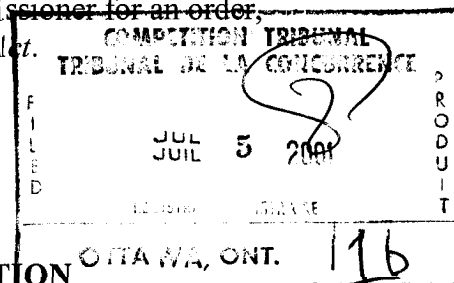


THE COMPETITION TRIBUNAL

IN THE MATTER OF THE *COMPETITIONACT*, R.S. 1985, c.C-34, as amended, and the *Competition Tribunal Rules*, SOR/94-290, as amended (the “Rules”);

AND IN THE MATTER OF an inquiry pursuant to subsection 10(1)(b) of the *Competition Act* relating to the proposed acquisition of all of the issued and outstanding shares of Newalta Corporation by Canadian Crude Separators Inc.;

AND IN THE MATTER OF an Application by the Commissioner for an order, on consent, pursuant to ss. 100 and 105 of the *Competition Act*.



BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

- and -

CANADIAN CRUDE SEPARATORS INC.

Respondent

AFFIDAVIT OF RICHARD J. TAYLOR

I, Richard J. Taylor, of the City of Ottawa, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Assistant Deputy Commissioner of Competition, Division ‘A’, Mergers Branch of the Competition Bureau (“Bureau”) in the Department of Industry of the Government of Canada. I have been employed at the Bureau for 18 years in positions of increasing responsibility. I have significant experience in conducting and directing the assessment of

the competitive effects of merger transactions and other commercial transactions.

2. I am responsible for the conduct of the Commissioner of Competition's (the "Commissioner") inquiry (the "Inquiry") into the proposed acquisition (the "Merger") of Newalta Corporation ("Newalta") by Canadian Crude Separators Inc. ("CCS") made under the authority of the Commissioner pursuant to the provisions of paragraph 10(1)(b) of the *Competition Act* (the "Act") and as such have personal knowledge of the matters deposed to in this Affidavit. Where my knowledge is based on information that I have received from others, I have indicated the source of this information and verily believe such information to be true.
3. I have reviewed the public and other documents provided by CCS, Newalta and others and having had discussions with other Bureau officers involved in the Bureau's investigation, various customers and others in this matter, and, as a result, I state, and do believe that:

The Parties

4. CCS is a corporation constituted under the laws of Alberta and is engaged primarily in the provision of services to the upstream oil and gas sector through the operation of its two divisions: the Treatment and Disposal Division and the Well Servicing Division. The Treatment and Disposal Division operates oilfield waste treatment facilities and disposal sites in 21 centres in Alberta and Saskatchewan. The Well Servicing Division has a fleet of 39 well service rigs operating in Alberta and northeastern British Columbia. CCS' revenues for the twelve months ended December 31, 2000 were Cdn. \$67.8 million.
5. Newalta is a corporation constituted under the laws of Alberta and is engaged primarily in the provision of services through the processing and recovery of resalable products from waste materials generated by the oil production industry. In Alberta, Newalta operates 28 waste treatment facilities in four lines of business Conventional Oilfield Services, Heavy

Oilfield Services, Oil Recycling Services and Industrial Services. Newalta does not operate oil well service rigs. Newalta's revenues for the twelve months ended December 31, 2000 were Cdn. \$78.4 million.

6. The only other significant multi-market commercial participant in the oilfield waste treatment and disposal market is Anadime Corporation ("Anadime"). Anadime has revenues from all businesses of \$13.2 million in 2000 (\$11 million in Canada) and operates five oilfield waste processing facilities at Niton, Hays, Stettler, Elk Point and Provost and a terminalling facility at Willesden Green.

The Merger

7. On May 3, 2001 CCS commenced a bid to acquire all of the issued and outstanding Newalta common shares and Newalta common share purchase warrants. The date identified in the June 25, 2001 Notice of Variation to Newalta shareholders and warrant holders for tendering their interests in Newalta is July 6, 2001 unless such bid is extended.
8. CCS has advised the Bureau that it intends to take up the shares tendered pursuant to the Offer on Friday, July 6, 2001.

The Commissioner's Review of the Transaction

9. The Commissioner was first formally advised of the possibility of the Merger in a request for an Advance Ruling Certificate in the matter on March 15, 2001. At that time, CCS also filed a Competitive Impact Statement and certain other documents setting forth information about the Merger. Since the bid represented a hostile takeover and given the few firms in the market, the acquirer requested that no contact with the target company, customers, competitors, suppliers or regulators be conducted prior to the transaction being made public.

10. As a result of early indications that the transaction would create or enhance market power, and given the high level of concentration in the market and given the apparent overlap, this merger was classified as 'complex' by the Bureau and would therefore require an in-depth review of the effects of the transaction which would require at least the time indicated in the Bureau's Service Standards (10 weeks) from the date that the Offer became public for the Bureau to complete an analysis of the effects on competition of the Merger in the relevant markets. CCS was notified on or about April 9, 2001 that the proposed Merger had been classified by the Bureau as Complex.
11. The transaction was made public on May 3, 2001, following which Bureau staff initiated preliminary contact with customers, competitors and regulators of the parties to seek their views of the likely competitive impacts of the transaction. As well, Bureau staff examined public and other documents of the parties to further its understanding of the market and of the transaction's effect on competition in numerous product and geographic markets.
12. On June 11, 2001, Newalta announced its signing of a letter of intent to acquire Anadime, the third and only other multiple market competitor in the oilfield waste treatment and disposal market. This transaction, if implemented, may also result in negative effects on competition on additional markets and would result in a significantly different post-merger market structure if completed on its own, or in conjunction with the CCS-Newalta transaction.
13. As a result of the proposed Anadime take-over, the Commissioner's analysis was further complicated and made even more burdensome as a result of being required to measure the impact of that proposed transaction in conjunction with, and as an alternative to, the Merger.
14. Given the timing for shareholders to tender their shares under the terms of CCS' initial offer the Bureau provided its initial views to counsel for CCS on June 14, 2001, and advised that the transaction was likely to raise significant competition concerns if it chose to complete it.

