafarge has divested these assets to a Commission-approved buyer. Under the terms of the order, the companies must preserve and maintain the marketability, viability and competitiveness of each business to be divested. Compliance with these terms will be overseen by Commission-approved monitor trustees.

A summary of the proposed consent agreement will be published in the Federal Register shortly. The agreement will be subject to public comment for 30 days, until July 18, 2001, after which the Commission will decide whether to make it final. Comments should be addressed to the FTC, Office of the Secretary, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

The Commission vote to accept the proposed consent agreement and Order to Hold Separate and Maintain Assets was 5-0.

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**NOTE:** A consent agreement is for settlement purposes only and does not constitute an admission of a law violation. When the Commission issues a consent order on a final basis, it carries the force of law with respect to future actions. Each violation of such an order may result in a civil penalty of \$11,000.

**Copies** of the complaint, proposed consent agreement, and an analysis of the proposed consent order to aid public comment, are available from the FTC's Web site at <http://www.ftc.gov> and also from the FTC's Consumer Response Center, Room 130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580; 1-877-FTC-HELP (877-382-4357); TDD for the hearing impaired 202-326-2502. To find out the latest news as it is announced, call the FTC NewsPhone recording at 202-326-2710.

**MEDIA CONTACT:**

Mitchell J. Katz

Office of Public Affairs

*Office of Public Affairs*  
202-326-2161

**STAFF CONTACTS:**

Richard Liebeskind  
*Bureau of Competition*  
202-326-2441

(FTC File No. 001-0112)  
(Lafarge.final.wpd)





**Federal Trade Commission**  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

For Release: June 18, 2001

## **FTC Clears Merger of Lafarge S.A. and Blue Circle Industries**

### ***Three Divestitures Required to Ensure Competition in Cement and Lime Industries***

The Federal Trade Commission accepted a proposed consent order on June 15, 2001 designed to remedy the anticompetitive effects of the merger of Lafarge S.A. (Lafarge) and Blue Circle Industries PLC (Blue Circle), two leading companies in the North American cement and lime markets. Through the order, which is subject to public comment and final approval, the companies would be required to divest Blue Circle's cement business serving the Great Lakes Region (including all or parts of Ohio, Michigan, Illinois, Wisconsin and New York); Blue Circle's cement business in the Syracuse, New York area; and Blue Circle's lime business in the southeast United States.

The Syracuse cement business will be divested to Glens Falls Lehigh Cement Company (Glens Falls). The other assets will be divested to a Commission-approved acquirer. The Commission has also accepted an order to hold separate and maintain assets, which requires the companies to hold assets to be divested as separate entities and maintain them as viable, competitive and ongoing operations until the divestitures are completed.

The proposed divestitures were developed in coordination with the Canadian Competition Bureau, which had required divestitures as a condition of approving the merger. "By working together, the two agencies were able to protect consumers' interests," said Michael E. Antalics, Deputy Director of the Commission's Bureau of Competition.

### **Parties to the Proposed Merger**

Lafarge, a French corporation with global operations manufacturing and selling cement and other building materials, is one of the top three cement manufacturers in the world. It also has an ownership interest in a joint venture with Carmeuse North America Group B.V. (Carmeuse) to manufacture and sell lime. Blue Circle, based in England, also manufactures and sells cement worldwide. It is one of the top five cement manufacturers in North America, and participates in a joint venture with Chemical Lime Company (Chemical) to manufacture and sell lime. On January 8, 2001,

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### **The Commission's Complaint**

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The complaint defines three geographic areas for which the merger was analyzed: 1) the market for cement in the province of Ontario, Canada; all of Michigan; and the coastal markets around Lake Superior, Lake Michigan, Lake Erie and Ontario, including Green Bay and Milwaukee, Wisconsin; Chicago, Illinois; Cleveland, Ohio; and Buffalo, New York (the Great Lakes Region); 2) the market for cement in the region within a 70-mile radius of Syracuse, New York, including the metropolitan areas of Syracuse, Utica, Rome, Elmira and Binghamton (the Syracuse Region); and 3) the market for lime in Alabama, Georgia and Florida (the Southeast Region).

The complaint contends that the markets for cement in the Great Lakes Region and Syracuse Region, as well as the market for lime in the Southeast Region, are highly concentrated, and that the merger would substantially increase this concentration. In the Great Lakes Region, Lafarge and Blue Circle currently have a combined 47 percent share of the cement market. After the transaction, the top four firms in the region would control 91 percent of the market. In the Syracuse Region, the companies currently have a combined market share of 68 percent, and after the merger, the merged entity and another company would control all of the cement market in this region. In the Southeast Region, if the merger proceeds, the Blue Circle/Lafarge entity and the Carmeuse joint venture together with the Blue Circle/Lafarge and Chemical joint venture would control 85 percent of the lime market.

According to the complaint, the merger would likely eliminate direct competition between Lafarge and Blue Circle, would increase the likelihood of coordinated interaction among the remaining firms in the market, and would result in increased prices for cement and lime. Entry by a new competitor, the Commission contends, would be neither timely, likely nor sufficient to offset these adverse competitive effects.

**TERMS OF THE PROPOSED CONSENT ORDER**

Under the terms of the proposed consent order, the anticompetitive effects of the merger would be addressed through three divestitures. First, Lafarge would divest Blue Circle's cement business in the Great Lakes Region to a Commission-approved buyer within 180 days of the merger's consummation. Second, Lafarge would divest Blue Circle's cement terminal serving the Syracuse Region to Glens Falls no later than 20 days after the merger closes. Finally, Blue Circle would be required to obtain total ownership of its lime joint venture from Chemical and Lafarge would then be required to divest Blue Circle's lime business in the Southeast Region to a Commission-approved buyer within 180 days of the merger's consummation. Lafarge would be required to wait until the Blue Circle/Chemical joint venture is unwound before consummating the merger. In each case, if the companies do not complete the divestitures within the time periods specified in the order, the FTC could appoint a trustee to sell the assets.

The proposed consent order also contains an Order to Hold Separate and Maintain Assets that would require Lafarge and Blue Circle to hold Blue Circle's Great Lakes Region cement business and Southeast Region lime business separate from the rest of their operations until Lafarge has divested these assets to a Commission-approved buyer. Under the terms of the order, the companies must preserve and maintain the marketability, viability and competitiveness of each business to be divested. Compliance with these terms will be overseen by Commission-approved monitor trustees.

A summary of the proposed consent agreement will be published in the Federal Register shortly. The agreement will be subject to public comment for 30 days, until July 18, 2001, after which the Commission will decide whether to make it final. Comments should be addressed to the FTC, Office of the Secretary, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

The Commission vote to accept the proposed consent agreement and Order to Hold Separate and Maintain Assets was 5-0.

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Richard Liebeskind

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202-326-2441

(FTC File No. 001-0112)

(Lafarge.final.wpd)

**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**

---

In the Matter of )

**LAFARGE S.A.**, )  
a corporation, )

**BLUE CIRCLE INDUSTRIES PLC**, )  
a corporation, )

**BLUE CIRCLE NORTH AMERICA, INC.**, )  
a corporation, and )

**BLUE CIRCLE, INC.**, )  
a corporation. )

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**Docket No. C-4014**

**COMPLAINT**

Pursuant to the provisions of the Federal Trade Commission Act and of the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission (the "Commission"), having reason to believe that Respondent Lafarge S.A. ("Lafarge") has entered into an agreement to acquire all of the securities of Respondent Blue Circle Industries PLC ("Blue Circle PLC"); and having reason to believe that the transaction between Respondents is in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

**I. RESPONDENTS AND JURISDICTION**

1. Respondent Lafarge S.A. is a corporation organized, existing and doing business under and by virtue of the laws of France, with its office and principal place of business located at 61 rue des Belles Feuilles, Paris, France. Lafarge S.A. owns more than 50% of the common stock of Lafarge Corporation whose office and principal place of business in the United States is at 12950 Worldgate Drive, Suite 600, Herndon, VA 20191. Lafarge, among other things, is engaged in the manufacture and sale of cement and lime.
2. Respondent Blue Circle Industries PLC is a company registered in England and Wales under number 66568 whose registered office is located at 84 Eccleston Square, London,

England. Blue Circle Industries PLC does business in the United States through Blue Circle North America, Inc., Blue Circle, Inc., BlueChem, L.L.C. and other entities. Blue Circle PLC, among other things, is engaged in the manufacture and sale of cement and lime.

3. Respondent Blue Circle North America, Inc., a corporation controlled by Blue Circle PLC, is organized, existing and doing business under and by virtue of the laws of the State of Georgia, and has its office and principal place of business located at 1800 Parkway Place, Suite 1100, Marietta, GA 30067. Blue Circle North America, Inc., among other things, is engaged in the manufacture and sale of cement and lime.
4. Respondent Blue Circle, Inc., a corporation controlled by Blue Circle PLC, is organized, existing and doing business under and by virtue of the laws of the State of Alabama, and has its office and principal place of business located at 1800 Parkway Place, Suite 1100, Marietta, GA 30067. Blue Circle, Inc., among other things, is engaged in the manufacture and sale of cement and lime.
5. Respondents are, and at all times relevant herein have been, engaged in commerce as defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and are corporations who business is in, or affects, commerce as defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

## **II. THE TRANSACTION**

6. On January 8, 2001, Lafarge and Blue Circle PLC approved an acquisition agreement pursuant to which Lafarge will acquire the outstanding common stock of Blue Circle PLC for an amount valued, at the time of entering into the agreement, at approximately \$3.8 billion (the "Acquisition").

## **COUNT I**

### **CEMENT IN THE GREAT LAKES REGION**

7. Paragraphs 1-6 are incorporated by reference as if fully set forth herein.
8. One relevant line of commerce in which to analyze the effects of the Acquisition is the manufacture, marketing and sale of cement.
9. Cement is the essential binding ingredient in concrete. Cement is a construction raw material that users mix with water and aggregates (crushed stone, sand, or gravel) to form concrete. Cement is a closely controlled chemical combination of calcium (normally from limestone), silicon, aluminum, iron and small amounts of other ingredients.

10. Cement is made by quarrying, crushing and grinding the raw materials, burning them in large kilns at extremely high temperatures and finely grinding the resulting marble-size pellets (called "clinker") with gypsum into an extremely fine, usually gray, powder. The term "cement" includes its related products, including, but not limited to, portland cement and masonry and mortar cement. Cement produced by one manufacturer is virtually indistinguishable from that manufactured by another.
11. One relevant geographic market in which to analyze the effects of the Acquisition is the Great Lakes region (hereafter the "Great Lakes Region").
12. The Great Lakes Region consists of the province of Ontario, Canada, all of Michigan and the coastal areas around Lake Superior, Lake Michigan, Lake Huron, Lake Erie and Lake Ontario, including, but not limited to, Green Bay and Milwaukee, WI, Chicago, IL, Cleveland, OH and Buffalo, NY.
13. The market for cement in the Great Lakes Region is highly concentrated, and the Acquisition, if consummated, would substantially increase that concentration.
14. Entry into the Great Lakes Region cement market would not be timely, likely or sufficient to deter or offset the adverse competitive effects arising from the Acquisition.
15. The effects of the Acquisition, if consummated, may be to substantially lessen competition for cement in the Great Lakes Region because, among other things:
  - a. it would increase concentration substantially in a highly concentrated market;
  - b. it would eliminate actual, direct, substantial, and potentially increased competition between Respondents;
  - c. it would facilitate the unilateral exercise of market power by the merged firm;
  - d. it would increase the likelihood of coordinated interaction among the remaining firms; and
  - e. it will likely result in increased prices for cement.

## **COUNT II**

### **CEMENT IN THE SYRACUSE, NY REGION**

16. Paragraphs 1-10 are incorporated by reference as if fully set forth herein.

17. One relevant geographic market in which to analyze the effects of the Acquisition is the market for cement in the region within approximately 70 miles of Blue Circle PLC's terminal located in Solway, New York, including all of the surrounding metropolitan areas (the "Syracuse Region"). The metropolitan areas in the Syracuse Region include Syracuse, Utica, Rome, Elmira, and Binghamton, NY.
18. The market for cement in the Syracuse Region is highly concentrated, and the Acquisition, if consummated, would substantially increase that concentration.
19. Entry into the market for cement in the Syracuse Region would not be timely, likely or sufficient to deter or offset the adverse competitive effects arising from the Acquisition.
20. The effects of the Acquisition, if consummated, may be to substantially lessen competition in the market for cement in the Syracuse Region because, among other things:
  - a. it would increase concentration substantially in a highly concentrated market;
  - b. it would eliminate actual, direct, substantial, and potentially increased competition between Respondents;
  - c. it would facilitate the unilateral exercise of market power by the merged firm;
  - d. it would increase the likelihood of coordinated interaction among the remaining firms; and
  - e. it will likely result in increased prices for cement.

### **COUNT III**

#### **LIME IN THE SOUTHEASTERN UNITED STATES**

21. Paragraphs 1-6 are incorporated by reference as if fully set forth herein.
22. One relevant line of commerce in which to analyze the effects of the Acquisition is the manufacture, marketing and sale of lime.
23. Lime is produced through the combination of calcium (normally from limestone) and other raw materials, and is produced by quarrying, crushing and grinding the raw materials, and then burning them in kilns at high temperatures. Lime is used in a variety of applications, including, among others, the steel and paper industries and water treatment plants. Lime produced by one manufacturer is virtually indistinguishable from that manufactured by another.



24. One relevant geographic market in which to analyze the effects of the Acquisition is the market for lime in the Southeastern region of the United States consisting of Alabama, Georgia and Florida (the "Southeast").
25. The market for lime in the Southeast is highly concentrated, and the Acquisition will substantially increase that concentration.
26. Entry into the market for lime in the Southeast would not be timely, likely or sufficient to deter or offset the adverse competitive effects arising from the Acquisition.
27. The effect of the Acquisition may be to substantially lessen competition in the market for lime in the Southeast because, among other things:
  - a. it would increase concentration substantially in a highly concentrated market;
  - b. it would reduce actual, direct, substantial, and potentially increased competition between Respondents;
  - c. it would increase the likelihood of coordinated interaction; and
  - d. it will likely result in increased prices for lime.

### **III. VIOLATIONS CHARGED**

28. The agreement referenced in Paragraph 6 entered into by Lafarge and Blue Circle PLC constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Further, the Acquisition, if consummated, would constitute a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this 15<sup>th</sup> day of June, 2001, issues its Complaint against said Respondents.

By the Commission.

SEAL

Benjamin I. Berman  
Acting Secretary

**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**

\_\_\_\_\_  
In the Matter of )

**LAFARGE S.A.**, )  
a corporation, )

**BLUE CIRCLE INDUSTRIES PLC**, )  
a corporation, )

**BLUE CIRCLE NORTH AMERICA, INC.**, )  
a corporation, and )

**BLUE CIRCLE, INC.**, )  
a corporation. )  
\_\_\_\_\_)

File No. 001 0112

**AGREEMENT CONTAINING CONSENT ORDERS**

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition by Lafarge S.A. ("Lafarge") of certain voting securities of Blue Circle Industries PLC ("Blue Circle PLC"), and it now appearing that Lafarge and Blue Circle PLC, hereinafter sometimes referred to as "Proposed Respondents," are willing to enter into this Agreement Containing Consent Orders ("Consent Agreement") to divest certain assets and providing for other relief:

**IT IS HEREBY AGREED** by and between Proposed Respondents, by their duly authorized officers and attorney, and counsel for the Commission that:

1. Proposed Respondent Lafarge S.A. is a corporation organized, existing and doing business under and by virtue of the laws of France, with its office and principal place of business located at 61 rue des Belles Feuilles, Paris, France. Lafarge S.A. owns more than 50% of the common stock of Lafarge Corporation whose office and principal place of business in the United States is located at 12950 Worldgate Drive, Suite 600, Herndon, VA 20191.
2. Proposed Respondent Blue Circle Industries PLC is a company registered in England and Wales under number 66568 whose registered office is located at 84 Eccleston Square,

London, England. Blue Circle Industries PLC does business in the United States through Blue Circle North America Inc., Blue Circle Inc., BlueChem, L.L.C. and other entities.

3. Proposed Respondent Blue Circle North America, Inc., a corporation controlled by Blue Circle PLC, is organized, existing and doing business under and by virtue of the laws of the State of Georgia, and has its office and principal place of business located at 1800 Parkway Place, Suite 1100, Marietta, GA 30067.
4. Proposed Respondent Blue Circle, Inc., a corporation controlled by Blue Circle PLC, is organized, existing and doing business under and by virtue of the laws of the State of Alabama, and has its office and principal place of business located at 1800 Parkway Place, Suite 1100, Marietta, GA 30067.
5. Proposed Respondents admit all the jurisdictional facts set forth in the draft of Complaint here attached.
6. Proposed Respondents waive
  - a. any further procedural steps;
  - b. the requirement that the Commission's Order to Hold Separate and Maintain Assets (the "Hold Separate") and Decision and Order, here attached and made a part hereof, contain a statement of findings of fact and conclusions of law;
  - c. all rights to seek judicial review or otherwise to challenge or contest the validity of the Hold Separate and Decision and Order entered pursuant to this Consent Agreement; and
  - d. any claim under the Equal Access to Justice Act.
7. Proposed Respondents shall submit an initial compliance report within thirty (30) days from the date on which this Consent Agreement is executed setting forth in detail the manner in which Proposed Respondents have complied and will comply with the Hold Separate and the Decision and Order. Such reports will not become part of the public record unless and until this Consent Agreement and the accompanying Decision and Order and Hold Separate are accepted by the Commission for public comment.
8. This Consent Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Consent Agreement is accepted by the Commission, it, together with the Complaint contemplated thereby, will be placed on the public record for a period of thirty (30) days and information in respect thereto

publicly released. The Commission thereafter may either withdraw its acceptance of this Consent Agreement and so notify Proposed Respondents, in which event it will take such action as it may consider appropriate, or amend its complaint if circumstances so require and issue its Decision and Order, in disposition of the proceeding.

