

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

**COMMISSIONERS:      Jon Leibowitz, Chairman  
                             Pamela Jones Harbour  
                             William E. Kovacic  
                             J. Thomas Rosch**

**In the Matter of**  
  
**AGRIUM INC.,  
a corporation.**

**Docket No. C-4277**

**ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS**

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition of CF Industries Holdings, Inc., by Agrium Inc. (“Respondent Agrium”), and Respondent Agrium having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent Agrium 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

Respondent Agrium, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondent Agrium of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent Agrium 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 Respondent Agrium has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement 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 the following Order to Hold Separate and Maintain Assets (“Hold Separate Order”):

1. Respondent Agrium Inc. is a corporation organized, existing and doing business under and by virtue of the laws of Canada, with its office and principal place of business located at 13131 Lake Fraser Drive SE, Calgary, Alberta, T2J7E8, Canada.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent Agrium, and the proceeding is in the public interest.

## **ORDER**

### **I.**

**IT IS ORDERED** that, as used in this Hold Separate Order, the following definitions and the definitions in Paragraph I of the Decision and Order attached to the Agreement Containing Consent Orders in this matter and, when made final, Paragraph I of the Decision and Order, which are incorporated herein by reference and made a part hereof, shall apply:

- A. “Decision and Order” means:
  1. the Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance of a final Decision and Order by the Commission; and
  2. the Final Decision and Order issued and served by the Commission.
- B. “Hold Separate Trustee” means the person appointed pursuant to Paragraph III of this Hold Separate Order.
- C. “Monitor” means any monitor appointed pursuant to Paragraph VII of this Hold Separate Order.
- D. “Orders” means the Decision and Order and this Order to Hold Separate and Maintain Assets.
- E. “Ritzville Held Separate Business” means the Ritzville Terminal and the on-going supply, storage, and sale of Anhydrous Ammonia at the Ritzville Terminal.

## II.

**IT IS FURTHER ORDERED** that from the Agrium-CF Acquisition Date until the Ritzville Terminal Divestiture Date:

A. Respondent Agrium shall:

1. take such actions as are necessary to maintain the viability and marketability of the Ritzville Terminal and Carseland Facility and to prevent the destruction, removal, wasting, deterioration, or impairment of the Ritzville Terminal and Carseland Facility, except for ordinary wear and tear;
2. maintain the operations of the Ritzville Terminal and Carseland Facility in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance of the assets, as necessary) and/or as may be necessary to preserve the marketability, viability, and competitiveness of the Ritzville Terminal and Carseland Facility; and
3. use its best efforts to preserve the existing relationships with suppliers, vendors, distributors, customers, governmental agencies, employees, and others having business relations with the Ritzville Terminal and Carseland Facility.

B. Respondent Agrium's responsibilities shall include, but are not limited to, the following:

1. Respondent Agrium shall not sell, transfer, encumber or otherwise impair the economic viability, marketability, or competitiveness of the Ritzville Terminal and Carseland Facility;
2. Respondent Agrium shall retain all of Respondent Agrium's rights, title, and interest in the Ritzville Terminal and Carseland Facility, until the Ritzville Terminal Divestiture Date;
3. Respondent Agrium shall maintain a work force at the equivalent or larger size, and with equivalent or better training and expertise, to what has been associated with the Ritzville Terminal and Carseland Facility as of the date Respondent Agrium signed the Consent Agreement;
4. Respondent Agrium shall not offer employees Related To the Ritzville Terminal and Carseland Facility other positions within Respondent Agrium or terminate employees Related To the Ritzville Terminal and Carseland Facility;
5. Respondent Agrium shall do nothing to prevent or discourage suppliers that, prior to the date on which the Consent Agreement was signed, supplied goods and services to the

Ritzville Terminal and Carseland Facility from continuing to supply goods and services to the Ritzville Terminal and Carseland Facility;