15. I am advised by Victor Hammill and do verily believe that on June 19, 2001, the Bureau reiterated its concerns in a further meeting with CCS, its counsel and advising economist. CCS advised that it would cooperate with the Bureau in avoiding a contested injunctive procedure by cooperating with the Bureau to identify terms of an interim order. I personally spoke with Counsel to CSS and reiterated the Commissioner's concerns on June 27th, 2001.

The Bureau's Preliminary Analysis

16. The preliminary examination of the Merger has included the following:
 - a. A review of the documents provided by CCS and Newalta
 - b. meetings with the senior officers of CCS and Newalta, their counsel and advising economists by telephone or in-person;
 - c. site visits to operating waste facilities of each of the parties;
 - d. contacts by telephone and in-person interviews with customers, competitors, industry associations and provincial regulatory agencies; and
 - e. a review of documents provided by the parties, competitors, customers or available publicly.
17. It appears to the Bureau that the transaction will likely result in the top two firms in the industry, with an overall market share likely above 80%, and near 100% in certain local geographic regions, dominating the market worth approximately \$160 million per year in Alberta and certain geographic areas of Saskatchewan and British Columbia.

18. In its preliminary investigation, the Bureau discovered that the oilfield waste treatment and disposal market appears to be characterised by competition among three competitors, CCS, Newalta and Anadime who service oil producers from a number of locations in proximity to oil producing fields. No other firms provide the scope of services or distribution of service locations of these firms in the market, with Anadime being a much smaller competitor in terms of markets served and market share. No other firms enjoy the same reputation as CCS or Newalta in terms of scope and breadth of service, financial stability and environmental stewardship in the industry. The combined firm will have nearly a 100% market share in several local markets across a number of product markets, particularly in the treatment of the most difficult types oilfield wastes to treat. Barriers to entry and exit are high, given the time needed to enter and build a business in numerous local markets, the regulatory obstacles and potential environmental liabilities facing entrants.
19. Further supporting the Bureau's view of the market is that CCS itself, in its public 1999 Annual Information Form filed with securities regulators stated that:

“Competition for the Treatment and Disposal Division of the Corporation comes primarily from one other company involved in the business in western Canada. Increased oilfield activity and environmental regulations is resulting in an increasing market for this division's services. Location of facilities is a key factor in the success of the business due to the importance of transportation costs to the economics of the Corporation's customers. In addition, the industry has relatively high barriers to entry as a result of high capital costs and stringent regulatory approval processes. These factors combine to create an environment where, in the absence of technological advances, management believes there will be little direct competition in any one geographic area for the next two to three years.”

Market Definition

20. The Bureau's preliminary investigation has identified three relevant product markets: (a) oilfield waste treatment and disposal services; (b) crude oil separation and terminalling services; and (c) uncontaminated liquid and solid oilfield waste disposal services.

Product Dimension - Oilfield Waste Treatment and Disposal

21. The oilfield waste treatment and disposal services product market includes the consolidation, treatment and final disposal of various contaminated liquids, sludges, and solids that are a byproduct of oilfield operations. These wastes include products such as drilling muds, work over fluids, spill materials, tank bottoms, slop oil, produced waters and other liquids, emulsions, solids and sludges derived from drilling, producing and maintaining oil production. Certain liquid and solid wastes may be disposed of directly without further treatment.
22. The geographic markets in which the parties have waste treatment facilities or disposal facilities are as follows:
1. Zama/Rainbow Lake AB
 2. Fort St. John, BC
 3. Gordondale/Spirit River/La Glace/Grand Prairie AB
 4. Red Earth, AB
 5. Slave Lake, AB
 6. Judy Creek, AB
 7. High Prairie/Valleyview/Fox Creek AB
 8. Edson/Wolf Lake/Brazeau/Niton Jct/Drayton Valley AB
 9. Rocky Mountain House/Pigeon Lake/Stauffer/Eckville AB
 10. Joffre/Stettler/Big Valley AB
 11. Elk Point/Lindberg/Marshall AB

12. Hughenden/Provost/Unity/Coronation AB
13. Hays/Brooks/Taber AB
14. Kindersley SK
15. Gull Lake SK
16. Halbrite SK

The combined operations of the parties would include nearly thirty-eight (38) oilfield waste treatment and disposal facilities and an additional ten (10) other facilities while the only other commercial competitor, Anadime, has a total of six (6) facilities.

23. The transaction would appear to result in the creation of new practical monopolies in the supply oilfield waste treatment and disposal services in the following areas:

1. Zama/Rainbow Lake, AB;
2. Gordondale/Spirit River/La Glace/Grand Prairie, AB;
3. Rocky Mountain House/Pigeon Lake/Stauffer/Eckville AB.

The affected Newalta facilities (the “Affected Facilities”) are located at:

1. Grande Prairie;
2. Gordondale;
3. Spirit River;
4. Zama;
5. Eckville; and
6. Stauffer.

24. The Commissioner has not yet completed his analysis and requires additional detailed market information in regard to facilities located in the following geographic markets in which the combined entity would have significant market share and/or control over access to disposal facilities:

1. High Prairie/Valleyview/Fox Creek AB
2. Edson/Wolf Lake/Brazeau/Niton Jct/Drayton Valley AB
3. Hughenden/Provost/Unity/Coronation AB; and
4. Edson/Wolf Lake/Brazeau/Niton Jct/Drayton Valley AB

The affected Newalta facilities (the “Affected Facilities”) are located at:

1. Valleyview
2. Drayton Valley
3. Hughenden including the waste disposal cavern associated with such facility; and
4. Elk Point.