9. This Consent Agreement is for settlement purposes only and does not constitute an admission by Proposed Respondents that the law has been violated as alleged in the draft Complaint here attached, or that the facts as alleged in the draft Complaint, other than jurisdictional facts, are true.
10. Because there may be interim competitive harm, and divestiture or other relief resulting from a proceeding challenging the legality of the proposed acquisition might not be possible, or might be less than an effective remedy, the Commission may issue the Hold Separate at any time after it accepts this Consent Agreement.
  - a. Within ten (10) days after execution of this Consent Agreement, Proposed Respondents shall enter into the Lime Hold Separate Trustee Agreement (which shall include a trust agreement between Proposed Respondents and the Divestiture Trustee for the Lime Assets) as provided in Paragraph II of the Hold Separate.
  - b. Within ten (10) days after execution of the Lime Hold Separate Trustee Agreement, Proposed Respondents shall enter into a management agreement with the Lime Manager as provided in Paragraph II of the Hold Separate.
  - c. Within ten (10) days after execution of this Consent Agreement, Proposed Respondents shall enter into the Great Lakes Hold Separate Trustee Agreement (which shall include a trust agreement between Proposed Respondents and the Divestiture Trustee for the Great Lakes Assets) as provided in Paragraph III of the Hold Separate.
  - d. Within ten (10) days after execution of the Great Lakes Hold Separate Trustee Agreement, Proposed Respondents shall enter into a management agreement with the Great Lakes Manager as provided in Paragraph III of the Hold Separate.
  - e. Proposed Respondents shall not consummate the Acquisition (as this term is defined in the Decision and Order) unless and until Proposed Respondents have entered into the agreements described in this paragraph 10.
11. This Consent Agreement contemplates that, if it is accepted by the Commission, the Commission may (1) issue its Complaint corresponding in form and substance with the draft Complaint here attached, (2) issue and serve its Hold Separate, (3) issue and serve its

Decision and Order, and (4) make information public with respect thereto. If such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission may, without further notice to Proposed Respondents, issue the attached Decision and Order containing an order to divest in disposition of the proceeding. When final, the Decision and Order and Hold Separate shall have the same force and effect, and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Decision and Order and Hold Separate shall become final upon service. Delivery of the Complaint, Decision and Order, and Hold Separate to Proposed Respondents' United States counsel named in this Consent Agreement by any means specified in Commission Rule 4.4(a), 16 C.F.R. § 4.4.(a), shall constitute service. Proposed Respondents waive any right they may have to any other manner of service. The Complaint may be used in construing the terms of the Decision and Order and Hold Separate. No agreement, understanding, representation, or interpretation not contained in the Decision and Order, Hold Separate, or the Consent Agreement may be used to vary or contradict the terms of the Decision and Order or the Hold Separate.

12. By signing this Consent Agreement, Proposed Respondents represent and warrant that they can accomplish the full relief contemplated by the attached Decision and Order and the Hold Separate, and that all parents, subsidiaries, affiliates, and successors necessary to effectuate the full relief contemplated by this Consent Agreement are parties to the Consent Agreement and are bound thereby as if they had signed this Consent Agreement and were made parties to this proceeding and to the orders.
13. Proposed Respondents have read the Complaint, Decision and Order, and Hold Separate contemplated hereby. Proposed Respondents understand that once the Decision and Order and Hold Separate have been issued they will be required to file one or more compliance reports showing that they have fully complied with the Decision and Order and the Hold Separate. Proposed Respondents agree to comply with the Decision and Order and the Hold Separate from the date they execute this Consent Agreement. Proposed Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Decision and Order and the Hold Separate.

**LAFARGE S.A.**

**FEDERAL TRADE COMMISSION**

By: \_\_\_\_\_  
Bernard Kasriel  
Vice Chairman and Chief Operating Officer

By: \_\_\_\_\_  
Chul Pak  
Attorney

Dated: \_\_\_\_\_, 2001

**APPROVED:**

\_\_\_\_\_  
George S. Cary, Esq.  
Cleary, Gottlieb, Steen & Hamilton  
Counsel for Lafarge S.A.

\_\_\_\_\_  
Morris A. Bloom  
Deputy Assistant Director

**BLUE CIRCLE INDUSTRIES PLC**

By: \_\_\_\_\_  
Richard Tapp  
Head of Group Legal and Secretariat

\_\_\_\_\_  
Richard Liebeskind  
Assistant Director

Dated: \_\_\_\_\_, 2001

\_\_\_\_\_  
Molly S. Boast  
Director  
Bureau of Competition

\_\_\_\_\_  
William Blumenthal, Esq.  
King & Spalding  
Counsel for Blue Circle Industries PLC

**BLUE CIRCLE NORTH AMERICA INC.**

By: \_\_\_\_\_  
Frederick J. Kempf  
Vice President, Corporate Resources and Chief Financial Officer

Dated: \_\_\_\_\_, 2001

\_\_\_\_\_  
William Blumenthal, Esq.  
King & Spalding  
Counsel for Blue Circle Industries PLC

**BLUE CIRCLE INC.**

By: \_\_\_\_\_  
Frederick J. Kempf  
Vice President, Corporate Resources and Chief Financial Officer

Dated: \_\_\_\_\_, 2001

\_\_\_\_\_  
William Blumenthal, Esq.  
King & Spalding  
Counsel for Blue Circle Industries PLC

**Attachments**

Complaint  
Order to Hold Separate and Maintain Assets  
Decision and Order



**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**      **Timothy J. Muris, Chairman**  
                              **Sheila F. Anthony**  
                              **Mozelle W. Thompson**  
                              **Orson Swindle**  
                              **Thomas B. Leary**

In the Matter of	)	
	)	
	)	
<b>LAFARGE S.A.,</b>	)	
a corporation,	)	
	)	
<b>BLUE CIRCLE INDUSTRIES PLC,</b>	)	
a corporation,	)	
	)	
<b>BLUE CIRCLE NORTH AMERICA, INC.,</b>	)	Docket No. C-
a corporation, and	)	
	)	
<b>BLUE CIRCLE, INC.,</b>	)	
a corporation.	)	
	)	

**ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS**

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition by Respondent Lafarge S.A. ("Lafarge") of certain voting securities of Respondent Blue Circle Industries PLC ("Blue Circle PLC"), and Respondents having been furnished thereafter with a copy of the draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders ("Consent Agreement"), an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of the Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts and that a Complaint should issue stating its charges in that respect, and having determined to accept the executed Consent Agreement and to place such Consent Agreement containing the Decision and Order on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues this Order to Hold Separate and Maintain Assets (“Hold Separate”):

1. Respondent Lafarge S.A. is a corporation organized, existing and doing business under and by virtue of the laws of France, with its office and principal place of business located at 61 rue des Belles Feuilles, Paris, France. Lafarge S.A. owns more than 50% of the common stock of Lafarge Corporation whose office and principal place of business in the United States is located at 12950 Worldgate Drive, Suite 600, Herndon, VA 20191.
2. Respondent Blue Circle Industries PLC is a company registered in England and Wales under number 66558 whose registered office is located at 84 Eccleston Square, London, England. Blue Circle Industries PLC does business in the United States through Blue Circle North America, Inc., Blue Circle, Inc., BlueChem, L.L.C. and other entities.
3. Respondent Blue Circle North America, Inc., a corporation controlled by Blue Circle PLC, is organized, existing and doing business under and by virtue of the laws of the State of Georgia, and has its office and principal place of business located at 1800 Parkway Place, Suite 1100, Marietta, GA 30067.
4. Respondent Blue Circle, Inc., a corporation controlled by Blue Circle PLC, is organized, existing and doing business under and by virtue of the laws of the State of Alabama, and has its office and principal place of business located at 1800 Parkway Place, Suite 1100, Marietta, GA 30067.
5. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents and the proceeding is in the public interest.

## **ORDER**

### **I.**

**IT IS HEREBY ORDERED** that, as used in this Hold Separate, the following definitions shall apply:

- A. “Lafarge” means Lafarge S.A., its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Lafarge S.A., including Lafarge Corporation, and the

respective directors, officers, employees, agents, representatives, successors, and assigns of each.

- B. “Blue Circle PLC” means Blue Circle Industries PLC, Blue Circle North America, Inc. and Blue Circle, Inc., their directors, officers, employees, agents, representatives, successors, and assigns; their parents, subsidiaries, divisions, groups, and affiliates controlled by Blue Circle Industries PLC, Blue Circle North America, Inc., Blue Circle, Inc. and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Chemical Lime” means Chemical Lime Company, a company organized under the laws of Nevada, with its office and principal place of business in the United States located at 3700 Hulen Street, Fort Worth, Texas 76107. The term “Chemical Lime” includes the directors, officers, employees, agents, representatives, successors, and assigns of Chemical Lime and the parents, subsidiaries, divisions, groups, and affiliates of Chemical Lime and their respective directors, officers, employees, agents, representatives, successors, and assigns.
- D. “BlueChem” means BlueChem, L.L.C., a limited liability company organized under the laws of Delaware, with its office and principal place of business in the United States located at 8039 Highway 25, Calera, Alabama. The term “BlueChem” includes the directors, officers, employees, agents, representatives, successors, and assigns of BlueChem and the parents, subsidiaries, divisions, groups, and affiliates of BlueChem and their respective directors, officers, employees, agents, representatives, successors, and assigns.
- E. “Eastern Lime” means Eastern Lime Holdings, L.P., a limited partnership organized under the laws of Delaware, with its office and principal place of business in the United States located at 8039 Highway 25, Calera, Alabama. The term “Eastern Lime” includes the directors, officers, employees, agents, representatives, successors, and assigns of Eastern Lime and the parents, subsidiaries, divisions, groups, and affiliates of Eastern Lime Holdings and their respective directors, officers, employees, agents, representatives, successors, and assigns.
- F. “Commission” means the Federal Trade Commission.
- G. “Respondents” means Lafarge and Blue Circle PLC, individually and collectively.
- H. “Acquisition” means the proposed acquisition of Blue Circle PLC by Lafarge, as publicly announced by Respondents on January 8, 2001, and for which a filing pursuant to the Hart-Scott-Rodino Antitrust Improvements Act was made by Lafarge on February 16, 2000, and by Blue Circle PLC on March 6, 2000; and as further described in the January 8, 2001 Merger Agreement between Lafarge and Blue Circle PLC, and the January 25, 2001 Scheme Document presented to Blue Circle PLC shareholders.

- I. “Barges” means the following barges and tugs: “St. Marys Barge #1” (Canadian Flag), “St. Marys Barge #2” (Canadian Flag), “St. Marys Barge #3” (Barbados Flag), “Sea Eagle II Tug for St. Marys Barge #2” (Canadian Flag) and “Lewis G. Harriman” (U.S. Flag).
- J. “Bowmanville Plant” means Blue Circle PLC’s plant in Bowmanville, Ontario, Canada that manufactures, distributes and sells Cement.
- K. “Carmeuse” means Carmeuse North America Group B.V., a private company organized under the laws of the Netherlands, with its office and principal place of business in the United States located at 390 East Joseph Orr Road, Chicago Heights, IL 60411. The term “Carmeuse” includes the directors, officers, employees, agents, representatives, successors, and assigns of Carmeuse North America Group B.V., and the subsidiaries, parents, divisions, groups, and affiliates of Carmeuse North America Group B.V. and their respective directors, officers, employees, agents, representatives, successors, and assigns.
- L. “Cement” means the product that is the result of the combination of calcium (normally from limestone), silicon, aluminum, iron and other raw materials, and that is produced by quarrying, crushing and grinding the raw materials, burning them in kilns at high temperatures, and then finely grinding the resulting pellets (“clinker”) with gypsum into an extremely fine powder. The term “Cement” includes, but is not limited to, portland cement, masonry and mortar cement, and the clinker that is ground to produce Cement.
- M. “Decision and Order” means the Decision and Order incorporated into and made a part of the Consent Agreement.
- N. “Detroit Facility” means Blue Circle PLC’s grinding facility and terminal in Detroit, Michigan that grinds, distributes and sells Cement and Slag.
- O. “Effective Date of Divestiture of the Great Lakes Assets” means the date on which the divestiture of the Great Lakes Assets to the Great Lakes Assets Acquirer is consummated.
- P. “Effective Date of Divestiture of the Lime Assets” means the date on which the divestiture of the Lime Assets to the Lime Assets Acquirer is consummated.
- Q. “Great Lakes Assets” means all of Blue Circle PLC’s rights, titles, and interests in and to all assets, properties, business and goodwill, tangible or intangible, used to operate the Great Lakes Business in the ordinary course and in accordance with past practice, including, but not limited to (i) the Bowmanville Plant, the St. Marys Plant, the Detroit Facility, the Great Lakes Terminals, the Barges, Hutton Transport, the Ready-Mix Operations, the Unused Great Lakes Terminals, and the Great Lakes Slag Joint Venture, (ii) all real property (together with appurtenances, licenses and permits) owned, leased or otherwise held by Blue Circle PLC and used to operate the Great Lakes Business, (iii) all personal property owned, leased or otherwise held by Blue Circle PLC and used to operate

the Great Lakes Business, (iv) all intellectual property owned by or licensed to Blue Circle PLC used in the Great Lakes Business, including but not limited to, trademarks, patents, mask works, copyrights, trade secrets, research materials, technical information, management information systems, software, inventions, test data, technological know-how, licenses, registrations, submissions, approvals, technology, specifications, designs, drawings, processes, recipes, protocols, and formulas, (v) all rights of Blue Circle PLC relating to the Great Lakes Business under any contract entered into with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees, and joint venture partners, (vi) all governmental approvals, consents, licenses, permits, waivers, or other authorizations held by Blue Circle PLC and used to operate the Great Lakes Business, (vii) all rights of Blue Circle PLC relating to the Great Lakes Business under any warranty and guarantee, express or implied, (viii) all books, records, and files held by Blue Circle PLC relating to the Great Lakes Business, (ix) all plant facilities, machinery, equipment, furniture, fixtures, tools, vehicles, transportation and storage facilities, and supplies held by Blue Circle PLC and used to operate the Great Lakes Business, (x) all rights in and to inventories of products, raw materials, supplies and parts, including work-in-process and finished goods held by Blue Circle PLC and used in the Great Lakes Business, (xi) all customer and vendor lists, catalogs, sales promotion literature, and advertising materials held by Blue Circle PLC and used in the Great Lakes Business, (xii) all rights in and to quarries and pits (together with appurtenances, licenses and permits) owned, leased or otherwise held by Blue Circle PLC and used to operate the Great Lakes Business, and (xiii) all items of prepaid expense held by Blue Circle PLC and used in the Great Lakes Business; provided, however, that the Great Lakes Assets do not include the Excluded Great Lakes Assets identified in Appendix A of the Decision and Order.

- R. “Great Lakes Assets Acquirer” means the Person approved by the Commission to acquire the Great Lakes Assets.
- S. “Great Lakes Business” means the research, development, manufacture, distribution, or sale of Cement and Slag at or by the Bowmanville Plant, the St. Marys Plant, the Detroit Facility, the Great Lakes Terminals, the Unused Great Lakes Terminals, the Barges, Hutton Transport, and the Ready-Mix Operations. The Great Lakes Business includes all of Blue Circle PLC’s rights, titles and interests in and to the Great Lakes Slag Joint Venture.
- T. “Great Lakes Employees” means employees of Blue Circle PLC who worked at least one hundred (100) work days for the Great Lakes Business during the twelve-month period prior to the Effective Date of Divestiture of the Great Lakes Assets.
- U. “Great Lakes Hold Separate Trustee” means the Great Lakes Hold Separate Trustee appointed pursuant to Paragraph III of this Hold Separate.