6. Respondent Agrium shall provide the Ritzville Terminal and Carseland Facility with sufficient working capital to operate at least at current rates of operation, to meet all capital calls with respect to such business and to carry on, at least at their scheduled pace, all capital projects, business plans and promotional activities for the Ritzville Terminal and Carseland Facility;
7. Respondent Agrium shall ensure that the Ritzville Terminal is supplied with Anhydrous Ammonia on an ongoing basis as necessary and appropriate to ensure that the Ritzville Terminal will build up sufficient Anhydrous Ammonia supply to meet seasonal demand for Anhydrous Ammonia;
8. Respondent Agrium shall continue, at least at their scheduled pace, any additional expenditures for the Ritzville Terminal and Carseland Facility authorized prior to the date the Consent Agreement was signed by Respondent Agrium including, but not limited to, all distribution, marketing and sales expenditures;
9. Respondent Agrium shall provide such resources as may be necessary to respond to competition against the Ritzville Terminal and Carseland Facility and/or to prevent any diminution in sales of the Ritzville Terminal and Carseland Facility after the date on which Respondent Agrium signed the Consent Agreement and prior to the Ritzville Terminal Divestiture Date;
10. Respondent Agrium shall make available for use by the Ritzville Terminal and Carseland Facility funds sufficient to perform all routine maintenance and all other maintenance as may be necessary to, and all replacements of, the assets related to such business;
11. Respondent Agrium shall provide the Ritzville Terminal and Carseland Facility with such funds as are necessary to maintain the economic viability, marketability and competitiveness of the Ritzville Terminal and Carseland Facility;
12. Respondent Agrium shall provide such support services to the Ritzville Terminal and Carseland Facility as were being provided to the Ritzville Terminal and Carseland Facility as of the Agrium-CF Acquisition Date.
13. Respondent Agrium shall provide all the Ritzville Terminal and Carseland Facility employees with reasonable financial incentives to continue in their positions consistent with past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of the Ritzville Terminal and Carseland Facility pending divestiture. Such incentives shall include a continuation of all employee benefits offered by Respondent Agrium until the Ritzville Terminal Divestiture Date has occurred, including regularly scheduled raises, bonuses, vesting of pension benefits (as

permitted by law), and additional incentives as may be necessary to prevent any diminution of the Ritzville Terminal's competitiveness and the Carseland Facility's competitiveness.

- C. Respondent Agrium shall not interfere with the hiring or employing of the Ritzville Terminal employees as described in Paragraph VII of the proposed Decision and Order, and shall remove any impediments within the control of Respondent Agrium that may deter these employees from accepting employment with the Ritzville Terminal Acquirer including, but not limited to, any noncompete provisions of employment or other contracts with Respondent Agrium that would affect the ability or incentive of those individuals to be employed by the Ritzville Terminal Acquirer. In addition, Respondent Agrium shall not make any counteroffer to a Ritzville Terminal employee who receives a written offer of employment from the Ritzville Terminal Acquirer;

*PROVIDED, HOWEVER*, subject to the conditions of continued employment prescribed in this Order to Maintain Assets, this Paragraph II.F. shall not prohibit Respondent Agrium from continuing to employ any Designated Ritzville Employee under the terms of such employee's employment with Respondent Agrium prior to the date of the written offer of employment from the Ritzville Terminal Acquirer to such employee.

- D. The purposes of this Paragraph II are to: (1) preserve the Ritzville Terminal and Carseland Facility as a viable, competitive, and ongoing business independent of Respondent Agrium until the divestiture required by the Decision and Order is achieved; (2) prevent interim harm to competition pending the relevant divestitures and other relief; and (3) help remedy any anticompetitive effects of the proposed Agrium-CF Acquisition as alleged in the Commission's Complaint.