Product Dimension - Crude Oil Separation and Terminalling Services

25. The crude oil separation and terminalling services, provided by the parties typically as a component of their waste treatment facility, are used by crude oil producers as a final step in the treatment and transmission of pipeline crude. Oil producers contract with independent tanker truck operators to transport “wet” oil, that is crude oil containing levels of water exceeding acceptable limits for pipeline transport, from the producer’s site to a processing facility. Using separation tanks and heat, excess water is removed from crude oil, the unwanted fluids are disposed of into a licensed disposal well and the “dry” crude is held in storage (“terminalled”) until a sufficient quantity has been processed to be transmitted by pipeline to a downstream refinery.
26. Based on the Bureau’s preliminary analysis, the cost of entry and the ability for producers to consolidate their own volumes economically, or with those of another producer with excess separation capacity to offset the exercise of market power, it appears that the transaction is unlikely to result in a substantial lessening of competition in the crude oil separation and terminalling services market.

Product Dimension - Uncontaminated Waste Disposal

27. Unlike contaminated waste that requires treatment prior to disposal, other options exist for straight disposal of uncontaminated oilfield waste (i.e. waste that does not exceed regulatory limits for contamination) through land spreading, road spreading, landfills and cavern disposal. Producers themselves are capable of managing some uncontaminated wastes by spreading them on own facilities or, in the case of uncontaminated liquids, by injecting them back into their own disposal wells that are licensed to accept these liquids.
28. Based on the Bureau's preliminary review of the market, there has been successful entry into this market, both on a de novo basis, by way of expansion and by vertical entry by producers into this market. As such it appears that the Merger is unlikely to result in a substantial lessening of competition in uncontaminated oilfield waste disposal however it is recognized that disposal facilities play an important role in the overall efficiency and effectiveness of the oilfield waste treatment and disposal market.

Entry Conditions

29. Regulatory barriers to entry exist at both the provincial and municipal government levels. The provinces are largely concerned with the broad range of potential environmental and liability impacts in the event of non-compliance by waste treatment firms. Municipal authorities are involved from a development and land use perspective in their local area. Neither provincial nor municipal governments regulate the price of oilfield waste treatment and disposal costs and directed subsidies do not exist in making any particular choice.
30. The Bureau has contacted certain customers of Newalta and CCS and I am advised by Victor Hammill, a Competition Law Officer, and I do verily believe that such customers have stated that, although price is a concern, oilfield waste treatment and disposal firms need a strong reputation as responsible, fiscally stable, environmental stewards. These waste generators fear exposure to liability in the event of mismanagement on the part of waste firms.

31. The incumbents have a further ability to control costs given their ownership of cavern and landfill disposal facilities. Anadime cites a lack of its own integrated disposal options as a key challenge in its ability to be successful into the future.

Effective Remaining Competition

32. Anadime is the only remaining commercial competitor in the oilfield waste treatment and disposal market that has facilities in a number of local markets. This multi-market presence can act to improve reputation and the perception of stability. It provides a single source option for oil producers that generate waste in more than one geographic market, thereby reducing such producers' own transaction, auditing and administration costs. However, I am advised by Victor Hammill, and I do verily believe that market contacts consistently claimed that the merging parties had a better overall reputation than Anadime. Its poor financial performance in past years has impacted its perception in the marketplace.

The Commissioner has commenced an Inquiry pursuant to section 10(1)(b)

33. Upon being advised of the Bureau's preliminary conclusions that the transaction appeared to pose significant and serious effects on competition in certain markets, the Commissioner commenced an Inquiry on June 28, 2001.
34. The preliminary investigation and the Inquiry have identified serious competition concerns regarding the Merger in certain geographic locations in respect of the supply of oilfield waste treatment and disposal services which, is characterised, inter alia, by inelastic demand, high firm concentration, significant barriers to entry, the potential removal of a vigorous and effective competitor, and ineffective remaining competition.

The Commissioner Requires Additional Time to Complete the Inquiry

35. Given that CCS is determined to close the transaction on July 6, 2001 and the obligations of the Commissioner to complete his review of this matter, there is insufficient time to complete these tasks and file an application under s.92 of the *Competition Act*.
36. While the Commissioner has reached preliminary conclusions regarding the appearance of substantial anti-competitive effects in certain markets as a result of the proposed merger, the Commissioner and his staff are still analysing and defining the product and geographic markets and the precise nature of the substantial lessening or prevention of competition.
37. To further quantify these effects on a market by market basis and to verify the preliminary market assessments in a complex multi-market industry, the Bureau will require more specific information from each of the parties and their competitors concerning each facility and its capacities, revenues and pricing structures for each customer and waste type handled. Obtaining this information, and its subsequent analysis, will assist the Bureau in quantifying the level of dominance the combined firm would have in each service in each local market. Further documentary evidence will also be gathered to assess incentives, plans and views of competitors in the relevant markets and the reasons for the subject transaction. CCS has agreed to cooperate with the Bureau's information requests.
38. Given the transformation of the market for the supply of oilfield waste treatment and disposal services into one characterised as a monopoly or duopoly, as the case may be, the Commissioner requires more time and information from market participants, customers, industry experts, economists and counsel in order to further and conclusively analyse and assess the competitive impact of the Merger.

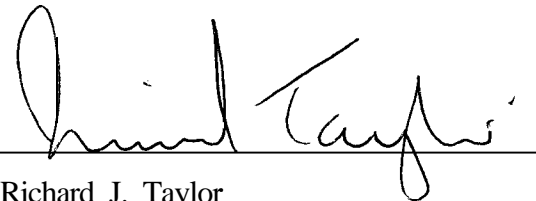
In Absence of Issuance of the Draft Interim Order The Tribunal's Remedy will be Substantially Impaired