- V. “Great Lakes Manager” means an individual with experience in the management, sales, marketing, or financial operations of the Great Lakes Business, who is appointed by the Respondents and approved by the Great Lakes Hold Separate Trustee to manage the Great Lakes Business during the Hold Separate Period.
- W. “Great Lakes Slag Joint Venture” means the joint venture between Blue Circle PLC and St. Lawrence Cement Inc. (“St. Lawrence”) as set forth in the Share Purchase and Shareholder Agreement by and among St. Lawrence, Blue Circle PLC and Great Lakes Slag Inc., dated March 27, 2000, pursuant to which Blue Circle PLC purchases 50% of the annual output of Slag from Algoma Steel Inc.’s steel plant in Sault Ste. Marie, Ontario, Canada.
- X. “Great Lakes Terminals” means Blue Circle PLC’s terminals located in Buffalo, New York, Cleveland, Ohio, Grand Rapids, Michigan, Green Bay, Wisconsin, Milwaukee, Wisconsin, Schoolcraft, Michigan, and Waukegan, Illinois which store, distribute and sell Cement.
- Y. “Hold Separate” means this Order to Hold Separate and Maintain Assets.
- Z. “Hold Separate Period” means the time period during which the Hold Separate is in effect, which shall begin on the date that the Acquisition is consummated and terminate pursuant to Paragraph VI hereof.
- AA. “Hutton Transport” means Hutton Transport Limited, a company organized under the laws of Ontario, Canada and a wholly-owned subsidiary of Blue Circle PLC.
- BB. “Lime” means the product that is the result of the quarrying, crushing and grinding of limestone, and burning it in kilns at high temperatures. The term “Lime” includes, but is not limited to, quicklime, dolomitic lime and hydrated lime.
- CC. “Lime Assets” means all of Respondents’ rights, titles, and interests in and to all assets, properties, business and goodwill, tangible or intangible, used to operate the Lime Business in the ordinary course and in accordance with past practice, including, but not limited to (i) the Lime Plant, (ii) all real property (together with appurtenances, licenses and permits) owned, leased or otherwise held by Respondents and used to operate the Lime Business, (iii) all personal property owned, leased or otherwise held by Respondents and used to operate the Lime Business, (iv) all intellectual property owned by or licensed to Respondents relating to the Lime Business, including but not limited to, trademarks, patents, mask works, copyrights, trade secrets, research materials, technical information, management information systems, software, inventions, test data, technological know-how, licenses, registrations, submissions, approvals, technology, specifications, designs, drawings, processes, recipes, protocols, and formulas, (v) all rights of Respondents relating to the Lime Business under any contract entered into with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors,

personal property lessees, licensors, licensees, consignors and consignees, and joint venture partners, (vi) all governmental approvals, consents, licenses, permits, waivers, or other authorizations held by Respondents and used to operate the Lime Business, (vii) all rights of Respondents relating to the Lime Business under any warranty and guarantee, express or implied, (viii) all books, records, and files held by Respondents relating to the Lime Business, (ix) all plant facilities, machinery, equipment, furniture, fixtures, tools, vehicles, transportation and storage facilities, and supplies held by Respondents and used to operate the Lime Business, (x) all rights in and to inventories of products, raw materials, supplies and parts, including work-in-process and finished goods held by Respondents and used to operate the Lime Business, (xi) all customer and vendor lists, catalogs, sales promotion literature, and advertising materials held by Respondents relating to the Lime Business, and (xii) all items of prepaid expense held by Respondents and used in the Lime Business; provided, however, that the Lime Assets do not include the Excluded Lime Assets identified in Appendix A of the Decision and Order.

- DD. “Lime Assets Acquirer” means the Person approved by the Commission to acquire the Lime Assets.
- EE. “Lime Business” means the research, development, manufacture, distribution, or sale of Lime at or by the Lime Plant.
- FF. “Lime Employees” means employees of Blue Circle PLC who worked at least one hundred (100) work days for the Lime Business during the twelve-month period prior to the Effective Date of Divestiture of the Lime Assets.
- GG. “Lime JV” means the joint venture created by Blue Circle PLC, Chemical Lime and BlueChem on or about December 20, 2000, to own and control the Lime Assets, and that operates under the name Eastern Lime Holdings, L.P.
- HH. “Lime Hold Separate Trustee” means the Lime Hold Separate Trustee appointed pursuant to Paragraph II of this Hold Separate.
- II. “Lime Manager” means an individual with experience in the management, sales, marketing, or financial operations of the Lime Business, who is appointed by the Respondents and approved by the Lime Hold Separate Trustee to manage the Lime Business during the Hold Separate Period.
- JJ. “Lime Plant” means the Lime production facility located at 8039 Highway 25, Calera, Alabama that manufactures, distributes and sells Lime.
- KK. “Lime Rock Supply Agreement” means the agreement to be entered into between Lafarge and the Lime Assets Acquirer, and incorporated into the Lime Assets Purchase Agreement, by which Lafarge will supply lime rock to the Lime Assets Acquirer on terms agreed by the Lime Assets Acquirer and approved by the Commission.

- LL. “Lime Site Services Agreement” means the agreement to be entered into between Lafarge and the Lime Assets Acquirer, and incorporated into the Lime Assets Purchase Agreement, by which Lafarge will provide site services at the Calera Site to the Lime Assets Acquirer on terms agreed by the Lime Assets Acquirer and approved by the Commission.
- MM. “Material Confidential Information” means competitively sensitive or proprietary information not independently known to an entity from sources other than the entity to which the information pertains, and includes, but is not limited to, all customer lists, price lists, marketing methods, patents, technologies, processes or other trade secrets.
- NN. “Non-Public Great Lakes Information” means any information relating to the Great Lakes Assets not in the public domain. Non-Public Great Lakes Information shall not include: (i) information that subsequently falls within the public domain through no violation of this Order by Respondents or breach of a confidentiality or non-disclosure agreement with respect to such information; (ii) information independently developed by Respondents without reference to or use of Non-Public Great Lakes Information; and (iii) information that is required to be disclosed by law.
- OO. “Non-Public Lime Information” means any information relating to the Lime Assets not in the public domain and any information obtained by Respondents in the course of performing Respondents’ obligations under the Lime Rock Supply Agreement or the Lime Site Services Agreement. Non-Public Lime Information shall not include: (i) information that subsequently falls within the public domain through no violation of this Order by Respondents or breach of a confidentiality or non-disclosure agreement with respect to such information; (ii) information independently developed by Respondents without reference to or use of Non-Public Lime Information; and (iii) information that is required to be disclosed by law.
- PP. “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity.
- QQ. “Ready-Mix Operations” means the 39 ready-mix operations identified on Appendix C to the Decision and Order.
- RR. “Slag” means the by-product from the manufacture of steel that is ground into a powder, and sold as a product that can be used as an input into Cement.
- SS. “St. Marys Plant” means Blue Circle PLC’s plant in St. Marys, Ontario, Canada that manufactures, distributes and sells Cement.
- TT. “Unused Great Lakes Terminals” means Blue Circle PLC’s terminals in South Beloit, Illinois and Coniston, Ontario, Canada.



## **II.**

### **IT IS FURTHER ORDERED that:**

- A. During the Hold Separate Period, Respondents shall (i) hold the Lime Business as a separate and independent business as required by this Hold Separate, except to the extent that Respondents must exercise direction and control over the Lime Business and Lime Assets to assure compliance with this Hold Separate, or with the Decision and Order contained in the Consent Agreement, and except as otherwise provided in this Hold Separate, and (ii) vest the Lime Business with all powers and authorities necessary to conduct its business.
- B. The purpose of this Hold Separate is to: (i) preserve the Lime Business as a viable, competitive, and ongoing business, independent of Respondents, until the Effective Date of Divestiture of the Lime Assets; (ii) assure that no Material Confidential Information is exchanged between Respondents and the Lime Business, except as otherwise provided in this Hold Separate; and (iii) prevent interim harm to competition pending divestiture of the Lime Assets and other relief.
- C. William M. Troutman is hereby appointed to serve as the Lime Hold Separate Trustee.
- D. The Lime Hold Separate Trustee shall monitor Respondents' compliance with Paragraph II of this Hold Separate, and shall have all powers and authority necessary to effectuate his or her responsibilities pursuant to this Hold Separate and shall have the rights, duties and responsibilities described below:
  - 1. Respondents shall hold the Lime Business separate and independent on the following terms and conditions:
    - a. No later than ten (10) days after the execution of the Consent Agreement, Respondents shall have executed a Lime Hold Separate Trustee Agreement that, subject to the approval of the Commission, transfers to the Lime Hold Separate Trustee all rights, powers and authorities contained in the Consent Agreement or necessary to permit the Lime Hold Separate Trustee to perform his or her duties and obligations pursuant to this Hold Separate and the Decision and Order.
    - b. No later than one (1) day after the commencement of the Hold Separate Period, Respondents shall transfer to the Lime Hold Separate Trustee all rights, powers, and authorities necessary to permit the Lime Hold Separate Trustee to perform his or her duties and responsibilities, pursuant to this Hold Separate and consistent with the purposes of the Decision and Order contained in the Consent Agreement.
    - c. The Lime Hold Separate Trustee shall have the responsibility, consistent with the terms of this Hold Separate and the Decision and Order contained in the Consent Agreement, for monitoring the organization of the Lime Business; for managing the Lime Business through the Lime Manager; for maintaining the independence of the Lime

Business; and for assuring Respondents' compliance with their obligations pursuant to this Hold Separate and the Decision and Order contained in the Consent Agreement.

d. The Lime Hold Separate Trustee shall have full and complete access to all personnel, books, records, documents and facilities of the Lime Business or to any other relevant information of the Respondents relating to the Lime Business or relating to Respondents' obligations under the Decision and Order and/or under this Hold Separate, as the Lime Hold Separate Trustee may reasonably request. Respondents shall develop such financial or other information as the Lime Hold Separate Trustee may reasonably request and shall cooperate with the Lime Hold Separate Trustee. Respondents shall take no action to interfere with or impede the Lime Hold Separate Trustee's ability to perform his or her responsibilities consistent with the terms of this Hold Separate or to monitor Respondents' compliance with this Hold Separate.

e. The Lime Hold Separate Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonable and necessary to carry out the Lime Hold Separate Trustee's duties and responsibilities. The Lime Hold Separate Trustee shall account for all expenses incurred, including fees for his or her services, subject to the approval of the Commission.

f. The Commission may require the Lime Hold Separate Trustee to sign an appropriate confidentiality agreement relating to the Commission materials and information received in connection with the performance of the Lime Hold Separate Trustee's duties.

g. The Respondents may require the Lime Hold Separate Trustee to sign a confidentiality agreement prohibiting the disclosure of any Material Confidential Information relating to the Lime Business to anyone other than the Commission.

h. If the Lime Hold Separate Trustee ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate, the Commission may appoint a substitute Lime Hold Separate Trustee. In the event a substitute Lime Hold Separate Trustee is appointed, Respondents shall be notified of the name of the substitute Lime Hold Separate Trustee. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Lime Hold Separate Trustee within ten (10) business days after receipt of written notice by the Commission to Respondents of the identity of any proposed Lime Hold Separate Trustee, Respondents shall be deemed to have consented to the selection of the proposed Lime Hold Separate Trustee.

2. No later than ten (10) days after the execution of the Lime Hold Separate Trustee Agreement, Respondents shall have, subject to the approval of the Lime Hold Separate Trustee, entered into a management agreement with, and transferred to the Lime Manager all rights, powers, and authorities necessary to permit the Lime Manager to perform his/her duties and responsibilities, pursuant to the Hold Separate and consistent with the purposes of the Decision and Order contained in the Consent Agreement.

a. The Lime Manager, in his or her capacity as such, shall report directly and exclusively to the Lime Hold Separate Trustee, and shall manage the Lime Business independently of the management of Respondents. The Lime Manager shall not be involved in any way in the operations of the Respondents' businesses (other than the Lime Business) or the operations of Carmeuse's business during the Hold Separate Period.

b. In the event the Lime Manager ceases to act in his or her capacity as such, then Respondents shall select a substitute Lime Manager, subject to the approval of the Lime Hold Separate Trustee, and transfer to the substitute Lime Manager all rights, powers and authorities necessary to permit the substitute Lime Manager to perform his or her duties and responsibilities, pursuant to this Hold Separate.

c. Respondents shall not change the composition of the management of the Lime Business, except that the Lime Manager shall be permitted to remove management employees for cause subject to approval of the Lime Hold Separate Trustee. The Lime Hold Separate Trustee shall have the power to remove the Lime Manager for cause. Within fifteen (15) days after such removal, Respondents shall appoint a replacement for the Lime Manager, subject to the approval of the Hold Separate Trustee in the same manner as provided in Paragraph II of this Hold Separate.

d. The Lime Manager shall have no financial interests affected by Respondents' revenues, profits or profit margins, except that the Lime Manager's compensation for managing the Lime Business may include economic incentives dependent on the financial performance of the Lime Business if there are also sufficient incentives for the Lime Manager to operate the Lime Business at no less than current rates of operations (including, but not limited to, current rates of production and sales) and to achieve the objectives of this Hold Separate. For a period of two (2) years beginning after the termination of this Hold Separate, Respondents shall not retain the services of the Lime Manager.

e. The Lime Manager shall make no material changes in the present operation of the Lime Business except with the approval of or at the instruction of the Lime Hold Separate Trustee.

f. In addition to the Lime Employees, the Lime Manager shall employ such employees as are reasonably necessary to assist the Lime Manager in managing the Lime Business, including, without limitation, pricing services personnel, employee relations personnel, legal services personnel, public relations personnel, supply personnel, earnings consolidation and analysis personnel, business performance personnel (balances scorecard, expense, volume, shared services reporting), customer relations personnel and marketing administration personnel.

3. The Lime Business shall be staffed with employees sufficient to maintain the viability and competitiveness of the Lime Business. Lime Employees shall include (i) all Lime Employees employed by Blue Circle PLC and/or the Lime JV as of the date the Commission accepts the Consent Agreement for public comment; and (ii) those persons

hired from other sources. The Lime Manager, with the approval of the Lime Hold Separate Trustee, shall have the authority to replace employees who have otherwise left their positions with the Lime Business since March 1, 2001. To the extent that Lime Employees leave the Lime Business prior to the Effective Date of Divestiture of the Lime Assets, the Lime Manager, with the approval of the Lime Hold Separate Trustee, shall use reasonable efforts to replace the departing Lime Employees with persons who have similar experience and expertise.

4. Respondents shall cause the Lime Hold Separate Trustee, the Lime Manager, and each Lime Employee with managerial responsibilities having access to Material Confidential Information relating to the Lime Assets to submit to the Commission a signed statement that the individual will maintain the confidentiality required by the terms and conditions of this Hold Separate. These individuals must retain and maintain all Material Confidential Information relating to the Lime Assets on a confidential basis and, except as is permitted by this Hold Separate, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any of Respondents' businesses other than the Lime Business, including but not limited to, Respondents' businesses with Carmeuse. Such persons shall also be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person who works for any of Carmeuse's businesses. These persons shall not be involved in any way in the management, sales, marketing, and financial operations of products of Respondents or Carmeuse that compete with the products of the Lime Business.

5. No later than ten (10) days after the execution of the Lime Hold Separate Trustee Agreement, Respondents shall establish written procedures, subject to the approval of the Lime Hold Separate Trustee, covering the management, maintenance, and independence of the Lime Business consistent with the provisions of this Hold Separate.

6. No later than one (1) business day after the commencement of the Hold Separate Period, Respondents shall circulate to the Lime Employees and to Respondents' employees who are responsible for the operation, distribution, marketing or sale of Lime in the southeast region of the United States, a notice of this Hold Separate and Consent Agreement, in the form attached as Attachment A.

7. The Lime Hold Separate Trustee and the Lime Manager shall serve, without bond or other security, at the cost and expense of Respondents, on reasonable and customary terms and conditions commensurate with the person's experience and responsibilities.

8. Respondents shall indemnify the Lime Hold Separate Trustee and the Lime Manager, and hold the Lime Hold Separate Trustee and the Lime Manager harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Lime Hold Separate Trustee's or the Lime Manager's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for or defense of any claim, whether or not resulting in

any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Lime Hold Separate Trustee or the Lime Manager.

9. Respondents shall provide the Lime Business with sufficient financial resources:

a. as are appropriate in the judgment of the Lime Hold Separate Trustee to operate the Lime Business at no less than current rates of operation (including, but not limited to, current rates of Lime production and sales) and at no less than the rates of operation projected in the business plans of the Lime JV as of January 1, 2001 (including, but not limited to, the rates of operation projected in the business plans); provided that the failure to achieve production or sales goals projected in Respondents' business plans shall not be deemed to be a violation of this Hold Separate,

b. to continue, at least at their scheduled pace, any additional expenditures for the Lime Business authorized prior to the date the Consent Agreement is executed,

c. to perform all ordinary and necessary maintenance to, and replacements of, assets of the Lime Business,

d. to carry on capital projects and business plans (as reflected in business plans of the Lime JV as of January 1, 2001) at their scheduled pace, and

e. to maintain the viability, competitiveness, and marketability of the Lime Business until the Effective Date of Divestiture of the Lime Assets, provided the Lime Business may not assume any new long-term debt, except as necessary to meet a competitive threat and as approved by the Lime Hold Separate Trustee.

f. The financial resources to be provided to the Lime Business pursuant to this Paragraph shall include, but shall not be limited to, (i) general funds, (ii) capital, (iii) working capital, and (iv) reimbursement for any operating losses, capital losses, or other losses; provided, however, that consistent with the purposes of the Decision and Order contained in the Consent Agreement, the Lime Hold Separate Trustee may reduce the scale or pace of any capital or research and development project, or substitute any capital or research and development project for another of the same cost.

10. Respondents shall, at the option of the Lime Manager, and with the approval of the Lime Hold Separate Trustee, continue to provide the same support services to the Lime Assets and Lime Business as are being provided to such assets and business by Blue Circle PLC as of the date Respondents execute the Consent Agreement; provided:

a. Respondents may charge the Lime Business the same fees, if any, charged by Respondents for such support services as of the date Respondents execute the Consent Agreement.

b. Respondents shall ensure that all personnel providing such support services retain and maintain all Material Confidential Information relating to the Lime Assets and Lime Business on a confidential basis, and, except as is permitted by this Hold Separate, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any person whose employment involves any of Respondents' businesses (other than the Lime Business), including but not limited to, Carmeuse. Such persons shall also be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any person who works for any of Carmeuse's businesses. Such personnel shall also be required to execute confidentiality agreements prohibiting the disclosure of any Material Confidential Information relating to the Lime Assets and Lime Business.