### III.

**IT IS FURTHER ORDERED**, that:

- A. From the Agrium-CF Acquisition Date until the Ritzville Terminal Divestiture Date, Respondent Agrium shall hold the Ritzville Held Separate Business separate, apart, and independent of Respondent Agrium. To hold the Ritzville Held Separate Business separate, Respondent Agrium shall, among other things:
1. Not offer CF employees Related To the Ritzville Held Separate Business positions with Respondent Agrium (other than continuing employment at the Ritzville Terminal).
  2. Do nothing to prevent or discourage suppliers that, prior to the Ritzville Terminal Divestiture Date, supplied goods and services to the Ritzville Terminal from continuing to supply goods and services to the Ritzville Terminal.

- B. At any time after the Terra Ritzville Termination Date, the Commission may appoint a Hold Separate Trustee to assure that the Ritzville Held Separate Business is held separate from Respondent Agrium.
1. The Commission shall select the Hold Separate Trustee, subject to the consent of Respondent Agrium, which consent shall not be unreasonably withheld. If Respondent Agrium has not opposed, in writing, including the reasons for opposing, the selection of a proposed Hold Separate Trustee within five (5) business days after notice by the staff of the Commission to Respondent Agrium of the identity of any proposed Hold Separate Trustee, Respondent Agrium shall be deemed to have consented to the selection of the proposed Hold Separate Trustee.
  2. Not later than five (5) business days after appointment of the Hold Separate Trustee, Respondent Agrium shall execute an agreement that, subject to the prior approval of the Commission, confers on the Hold Separate Trustee all the rights and powers necessary to permit the Hold Separate Trustee to perform his duties and responsibilities, pursuant to this Hold Separate Order and consistent with the purposes of this Hold Separate Order.
  3. Not later than ten (10) business days after appointment of the Hold Separate Trustee, Respondent Agrium shall, pursuant to the Hold Separate Trustee Agreement, transfer to the Hold Separate Trustee all rights, powers, and authorities necessary to permit the Hold Separate Trustee to perform his/her duties and responsibilities, pursuant to this Hold Separate Order and consistent with the purposes of the Decision and Order.
  4. Respondent Agrium shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Hold Separate Trustee:
    - a. The Hold Separate Trustee shall have the responsibility, consistent with the terms of this Hold Separate Order and the Decision and Order, for monitoring the organization of the Ritzville Held Separate Business; for managing the Ritzville Held Separate Business through the Managers; for maintaining the independence of the Ritzville Held Separate Business; and for monitoring Respondent Agrium's compliance with its obligations pursuant to the Orders.
    - b. Subject to all applicable laws and regulations, the Hold Separate Trustee shall have full and complete access to all personnel, books, records, documents and facilities of the Ritzville Held Separate Business or to any other relevant information as the Hold Separate Trustee may reasonably request including, but not limited to, all documents and records kept by Respondent Agrium in the ordinary course of business that relate to the Ritzville Held Separate Business. Respondent Agrium shall develop such financial or other information as the Hold Separate Trustee may request and shall cooperate with the Hold Separate Trustee. Respondent Agrium shall take no action to interfere with or impede the Hold Separate Trustee's ability to monitor Respondent Agrium's compliance with the Orders or otherwise to

perform his/her duties and responsibilities consistent with the terms of this Hold Separate Order.