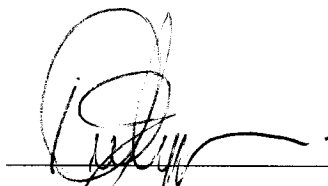
39. In the absence of an interim order on the terms sought in the Draft Consent Interim Order (the "DCIO") CCS will be able to take up the shares deposited under the terms of the offer and, assuming sufficient shares are deposited, the CCS will be able to integrate the business operations of Newalta with those of its own, have access to Newalta's proprietary and competitively sensitive information and terminate a vigorously competitive management team which would seriously jeopardize the Tribunal's ability to order the divestment of any ongoing competitive businesses and remedy the effects of the merger on competition. The DCIO is attached as Exhibit "A" to my affidavit.
40. If the DCIO is not granted it is highly unlikely that the acquired businesses of Newalta and the Respondent's own competing business in the supply of oil field waste remediation, management and disposal services in Western Canada would be operated independently or on a competitive basis and the effectiveness of any ultimate remedy in respect of the Affected Businesses issued by the Tribunal will be significantly decreased.
41. The DCIO will allow the Commissioner to complete his assessment of the competition affects of the Merger. CCS has agreed to hold separate those facilities and businesses of Newalta that have been identified by the Commissioner as posing competition concerns and CCS has further agreed to divest each of those facilities pursuant to the terms of a letter agreement dated July 4th, 2001 attached as Exhibit "B" (the "Letter Agreement") to my affidavit.
42. Pursuant to the terms of the DCIO, CCS will not take any action, beyond the acquisition of shares, in respect of the identified Affected Businesses acquired from Newalta. The Affected Business will be managed by an Independent Manager appointed by the Commissioner.
43. Further, under the terms of the DCIO, CCS and its affiliates, officers and employees, the

Independent Manager and any Monitor appointed by the Commissioner are obligated to take steps to prevent the disclosure of competitively sensitive and business proprietary information.

44. Based upon the commitments of CCS contained in the DCIO and the Letter Agreement, I am advised by the Commissioner and I verily believe that the Commissioner is satisfied that the competition concerns identified by the Bureau's investigation will be resolved at the conclusion of the Commissioner's Inquiry into the effects of the proposed merger on competition.
45. I am further advised by the Commissioner and I do verily believe that the Commissioner is satisfied that if the DCIO is issued the public interest in competition is adequately and properly protected by the remedies available to the Tribunal, including divestiture orders in respect of the Affected Facilities and businesses carried on thereat and that the Tribunal's, ability to remedy the competitive effects of the Merger will not be substantially impaired in such circumstances.

SWORN before me at
the City of Hull, in the
Province of Quebec on this
the 5th day of July, 2001.

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)
) 
Richard J. Taylor


A Commissioner etc.

THE COMPETITION TRIBUNAL

IN THE MATTER OF THE *COMPETITION ACT*,
R.S. 1985, c.C-34, as amended, and the *Competition*
Tribunal Rules, SOR/94-290, as amended (the
“*Rules*”);

AND IN THE MATTER OF an inquiry pursuant to subsection
10(1)(b) of the *Competition Act* relating to the proposed acquisition
of Newalta Corporation by Canadian Crude Separators Inc.;

AND IN THE MATTER OF an Application by the
Commissioner of Competition for an order pursuant to
ss. 100 and 105 of the *Competition Act*.

B E T W E E N:

THE COMMISSIONER OF COMPETITION

Applicant

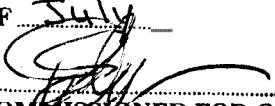
- and -

CANADIAN CRUDE SEPARATORS INC.

Respondent

AFFIDAVIT OF RICHARD J. TAYLOR

William J. Miller
Duane E. Schippers
Department of Justice
Counsel to the Commissioner of
Competition
Place du Portage, Phase I
50 Victoria Street
Hull, Quebec K1A 0C9
Telephone: (819) 997-3325
Facsimile: (819) 953-9267

THIS IS EXHIBIT "A" TO THE
AFFIDAVIT OF Richard S. Taylor
SWORN BEFORE ME THIS 5th DAY
OF July 2001

COMMISSIONER FOR OATHS ---

CT-

IN THE MATTER OF an application by the Commissioner of Competition
under sections 100 and 105 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF the acquisition by Canadian Crude Separators Inc.
of a majority of the issued and outstanding shares of Newalta Corporation.

BETWEEN

THE COMMISSIONER OF COMPETITION

Applicant

- and -

CANADIAN CRUDE SEPARATORS INC.

Respondent

DRAFT CONSENT INTERIM ORDER

COMPETITION TRIBUNAL

CONSENT INTERIM ORDER

- [1] FURTHER TO the application of the Commissioner of Competition pursuant to sections 100 and 105 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended, to preserve, during the course of the Commissioner's investigation of the Merger (as hereinafter defined) of the Respondent and Newalta Corporation, each of the Affected Businesses (as hereinafter defined) as independent, viable, ongoing and competitive businesses and to preserve the Competition Tribunal's ability to order appropriate relief pending final disposition by the Tribunal of a possible application pursuant to section 92 of the *Competition Act*;
- [2] AND ON READING the notice of application for an interim order on consent, the consent order impact statement and the draft consent order and the annexes attached thereto, all of which were filed on July 4th, 2001 and it appearing that the Respondent's offer to purchase all of the issued and outstanding shares of Newalta Corporation is to expire on July 6, 2001;
- [3] AND ON HEARING the submissions of counsel for the parties on July 5, 2001;
- [4] AND ON CONSIDERING that the Commissioner and the Respondents have reached a settlement which is reflected in the draft consent order;

THE TRIBUNAL ORDERS THAT:

Definitions

- [5] For the purposes of this interim order, the following definitions shall apply:
- (a) "Act" means the *Competition Act*, R.S.C. 1985, c. C-34, as amended;
- (b) "Affected Businesses" means the businesses associated with the Affected Facilities set forth in Annex 1;

- (c) “Affected Facilities” means the oilfield waste treatment and disposal facilities owned by Newalta and described in Annex 1;
- (d) “Affected Personnel” means all Newalta personnel located at or in the immediate vicinity of the Affected Facilities for the purpose of operating the Affected Facilities, as well as all Newalta personnel located elsewhere, including Newalta’s Head Office, that provide operational, marketing, promotional, customer relation, transportation and logistic services essential to the ongoing operation of the Affected Businesses;
- (e) “CCS” means Canadian Crude Separators Inc.;
- (f) “Commissioner” means the Commissioner of Competition appointed pursuant to section 7 of the Act;
- (g) “Confidential Information” means competitively sensitive or proprietary information of the Affected Businesses other than information which is known to CCS from sources other than Newalta;
- (h) “Independent Manager” means the Independent Manager of the Affected Businesses appointed pursuant to paragraphs 8 or 9 of this order and any employees, agents or other persons acting for or on behalf of the Independent Manager with respect to any matter referred to in this order;
- (i) “Merger” means the acquisition by CCS of a majority of the issued and outstanding shares of Newalta pursuant to a public tender offer which expires on July 6, 2001 or such later date as may be extended;
- (j) “Monitor” means the monitor to be appointed pursuant to paragraphs 20 or 21 of this order to monitor compliance of the businesses within the terms of this interim order;