Nothing herein shall require Respondents to hold separate the operations, assets or personnel used to provide the following support services to the Lime Business during the Hold Separate Period, provided that Respondents adhere to the confidentiality obligations contained herein:

- (1) Public affairs/media relations services;
- (2) Legal services;
- (3) Preparation of tax returns and other audit services;
- (4) Information systems services, including construction, maintenance and support of all SAP and other computer systems;
- (5) Medical services, including drug testing;
- (6) Processing of accounts payable;
- (7) Security services;
- (8) Technical support;
- (9) Financial accounting services;
- (10) Engineering services, including engineering, design and maintenance of plants and terminals;
- (11) Real estate services, including the identification and development of new site;
- (12) Procurement of goods and services utilized in the ordinary course of business by the Lime Business; and
- (13) Transportation and other logistics services.

11. Except as provided in this Hold Separate and the Decision and Order, Respondents shall not employ or make offers of employment to any Lime Employee during the Hold Separate Period. The Lime Assets Acquirer shall have the option of offering employment to the Lime Employees pursuant to the terms of the Decision and Order. After the Hold Separate Period, Respondents may offer employment to the Lime Employees who have not been offered employment or have been terminated by the Lime Assets Acquirer. Respondents shall not interfere with the employment of the Lime Employees by the Lime Assets Acquirer; shall not offer any incentive to said employees to decline employment with the Lime Assets Acquirer or accept other employment with Respondents; and shall remove any impediments that may deter Lime Employees from accepting employment with the Lime Assets Acquirer including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with the Lime Employees that would affect the ability of the Lime Employees to be employed by the Lime Assets Acquirer.

12. For a period of one (1) year commencing on the Effective Date of Divestiture of the Lime Assets, Respondents shall not employ or make offers of employment to any Lime Employees who have been offered employment with the Lime Assets Acquirer, unless such individuals have been terminated by the Lime Assets Acquirer.

13. Notwithstanding subparagraph II.D.11, Respondents may offer a bonus or severance to those Lime Employees who continue their employment with the Lime Business until the Effective Date of Divestiture of the Lime Assets, in addition to any other bonus or severance to which the Lime Employees would otherwise be entitled.

14. Respondents shall not exercise direction or control over, or influence directly or indirectly, the Lime Assets, the Lime Business, the Lime Hold Separate Trustee, the Lime Manager, or any of its operations; provided, however, that Respondents may exercise only such direction and control over the Lime Business as are necessary to assure compliance with this Hold Separate or the Consent Agreement, or with all applicable laws including, in consultation with the Lime Hold Separate Trustee, continued oversight of the Lime Business's compliance with policies and standards concerning the safety, health, and environmental aspects of its operations and the integrity of its financial controls; and Respondents shall have the right to defend any legal claims, investigations or enforcement actions threatened or brought against the Lime Business.

15. Except for the Lime Manager or the Lime Hold Separate Trustee, and except to the extent provided in this Paragraph II, Respondents shall not permit anyone not an employee, officer or director of the Lime Business to be involved in the operations of the Lime Business.

16. Respondents shall maintain the viability, marketability, and competitiveness of the Lime Assets and the Lime Business, and shall not cause the wasting or deterioration of the Lime Assets and the Lime Business, nor shall they cause the Lime Assets and the Lime Business to be operated in a manner inconsistent with

applicable laws, nor shall they sell, transfer, encumber or otherwise impair the viability, marketability or competitiveness of the Lime Assets and the Lime Business. Respondents shall comply with the terms of this subparagraph II.D.16 until such time as Respondents or the Divestiture Trustee have divested the Lime Assets pursuant to the terms of the Decision and Order. Respondents shall conduct the business of the Lime Assets and the Lime Business in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance efforts) and shall use their best efforts to preserve the existing relationships with suppliers, customers, employees, and others having business relationships with the Lime Assets and the Lime Business in the ordinary course of business and in accordance with past practice. Respondents shall not terminate the operations of any Lime Assets or the Lime Business. Respondents shall use their best efforts to keep the organization and properties of the Lime Assets and the Lime Business intact, including current business operations, physical facilities and working conditions, and a work force of equivalent size, training, and expertise associated with the Lime Assets and the Lime Business.

17. Until the Effective Date of Divestiture of the Lime Assets, Respondents shall ensure that the Lime Employees continue to be paid their salaries, all current and accrued bonuses, pensions and other current and accrued benefits to which such employees would otherwise have been entitled.

18. Except as required by law, and except to the extent that necessary information is exchanged in the course of consummating the Acquisition, defending investigations, defending or prosecuting litigation, obtaining legal advice, negotiating and meeting obligations under agreements to divest assets pursuant to the Decision and Order contained in the Consent Agreement and engaging in related due diligence, or complying with this Hold Separate or the Decision and Order contained in the Consent Agreement, Respondents shall not receive or have access to, or use or continue to use, any Non-Public Lime Information. Nor shall the Lime Manager or the Lime Employees (excluding support services employees involved in providing support to the Lime Business pursuant to this Paragraph II) receive or have access to, or use or continue to use, any Material Confidential Information not in the public domain about Respondents and relating to Respondents' businesses except such information as is necessary to maintain and operate the Lime Business. Respondents may receive, on a regular basis, aggregate financial information relating to the Lime Assets necessary to allow Respondents to prepare United States consolidated financial reports and tax returns. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph.

19. Within thirty (30) days after commencement of the Hold Separate Period and every sixty (60) days thereafter until the Hold Separate terminates, the Lime Hold Separate Trustee shall report in writing to the Commission concerning the efforts to accomplish the purposes of this Hold Separate. Included within that report shall be the Lime Hold Separate Trustee's assessment of the extent to which the Lime Business is meeting (or exceeding) projected goals as reflected in operating plans, budgets, projections or any other regularly prepared financial statements.



### **III.**

#### **IT IS FURTHER ORDERED** that:

- A. During the Hold Separate Period, Respondents shall (i) hold the Great Lakes Business as a separate and independent business as required by this Hold Separate, except to the extent that Respondents must exercise direction and control over the Great Lakes Business and Great Lakes Assets to assure compliance with this Hold Separate or with the Decision and Order contained in the Consent Agreement, and except as otherwise provided in this Hold Separate, and (ii) vest the Great Lakes Business with all powers and authorities necessary to conduct its business.
- B. The purpose of this Hold Separate is to: (i) preserve the Great Lakes Business as a viable, competitive, and ongoing business, independent of Respondents, until the Effective Date of Divestiture of the Great Lakes Assets; (ii) assure that no Material Confidential Information is exchanged between Respondents and the Great Lakes Business, except as otherwise provided in this Hold Separate; and (iii) prevent interim harm to competition pending divestiture of the Great Lakes Assets and other relief.
- C. Daniel E. Somes is hereby appointed to serve as the Great Lakes Hold Separate Trustee.
- D. The Great Lakes Hold Separate Trustee shall monitor Respondents' compliance with Paragraph III of this Hold Separate, and shall have all powers and authority necessary to effectuate his or her responsibilities pursuant to this Hold Separate and shall have the rights, duties and responsibilities described below:
  - 1. Respondents shall hold the Great Lakes Business separate and independent on the following terms and conditions:
    - a. No later than ten (10) days after the execution of the Consent Agreement, Respondents shall have executed a Great Lakes Hold Separate Trustee Agreement that, subject to the approval of the Commission, transfers to the Great Lakes Hold Separate Trustee all rights, powers and authorities contained in the Consent Agreement or necessary to permit the Great Lakes Hold Separate Trustee to perform his or her duties and obligations pursuant to this Hold Separate and the Decision and Order.
    - b. No later than one (1) day after the commencement of the Hold Separate Period, Respondents shall transfer to the Great Lakes Hold Separate Trustee all rights, powers, and authorities necessary to permit the Great Lakes Hold Separate Trustee to perform his/her duties and responsibilities, pursuant to this Hold Separate and consistent with the purposes of the Decision and Order contained in the Consent Agreement.
    - c. The Great Lakes Hold Separate Trustee shall have the responsibility, consistent with the terms of this Hold Separate and the Decision and Order

contained in the Consent Agreement, for monitoring the organization of the Great Lakes Business; for managing the Great Lakes Business through the Great Lakes Manager; for maintaining the independence of the Great Lakes Business; and for assuring Respondents' compliance with their obligations pursuant to this Hold Separate and the Decision and Order contained in the Consent Agreement.

d. The Great Lakes Hold Separate Trustee shall have full and complete access to all personnel, books, records, documents and facilities of the Great Lakes Business or to any other relevant information of the Respondents relating to the Great Lakes Business or relating to Respondents' obligations under the Decision and Order and/or under this Hold Separate, as the Great Lakes Hold Separate Trustee may reasonably request. Respondents shall develop such financial or other information as the Great Lakes Hold Separate Trustee may reasonably request and shall cooperate with the Great Lakes Hold Separate Trustee. Respondents shall take no action to interfere with or impede the Great Lakes Hold Separate Trustee's ability to perform his or her responsibilities consistent with the terms of this Hold Separate or to monitor Respondents' compliance with this Hold Separate.

e. The Great Lakes Hold Separate Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonable and necessary to carry out the Great Lakes Hold Separate Trustee's duties and responsibilities. The Great Lakes Hold Separate Trustee shall account for all expenses incurred, including fees for his or her services, subject to the approval of the Commission.

f. The Commission may require the Great Lakes Hold Separate Trustee to sign an appropriate confidentiality agreement relating to the Commission materials and information received in connection with the performance of the Great Lakes Hold Separate Trustee's duties.

g. The Respondents may require the Great Lakes Hold Separate Trustee to sign a confidentiality agreement prohibiting the disclosure of any Material Confidential Information relating to the Great Lakes Business to anyone other than the Commission.

h. If the Great Lakes Hold Separate Trustee ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate, the Commission may appoint a substitute Great Lakes Hold Separate Trustee. In the event a substitute Great Lakes Hold Separate Trustee is appointed, Respondents shall be notified of the name of the substitute Great Lakes Hold Separate Trustee. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Great Lakes Hold Separate Trustee within ten (10) business days after notice by the Commission to Respondents of the identity of any proposed Great Lakes Hold Separate Trustee, Respondents shall be deemed to have consented to the selection of the proposed Great Lakes Hold Separate Trustee.

2. No later than ten (10) days after the execution of the Great Lakes Hold Separate Trustee Agreement, Respondents shall have, subject to the approval of the Great Lakes Hold Separate Trustee, entered into a management agreement with, and transferred to the Great Lakes Manager all rights, powers, and authorities necessary to permit the Great Lakes Manager to perform his/her duties and responsibilities, pursuant to this Hold Separate and consistent with the purposes of the Decision and Order contained in the Consent Agreement.

a. The Great Lakes Manager, in his or her capacity as such, shall report directly and exclusively to the Great Lakes Hold Separate Trustee, and shall manage the Great Lakes Business independently of the management of Respondents. The Great Lakes Manager shall not be involved in any way in the operations of the Respondents' businesses (other than the Great Lakes Business) during the Hold Separate Period.

b. In the event the Great Lakes Manager ceases to act in his or her capacity as such, then Respondents shall select a substitute Great Lakes Manager, subject to the approval of the Great Lakes Hold Separate Trustee, and transfer to the substitute Great Lakes Manager all rights, powers and authorities necessary to permit the substitute Great Lakes Manager to perform his or her duties and responsibilities, pursuant to this Hold Separate.

c. Respondents shall not change the composition of the management of the Great Lakes Business, except that the Great Lakes Manager shall be permitted to remove management employees for cause subject to approval of the Great Lakes Hold Separate Trustee. The Great Lakes Hold Separate Trustee shall have the power to remove the Great Lakes Manager for cause. Within fifteen (15) days after such removal, Respondents shall appoint a replacement for the Great Lakes Manager, subject to the approval of the Hold Separate Trustee in the same manner as provided in Paragraph III of this Hold Separate.

d. The Great Lakes Manager shall have no financial interests affected by Respondents' revenues, profits or profit margins, except that the Great Lakes Manager's compensation for managing the Great Lakes Business may include economic incentives dependent on the financial performance of the Great Lakes Business if there are also sufficient incentives for the Great Lakes Manager to operate the Great Lakes Business at no less than current rates of operations (including, but not limited to, current rates of production and sales) and to achieve the objectives of this Hold Separate. For a period of two (2) years beginning after the termination of this Hold Separate, Respondents shall not retain the services of the Great Lakes Manager.

e. The Great Lakes Manager shall make no material changes in the present operation of the Great Lakes Business except with the approval of or at the instruction of the Great Lakes Hold Separate Trustee.

f. In addition to the Great Lakes Employees, the Great Lakes Manager shall employ such employees as are reasonably necessary to assist the Great

Lakes Manager in managing the Great Lakes Business, including, without limitation, pricing services personnel, employee relations personnel, legal services personnel, public relations personnel, supply personnel, earnings consolidation and analysis personnel, business performance personnel (balances scorecard, expense, volume, shared services reporting), customer relations personnel and marketing administration personnel.

3. The Great Lakes Business shall be staffed with employees sufficient to maintain the viability and competitiveness of the Great Lakes Business. Great Lakes Employees shall include (i) all Great Lakes Employees employed by Blue Circle PLC as of the date the Commission accepts the Consent Agreement for public comment; and (ii) those persons hired from other sources. The Great Lakes Manager, with the approval of the Great Lakes Hold Separate Trustee, shall have the authority to replace employees who have otherwise left their positions with the Great Lakes Business since March 1, 2001. To the extent that Great Lakes Employees leave the Great Lakes Business prior to the Effective Date of Divestiture of the Great Lakes Assets, the Great Lakes Manager, with the approval of the Great Lakes Hold Separate Trustee, shall use reasonable efforts to replace the departing Great Lakes Employees with persons who have similar experience and expertise.

4. Respondents shall cause the Great Lakes Hold Separate Trustee, the Great Lakes Manager, and each Great Lakes Employee with managerial responsibilities having access to Material Confidential Information relating to the Great Lakes Assets to submit to the Commission a signed statement that the individual will maintain the confidentiality required by the terms and conditions of this Hold Separate. These individuals must retain and maintain all Material Confidential Information relating to the Great Lakes Assets on a confidential basis and, except as is permitted by this Hold Separate, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any of Respondents' businesses other than the Great Lakes Business. These persons shall not be involved in any way in the management, sales, marketing, and financial operations of the competing products of Respondents.

5. No later than ten (10) days after the execution of the Great Lakes Hold Separate Trustee Agreement, Respondents shall establish written procedures, subject to the approval of the Great Lakes Hold Separate Trustee, covering the management, maintenance, and independence of the Great Lakes Business consistent with the provisions of this Hold Separate.

6. No later than one (1) business day after the commencement of the Hold Separate Period, Respondents shall circulate to the Great Lakes Employees and to Respondents' employees who are responsible for the operation, distribution, marketing or sale of Cement and Slag in the Great Lakes region of the United States, a notice of this Hold Separate, in the form attached as Attachment B.

7. The Great Lakes Hold Separate Trustee and the Great Lakes Manager shall serve, without bond or other security, at the cost and expense of Respondents, on

reasonable and customary terms and conditions commensurate with the person's experience and responsibilities.

8. Respondents shall indemnify the Great Lakes Hold Separate Trustee and the Great Lakes Manager, and hold the Great Lakes Hold Separate Trustee and the Great Lakes Manager harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Great Lakes Hold Separate Trustee's or the Great Lakes Manager's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for or defense of any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Great Lakes Hold Separate Trustee or the Great Lakes Manager.

9. Respondents shall provide the Great Lakes Business with sufficient financial resources:

a. as are appropriate in the judgment of the Great Lakes Hold Separate Trustee to operate the Great Lakes Business at no less than current rates of operation (including, but not limited to, current rates of production and sales) and at no less than the rates of operation projected in the business plans of Blue Circle PLC as of January 1, 2001 (including, but not limited to, the rates of operation projected in the business plans); provided that the failure to achieve production or sales goals projected in Respondents' business plans shall not be deemed to be a violation of this Hold Separate,

b. to continue, at least at their scheduled pace, any additional expenditures for the Great Lakes Business authorized prior to the date this Hold Separate becomes final,

c. to perform all ordinary and necessary maintenance to, and replacements of, assets of the Great Lakes Business,

d. to carry on capital projects and business plans (as reflected in business plans of Blue Circle PLC as of January 1, 2001) at their scheduled pace, and

e. to maintain the viability, competitiveness, and marketability of the Great Lakes Business until the Effective Date of Divestiture of the Great Lakes Assets, provided the Great Lakes Business may not assume any new long-term debt, except as necessary to meet a competitive threat and as approved by the Great Lakes Hold Separate Trustee.

f. The financial resources to be provided to the Great Lakes Business pursuant to this Paragraph shall include, but shall not be limited to, (i) general funds, (ii) capital, (iii) working capital, and (iv) reimbursement for any operating losses, capital losses, or other losses; provided, however, that consistent with the purposes of the Decision and Order contained in the Consent Agreement, the Great Lakes Hold Separate Trustee may reduce the scale or pace of any capital or research and development project, or substitute any capital or research and development project for another of the same cost.

10. Respondents shall, at the option of the Great Lakes Manager, and with the approval of the Great Lakes Hold Separate Trustee, continue to provide the same support services to the Great Lakes Assets and Great Lakes Business as are being provided to such assets and business by Blue Circle PLC as of the date Respondents execute the Consent Agreement, provided:

a. Respondents may charge the Great Lakes Business the same fees, if any, charged by Respondents for such support services as of the date Respondents execute the Consent Agreement.

b. Respondents shall ensure that all personnel providing such support services retain and maintain all Material Confidential Information relating to the Great Lakes Assets and Great Lakes Business on a confidential basis, and, except as is permitted by this Hold Separate, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any person whose employment involves any of Respondents' businesses other than the Great Lakes Business. Such personnel shall also be required to execute confidentiality agreements prohibiting the disclosure of any Material Confidential Information of the Great Lakes Assets and Great Lakes Business.