- c. The Hold Separate Trustee shall have the authority to employ, at the cost and expense of Respondent Agrium, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Hold Separate Trustee's duties and responsibilities.
  - d. The Commission may require the Hold Separate Trustee, and Persons hired by the Hold Separate Trustee, to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with performance of the Hold Separate Trustee's duties.
  - e. Respondent Agrium may require the Hold Separate Trustee, and Persons hired by the Hold Separate Trustee, to sign a confidentiality agreement prohibiting the disclosure of any Confidential Business Information gained as a result of his or her role as Hold Separate Trustee to anyone other than the Commission.
  - f. Thirty (30) days after the appointment of the Hold Separate Trustee pursuant to this Paragraph III.B., and every thirty (30) days thereafter until the Hold Separate Order terminates, the Hold Separate Trustee shall report in writing to the Commission concerning the efforts to accomplish the purposes of this Hold Separate Order. Included within that report shall be the Hold Separate Trustee's assessment of the extent to which the businesses comprising the Ritzville Held Separate Business are meeting (or exceeding) their projected goals as are reflected in operating plans, budgets, projections or any other regularly prepared financial statements.
  - g. If the Hold Separate Trustee ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate Order, the Commission may appoint a substitute Hold Separate Trustee consistent with the terms of this paragraph, subject to the consent of Respondent Agrium, which consent shall not be unreasonably withheld. If Respondent Agrium has not opposed, in writing, including the reasons for opposing, the selection of the substitute Hold Separate Trustee within five (5) business days after notice by the staff of the Commission to Respondent Agrium of the identity of any substitute Hold Separate Trustee, Respondent Agrium shall be deemed to have consented to the selection of the proposed substitute trustee. Respondent Agrium and the substitute Hold Separate Trustee shall execute a new Hold Separate Trustee Agreement, subject to the approval of the Commission, consistent with this Paragraph III.B.
- C. Respondent Agrium shall enter into management agreements with one or more persons, approved by Commission staff, to be Managers of the Ritzville Held Separate Business, (1) at any time after the Agrium-CF Acquisition Date and before the Ritzville Terminal Divestiture Date, at the request of Commission staff, or (2) no later than five (5) business days after the appointment of the Hold Separate Trustee.

1. Respondent Agrium shall, pursuant to the management agreements, transfer all rights, powers, and authorities necessary to manage and maintain the Ritzville Held Separate Business, to the Managers.
2. The Managers shall report directly and exclusively to the Hold Separate Trustee, if one is appointed, or otherwise to Commission staff, and shall manage the Ritzville Held Separate Business independently of the management of Respondent Agrium. The Managers shall not be involved, in any way, in the operations of the other businesses of Respondent Agrium during the term of this Hold Separate Order.
3. The Managers shall have no financial interests (other than existing options and interests in securities of Respondent Agrium) affected by Respondent Agrium's revenues, profits or profit margins, except that the compensation of the Managers for managing the Ritzville Held Separate Business may include economic incentives dependent on the financial performance of the Ritzville Held Separate Business if there are also sufficient incentives for the Managers to operate the Ritzville Held Separate Business at no less than current rates of operation (including, but not limited to, current rates of production and sales) and to achieve the objectives of this Hold Separate Order.
4. The Managers shall make no material changes in the present operation of the Ritzville Held Separate Business except with the approval of the Hold Separate Trustee, in consultation with the Commission staff, or Commission staff.
5. The Managers shall have the authority, with the approval of the Hold Separate Trustee or Commission staff, to remove employees and replace them with others of similar experience or skills. If any person ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate Order, the Managers, in consultation with the Hold Separate Trustee or Commission staff, may request Respondent Agrium to, and Respondent Agrium shall, appoint a substitute person, which person the Managers shall have the right to approve.
6. In addition to those employees within the Ritzville Held Separate Business, the Managers may employ such Persons as are reasonably necessary to assist the Managers in managing the Ritzville Held Separate Business.
7. The Commission staff or the Hold Separate Trustee, in consultation with the Commission staff, shall be permitted, to remove the Manager(s) for cause. Within fifteen (15) days after such removal of the Manager(s), Respondent Agrium shall appoint replacement Manager(s), subject to the approval of the Commission, on the same terms and conditions as provided in Paragraph II.C.2 of this Hold Separate Order.
8. In the event that the Manager(s) cease(s) to act as Managers, then Respondent Agrium shall select substitute Manager(s), subject to the approval of the Hold Separate Trustee, if appointed, and Commission staff, and transfer to the substitute Manager(s) all rights,



powers and authorities necessary to permit the substitute Manager(s) to perform his/her/their duties and responsibilities, pursuant to this Hold Separate Order.

