

File No. CT 01/005

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 LO(1)@ 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 on consent, pursuant to ss. 100 and 105 of the *Competition Act*.

for an order		COMPETITION TRIBUNAL	
		TRIBUNAL DE LA CONCURRENCE	
F I L E D	JUL 5 2001		P R O D U I T
	REGISTRAR - REGISTRAIRE		
	OTTAWA, ONT. 1c		

BETWEEN!

THE COMMISSIONER OF COMPETITION

- and -

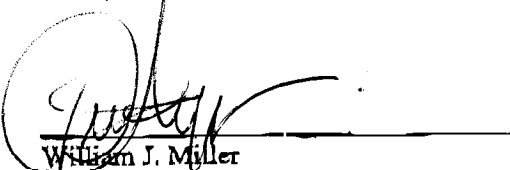
CANADIAN CRUDE SEPARATORS INC.

Respondent

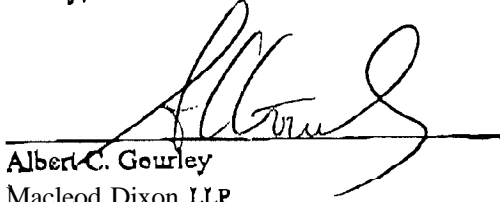
CONSENT

THE **PARTIES** hereto, by their solicitors, hereby consent to the issuance of an interim order pursuant to sections 100 and 105 of the *Competition Act* in the form attached hereto as Schedule "A".

Signed at Hull, Quebec, this the day
of July, 2001.


William J. Miller
Duane E. Schippers
Department of Justice
Counsel to the Commissioner of
Competition

Signed at Toronto, Ontario, this the day
of July, 2001.


Albert C. Gourley
Macleod Dixon LLP
Barristers & Solicitors
Counsel to Canadian Crude Separators Inc.

SCHEDULE “A”

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.

B E T W E E N

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: _____