Nothing herein shall require Respondents to hold separate the operations, assets or personnel used to provide the following support services to the Great Lakes Business during the Hold Separate Period, provided that Respondents adhere to the confidentiality obligations contained herein:

- (1) Public affairs/media relations services
- (2) Legal services
- (3) Preparation of tax returns and other audit services;
- (4) Information systems services, including construction, maintenance and support of all SAP and other computer systems;
- (5) Medical services, including drug testing;
- (6) Processing of accounts payable;
- (7) Security services;
- (8) Technical support;
- (9) Financial accounting services;
- (10) Engineering services, including engineering, design and maintenance of plants and terminals;

- (11) Real estate services, including the identification and development of new site;
- (12) Procurement of goods and services utilized in the ordinary course of business by the Great Lakes Business; and
- (13) Transportation and other logistics services.

11. Except as provided in this Hold Separate and the Decision and Order, Respondents shall not employ or make offers of employment to any Great Lakes Employee during the Hold Separate Period. The Great Lakes Assets Acquirer shall have the option of offering employment to the Great Lakes Employees pursuant to the terms of the Decision and Order. After the Hold Separate Period, Respondents may offer employment to the Great Lakes Employees who have not been offered employment or have been terminated by the Great Lakes Assets Acquirer. Respondents shall not interfere with the employment of the Great Lakes Employees by the Great Lakes Assets Acquirer; shall not offer any incentive to said employees to decline employment with the Great Lakes Assets Acquirer or accept other employment with Respondents; and shall remove any impediments that may deter Great Lakes Employees from accepting employment with the Great Lakes Assets Acquirer including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with the Great Lakes Employees that would affect the ability of the Great Lakes Employees to be employed by the Great Lakes Assets Acquirer.

12. For a period of one (1) year commencing on the Effective Date of Divestiture of the Great Lakes Assets, Respondents shall not employ or make offers of employment to any Great Lakes Employees who have been offered employment with the Great Lakes Assets Acquirer, unless such individuals have been terminated by the Great Lakes Assets Acquirer.

13. Notwithstanding subparagraph III.D.11, Respondents may offer a bonus or severance to those Great Lakes Employees who continue their employment with the Great Lakes Business until the Effective Date of Divestiture of the Great Lakes Assets, in addition to any other bonus or severance to which the employees would otherwise be entitled.

14. Respondents shall not exercise direction or control over, or influence directly or indirectly, the Great Lakes Assets, the Great Lakes Business, the Great Lakes Hold Separate Trustee, the Great Lakes Manager, or any of its operations; provided, however, that Respondents may exercise only such direction and control over the Great Lakes Business as are necessary to assure compliance with this Hold Separate or the Consent Agreement, or with all applicable laws including, in consultation with the Lime Hold Separate Trustee, continued oversight of the Great Lakes Business's compliance with policies and standards concerning the safety, health, and environmental aspects of its operations and the integrity of its financial controls; and Respondents shall have the right to defend any legal claims, investigations or enforcement actions threatened or brought against the Great Lakes Business.

15. Except for the Great Lakes Manager or the Great Lakes Hold Separate Trustee, and except to the extent provided in this Paragraph III, Respondents shall not permit anyone not an employee, officer or director of the Great Lakes Business to be involved in the operations of the Great Lakes Business.

16. Respondents shall maintain the viability, marketability, and competitiveness of the Great Lakes Assets and the Great Lakes Business, and shall not cause the wasting or deterioration of the Great Lakes Assets and the Great Lakes Business, nor shall they cause the Great Lakes Assets and the Great Lakes Business to be operated in a manner inconsistent with applicable laws, nor shall they sell, transfer, encumber or otherwise impair the viability, marketability or competitiveness of the Great Lakes Assets and the Great Lakes Business. Respondents shall comply with the terms of this subparagraph III.D.16 until such time as Respondents or the Divestiture Trustee have divested the Great Lakes Assets pursuant to the terms of the Decision and Order. Respondents shall conduct the business of the Great Lakes Assets and the Great Lakes Business in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance efforts) and shall use their best efforts to preserve the existing relationships with suppliers, customers, employees, and others having business relationships with the Great Lakes Assets and the Great Lakes Business in the ordinary course of business and in accordance with past practice. Respondents shall not terminate the operations of any Great Lakes Assets or the Great Lakes Business. Respondents shall use their best efforts to keep the organization and properties of the Great Lakes Assets and the Great Lakes Business intact, including current business operations, physical facilities and working conditions, and a work force of equivalent size, training, and expertise associated with the Great Lakes Assets and the Great Lakes Business.

17. Until the Effective Date of Divestiture of the Great Lakes Assets, Respondents shall ensure that the Great Lakes Employees continue to be paid their salaries, all current and accrued bonuses, pensions and other current and accrued benefits to which such employees would otherwise have been entitled.

18. Except as required by law, and except to the extent that necessary information is exchanged in the course of consummating the Acquisition, defending investigations, defending or prosecuting litigation, obtaining legal advice, negotiating and meeting obligations under agreements to divest assets pursuant to the Decision and Order contained in the Consent Agreement and engaging in related due diligence, or complying with this Hold Separate or the Decision and Order contained in the Consent Agreement, Respondents shall not receive or have access to, or use or continue to use, any Non-Public Great Lakes Information. Nor shall the Great Lakes Manager or the Great Lakes Employees (excluding support services employees involved in providing support to the Great Lakes Business pursuant to this Paragraph III) receive or have access to, or use or continue to use, any Material Confidential Information not in the public domain about Respondents and relating to Respondents' businesses except such information as is necessary to maintain and operate the Great Lakes Business. Respondents may receive, on a regular basis, aggregate financial information relating to the Great Lakes Assets necessary to allow Respondents to prepare United States consolidated financial reports



and tax returns. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph.

19. Within thirty (30) days after the commencement of the Hold Separate Period and every sixty (60) days thereafter until the Hold Separate terminates, the Great Lakes Hold Separate Trustee shall report in writing to the Commission concerning the efforts to accomplish the purposes of this Hold Separate. Included within that report shall be the Great Lakes Hold Separate Trustee's assessment of the extent to which the Great Lakes Business is meeting (or exceeding) projected goals as reflected in operating plans, budgets, projections or any other regularly prepared financial statements.

#### IV.

**IT IS FURTHER ORDERED** that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate structure of Respondents such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of this Hold Separate.

#### V.

**IT IS FURTHER ORDERED** that for the purposes of determining or securing compliance with this Hold Separate, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents made to their principal United States offices, Respondents shall permit any duly authorized representatives of the Commission:

- A. Access, during office hours of Respondents and in the presence of counsel, to all facilities, and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of Respondents relating to compliance with this Hold Separate; and
- B. Upon eight (8) days' notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

#### VI.

**IT IS FURTHER ORDERED** that this Hold Separate shall terminate on the earlier of:

- A. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or

- B. With respect to the Great Lakes Assets, the Effective Date of Divestiture of the Great Lakes Assets, as required by the Decision and Order contained in the Consent Agreement; and with respect to the Lime Assets, the Effective Date of Divestiture of the Lime Assets, as required by the Decision and Order contained in the Consent Agreement.

By the Commission.

Donald S. Clark  
Secretary

SEAL

ISSUED:

## **ATTACHMENT A**

### **NOTICE OF DIVESTITURE AND REQUIREMENT FOR CONFIDENTIALITY**

Lafarge S.A. ("Lafarge") and Blue Circle Industries PLC ("Blue Circle PLC"), hereinafter referred to as "Respondents," have entered into an Agreement Containing Consent Orders ("Consent Agreement") with the Federal Trade Commission relating to the divestiture of certain assets.

As used herein, the term "Lime JV" as defined in the Federal Trade Commission's Decision and Order ("Decision and Order"), means the joint venture created by Blue Circle PLC, Chemical Lime and BlueChem on or about December 20, 2000, to own and control the Lime Assets, and that operates under the name Eastern Lime Holdings, L.P., a limited partnership. As used herein, the term "Lime Plant" as defined in the Decision and Order, means the Lime production facility located at 8039 Highway 25, Calera, Alabama that manufactures, distributes and sells Lime, and that is owned and controlled by the Lime JV. As used herein, the term "Lime Business" as defined in the Decision and Order means the research, development, manufacture, distribution, or sale of Lime at through or by the Lime Plant. As used herein, the term "Lime Assets" as defined in the Decision and Order, means the Respondents' assets, properties, business and goodwill, tangible or intangible used to operate the Lime Business in the ordinary course of business and in accordance with past practice. As used herein, the term "Carmeuse" as defined in the Decision and Order, means Carmeuse North America Group B.V.

Under the terms of the Consent Agreement, if the Respondents fail to divest the Lime Assets within 180 days from the date upon which Lafarge and Blue Circle PLC consummate the Acquisition, a trustee will be appointed to divest the Lime Assets.

The Lime Assets must be managed and maintained as a separate, ongoing business, independent of all other businesses of the Respondents, including but not limited to Carmeuse, until the Lime Assets are divested. All competitive information relating to the Lime Assets must be retained and maintained by the persons involved in the operation of the Lime Assets on a confidential basis, and such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any other business of the Respondents, including but not limited to Carmeuse. Similarly, persons involved in similar activities at Blue Circle PLC, Lafarge or Carmeuse shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any similar information to or with any other person whose employment involves the Lime Assets.

Any violation of the Consent Agreement may subject Respondents to civil penalties and other relief as provided by law.

## **ATTACHMENT B**

### **NOTICE OF DIVESTITURE AND REQUIREMENT FOR CONFIDENTIALITY**

Lafarge S.A. (“Lafarge”) and Blue Circle Industries PLC (“Blue Circle PLC”), hereinafter referred to as “Respondents,” have entered into an Agreement Containing Consent Orders (“Consent Agreement”) with the Federal Trade Commission relating to the divestiture of certain assets.

As used herein, the term “Great Lakes Business” as defined in the Federal Trade Commission’s Decision and Order (“Decision and Order”) means the research, development, manufacture, distribution, or sale of Cement and Slag at the Bowmanville Plant, the St. Marys Plant, the Detroit Facility, the Great Lakes Terminals, the Unused Great Lakes Terminals, the Barges, Hutton Transport, and the Ready-Mix Operations. As used herein, the term “Great Lakes Assets” as defined in the Decision and Order, means the Respondents’ assets, properties, business and goodwill, tangible or intangible used to operate the Great Lakes Business in the ordinary course of business and in accordance with past practice.

Under the terms of the Consent Agreement, if the Respondents fail to divest the Great Lakes Assets within 180 days from the date upon which Lafarge and Blue Circle PLC consummate the Acquisition, a trustee will be appointed to divest the Great Lakes Assets.

The Great Lakes Assets must be managed and maintained as a separate, ongoing business, independent of all other businesses of the Respondents until the Great Lakes Assets are divested. All competitive information relating to the Great Lakes Assets must be retained and maintained by the persons involved in the operation of the Great Lakes Assets on a confidential basis, and such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any other business of the Respondents. Similarly, persons involved in similar activities at Blue Circle PLC or Lafarge shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any similar information to or with any other person whose employment involves the Great Lakes Assets.

Any violation of the Consent Agreement may subject Respondents to civil penalties and other relief as provided by law.

**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**      **Timothy J. Muris, Chairman**  
                              **Sheila F. Anthony**  
                              **Mozelle W. Thompson**  
                              **Orson Swindle**  
                              **Thomas B. Leary**

\_\_\_\_\_  
In the Matter of )

**LAFARGE S.A.,** )  
a corporation, )

**BLUE CIRCLE INDUSTRIES PLC,** )  
a corporation, )

**BLUE CIRCLE NORTH AMERICA, INC.,** )  
a corporation, and )

**BLUE CIRCLE, INC.,** )  
a corporation. )  
\_\_\_\_\_ )

Docket No. C-

**DECISION AND ORDER**

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition by Respondent Lafarge S.A. ("Lafarge") of certain voting securities of Respondent Blue Circle Industries PLC ("Blue Circle PLC"), and Respondents having been furnished thereafter with a copy of the draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders, an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of the Agreement Containing Consent Orders is for settlement purposes only and does not constitute an admission

by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and its Order to Hold Separate and Maintain Assets and having accepted the executed Agreement Containing Consent Orders and placed such Agreement Containing Consent Orders on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. Respondent Lafarge S.A. is a corporation organized, existing and doing business under and by virtue of the laws of France, with its office and principal place of business located at 61 rue des Belles Feuilles, Paris, France. Lafarge S.A. owns more than 50% of the common stock of Lafarge Corporation, whose office and principal place of business in the United States is located at 12950 Worldgate Drive, Suite 600, Herndon, VA 20191.
2. Respondent Blue Circle Industries PLC is a company registered in England and Wales under number 66558 whose registered office is located at 84 Eccleston Square, London, England. Blue Circle Industries PLC does business in the United States through Blue Circle North America, Inc., Blue Circle, Inc., BlueChem, L.L.C. and other entities.
3. Respondent Blue Circle North America, Inc., a corporation controlled by Blue Circle PLC, is organized, existing and doing business under and by virtue of the laws of the State of Georgia, and has its office and principal place of business located at 1800 Parkway Place, Suite 1100, Marietta, GA 30067.
4. Respondent Blue Circle, Inc., a corporation controlled by Blue Circle PLC, is organized, existing and doing business under and by virtue of the laws of the State of Alabama, and has its office and principal place of business located at 1800 Parkway Place, Suite 1100, Marietta, GA 30067.
5. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents and the proceeding is in the public interest.

## ORDER

### I.

**IT IS HEREBY ORDERED** that, as used in this Order, the following definitions shall apply:

- A. “Lafarge” means Lafarge S.A., its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Lafarge S.A., including Lafarge Corporation, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Blue Circle PLC” means Blue Circle Industries PLC, Blue Circle North America, Inc. and Blue Circle, Inc., their directors, officers, employees, agents, representatives, successors, and assigns; their parents, subsidiaries, divisions, groups, and affiliates controlled by Blue Circle Industries PLC, Blue Circle North America, Inc., Blue Circle, Inc. and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Chemical Lime” means Chemical Lime Company, a company organized under the laws of Nevada, with its office and principal place of business in the United States located at 3700 Hulen Street, Fort Worth, Texas 76107. The term “Chemical Lime” includes the directors, officers, employees, agents, representatives, successors, and assigns of Chemical Lime and the parents, subsidiaries, divisions, groups, and affiliates of Chemical Lime and their respective directors, officers, employees, agents, representatives, successors, and assigns.
- D. “BlueChem” means BlueChem, L.L.C., a limited liability company organized under the laws of Delaware, with its office and principal place of business in the United States located at 8039 Highway 25, Calera, Alabama. The term “BlueChem” includes the directors, officers, employees, agents, representatives, successors, and assigns of BlueChem and the parents, subsidiaries, divisions, groups, and affiliates of BlueChem and their respective directors, officers, employees, agents, representatives, successors, and assigns.
- E. “Eastern Lime” means Eastern Lime Holdings, L.P., a limited partnership organized under the laws of Delaware, with its office and principal place of business in the United States located at 8039 Highway 25, Calera, Alabama. The term “Eastern Lime” includes the directors, officers, employees, agents, representatives, successors, and assigns of Eastern Lime and the parents, subsidiaries, divisions, groups, and affiliates of Eastern Lime and

their respective directors, officers, employees, agents, representatives, successors, and assigns.

- F. "Commission" means the Federal Trade Commission.
- G. "Respondents" means Lafarge and Blue Circle PLC, individually and collectively.
- H. "Acquirer" means the Person approved by the Commission to acquire the Great Lakes Assets, the Solvay Assets or the Lime Assets.
- I. "Acquisition" means the proposed acquisition of Blue Circle PLC by Lafarge, as publicly announced by Respondents on January 8, 2001, and for which a filing pursuant to the Hart-Scott-Rodino Antitrust Improvements Act was made by Lafarge on February 16, 2000, and by Blue Circle PLC on March 6, 2000; and as further described in the January 8, 2001 Merger Agreement between Lafarge and Blue Circle PLC, and the January 25, 2001 Scheme Document presented to Blue Circle PLC shareholders.
- J. "Barges" means the following barges and tugs: "St. Marys Barge #1" (Canadian Flag), "St. Marys Barge #2" (Canadian Flag), "St. Marys Barge #3" (Barbados Flag), "Sea Eagle II Tug for St. Marys Barge #2" (Canadian Flag), and "Lewis G. Harriman" (U.S. Flag).
- K. "Bowmanville Plant" means Blue Circle PLC's plant in Bowmanville, Ontario, Canada that manufactures, distributes and sells Cement.
- L. "Calera Site" means Blue Circle PLC's real property located at 8039 Highway 25, Calera, Alabama on which the Lime Plant and Blue Circle PLC's plant that produces Cement are located.
- M. "Carmeuse" means Carmeuse North America Group B.V., a private company organized under the laws of the Netherlands, with its office and principal place of business in the United States located at 390 East Joseph Orr Road, Chicago Heights, IL 60411. The term "Carmeuse" includes the directors, officers, employees, agents, representatives, successors, and assigns of Carmeuse North America Group B.V., and the subsidiaries, parents, divisions, groups, and affiliates of Carmeuse North America Group B.V. and their respective directors, officers, employees, agents, representatives, successors, and assigns.
- N. "Cement" means the product that is the result of the combination of calcium (normally from limestone), silicon, aluminum, iron and other raw materials, and that is produced by quarrying, crushing and grinding the raw materials, burning them in kilns at high temperatures, and then finely grinding the resulting pellets ("clinker") with gypsum into an extremely fine powder. The term "Cement" includes, but is not limited to, portland cement, masonry and mortar cement, and the clinker that is ground to produce Cement.