- D. No later than five (5) days after the appointment of the Hold Separate Trustee, Respondent Agrium shall circulate to employees of the Ritzville Held Separate Business a copy of this Hold Separate Order and the Consent Agreement with the Commission's press release and analysis to aid public comment.
- E. The purposes of this Paragraph III are to: (1) preserve the Ritzville Held Separate Business as a viable, competitive, and ongoing business independent of Respondent Agrium until the divestiture required by the Decision and Order is achieved; (2) assure that no Confidential Business Information is exchanged between Respondent Agrium and the Ritzville Held Separate Business, except in accordance with the provisions of this Hold Separate Order; (3) prevent interim harm to competition pending the relevant divestitures and other relief; and (4) help remedy any anticompetitive effects of the proposed Agrium-CF Acquisition as alleged in the Commission's Complaint.

#### IV.

**IT IS FURTHER ORDERED** that:

- A. From the Agrium-CF Acquisition Date until the Ritzville Terminal Divestiture Date:
  - 1. Respondent Agrium shall not permit any of its employees, officers, or directors to be involved in the operations of the Ritzville Held Separate Business, unless otherwise authorized by this Hold Separate Order.
  - 2. Respondent Agrium, and Respondent Agrium's or CF's personnel operating the Ritzville Held Separate Business, shall retain and maintain all Confidential Business Information of the Ritzville Held Separate Business on a confidential basis, separate and apart from Respondent Agrium and, except as is requested by Respondent Agrium for purposes of the divestiture of the Ritzville Terminal as required by the Decision and Order, in this matter, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to Respondent Agrium or with Respondent Agrium's personnel.
  - 3. Respondent Agrium shall not, directly or indirectly, receive, disclose, or use any Confidential Business Information Related To the Ritzville Terminal to any Person except the Ritzville Terminal Acquirer or other persons specifically authorized by the Ritzville Terminal Acquirer to receive such information, or than as necessary to comply with the following:

- a. the requirements of the Orders
  - b. applicable laws and regulations.
4. Respondent Agrium shall not provide, disclose or otherwise make available, directly or indirectly, any such Confidential Business Information related to the marketing or sales of the Ritzville Terminal to Respondent Agrium's employees associated with Respondent Agrium's Anhydrous Ammonia sales in the PNW.
5. Respondent Agrium shall institute procedures and requirements to ensure that:
  - a. Confidential Business Information Related to the Ritzville Terminal is not provided to, or obtained by, Respondent Agrium's employees associated with Respondent Agrium's Anhydrous Ammonia sales in the PNW;
  - b. Respondent Agrium employees with access to Confidential Business Information Relating To the Ritzville Terminal do not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information in contravention of this Hold Separate Order; and
  - c. Respondent Agrium's employees associated with Respondent Agrium's Anhydrous Ammonia sales in the PNW do not solicit, access or use any Confidential Business Information that they are prohibited under this Hold Separate Order from receiving for any reason or purpose.
- B. From the Terra Ritzville Termination Date until the Ritzville Terminal Divestiture Date, Respondent Agrium shall require any Persons with access to Confidential Business Information Relating To the Ritzville Terminal to enter into agreements, within ten (10) days after the date the Terra Divestiture Termination Date, not to disclose any Confidential Business Information Relating To the Ritzville Terminal to Respondent Agrium or to any third party except as otherwise permitted by this Hold Separate Order. Copies of such agreements shall be retained by Respondent Agrium, and provided to the Commission and the Hold Separate Trustee, if appointed.
- C. The purposes of this Paragraph IV are to: (1) preserve the Ritzville Held Separate Business as a viable, competitive, and ongoing business independent of Respondent Agrium until the divestiture required by the Decision and Order is achieved; (2) assure that no Confidential Business Information is exchanged between Respondent Agrium and the Ritzville Held Separate Business, except in accordance with the provisions of this Hold Separate Order; (3) prevent interim harm to competition pending the relevant divestitures and other relief; and (4) help remedy any anticompetitive effects of the proposed Agrium-CF Acquisition as alleged in the Commission's Complaint.