- (k) “Newalta” means Newalta Corporation;
- (l) “Newalta’s Head Office” means the head office of Newalta located at 333 Eleventh Avenue S.W., Suite 1200, Calgary, Alberta, T2R 1L9;
- (m) “Non-Affected Personnel” means all Newalta personnel other than Affected Personnel;
- (n) “Offer” means the offer by CCS dated May 3rd, 2001 as amended to acquire all of the outstanding common shares and common share purchase warrants of Newalta Corporation;
- (o) “Person” means any natural person, corporation, association, firm, partnership or other business or legal entity;
- (p) “Privilege” means solicitor-client privilege, litigation privilege or any other legally-recognized privileged; and
- (q) “Respondent” means CCS and its affiliates and after July 6, 2001, or such later date as may be extended, in the event that the Offer is successful, Newalta.

Application

[6] The provisions of this order shall apply to:

- (a) the Respondent;

- (b) each Person controlled by the Respondent, and each officer, director, employee, agent or other Person acting for or on behalf of the Respondent with respect to any matter referred to in this order;
- (c) the successor and assigns of the Respondent;
- (d) the Independent Manager appointed pursuant to paragraphs 8 or 9 herein and each employee, agent or other Person acting for or on behalf of the Independent Manager with respect to any matter referred to in this order; and
- (e) the Monitor appointed pursuant to paragraph 20 or 21 herein.

Prohibition

- [7] The Respondent be and is hereby restrained and prohibited from, until further order of this Tribunal, or until this Order is terminated in accordance with paragraph 34 hereof, doing any act or thing which may constitute or be directed toward the implementation of the Merger with respect to the Affected Businesses, except as provided herein.

Independent Manager

- [8] The Respondent shall forthwith submit to the Commissioner a list of the names of five qualified individuals with no present or past association to CCS or any of its affiliates, excluding Newalta. The Commissioner shall, with due regard to the list of qualified individuals, appoint an Independent Manager to manage and operate the Affected Businesses independently of the Respondent, as specified herein until such time as this order is terminated pursuant to paragraph 34. The Respondent shall be responsible for all fees and expenses properly charged or incurred by the Independent Manager.

- [9] In the event that the Independent Manager ceases to act in his or her capacity as such, then the Commissioner, after considering the recommendations of the Respondent, shall select a substitute Independent Manager. This order shall apply to any substitute Independent Manager appointed pursuant to this paragraph.

Independent Management of the Affected Businesses

- [10] During the term of this interim order, the Independent Manager shall take all necessary steps and give all necessary instructions to cause the Affected Businesses under his or her management, and any servants or agents of such Affected Businesses or the Independent Manager (including the Affected Personnel), to:
- (a) operate such Affected Businesses independently of the Respondent;
 - (b) operate such Affected Businesses in compliance with all applicable laws;
 - (c) maintain all material permits and approvals necessary for the operation of such Affected Businesses;
 - (d) use commercially reasonable efforts to maintain and enhance the competitiveness and the customer base of such Affected Businesses and, in particular, continue to solicit business and to submit bids in response to tenders as they arise;
 - (e) maintain and hold such Affected Businesses in good condition and repair, normal wear and tear excepted, and to standards at least equal to those maintained by Newalta prior to the date of this order;
 - (f) establish all fees, deductions, discounts, credits or allowances with respect to the goods and services provided by such Affected Businesses;

- (g) take all commercially reasonable steps to honour all customer contracts and to maintain quality and service standards for customers of such Affected Businesses at the level that existed prior to the date of this order, save as required by prudent management of such Affected Businesses;
- (h) with the consent of the Commissioner enter into management or employment contracts or establish employment incentives not exceeding the term of this Order for the purposes of retaining managers and employees in order to maintain the operations of the Affected Businesses at standards as they existed immediately prior to the Merger;
- (i) not communicate any Confidential Information related to such Affected Businesses to the Respondent, including each Person controlled by the Respondent, or any other Person, save the Commissioner, except as permitted herein;
- (j) not knowingly take or allow to be taken any action that materially and adversely affects the competitiveness, assets, operations or financial status of such Affected Businesses;
- (k) not materially curtail marketing, sales, promotional or other activities of such Affected Businesses in connection with the solicitation of existing or prospective customers save as required by prudent management of such Affected Businesses;
- (l) not relocate, destroy or dismantle any fixed assets of such Affected Businesses;
- (m) not, to any material extent, enter into any agreement to lease or otherwise encumber any assets of such Affected Businesses, or real property occupied by such Affected Businesses to or in favour of any other Person save as required by prudent management of such Affected Businesses; or

- (n) not terminate or alter any current employment, salary or benefit agreements for any of the Affected Personnel, to any material extent without the prior written consent of the Commissioner.
- [11] Subject to the approval of the Commissioner, the Independent Manager shall have authority to enter into or renew customer contracts in relation to the Affected Businesses under his or her management, in the name of the business(es).
- [12] The Respondent shall, if necessary, contribute working capital with respect to the Affected Businesses to permit the applicable Affected Business(es) to continue to operate at standards at least equal to those existing at the date of the Merger and may contribute funds for significant capital expenditures in consultation with the Independent Manager of the applicable Affected Business(es) and any Monitor thereof.
- [13] Notwithstanding any other provision of this order, the Independent Manager is permitted, with the approval of the Commissioner or the Monitor, to use the managerial, administrative and operational (including maintenance) resources of the Respondent, including the Non-Affected Personnel, for the following services:
- (a) public affairs/media relations services;
 - (b) legal services;
 - (c) information systems services, including construction, maintenance and support of all computer systems;
 - (d) to maintain, in accordance with Canadian generally accepted accounting principles, separate and adequate financial ledger books and records of material financial information with respect to the Affected Businesses;

- (e) preparation of tax returns and other audit services;
- (f) human resources and payroll services;
- (g) processing of accounts payable;
- (h) security services;
- (i) technical support;
- (j) occupational health and safety, including medical services such as drug testing;
- (k) environmental permitting and liability, and any other regulatory compliance services;
- (l) insurance, including notification of claims for which coverage is sought;
- (m) financial accounting services, including banking;
- (n) engineering services, including engineering, design and maintenance of plants and terminals;
- (o) real estate services, including the identification and development of new sites; and
- (p) procurement of goods and services utilized in the ordinary course of business by the Affected Business(es).