- O. "Detroit Facility" means Blue Circle PLC's grinding facility and terminal in Detroit, Michigan that grinds, distributes and sells Cement and Slag.
- P. "Divestiture Trustee" means the Divestiture Trustee(s) appointed pursuant to Paragraph VII of this Order.
- Q. "Effective Date of Divestiture of the Great Lakes Assets" means the date on which the divestiture of the Great Lakes Assets to the Great Lakes Assets Acquirer is consummated.
- R. "Effective Date of Divestiture of the Lime Assets" means the date on which the divestiture of the Lime Assets to the Lime Assets Acquirer is consummated.
- S. "Excluded Great Lakes Assets" means all the assets identified in Appendix A to this Order.
- T. "Excluded Lime Assets" means all the assets identified in Appendix A to this Order.
- U. "Excluded Solvay Assets" means all the assets identified in Appendix A to this Order.
- V. "Glens Falls Lehigh" means Glens Falls Lehigh Cement Company, a partnership organized, existing and doing business under and by virtue of the laws of New York, with its offices and principal place of business located at 313 Warren Street, Glens Falls, New York, its subsidiaries, divisions, groups and affiliates proposing to acquire the Solvay Assets that receives the prior approval of the Commission to acquire the Solvay Assets.
- W. "Great Lakes Assets" means all of Blue Circle PLC's rights, titles, and interests in and to all assets, properties, business and goodwill, tangible or intangible, used to operate the Great Lakes Business in the ordinary course and in accordance with past practice, including, but not limited to (i) the Bowmanville Plant, the St. Marys Plant, the Detroit Facility, the Great Lakes Terminals, the Barges, Hutton Transport, the Ready-Mix Operations, the Unused Great Lakes Terminals, and the Great Lakes Slag Joint Venture, (ii) all real property (together with appurtenances, licenses and permits) owned, leased or otherwise held by Blue Circle PLC and used to operate the Great Lakes Business, (iii) all personal property owned, leased or otherwise held by Blue Circle PLC and used to operate the Great Lakes Business, (iv) all intellectual property owned by or licensed to Blue Circle PLC used in the Great Lakes Business, including but not limited to, trademarks, patents, mask works, copyrights, trade secrets, research materials, technical information, management information systems, software, inventions, test data, technological know-how, licenses, registrations, submissions, approvals, technology, specifications, designs, drawings, processes, recipes, protocols, and formulas, (v) all rights of Blue Circle PLC relating to the Great Lakes Business under any contract entered into

with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees, and joint venture partners, (vi) all governmental approvals, consents, licenses, permits, waivers, or other authorizations held by Blue Circle PLC and used to operate the Great Lakes Business, (vii) all rights of Blue Circle PLC relating to the Great Lakes Business under any warranty and guarantee, express or implied, (viii) all books, records, and files held by Blue Circle PLC relating to the Great Lakes Business, (ix) all plant facilities, machinery, equipment, furniture, fixtures, tools, vehicles, transportation and storage facilities, and supplies held by Blue Circle PLC and used to operate the Great Lakes Business, (x) all rights in and to inventories of products, raw materials, supplies and parts, including work-in-process and finished goods held by Blue Circle PLC and used in the Great Lakes Business, (xi) all customer and vendor lists, catalogs, sales promotion literature, and advertising materials held by Blue Circle PLC and used in the Great Lakes Business, (xii) all rights in and to quarries and pits (together with appurtenances, licenses and permits) owned, leased or otherwise held by Blue Circle PLC and used to operate the Great Lakes Business, and (xiii) all items of prepaid expense held by Blue Circle PLC and used in the Great Lakes Business; provided, however, that the Great Lakes Assets do not include the Excluded Great Lakes Assets.

- X. “Great Lakes Assets Acquirer” means the Person approved by the Commission to acquire the Great Lakes Assets.
- Y. “Great Lakes Assets Purchase Agreement” means the Commission-approved agreement (including, but not limited to, all related agreements, schedules, exhibits and appendices) to be entered into between Lafarge and the Great Lakes Assets Acquirer for sale of the Great Lakes Assets by Lafarge to the Great Lakes Assets Acquirer.
- Z. “Great Lakes Business” means the research, development, manufacture, distribution, or sale of Cement and Slag at or by the Bowmanville Plant, the St. Marys Plant, the Detroit Facility, the Great Lakes Terminals, the Unused Great Lakes Terminals, the Barges, Hutton Transport, and the Ready-Mix Operations. The Great Lakes Business includes all of Blue Circle PLC’s rights, titles and interests in and to the Great Lakes Slag Joint Venture.
- AA. “Great Lakes Employees” means employees of Blue Circle PLC who worked at least one hundred (100) work days for the Great Lakes Business during the twelve-month period prior to the Effective Date of Divestiture of the Great Lakes Assets.
- BB. “Great Lakes Hold Separate Trustee Agreement” means the Commission-approved agreement entered into between Lafarge and the trustee appointed by the Commission for the Great Lakes Assets pursuant to the Hold Separate.

- CC. “Great Lakes Key Employees” means any Great Lakes Employees identified as such in the Great Lakes Assets Purchase Agreement.
- DD. “Great Lakes Slag Joint Venture” means the joint venture between Blue Circle PLC and St. Lawrence Cement Inc. (“St. Lawrence”) as set forth in the Share Purchase and Shareholder Agreement by and among St. Lawrence, Blue Circle PLC and Great Lakes Slag Inc., dated March 27, 2000, pursuant to which Blue Circle PLC purchases 50% of the annual output of Slag from Algoma Steel Inc.’s steel plant in Sault Ste. Marie, Ontario, Canada.
- EE. “Great Lakes Terminals” means Blue Circle PLC’s terminals located in Buffalo, New York, Cleveland, Ohio, Grand Rapids, Michigan, Green Bay, Wisconsin, Milwaukee, Wisconsin, Schoolcraft, Michigan and Waukegan, Illinois which store, distribute and sell Cement.
- FF. “Hold Separate” means the Order to Hold Separate and Maintain Assets incorporated into and made a part of the Agreement Containing Consent Orders.
- GG. “Hutton Transport” means Hutton Transport Limited, a company organized under the laws of Ontario, Canada and a wholly-owned subsidiary of Blue Circle PLC.
- HH. “Independent Auditor” means the Independent Auditor(s) appointed pursuant to Paragraph VI of this Order.
- II. “Lime” means the product that is the result of the quarrying, crushing and grinding of limestone, and burning it in kilns at high temperatures. The term “Lime” includes, but is not limited to, quicklime, dolomitic lime and hydrated lime.
- JJ. “Lime Assets” means all of Respondents’ rights, titles, and interests in and to all assets, properties, business and goodwill, tangible or intangible, used to operate the Lime Business in the ordinary course and in accordance with past practice, including, but not limited to (i) the Lime Plant, (ii) all real property (together with appurtenances, licenses and permits) owned, leased or otherwise held by Respondents and used to operate the Lime Business, (iii) all personal property owned, leased or otherwise held by Respondents and used to operate the Lime Business, (iv) all intellectual property owned by or licensed to Respondents relating to the Lime Business, including but not limited to, trademarks, patents, mask works, copyrights, trade secrets, research materials, technical information, management information systems, software, inventions, test data, technological know-how, licenses, registrations, submissions, approvals, technology, specifications, designs, drawings, processes, recipes, protocols, and formulas, (v) all rights of Respondents relating to the Lime Business under any contract entered into with customers (together with associated bid and performance bonds), suppliers, sales representatives,

distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees, and joint venture partners, (vi) all governmental approvals, consents, licenses, permits, waivers, or other authorizations held by Respondents and used to operate the Lime Business, (vii) all rights of Respondents relating to the Lime Business under any warranty and guarantee, express or implied, (viii) all books, records, and files held by Respondents relating to the Lime Business, (ix) all plant facilities, machinery, equipment, furniture, fixtures, tools, vehicles, transportation and storage facilities, and supplies held by Respondents and used to operate the Lime Business, (x) all rights in and to inventories of products, raw materials, supplies and parts, including work-in-process and finished goods held by Respondents and used to operate the Lime Business, (xi) all customer and vendor lists, catalogs, sales promotion literature, and advertising materials held by Respondents relating to the Lime Business, and (xii) all items of prepaid expense held by Respondents and used in the Lime Business; provided, however, that the Lime Assets do not include the Excluded Lime Assets.

- KK. “Lime Assets Acquirer” means the Person approved by the Commission to acquire the Lime Assets.
- LL. “Lime Assets Purchase Agreement” means the Commission-approved agreement (including, but not limited to, all related agreements, schedules, exhibits and appendices) to be entered into between Lafarge and the Lime Assets Acquirer for sale of the Lime Assets by Lafarge to the Lime Assets Acquirer. The Lime Assets Purchase Agreement includes the Lime Rock Supply Agreement and Lime Site Services Agreement.
- MM. “Lime Business” means the research, development, manufacture, distribution, or sale of Lime at or by the Lime Plant.
- NN. “Lime Employees” means employees of Blue Circle PLC who worked at least one hundred (100) work days for the Lime Business during the twelve-month period prior to the Effective Date of Divestiture of the Lime Assets.
- OO. “Lime Hold Separate Trustee Agreement” means the Commission-approved agreement entered into between Lafarge and the trustee appointed by the Commission for the Lime Assets pursuant to the Hold Separate.
- PP. “Lime JV” means the joint venture created by Blue Circle PLC, Chemical Lime and BlueChem on or about December 20, 2000 to own and control the Lime Assets, and that operates under the name Eastern Lime Holdings, L.P.
- QQ. “Lime Key Employees” means any Lime Employees identified as such in the Lime Assets Purchase Agreement.

- RR. “Lime Off-Take Agreement” means the agreement between Eastern Lime and Chemical Lime pursuant to which Eastern Lime will supply to Chemical Lime the volumes of Lime listed in Confidential Appendix E for the five-year period following the date on which Chemical Lime divests to Blue Circle PLC all other rights, titles, and interests in and to the Lime JV and the Lime Assets.
- SS. “Lime Plant” means the Lime production facility located at 8039 Highway 25, Calera, Alabama that manufactures, distributes and sells Lime.
- TT. “Lime Rock Supply Agreement” means the agreement to be entered into between Lafarge and the Lime Assets Acquirer, and incorporated into the Lime Assets Purchase Agreement, by which Lafarge will supply lime rock to the Lime Assets Acquirer on terms agreed by the Lime Assets Acquirer and approved by the Commission.
- UU. “Lime Site Services Agreement” means the agreement to be entered into between Lafarge and the Lime Assets Acquirer, and incorporated into the Lime Assets Purchase Agreement, by which Lafarge will provide site services at the Calera Site to the Lime Assets Acquirer on terms agreed by the Lime Assets Acquirer and approved by the Commission.
- VV. “Non-Public Great Lakes Information” means any information relating to the Great Lakes Assets not in the public domain. Non-Public Great Lakes Information shall not include: (i) information that subsequently falls within the public domain through no violation of this Order by Respondents or breach of a confidentiality or non-disclosure agreement with respect to such information; (ii) information independently developed by Respondents without reference to or use of Non-Public Great Lakes Information; and (iii) information that is required to be disclosed by law.
- WW. “Non-Public Lime Information” means any information relating to the Lime Assets not in the public domain and any information obtained by Respondents in the course of performing Respondents’ obligations under the Lime Rock Supply Agreement or the Lime Site Services Agreement. Non-Public Lime Information shall not include: (i) information that subsequently falls within the public domain through no violation of this Order by Respondents or breach of a confidentiality or non-disclosure agreement with respect to such information; (ii) information independently developed by Respondents without reference to or use of Non-Public Lime Information; and (iii) information that is required to be disclosed by law.
- XX. “Non-Public Solvay Information” means any information relating to the Solvay Assets not in the public domain. Non-Public Solvay Information shall not include: (i) information that subsequently falls within the public domain through no violation of this Order by Respondents or breach of a confidentiality or non-disclosure agreement with respect to

such information; (ii) information independently developed by Respondents without reference to or use of Non-Public Solvay Information; and (iii) information that is required to be disclosed by law.

- YY. “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity.
- ZZ. “Railcars” means the 30 railcars identified in Confidential Appendix D hereto and owned by Blue Circle PLC.
- AAA. “Ready-Mix Operations” means the 39 ready-mix operations identified on Appendix C hereto.
- BBB. “Slag” means the by-product from the manufacture of steel that is ground into a powder, and sold as a product that can be used as an input into Cement.
- CCC. “Solvay Assets” means all of Blue Circle PLC’s rights, titles, and interests in and to all assets, properties, business and goodwill, tangible or intangible, used to operate the Solvay Terminal in the ordinary course and in accordance with past practice, including, but not limited to (i) the Solvay Terminal, (ii) all real property (together with appurtenances, licenses and permits) owned, leased or otherwise held by Blue Circle PLC and used to operate the Solvay Terminal, (iii) all personal property owned, leased or otherwise held by Blue Circle PLC and used to operate the Solvay Terminal, (iv) all rights of Blue Circle PLC relating to the Solvay Terminal under any contract entered into with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees, and joint venture partners, (v) all governmental approvals, consents, licenses, permits, waivers, or other authorizations held by Blue Circle PLC and used to operate the Solvay Terminal, (vi) all rights of Blue Circle PLC relating to the Solvay Terminal under any warranty and guarantee, express or implied, (vii) all books, records, and files held by Blue Circle PLC relating to the Solvay Terminal, (viii) all facilities, machinery, equipment, furniture, fixtures, tools, vehicles, transportation and storage facilities, and supplies held by Blue Circle PLC and used to operate the Solvay Terminal; provided, however, that the Solvay Assets do not include the Railcars, (ix) all rights in and to inventories of Cement at the Solvay Terminal, including Cement contained in any Railcars at the Solvay Terminal and Cement contained in Railcars in transit to the Solvay Terminal, and supplies and parts held by Blue Circle PLC and used to operate the Solvay Terminal, (x) all customer and vendor lists of the Solvay Terminal, and (xi) all items of prepaid expense used to operate the Solvay Terminal; provided, however, that the Solvay Assets do not include the Excluded Solvay Assets.

- DDD. "Solvay Assets Acquirer" means the Person approved by the Commission to acquire the Solvay Assets.
- EEE. "Solvay Assets Purchase Agreement" means the Commission-approved agreement (including, but not limited to, all related agreements, schedules, exhibits, and appendices) to acquire the Solvay Assets between Lafarge and the Solvay Assets Acquirer, including the Purchase and Sale Agreement by and among Lafarge and Glens Falls Lehigh, dated March 29, 2001, including all related agreements, schedules, exhibits, and appendices (attached hereto as Confidential Appendix F).
- FFF. "Solvay Employees" means the employees of Blue Circle PLC identified in Schedule 6.1 of the Solvay Assets Purchase Agreement.
- GGG. "Solvay Terminal" means the Blue Circle PLC terminal located in Solvay, New York that stores, distributes and sells Cement.
- HHH. "St. Marys Plant" means Blue Circle PLC's plant in St. Marys, Ontario, Canada that manufactures, distributes and sells Cement.
- III. "Unused Great Lakes Terminals" means Blue Circle PLC's terminals in South Beloit, Illinois and Coniston, Ontario, Canada.

## **II.**

### **IT IS FURTHER ORDERED** that:

- A. Blue Circle PLC and Lafarge shall divest the Great Lakes Assets, absolutely and in good faith and at no minimum price, to the Great Lakes Assets Acquirer no later than 180 days from the date upon which Blue Circle PLC and Lafarge consummate the Acquisition; provided, however, that nothing in this Paragraph II requires Blue Circle PLC and Lafarge to divest the Excluded Great Lakes Assets. This Paragraph II shall not require Blue Circle PLC and Lafarge to divest the Unused Great Lakes Terminals if the Commission approves the divestiture without such assets.
- B. Respondents shall divest the Great Lakes Assets only to an Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.
- C. For a period of up to six months from the Effective Date of Divestiture of the Great Lakes Assets:
1. At the request of the Great Lakes Assets Acquirer, Blue Circle PLC and Lafarge

shall provide technical assistance and advice sufficient to enable the Great Lakes Assets Acquirer to obtain governmental approvals necessary to operate the Great Lakes Business.