**V.**

**IT IS FURTHER ORDERED** that from the date Respondent Agrium signs the Consent Agreement until the Marseilles Terminal Divestiture Date:

A. Respondent Agrium shall:

1. take such actions as are necessary to maintain the viability and marketability of the Marseilles Terminal and to prevent the destruction, removal, wasting, deterioration, or impairment of the Marseilles Terminal, except for ordinary wear and tear;
2. maintain the operations of the Marseilles Terminal in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance of the assets, as necessary) and/or as may be necessary to preserve the marketability, viability, and competitiveness of the Marseilles Terminal; and
3. use its best efforts to preserve the existing relationships with suppliers, vendors, distributors, customers, governmental agencies, employees, and others having business relations with the Marseilles Terminal.

B. Respondent Agrium's responsibilities shall include, but are not limited to, the following:

1. Respondent Agrium shall not sell, transfer, encumber or otherwise impair the economic viability, marketability, or competitiveness of the Marseilles Terminal;
2. Respondent Agrium shall retain all of Respondent Agrium's rights, title, and interest in the Marseilles Terminal, until the Marseilles Terminal Divestiture Date;
3. Respondent Agrium shall maintain a work force at the equivalent or larger size, and with equivalent or better training and expertise, to what has been associated with the Marseilles Terminal as of the date Respondent Agrium signed the Consent Agreement;
4. Respondent Agrium shall not offer employees Related To the Marseilles Terminal other positions within Respondent Agrium or terminate employees Related To the Marseilles Terminal;
5. Respondent Agrium shall do nothing to prevent or discourage suppliers that, prior to the date on which the Consent Agreement was signed, supplied goods and services to the Marseilles Terminal from continuing to supply goods and services to the Marseilles Terminal;
6. Respondent Agrium shall provide the Marseilles Terminal with sufficient working capital to operate at least at current rates of operation, to meet all capital calls with respect to such business and to carry on, at least at their scheduled pace, all capital projects, business plans and promotional activities for the Marseilles Terminal;

7. Respondent Agrium shall ensure that the Marseilles Terminal is supplied with Anhydrous Ammonia on an ongoing basis as necessary and appropriate to ensure that the Marseilles Terminal will build up sufficient Anhydrous Ammonia supply to meet seasonal demand for Anhydrous Ammonia;
  8. Respondent Agrium shall continue, at least at their scheduled pace, any additional expenditures for the Marseilles Terminal authorized prior to the date the Consent Agreement was signed by Respondent Agrium including, but not limited to, all distribution, marketing and sales expenditures;
  9. Respondent Agrium shall provide such resources as may be necessary to respond to competition against the Marseilles Terminal and/or to prevent any diminution in sales of the Marseilles Terminal after the date on which Respondent Agrium signed the Consent Agreement and prior to the Marseilles Terminal Divestiture Date;
  10. Respondent Agrium shall make available for use by the Marseilles Terminal funds sufficient to perform all routine maintenance and all other maintenance as may be necessary to, and all replacements of, the assets related to such business;
  11. Respondent Agrium shall provide the Marseilles Terminal with such funds as are necessary to maintain the economic viability, marketability and competitiveness of the Marseilles Terminal;
  12. Respondent Agrium shall provide such support services to the Marseilles Terminal as were being provided to the Marseilles Terminal as of the date the Consent Agreement was signed by Respondent Agrium.
  13. Respondent Agrium shall provide all the Marseilles Terminal employees with reasonable financial incentives to continue in their positions consistent with past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of the Marseilles Terminal pending divestiture. Such incentives shall include a continuation of all employee benefits offered by Respondent Agrium until the Marseilles Terminal Divestiture Date has occurred, including regularly scheduled raises, bonuses, vesting of pension benefits (as permitted by law), and additional incentives as may be necessary to prevent any diminution of the Marseilles Terminal's competitiveness.
- C. Respondent Agrium shall not interfere with the hiring or employing of the Marseilles Terminal employees as described in Paragraph VII of the proposed Decision and Order, and shall remove any impediments within the control of Respondent Agrium that may deter these employees from accepting employment with the Marseilles Terminal Acquirer including, but not limited to, any noncompete provisions of employment or other contracts with Respondent Agrium that would affect the ability or incentive of those individuals to be employed by the Marseilles Terminal Acquirer. In addition, Respondent Agrium shall not

make any counteroffer to a Marseilles Terminal employee who receives a written offer of employment from the Marseilles Terminal Acquirer.