The Respondent shall ensure that all personnel providing such services retain and maintain all Confidential Information received for purposes of providing the above services on a confidential basis, and, except as is permitted by this order, 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 Respondent's businesses other than the applicable Affected Businesses. Such personnel shall be required to execute a confidentiality agreement to said effect. Nothing in this order, however, shall require the Respondent or the Independent Manager to hold separate the operations, assets or personnel used to provide such services, other than the Affected Personnel.

[14] The Independent Manager shall not communicate any Confidential Information acquired in the performance of the Independent Manager's duties under this order to any Person except to the extent required or permitted by this order. The Independent Manager will execute a customary confidentiality agreement in this respect.

[15] The Independent Manager may provide Confidential Information to the following Persons: (a) any Person employed by **Deloitte & Touche LLP**, the external auditors of Newalta; (b) any Person employed by **Ernst & Young LLP**, the external auditors of CCS and (c) senior accountants employed by CCS or Newalta (the "Permitted Persons") only for the purposes of preparing standard financial and regulatory reports, tax returns and benefits administration and to comply with applicable law and governmental authorities (the "Permitted Purposes") and provided that:

(i) prior to disclosure of any Confidential Information, each Permitted Person shall execute a confidentiality undertaking in the form of the Confidentiality Annex attached hereto as Annex 2; and

(ii) the Permitted Persons shall use the Confidential Information only for the Permitted Purposes and shall not disclose such information to any other Person, whether or not an employee of the Respondent.

[16] The Independent Manager is bound by the terms of this order but shall otherwise not be subject to liability for any act or omission arising out of his or her Independent Manager duties pursuant to this order, save to the extent such liability results from malfeasance, gross negligence or bad faith by the Independent Manager.

- [17] The Respondent shall not directly or indirectly receive or have access to, or use or continue to use any Confidential Information relating to the Affected Businesses, except as may be necessary to comply with the terms of this order or as permitted by this order, defend investigations, defend or prosecute litigation and obtain legal advice.
- [18] Notwithstanding the above, this order does not preclude disclosure to, or receipt by, the Respondent of summaries in aggregate form, such as revenue summaries, cash receipt summaries and tonnage summaries, provided that no Confidential Information is disclosed.
- [19] The Respondent shall:
- (a) take all reasonable steps to ensure that the Affected Businesses are independent of the Respondent, including transferring to the Independent Manager all rights, powers and authorities necessary for the Independent Manager to perform his or her duties and responsibilities under this order;
 - (b) not exercise any direction or control, direct or indirect, over the management or operations of the Affected Businesses or influence the marketing of the Affected Businesses except to the extent that the Respondent must exercise such direction and control to assure compliance with this order and except as otherwise provided in this order;
 - (c) cause the operational manager(s) of the Affected Businesses to follow the instructions and directions of the Independent Manager given pursuant to the provisions of this order; and
 - (d) permit the Affected Personnel, as well as the Independent Manager to occupy and carry on their activities hereunder in Newalta's Head Office and the Respondent shall take immediate steps to relocate all Non-Affected Personnel to a location or locations

other than Newalta's Head Office and, for purposes of clarity, CCS shall be free to terminate any such personnel.

Monitor

- [20] Upon issuance of this order, the Commissioner may appoint an individual(s) to serve as the person responsible for monitoring CCS' and the Independent Manager's compliance with this order in respect of the Affected Businesses. The Commissioner shall be responsible for all fees or expenses properly charged or incurred by the Monitor (or any substitute thereof appointed pursuant to paragraph 20 herein below).
- [21] In the event that the Monitor, appointed pursuant to paragraph 19 above, is unable to perform monitoring duties under the terms of this order because of death, disability, termination for cause or any other reason, the Commissioner may appoint a substitute Monitor.
- [22] For the purposes of monitoring compliance by the Respondent and the Independent Manager with this order, subject to any valid claim of Privilege, the Respondent and the Independent Manager shall respond to requests for information by the Monitor, and shall give the Monitor access to all information, records and documents of the Respondent relating to the Affected Businesses for which the Monitor is responsible, in the manner described below.
- [23] For the purposes of monitoring the compliance by the Respondent and the Independent Manager with this order, subject to any valid claim of Privilege, the Monitor may request access to:
- (a) the premises of the Affected Businesses for which he or she is responsible, as well as Newalta's Head Office;
 - (b) any information relating to the financial records, operations and assets of the Affected Businesses for which he or she is responsible; and

- (c) meetings of the management of the Affected Businesses for which he or she is responsible.

Where such a request is made, the Respondent and the Independent Manager shall take all reasonable steps to comply or to cause any other person(s) to comply with the request.

- [24] The Respondent shall not exert or attempt to exert any influence, direction or control over the Monitor, which may adversely affect the discharge of the Monitor's duties under the terms of this order.
- [25] If the Monitor considers that the Respondent or the Independent Manager is in default of any of the terms of this order, the Monitor shall immediately notify the Commissioner of the breach, who shall forthwith give notice to the Respondent and the Independent Manager setting out the particulars of such default.
- [26] The Monitor shall provide to the Commissioner, upon request, a written report in affidavit form relating to the Monitor's efforts to carry out the terms of this order and the Respondent's and the Independent Manager's compliance with this order.
- [27] The Monitor is bound by the terms of this order but shall not otherwise be subject to liability for any act or omission pursuant to the terms of this order, save to the extent that such liability results from malfeasance, gross negligence or bad faith by the Monitor. This order shall not be construed as providing the Monitor with ownership, management, possession, charge or control of the Affected Businesses.
- [28] The Monitor shall execute a confidentiality agreement pursuant to which the Monitor will undertake not to disclose any Confidential Information acquired in the performance of the Monitor's duties to any Person, except to the extent required or permitted by this order.