2. At the request of the Great Lakes Assets Acquirer, Blue Circle PLC and Lafarge shall provide such technical assistance as is necessary to enable the Great Lakes Assets Acquirer to conduct the Great Lakes Business in substantially the same manner as Blue Circle PLC operated the Great Lakes Business at the time of the announcement of the Acquisition.
  3. Blue Circle PLC and Lafarge shall receive no compensation for providing the assistance required pursuant to Paragraph II.C of this Order that exceeds the out-of-pocket costs associated with providing such technical assistance and the direct cost of the material and labor to provide such assistance.
- D. Blue Circle PLC and Lafarge shall allow the Great Lakes Assets Acquirer an opportunity to employ any Great Lakes Employees:
1. Not later than thirty days before the Effective Date of Divestiture of the Great Lakes Assets, Blue Circle PLC and Lafarge shall, to the extent permissible under applicable laws, (i) provide to the Great Lakes Assets Acquirer a list of all Great Lakes Employees, (ii) allow the Great Lakes Assets Acquirer an opportunity to interview any Great Lakes Employees, and (iii) allow the Great Lakes Assets Acquirer to inspect the personnel files and other documentation relating to such Great Lakes Employees.
  2. Blue Circle PLC and Lafarge shall, to the extent permissible under applicable laws, (i) not offer any incentive to any Great Lakes Employee to decline employment with the Great Lakes Assets Acquirer, (ii) remove any contractual impediments with Blue Circle PLC and Lafarge that may deter any Great Lakes Employee from accepting employment with the Great Lakes Assets Acquirer, including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with Blue Circle PLC and Lafarge that would affect the ability of the Great Lakes Employee to be employed by the Great Lakes Assets Acquirer, (iii) not interfere with the employment by the Great Lakes Assets Acquirer of any Great Lakes Employee, (iv) continue employee benefits offered by Blue Circle PLC and Lafarge until the divestiture has been completed, including regularly scheduled raises and bonuses, and regularly scheduled vesting of all pension benefits, and (v) pay a bonus to Great Lakes Key Employees who accept an offer of employment from the Great Lakes Assets Acquirer no later than thirty (30) days from the date Blue Circle PLC and Lafarge divest the Great Lakes Assets, pursuant to the terms set forth in Confidential Appendix B to this Order.



3. For a period of one year from the date this Order becomes final, Blue Circle PLC and Lafarge shall not, directly or indirectly, solicit, hire or enter into any arrangement for the services of any Great Lakes Employee employed by the Great Lakes Assets Acquirer, unless the Great Lakes Employee's employment has been terminated by the Great Lakes Assets Acquirer.
- E. Pending divestiture of the Great Lakes Assets and subject to the Hold Separate, Blue Circle PLC and Lafarge shall maintain the viability, marketability, and competitiveness of the Great Lakes Assets, and shall not cause the wasting or deterioration of the Great Lakes Assets, nor shall they cause the Great Lakes Assets to be operated in a manner inconsistent with applicable laws, nor shall they sell, transfer, encumber or otherwise impair the viability, marketability or competitiveness of the Great Lakes Assets. Blue Circle PLC and Lafarge shall comply with the terms of this paragraph until such time as Blue Circle PLC and Lafarge or the Divestiture Trustee have divested the Great Lakes Assets pursuant to the terms of this Order. Blue Circle PLC and Lafarge shall conduct the business of the Great Lakes Assets in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance efforts) and shall use their best efforts to preserve the existing relationships with suppliers, customers, employees, and others having business relationships with the Great Lakes Assets in the ordinary course of business and in accordance with past practice. Blue Circle PLC and Lafarge shall not terminate the operations of any Great Lakes Assets. Blue Circle PLC and Lafarge shall use their best efforts to keep the organization and properties of the Great Lakes Assets intact, including current business operations, physical facilities and working conditions, and a work force of equivalent size, training, and expertise associated with the Great Lakes Assets.
- F. The purpose of the divestiture of the Great Lakes Assets is to ensure the continued use of the Great Lakes Assets in the same business in which the Great Lakes Assets were engaged at the time of the announcement of the proposed Acquisition by Blue Circle PLC and Lafarge and to remedy the lessening of competition alleged in the Commission's complaint.

### **III.**

#### **IT IS FURTHER ORDERED that:**

- A. Blue Circle PLC and Lafarge shall divest the Solvay Assets, absolutely and in good faith, to Glens Falls Lehigh pursuant to and in accordance with the Solvay Assets Purchase Agreement, no later than 20 business days from the date upon which Blue Circle PLC and Lafarge consummate the Acquisition; provided, however, that nothing in this Paragraph III requires Blue Circle PLC and Lafarge to divest the Excluded Solvay Assets.

- B. If, at the time the Commission determines to make this Order final, the Commission determines that Glens Falls Lehigh is not acceptable as the Solvay Assets Acquirer or that the Solvay Assets Purchase Agreement is not an acceptable manner of divestiture, and so notifies Blue Circle PLC and Lafarge, Blue Circle PLC and Lafarge shall immediately terminate or rescind the Solvay Assets Purchase Agreement with Glens Falls Lehigh and divest the Solvay Assets at no minimum price, absolutely and in good faith, to another Person that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission, no later than 120 days from the date this Order becomes final.
- C. Blue Circle PLC and Lafarge shall comply with all terms of the Solvay Assets Purchase Agreement which shall be incorporated by reference and made a part of this Order. Failure by Blue Circle PLC and Lafarge to perform under or comply with the Solvay Assets Purchase Agreement shall also constitute a violation of this Order. Notwithstanding any paragraph, section, or other provision of the Solvay Assets Purchase Agreement, Blue Circle PLC and Lafarge shall not, without the prior approval of the Commission, modify any term of the Solvay Assets Purchase Agreement or fail to satisfy each condition to the Solvay Assets Acquirer's obligation to acquire the Solvay Assets (whether or not waived). The terms of the Solvay Assets Purchase Agreement shall not be construed to vary from or contradict the terms of this Order.
- D. For a period of up to six months from the date Blue Circle PLC and Lafarge divest the Solvay Assets pursuant to Paragraph III.A of this Order:
1. At the request of the Solvay Assets Acquirer, Blue Circle PLC and Lafarge shall provide technical assistance and advice sufficient to enable the Solvay Assets Acquirer to obtain governmental approvals necessary to operate the Solvay Terminal.
  2. At the request of the Solvay Assets Acquirer, Blue Circle PLC and Lafarge shall provide technical assistance as is necessary to enable the Solvay Assets Acquirer to operate the Solvay Terminal in substantially the same manner as Blue Circle PLC operated the Solvay Terminal at the time of the announcement of the Acquisition.
  3. Blue Circle PLC and Lafarge shall receive no compensation for providing the assistance required pursuant to Paragraph III.D of this Order that exceeds the out-of-pocket costs associated with providing such technical assistance and the direct cost of the material and labor to provide such assistance.
- E. Blue Circle PLC and Lafarge shall allow the Solvay Assets Acquirer an opportunity to enter into an employment contract with any Solvay Employees:

1. Not later than thirty days before the date the Solvay Assets are divested, Blue Circle PLC and Lafarge shall, to the extent permissible under applicable laws, (i) provide to the Solvay Assets Acquirer a list of all Solvay Employees, (ii) allow the Solvay Assets Acquirer an opportunity to interview any Solvay Employees, and (iii) allow the Solvay Assets Acquirer to inspect the personnel files and other documentation relating to such Solvay Employees.
  2. Blue Circle PLC and Lafarge shall, to the extent permissible under applicable laws, (i) not offer any incentive to any Solvay Employee to decline employment with the Solvay Assets Acquirer, (ii) remove any contractual impediments with Blue Circle PLC and Lafarge that may deter any Solvay Employee from accepting employment with the Solvay Assets Acquirer, including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with Blue Circle PLC and Lafarge that would affect the ability of the Solvay Employee to be employed by the Solvay Assets Acquirer, (iii) not interfere with the employment by the Solvay Assets Acquirer of any Solvay Employee, and (iv) continue employee benefits offered by Blue Circle PLC and Lafarge until the divestiture has been completed, including regularly scheduled raises and bonuses, and regularly scheduled vesting of all pension benefits.
  3. For a period of one year from the date this Order becomes final, Blue Circle PLC and Lafarge shall not, directly or indirectly, solicit, hire or enter into any arrangement for the services of any Solvay Employee employed by the Solvay Assets Acquirer, unless the Solvay Employee's employment has been terminated by the Solvay Assets Acquirer.
- F. Pending divestiture of the Solvay Assets, Blue Circle PLC and Lafarge shall maintain the viability, marketability, and competitiveness of the Solvay Assets, and shall not cause the wasting or deterioration of the Solvay Assets, nor shall they cause the Solvay Assets to be operated in a manner inconsistent with applicable laws, nor shall they sell, transfer, encumber or otherwise impair the viability, marketability or competitiveness of the Solvay Assets. Blue Circle PLC and Lafarge shall comply with the terms of this paragraph until such time as Blue Circle PLC and Lafarge or the Divestiture Trustee have divested the Solvay Assets pursuant to the terms of this Order. Blue Circle PLC and Lafarge shall conduct the business of the Solvay Assets in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance efforts) and shall use their best efforts to preserve the existing relationships with suppliers, customers, employees, and others having business relationships with the Solvay Assets in the ordinary course of business and in accordance with past practice. Blue Circle PLC and Lafarge shall not terminate the operations of any Solvay Assets. Blue Circle PLC and Lafarge shall use their best efforts to keep the organization and properties of the Solvay Assets

intact, including current business operations, physical facilities and working conditions, and a work force of equivalent size, training, and expertise associated with the Solvay Assets.

- G. The purpose of the divestiture of the Solvay Assets is to ensure the continued use of the Solvay Assets in the same business in which the Solvay Assets were engaged at the time of the announcement of the proposed Acquisition by Blue Circle PLC and Lafarge and to remedy the lessening of competition alleged in the Commission's complaint.

#### IV.

##### **IT IS FURTHER ORDERED** that:

- A. Blue Circle PLC shall acquire from Chemical Lime all of Chemical Lime's rights, titles, and interests in and to the Lime JV and the Lime Assets (other than the Lime Off-Take Agreement), absolutely and in good faith by no later than the date upon which Lafarge and Blue Circle PLC consummate the Acquisition. Lafarge and Blue Circle PLC shall not consummate the Acquisition unless and until Chemical Lime has divested all of its rights, titles, and interests in and to the Lime JV and the Lime Assets (other than the Lime Off-Take Agreement), absolutely and in good faith, to Blue Circle PLC effective no later than the consummation of the Acquisition.
- B. Respondents shall divest the Lime Assets (subject to the Lime Off-Take Agreement), absolutely and in good faith and at no minimum price, to the Lime Assets Acquirer no later than 180 days from the date upon which Lafarge and Blue Circle PLC consummate the Acquisition, provided, however, that nothing in this Paragraph IV requires Blue Circle PLC and Lafarge to divest the Excluded Lime Assets.
- C. Respondents shall divest the Lime Assets only to an Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.
- D. Respondents shall not divest the Lime Assets to Chemical Lime or Carmeuse.
- E. For a period of up to six months from the Effective Date of Divestiture of the Lime Assets:
  - 1. At the request of the Lime Assets Acquirer, Blue Circle PLC and Lafarge shall provide technical assistance and advice sufficient to enable the Lime Assets Acquirer to obtain governmental approvals necessary to operate the Lime Business.

2. At the request of the Lime Assets Acquirer, Blue Circle PLC and Lafarge shall provide such technical assistance as is necessary to enable the Lime Assets Acquirer to conduct the Lime Business in substantially the same manner as Blue Circle PLC operated the Lime Business at the time of the announcement of the Acquisition.
3. Blue Circle PLC and Lafarge shall receive no compensation for providing the assistance required pursuant to Paragraph IV.E of this Order that exceeds the out-of-pocket costs associated with providing such technical assistance and the direct cost of material and labor to provide such assistance.

F. Blue Circle PLC and Lafarge shall allow the Lime Assets Acquirer an opportunity to employ any Lime Employees:

1. No later than thirty days before the Effective Date of Divestiture of the Lime Assets, Blue Circle PLC and Lafarge shall, to the extent permissible under applicable laws, (i) provide to the Lime Assets Acquirer a list of all Lime Employees, (ii) allow the Lime Assets Acquirer an opportunity to interview any Lime Employees, and (iii) allow the Lime Assets Acquirer to inspect the personnel files and other documentation relating to such Lime Employees.
2. Blue Circle PLC and Lafarge shall, to the extent permissible under applicable laws, (i) not offer any incentive to any Lime Employee to decline employment with the Lime Assets Acquirer, (ii) remove any contractual impediments with Blue Circle PLC and Lafarge that may deter any Lime Employee from accepting employment with the Lime Assets Acquirer, including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with Blue Circle PLC and Lafarge that would affect the ability of the Lime Employee to be employed by the Lime Assets Acquirer, (iii) not interfere with the employment by the Lime Assets Acquirer of any Lime Employee, (iv) continue employee benefits offered by Blue Circle PLC and Lafarge until the divestiture has been completed, including regularly scheduled raises and bonuses, and regularly scheduled vesting of all pension benefits, and (v) pay a bonus to Lime Key Employees who accept an offer of employment from the Lime Assets Acquirer no later than thirty (30) days from the date Blue Circle PLC and Lafarge divest the Lime Assets, pursuant to the terms set forth in Confidential Appendix B to this Order.
3. For a period of one year from the Effective Date of Divestiture of the Lime Assets, Blue Circle PLC and Lafarge shall not, directly or indirectly, solicit, hire or enter into any arrangement for the services of any Lime Employee employed by the Lime Assets Acquirer, unless the Lime Employee's employment has been terminated by the Lime Assets Acquirer.

- G. Pending divestiture of the Lime Assets and subject to the Hold Separate, Blue Circle PLC and Lafarge shall maintain the viability, marketability, and competitiveness of the Lime Assets, and shall not cause the wasting or deterioration of the Lime Assets, nor shall they cause the Lime Assets to be operated in a manner inconsistent with applicable laws, nor shall they sell, transfer, encumber or otherwise impair the viability, marketability or competitiveness of the Lime Assets. Respondents shall comply with the terms of this paragraph until such time as Respondents or the Divestiture Trustee have divested the Lime Assets pursuant to the terms of this Order. Blue Circle PLC and Lafarge shall conduct the business of the Lime Assets in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance efforts) and shall use their best efforts to preserve the existing relationships with suppliers, customers, employees, and others having business relationships with the Lime Assets in the ordinary course of business and in accordance with past practice. Blue Circle PLC and Lafarge shall not terminate the operations of any Lime Assets. Blue Circle PLC and Lafarge shall use their best efforts to keep the organization and properties of the Lime Assets intact, including current business operations, physical facilities and working conditions, and a work force of equivalent size, training, and expertise associated with the Lime Assets.
- H. The purpose of the divestiture of the Lime Assets is to ensure the continued use of the Lime Assets in the same business in which the Lime Assets were engaged at the time of the announcement of the proposed Acquisition by Blue Circle PLC and Lafarge and to remedy the lessening of competition alleged in the Commission's complaint.

## V.

### **IT IS FURTHER ORDERED** that:

- A. Respondents shall (i) not provide, disclose or otherwise make available any Non-Public Great Lakes Information, any Non-Public Solvay Information or any Non-Public Lime Information to any Person, (ii) not use any Non-Public Great Lakes Information, any Non-Public Solvay Information, or any Non-Public Lime Information for any reason or purpose other than those set out in this Paragraph V, and (iii) enforce the terms of this Paragraph V.A as to any Person and take such action as is necessary to cause each Person to comply with the terms of this Paragraph V.A, including all actions that Respondents would take to protect their own trade secrets and confidential information; provided, however, that Respondents may disclose Non-Public Great Lakes Information to the Great Lakes Assets Acquirer, Non-Public Solvay Information to the Solvay Assets Acquirer, and Non-Public Lime Information to the Lime Assets Acquirer and their respective directors, officers, employees, agents and representatives, in connection with the divestiture requirements set forth in Paragraphs II, III and IV of this Order.

B. Notwithstanding Paragraph V.A of this Order and subject to the Hold Separate:

1. Respondents may use Non-Public Great Lakes Information, Non-Public Solvay Information or Non-Public Lime Information in the operation or sale process of the Great Lakes Assets, the Solvay Assets and the Lime Assets, respectively, prior to divesting such assets.
2. Respondents may provide, disclose, make available, or use Non-Public Great Lakes Information, Non-Public Solvay Information or Non-Public Lime Information only as is necessary to provide the technical assistance services pursuant to Paragraphs II, III and IV, respectively, of this Order, subject to the conditions set forth in Paragraph V.B.4 of this Order.
3. Respondents may provide, disclose, make available, or use Non-Public Lime Information only as is necessary to perform their obligations under the Lime Rock Supply Agreement and Lime Site Services Agreement, subject to the conditions set forth in Paragraph V.B.4 of this Order.
4. Respondents shall (i) provide, disclose, or otherwise make available Non-Public Great Lakes Information, Non-Public Solvay Information or Non-Public Lime Information only to those Persons working for Respondents and having a need to know and who agree in writing to maintain the confidentiality of such information and (ii) use any Non-Public Great Lakes Information, Non-Public Solvay Information or Non-Public Lime Information solely for the purposes set forth in this Paragraph V.
5. Respondents shall enforce the terms of this Paragraph V.B as to any Person and take such action as is necessary to cause each such Person to comply with the terms of this Paragraph V.B, including all actions that Respondents would take to protect their own trade secrets and confidential information.

## VI.

**IT IS FURTHER ORDERED** that:

- A. At any time after execution of the Agreement Containing Consent Orders, the Commission may appoint one or more Persons to serve as Independent Auditor for the purpose of monitoring Respondents' compliance with Paragraph IV of this Order:
1. The Commission may appoint William M. Troutman, to whose appointment Respondents have previously consented, to serve as the Independent Auditor for the Lime Assets.