*PROVIDED, HOWEVER*, subject to the conditions of continued employment prescribed in this Hold Separate Order, this Paragraph V.C. shall not prohibit Respondent Agrium from continuing to employ any Marseilles Terminal employee under the terms of such employee's employment with Respondent Agrium prior to the date of the written offer of employment from the Marseilles Terminal Acquirer to such employee.

- D. The purposes of this Paragraph V are to: (1) preserve the Marseilles Terminal as a viable, competitive, and ongoing business until the divestiture required by the Decision and Order is achieved; (2) prevent interim harm to competition pending the relevant divestitures and other relief; and (4) help remedy any anticompetitive effects of the proposed Agrium-CF Acquisition as alleged in the Commission's Complaint.

## VI.

**IT IS FURTHER ORDERED** that from the Agrium-CF Acquisition Date until the Marseilles Terminal Divestiture Date:

- A. Respondent Agrium, and Respondent Agrium's employees operating the Marseilles Terminal, shall retain and maintain all Confidential Business Information of the Marseilles Terminal on a confidential basis, separate and apart from Respondent Agrium's other businesses. Except as is requested by Respondent Agrium for purposes of the divestiture of the Marseilles Terminal as required by the Decision and Order, in this matter, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to Respondent Agrium's other businesses or with Respondent Agrium's personnel at Respondent Agrium's other businesses (except to the extent such communications are for human resources, legal, or accounting purposes in the ordinary course of business for the Marseilles Terminal's employees).
- B. Respondent Agrium shall not, directly or indirectly disclose any Confidential Business Information Related To the Marseilles Terminal except to the Marseilles Terminal Acquirer or other persons specifically authorized by the Marseilles Terminal Acquirer to receive such information, or than as necessary to comply with the following:
1. the requirements of the Orders
  2. applicable laws and regulations.
- C. Respondent Agrium shall not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information Related To the marketing or sales of the Marseilles Terminal to Respondent Agrium's employees not otherwise associated with Respondent Agrium's Anhydrous Ammonia sales in the Illinois-Iowa Area (which shall

also include the CF Anhydrous Ammonia terminals in the Illinois-Iowa Area after the Agrium-CF Acquisition).

- D. Respondent Agrium shall institute procedures and requirements to ensure that:
1. Confidential Business Information Related to the Marseilles Terminal is not provided to, or obtained by, Respondent Agrium's employees not otherwise associated with Respondent Agrium's Anhydrous Ammonia sales in the Illinois-Iowa Area;
  2. Respondent Agrium employees with access to Confidential Business Information Relating To the Marseilles Terminal do not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information in contravention of this Hold Separate Order; and
  3. Respondent Agrium's employees associated with Respondent Agrium's Anhydrous Ammonia sales in the Illinois-Iowa Area (including the CF Anhydrous Ammonia terminals after the Agrium-CF Acquisition) do not solicit, access or use any Confidential Business Information that they are prohibited under this Hold Separate Order from receiving for any reason or purpose.
- E. From the Terra Marseilles Termination Date until the Marseilles Terminal Divestiture Date, Respondent Agrium shall require any Persons with access to Confidential Business Information Relating To the Marseilles Terminal to enter into agreements, within ten (10) days after the date the Terra Marseilles Termination Date, not to disclose any Confidential Business Information Relating To the Marseilles Terminal to Respondent Agrium or to any third party except as otherwise permitted by this Hold Separate Order. Copies of such agreements shall be retained by Respondent Agrium, and provided to the Commission and the Monitor, if appointed.
- F. The purposes of this Paragraph VI are to: (1) preserve the Marseilles Terminal as a viable, competitive, and ongoing business until the divestiture required by the Decision and Order is achieved; (2) assure that no Confidential Business Information Relating To the Marseilles Terminal is used or disclosed by Respondent Agrium except in accordance with the provisions of this Hold Separate Order; (3) prevent interim harm to competition pending the relevant divestitures and other relief; and (4) help remedy any anticompetitive effects of the proposed Agrium-CF Acquisition as alleged in the Commission's Complaint.