[29] If the Monitor advises the Commissioner that the Respondent is in default of any of the terms of this order, or if the Commissioner otherwise believes such to be the case, then for the purpose of determining or securing compliance with this order, subject to any valid claim of Privilege and, upon written request, the Respondent shall permit any duly authorized representative of the Commissioner:

- (i) upon a minimum of twenty-four (24) hours notice to the Respondent, access during office hours of the Respondent, to inspect and copy all books, ledgers, accounts, correspondence, memorandum, and other records and documents in the possession or under control of the Respondent relating to compliance with this order; and
- (ii) upon a minimum of three (3) business days notice to the Respondent, and without restraint or interference from the Respondent, to interview directors, officers or employees of the Respondent on matters in the possession or under the control of the Respondent relating to compliance with this order.

General

[30] The Independent Manager shall immediately provide a copy of this order to those Affected Personnel that the Independent Manager deems appropriate and shall require that such personnel operate and manage the Affected Businesses in accordance with the terms of this order.

[31] The Respondent shall provide a copy of this order to any persons who are authorized to have access to Confidential Information pursuant to paragraphs 13 to 18 above.

[32] Notices, reports or other communications required or permitted pursuant to this interim order shall be in writing and shall be given by personal delivery to the party to whom such notice is to be given or by registered mail or telecopier to the address or telecopier number below:

If to the Commissioner:

Commissioner Competition
Competition Bureau
50 Victoria Street
Hull, Quebec K1A 0C9

Attention: Richard Taylor

If to the Respondent:
c/o Macleod Dixon LLP
Suite 3900, Canada Trust Tower
BCE Place
161 Bay Street, P.O. Box 505
Toronto, Ontario M5J 2S1

Attention: Robert J. Engbloom
 Albert C. Gourley

[33] This order does not prohibit anyone from providing Confidential Information to the Commissioner for purposes of the administration or enforcement of the Act, including for the purposes of this proceeding.

[34] This interim order shall have effect for 30 days from the date hereof.

[35] Nothing in this interim order prohibits the obtaining and use of Confidential Information by the Respondent or any other person for the purposes of any application to the Tribunal or any other legal recourse that may be instituted, subject to application of the confidentiality provisions of this order and the relevant rules of the Tribunal.

DATED at Ottawa this ____ date of July, 2001.

SIGNED on behalf of the Tribunal by the presiding judicial member.

ANNEX 1: AFFECTED BUSINESSES

The Affected Businesses shall comprise of the following Affected Facilities:

1. Grande Prairie
2. Gordondale
3. Spirit River
4. Valleyview
5. Drayton Valley
6. Hughenden including the waste disposal cavern associated with such facility.
7. Zama
8. Eckville
9. Stauffer
10. Elk Point.

ANNEX 2: CONFIDENTIALITY ANNEX

COMPETITION TRIBUNAL

COMMISSIONER OF COMPETITION

vs.

CANADIAN CRUDE SEPARATORS INC.

CONFIDENTIALITY UNDERTAKING

IN CONSIDERATION of being provided with Confidential Information relating to the Affected Businesses as defined in the Consent Interim Order of the Competition Tribunal dated **[insert]**, 2001 (the "Order"),

I, _____, of the City of _____, in the _____ of _____, agree to strictly maintain the confidentiality of all such documents and information.

I HEREBY CONFIRM that I have read the Order and I agree to be bound by the Order.

I HEREBY UNDERTAKE that I shall not disclose any confidential documents or information that relate to this Affected Business(es) that may be provided to me to any other person, except as expressly permitted by the Order, and that I shall not use any such documents or information for any purpose other than those expressly permitted by the Order.

I HEREBY ACKNOWLEDGE that any breach of this undertaking by me will be considered to be a breach of the Order.

DATED at this **[insert]** day of **[insert]**, 2001.

Print Name: _____

Witness:

Print Name: _____

819 953 9267

LEGAL INDUSTRY CANADA

07/04/01 17:21 P.002/006

Department of Justice
CanadaMinistère de la Justice
CanadaTHIS IS EXHIBIT "B" TO THE
AFFIDAVIT OF Richard J. TaylorSWORN BEFORE ME THIS 5th DAY
OF July 2001
COMMISSIONER FOR OATHS**CONFIDENTIAL**

Mr. Albert C. Gourley
Macleod Dixon LLP
Barristers & Solicitors
Suite 3900, Canada Trust Tower
BCE Place, 161 Bay Street
P.O. Box 505
Toronto, Ontario
M5J 2S1

July 4th, 2001

Dear Mr. Gourley:

Rc: Canadian Crude Separators Inc. ("CCS") proposed acquisition of all of the outstanding common shares and common share purchase warrants of Newalta Corporation ("Newalta").

Further to our telephone conversation of last Friday, June 29th, I am writing to set out the terms upon which the Commissioner of Competition (the "Commissioner") will resolve the competition concerns arising from the above noted transaction and will nor commence proceedings pursuant to section 92 and section 104 of the *Competition Act* to prevent the consummation of the above referenced transaction.

Hold Separate Orders:

1. CCS hereby consents to, and the Commissioner hereby agrees to seek, a section 100 (and 105) consent interim hold separate order (the "Consent Interim Hold Separate Order") in respect of the facilities identified in Annex "1" hereto ("Affected Facilities") on the terms contained in the enclosed draft order.
2. The Consent interim Hold Separate Order shall operate prior to any consent hold separate order that may be sought pursuant to section 104 of the *Competition Act* (the "Further Consent Hold Separate Order").
3. It is understood that the Further Consent Hold Separate Order may be sought on substantially similar terms (and on terms no less favourable to the Commissioner) as the Consent Interim Hold Separate Order if:

- (a) the Commissioner's ~~evaluation~~ of the Affected Facilities ("Evaluation") is, or is anticipated ~~to be, incomplete~~ by the time of the ~~expiry of the Consent~~ Interim Hold Separate Order; or
- (b) the ~~Commissioner's~~ Evaluation determines ~~that~~ the divestiture of one or more of the Affected Facilities is necessary;

in which event CCS hereby consents to such Further Consent Hold Separate Order.