2. The Commission may select someone other than William M. Troutman to serve as the Independent Auditor for the Lime Assets, subject to the consent of Respondents, which consent shall not be unreasonably withheld. Respondents shall be deemed to have consented to the selection of the proposed substitute Independent Auditor if Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Independent Auditor within ten (10) days after Respondents' receipt of written notice from the staff of the Commission of the identity of the proposed substitute Independent Auditor.
  3. Within ten (10) days after appointment of the Independent Auditor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, transfers to the Independent Auditor all rights and powers necessary to permit the Independent Auditor to perform his or her obligations under Paragraphs IV and VI of this Order.
  4. The Independent Auditor shall serve, without bond or other security, at the cost and expense of Respondents, on reasonable and customary terms and conditions, subject to the approval of the Commission.
  5. If the Independent Auditor has ceased to act or failed to act diligently, or if the Independent Auditor resigns for any reason, the Commission may appoint a substitute Independent Auditor in the same manner provided by this Order for appointment of the initial Independent Auditor.
  6. The Independent Auditor's power and duties under this Paragraph shall terminate the earlier of (i) ten (10) years from the date on which this Order becomes final, or (ii) the date on which all the agreements that comprise the Lime Assets Purchase Agreement have terminated or expired.
- B. An Independent Auditor appointed pursuant to Paragraph VI.A of this Order shall have all the powers and duties necessary, and may do all such acts and things required to be done, to monitor Respondents' compliance with Paragraph IV of this Order. In addition to the powers and duties provided to the Independent Auditor by this Order, the Independent Auditor shall:
1. Employ such consultants, accountants, attorneys, and other representatives and assistants as may be necessary to assist the Independent Auditor to perform his or her duties under this Paragraph VI;
  2. Account for all expenses incurred, including fees for the Independent Auditor's services and the services of any person employed by the Independent Auditor, in



the course of performing his or her duties under this Paragraph VI;

3. Sign a confidentiality agreement, if requested by Respondents, prohibiting the use, or disclosure to anyone other than the Commission or persons employed by the Independent Auditor, of any confidential information gained as a result of his or her role as Independent Auditor and providing for the return of any confidential information upon termination of the Independent Auditor's duties; and
4. Report in writing to the Commission concerning Respondents' compliance with Paragraph IV of this Order (i) within sixty (60) days from the date the Commission appoints the Independent Auditor and (ii) annually thereafter on the anniversary of the date this Order becomes final during the remainder of the Independent Auditor's period of appointment, or at any other time as requested by the staff of the Commission.

C. Respondents shall assist and cooperate with the Independent Auditor in performing his or her duties under this Paragraph VI and shall take no affirmative action, or fail to take any action within Respondents' control, as a result of which the Independent Auditor's ability to fulfill his or her duties as required by Paragraphs IV and VI of this Order would be diminished. In addition to the obligations imposed upon Respondents by Paragraph IV of this Order, Respondents shall:

1. Provide the Independent Auditor with complete access, subject to any legally recognized privilege, to the personnel, facilities, books, records, and any other information relating to Respondents' obligations under Paragraph IV of this Order; provided, however, that the Independent Auditor shall give Respondents notice of any request and attempt to schedule such access in a manner that will not unreasonably interfere with Respondents' operations;
2. Compensate the Independent Auditor for (i) his or her services and (ii) the services of such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to the Independent Auditor to perform his or her duties, at reasonable and customary terms and conditions, including payment of reasonable out-of-pocket expenses incurred in the performance of the Independent Auditor's duties; and
3. Indemnify the Independent Auditor, including any persons retained by the Independent Auditor, and hold all such persons harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Independent Auditor's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent

that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Independent Auditor.

- D. The Commission may on its own initiative or at the request of the Independent Auditor issue such additional orders or directions as may be necessary or appropriate to monitor compliance with the requirements of Paragraph IV of this Order.

## **VII.**

### **IT IS FURTHER ORDERED** that:

- A. If Respondents fail to complete one or more of the divestitures required by Paragraphs II, III and IV of this Order within the time periods specified therein, the Commission may appoint one or more Divestiture Trustees to divest the Great Lakes Assets, the Solvay Assets and/or the Lime Assets that have not been divested to an Acquirer or Acquirers in a manner acceptable to the Commission. The Divestiture Trustee will have the authority and responsibility to divest the Great Lakes Assets, the Solvay Assets and/or the Lime Assets absolutely and in good faith at no minimum price, and with the Commission's prior approval. Neither the decision of the Commission to appoint a Divestiture Trustee, nor the decision of the Commission not to appoint a Divestiture Trustee, to divest any of the assets under this Paragraph VII shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(*I*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.
- B. If a Divestiture Trustee is appointed by the Commission or a court pursuant to Paragraph VII of this Order to divest the Great Lakes Assets, the Solvay Assets and/or the Lime Assets to an Acquirer or Acquirers, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
1. The Commission may appoint Daniel E. Somes and William M. Troutman, to whose appointments Respondents have previously consented, to serve as, respectively, the Divestiture Trustee for the Great Lakes Assets and the Divestiture Trustee for the Lime Assets. If the Commission appoints Daniel E. Somes as the Divestiture Trustee of the Great Lakes Assets or William M. Troutman as the Divestiture Trustee for the Lime Assets, Respondents shall execute a trust agreement with the Divestiture Trustee no later than one (1) business day after appointment by the Commission in the form of the trust agreement attached to the Great Lakes Hold Separate Trustee Agreement and the Lime Hold Separate Trustee Agreement, as the case may be. Respondents shall

transfer to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to divest the Great Lakes Assets or the Lime Assets to an Acquirer or Acquirers and to enter into a purchase and sale agreement(s) and, as applicable, an operating agreement, with the Acquirer or Acquirers.

2. The Commission may select someone other than Daniel E. Somes or William M. Troutman to serve as Divestiture Trustees, subject to the consent of Respondents, which consent shall not be unreasonably withheld. Respondents shall be deemed to have consented to the selection of a proposed substitute Divestiture Trustee if Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed substitute Divestiture Trustee within ten (10) days after Respondents' receipt of written notice from the staff of the Commission of the identity of the proposed Divestiture Trustee.
3. Subject to the prior approval of the Commission, the Divestiture Trustee(s) shall have the exclusive power and authority to divest the Great Lakes Assets, the Solvay Assets and/or the Lime Assets to an Acquirer or Acquirers pursuant to the terms of this Order and to enter into a purchase and sale agreement(s) and, as applicable, an operating agreement with the Acquirer or Acquirers pursuant to the terms of this Order, which purchase and sale agreement(s) and, as applicable, operating agreement, shall be subject to the prior approval of the Commission.
4. Except as provided in Paragraph VII.B.1, within ten (10) days after appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to divest the Great Lakes Assets, the Solvay Assets and/or the Lime Assets to an Acquirer or Acquirers and to enter into a purchase and sale agreement(s) and, as applicable, an operating agreement, with the Acquirer or Acquirers.
5. The Divestiture Trustee shall have twelve (12) months from the date the Commission appoints the Divestiture Trustee to divest the Great Lakes Assets, the Solvay Assets and/or the Lime Assets only to an Acquirer or Acquirers that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. If, however, at the end of the applicable twelve-month period, the Divestiture Trustee has submitted to the Commission a plan of divestiture or believes that divestiture can be achieved within a reasonable time, such divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend such divestiture period only two (2) times.

6. The Divestiture Trustee shall have full and complete access, subject to any legally recognized privilege, to the personnel, books, records and facilities of Respondents related to the Great Lakes Assets, the Solvay Assets and/or the Lime Assets, or to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of his or her responsibilities.
7. The Divestiture Trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, but shall divest expeditiously at no minimum price. The divestitures shall be made only to an Acquirer or Acquirers that receives the prior approval of the Commission and the divestitures shall be accomplished only in a manner that receives the prior approval of the Commission; provided, however, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity or entities selected by Respondents from among those approved by the Commission; provided further, however, that Respondents shall select such entity within five (5) days of receiving written notification of the Commission's approval.
8. The Divestiture Trustee shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Respondents. The Divestiture Trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the Divestiture Trustee's locating an Acquirer or Acquirers and assuring compliance with this Order.
9. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not

resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.

10. If the Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute trustee in the same manner as provided in Paragraph VII of this Order.
  11. The Divestiture Trustee shall have no obligation or authority to operate or maintain the Great Lakes Assets, the Solvay Assets or the Lime Assets, as the case may be.
  12. The Divestiture Trustee shall report in writing to the Commission every sixty (60) days concerning his or her efforts to divest the Great Lakes Assets, the Solvay Assets and/or the Lime Assets and Respondents' compliance with the terms of this Order.
- C. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures required by this Order.

## VIII.

**IT IS FURTHER ORDERED** that Respondents shall provide a copy of this Order to each of Respondents' officers, employees, or agents having managerial responsibility for any of Respondents' obligations under this Order, no later than ten (10) days from the date this Order becomes final.

## IX.

**IT IS FURTHER ORDERED** that:

- A. Except as provided in Paragraph IX.B., Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order (i) no later than sixty (60) days from the date this Order becomes final, (ii) every sixty (60) days thereafter until the divestitures have been completed, and (iii) at such other times as the Commission may require.
- B. Within sixty (60) days of the Effective Date of Divestiture of the Lime Assets, and annually thereafter until the earlier of (i) ten (10) years from the date on which this Order

becomes final, or (ii) the date on which all of the agreements that comprise the Lime Assets Purchase Agreement have terminated or expired, Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with Paragraph IV of this Order.

- C. Respondents shall include in their compliance reports, among other things required by the Commission, a description (when applicable) of all substantive contacts or negotiations relating to the divestitures required by Paragraphs II, III and IV of this Order, the identity of all parties contacted, copies of all written communications to and from such parties, all reports and recommendations concerning the divestiture, the date of divestiture, and a statement that the divestiture has been accomplished in the manner approved by the Commission.

## X.

**IT IS FURTHER ORDERED** that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate structure of Respondents such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of this Order.

## XI.

**IT IS FURTHER ORDERED** that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and copy all non-privileged books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondents relating to any matter contained in this Order; and
- B. Upon eight days' notice to Respondents and without restraint or interference from them, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding any such matters.

**XII.**

**IT IS FURTHER ORDERED** that this Order shall terminate ten (10) years from the date this Order becomes final.

By the Commission.

Donald S. Clark  
Secretary

SEAL

ISSUED:

## Appendix A

### **The Excluded Great Lakes Assets includes the following:**

1. cash and cash equivalents;
2. any U.S. insurance policies that do not apply exclusively to the Great Lakes Business and prepaid expenses for any such U.S. insurance policies;
3. sporting tickets to the Toronto Blue Jays, Toronto Raptors, Toronto Maple Leafs, Ottawa Senators and any interest in the Ottawa Senators hockey club;
4. the following pension plans: (i) Blue Circle Inc. Savings Plan for Salaried Employees; (ii) Blue Circle Inc. Savings Plan for Blue Circle Cement Hourly Employees; and (iii) Blue Circle Inc. Pension Plan;
5. subject to item 6 below, intellectual property that is not used exclusively in the Great Lakes Business, provided, however, that, to the extent such intellectual property is used in the Great Lakes Business, Respondents shall grant the Great Lakes Assets Acquirer a perpetual, nonexclusive, paid-up (royalty-free) license to use such intellectual property in the operation of the Great Lakes Business;
6. all rights, including the right to use, in or to any trade name and trademark whether or not registered in any country in the world which includes the term “BLUE CIRCLE” or the “BLUE CIRCLE” design or the term “NEWCEM” or the “NEWCEM” design; provided, however, that the Great Lakes Assets Acquirer shall have rights to use the “BLUE CIRCLE” trade name and trademark and the “NEWCEM” trade name and trademark for a transition period of three months following the Effective Date of Divestiture of the Great Lakes Assets;
7. any titles, leases, licenses or other rights to or in real property other than the real property comprising the Detroit Facility, the Bowmanville Plant, the St. Marys Plant, the Great Lakes Terminals, Hutton Transport, the Unused Great Lakes Terminals and the Ready-Mix Operations, provided however, that Respondents shall not be required to divest any titles, leases, licenses or other rights to or in the real property comprising the Unused Great Lakes Terminals if the Commission approves the divestiture of the Great Lakes Assets without the Unused Great Lakes Terminals;
8. rights in and to pits and quarries, including all personal property used to operate such pits and quarries, other than those located at the Bowmanville Plant and the St. Marys Plant, or at Cambridge, Sunderland, Aberfoyle, Brighton, and North London (except the Byron and TCG Asphalt & Construction properties), Ontario, Canada;



9. any books and records that Respondents are required by law to retain, so long as Blue Circle PLC delivers at least one copy thereof to the Great Lakes Assets Acquirer; and
10. all refunds, rebates or similar payments of taxes to the extent such taxes were paid by or on behalf of Blue Circle PLC prior to the Effective Date of Divestiture of the Great Lakes Assets.

**The Excluded Solvay Assets includes the following:**

1. cash and cash equivalents;
2. any insurance policies that do not apply exclusively to the business of the Solvay Terminal and prepaid expenses for any such insurance policies;
3. the following pension plans: (i) Blue Circle Inc. Savings Plan for Salaried Employees; (ii) Blue Circle Inc. Savings Plan for Blue Circle Cement Hourly Employees; and (iii) Blue Circle Inc. Pension Plan;
4. any plants that manufacture Cement or Slag;
5. all rights, including the right to use, in or to any trade name and trademark whether or not registered in any country in the world which includes the term "BLUE CIRCLE" or the "BLUE CIRCLE" design; provided, however, that the Solvay Assets Acquirer shall have rights to use the "BLUE CIRCLE" trade name and "BLUE CIRCLE" design for a transition period of three months following divestiture of the Solvay Assets;
6. any titles, leases, licenses or other rights to or in real property, except for Blue Circle PLC's lease with CSX Transportation (formerly Consolidated Rail Corporation) dated April 1, 1987;
7. any books and records that Respondents are required by law to retain, so long as Blue Circle PLC delivers at least one copy thereof to the Acquirer of the Solvay Assets; and
8. all refunds, rebates or similar payments of taxes to the extent such taxes were paid by or on behalf of Blue Circle PLC prior to the date of divestiture of the Solvay Assets.

**The Excluded Lime Assets include the following:**

1. cash and cash equivalents;
2. any insurance policies that do not apply exclusively to the Lime Business and prepaid expenses for any such insurance policies;

3. the following pension plans: (i) Blue Circle Inc. Savings Plan for Salaried Employees; (ii) Blue Circle Inc. Savings Plan for Blue Circle Cement Hourly Employees; and (iii) Blue Circle Inc. Pension Plan;
4. any assets used by Respondents to provide site services to the Lime Assets Acquirer under the Lime Site Services Agreement;
5. any assets used by Respondents to provide lime rock to the Lime Assets Acquirer under the Lime Rock Supply Agreement, including rights in and to pits and quarries and all personal property used to operate such pits and quarries;
6. subject to item 6 below, intellectual property that is not used exclusively in the Lime Business, provided, however, that, to the extent such intellectual property is used in the Lime Business, Respondents shall grant the Lime Assets Acquirer a perpetual, nonexclusive, paid-up (royalty-free) license to use such intellectual property in the operation of the Lime Business;
7. all rights, including the right to use, in or to any trade name and trademark whether or not registered in any country in the world which includes the term "BLUE CIRCLE" or the "BLUE CIRCLE" design provided, however, that the Lime Assets Acquirer shall have the right to use the "BLUE CIRCLE" trade name and trademark for a transition period of three months following the Effective Date of Divestiture of the Lime Assets;
8. in the event the Lime Assets Acquirer chooses to enter into a lease for the real property comprising the Lime Plant (the "Land"), the Land together with related appurtenances, licenses and permits;
9. any railtracks, provided, however, that Respondents shall grant the Lime Assets Acquirer easements to use railtracks on the Calera Site;
10. any collective bargaining agreements;
11. any books and records that Respondents are required by law to retain, so long as Blue Circle PLC delivers at least one copy thereof to the Lime Assets Acquirer; and
12. all refunds, rebates or similar payments of taxes to the extent such taxes were paid by or on behalf of Blue Circle PLC prior to the Effective Date of Divestiture of the Lime Assets.

## **Confidential Appendix B**

## **Appendix C**

Blue Circle PLC Ready-Mix Operations to be divested pursuant to Paragraph II of this Order:

1. Barrie, Ontario
2. Belleville, Ontario
3. Blenheim, Ontario
4. Bowmanville, Ontario
5. Brampton, Ontario
6. Brantford, Ontario
7. Burlington, Ontario
8. Caledon, Ontario
9. Cambridge, Ontario
10. Cobourg, Ontario
11. Elora, Ontario
12. Guelph, Ontario
13. Hamilton, Ontario
14. Hanover, Ontario
15. Hull, Quebec
16. Ingersoll, Ontario
17. Kingston, Ontario
18. Leaside-Toronto, Ontario
19. London, Ontario
20. Maple, Ontario
21. Milton, Ontario

22. Mount Forest, Ontario
23. New Hamburg, Ontario
24. Newmarket, Ontario
25. Niagara (Thorold), Ontario
26. Ottawa (Gloucester), Ontario
27. Ottawa (Kanata), Ontario
28. Perth, Ontario
29. Peterborough, Ontario
30. Sarnia, Ontario
31. Scarborough, Ontario
32. St. Thomas, Ontario
33. Sutton, Ontario
34. Toronto (Bathurst/Etobicoke), Ontario
35. Wallaceburg, Ontario
36. West Lorne, Ontario
37. Whitby, Ontario
38. Windsor, Ontario
39. Woodstock, Ontario

## **Confidential Appendix D**

## **Confidential Appendix E**

## **Confidential Appendix F**