Divestiture of Facilities:

4. CCS agrees to divest ~~the~~ Affected Facilities described in Annex 1, along with all related equipment, licences, buildings and other real ~~property~~, pursuant to a consent ~~divestiture order~~ issued under sections 92 and 105 of the ~~Competition Act~~ ("Consent Divestiture Order"). The Commissioner ~~agrees~~ to receive and ~~seriously consider the~~ submissions and representations of CCS, ma& within the next 30 days, as to ~~whether~~ the number of Affected Facilities ~~may~~ be reduced, ~~although the ultimate decision rests with the Commissioner.~~
5. In the circumstances of section 4 and subject to its ~~obligation and the obligation of its counsel~~ (as ~~officers~~ of the court) to ~~represent the facts in a truthful and honest manner~~, CCS agrees not to ~~object to any of the material filed in support of the issuance of the Consent Divestiture Order~~ and for any ~~proceedings relating to a possible variation or rescission of the order, such as the Notice of Application, a Statement of Grounds and Material Facts and a Consent Order Impact Statement, as applicable.~~ The Commissioner ~~agrees to seek, and incorporate, the~~ reasonable ~~views~~ of CCS with respect to all such ~~supporting~~ documentation.
6. Any required ~~divestiture~~ will be ~~undertaken by a trustee ("Trustee")~~, provided, however, that the Trustee shall at all times during the first 12 months of any such required ~~divestiture~~ be contractually obligated by the Commissioner to ~~work in cooperation with~~ CCS with the object of ~~maximizing the price obtained for the Affected Facilities to be divested.~~ The Trustee shall ~~make every effort to sell the applicable Affected Facilities as a going concern to a single purchaser.~~ The Trustee shall ~~consult~~ with CCS and the ~~Commissioner~~ prior to ~~entering into to any agreement to sell any assets and the Commissioner must approve the sale of any of the assets to be divested.~~ CCS shall be ~~entitled~~ to propose one or more persons to act as the Trustee and the Commissioner may accept any such proposal or choose another Trustee, ~~subject to prior consultation with CCS.~~ CCS shall be responsible for all fees and expenses in respect of the proper discharge. ~~of the Trustee's duties.~~

Commissioner's Evaluation Process:

7. The Commissioner agrees to:

- (a) share relevant, non-confidential information with CCS for purposes of assisting CCS in understanding the issues and concerns of the Commissioner, if any, provided such assistance is not unduly burdensome upon the Commissioner.
- (b) meet with CCS, from time to time and on reasonable notice, for any purpose hereunder;
- (c) complete the Commissioner's Evaluation as soon as reasonably practical in light of the resources available to the Commissioner and scope of the evaluation; and
- (d) report to CCS on the findings of the Commissioner's Evaluation forthwith upon its conclusion.

8. The Commissioner will afford to CCS a reasonable opportunity to make representations regarding the Affected Facilities to be divested with a view to demonstrating that CCS' retention of those facilities would not substantially affect competition in the relevant geographic and product markets.

9. Prior to the completion of the Evaluation, CCS agrees to cooperate with and assist the Commissioner, his staff and his counsel:

- (a) in obtaining the Consent Interim Hold Separate Order under sections 100 and 105 of the Competition Act (or, if considered necessary by the Commissioner, a Further Consent Hold Separate Order under sections 92 and 104) on the terms and conditions set forth in Annex "1" hereto;
- (b) in accessing, reviewing, copying and obtaining information that might reasonably be considered relevant, or possibly relevant, to the Commissioner's Evaluation;
- (c) by meeting with them, from time to time and on reasonable notice, for any purpose hereunder; and
- (d) in otherwise facilitating the completion of the Commissioner's Evaluation without undue delay.

No Derogation of Rights by C o .

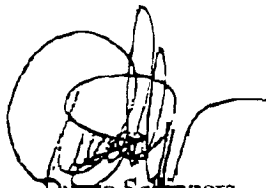
10. The Commissioner's decision, if made in accordance with this Agreement, shall be final and

~~not subject to review~~. CCS ~~agrees~~ that nothing herein shall derogate from the rights of the Commissioner ~~under~~ the Competition Act, ~~including the~~ right of the Commissioner to apply to the Competition Tribunal under section 92 thereof.

Third Party Intervention:

11. Should any person seek to intervene in any proceedings before the Competition Tribunal with respect to my of the ~~orders contemplated herein~~, the Commissioner and CCS shall cooperate in responding jointly or, if deemed advisable, separately with respect to such intervention and in a manner consistent with giving effect to the terms hereof.

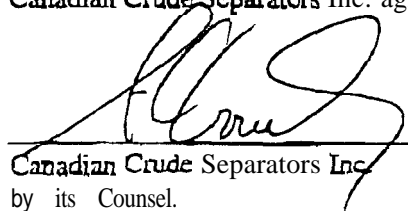
If you have any questions regarding the foregoing please do not hesitate to contact me. Assuming you have instructions to agree to these terms, please countersign this letter and return an Original copy to me.



Duane Schepers
Counsel

Encl.

Canadian Crude Separators Inc. agrees to the foregoing terms.



Canadian Crude Separators Inc.
by its Counsel.

ANNEX 1: AFFECTED BUSINESSES

The Affected ~~Businesses~~ shall comprise of the following ~~Affected~~ Facilities:

1. Grande Prairie
2. Gordondale
3. Spirit River
4. Valleyview
5. Dray-ton Valley
6. ~~Hughenden~~ including the waste disposal cavern associated ~~with~~ such facility.
7. Zama
8. Eckville
9. Stauffer
10. Elk Point.