## VII.

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

- A. At any time after the Terra Marseilles Termination Date or the Terra Ritzville Termination Date, the Commission may appoint a Monitor to assure that Respondent Agrium expeditiously complies with all of its obligations and performs all of its responsibilities as required by the Orders.
- B. The Commission shall select the Monitor, subject to the consent of Respondent Agrium, which consent shall not be unreasonably withheld. If Respondent Agrium has not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within five (5) business days after notice by the staff of the Commission to Respondent Agrium of the identity of any proposed Monitor, Respondent Agrium shall be deemed to have consented to the selection of the proposed Monitor.
- C. Not later than five (5) business days after appointment of the Monitor, Respondent Agrium shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to perform his duties and responsibilities, pursuant to the Orders and consistent with the purposes of the Orders.
- D. Not later than ten (10) business days after appointment of the Monitor, Respondent Agrium shall, pursuant to the Monitor Agreement, transfer to the Monitor all rights, powers, and authorities necessary to permit the Monitor to perform his duties and responsibilities, pursuant to this Hold Separate Order and consistent with the purposes of the Orders.
- E. Respondent Agrium shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
  1. The Monitor shall have the power and authority to monitor Respondent Agrium's compliance with the terms of the Orders, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the Orders and in consultation with the Commission including, but not limited to:
    - a. Assuring that Respondent Agrium expeditiously complies with all of its obligations and performs all of its responsibilities as required by the Orders; and
    - b. Monitoring any agreements between Respondent Agrium and either the Ritzville Terminal Acquirer or the Marseilles Terminal Acquirer.
  2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.

3. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondent Agrium's personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, Related To Respondent Agrium's compliance with its obligations under the Orders. Respondent Agrium shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondent Agrium's compliance with the Orders.
  4. The Monitor shall serve, without bond or other security, at the expense of Respondent Agrium on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Respondent Agrium, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Monitor shall account for all expenses incurred, including fees for services rendered, subject to the approval of the Commission.
  5. Respondent Agrium shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations 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, malfeasance, willful or wanton acts, or bad faith by the Monitor.
  6. The Monitor Agreement shall provide that within one (1) month from the date the Monitor is appointed pursuant to this paragraph, and every sixty (60) days thereafter, the Monitor shall report in writing to the Commission concerning performance by Respondent Agrium of its obligations under the Orders.
  7. Respondent Agrium may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *PROVIDED, HOWEVER*, such agreement shall not restrict the Monitor from providing any information to the Commission.
- F. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Monitor's duties.
- G. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor:
1. The Commission shall select the substitute Monitor, subject to the consent of Respondent Agrium, which consent shall not be unreasonably withheld. If Respondent



Agrium has not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after notice by the staff of the Commission to Respondent Agrium of the identity of any proposed Monitor, Respondent Agrium shall be deemed to have consented to the selection of the proposed Monitor.

2. Not later than ten (10) days after appointment of the substitute Monitor, Respondent Agrium shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondent Agrium's compliance with the relevant terms of the Orders in a manner consistent with the purposes of the Orders.

H. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.

I. A Monitor appointed pursuant to this Hold Separate Order may be the same person appointed as the Monitor pursuant to the Decision and Order, and as the Divestiture Trustee pursuant to the relevant provisions of this Hold Separate Order and the Decision and Order.

#### VIII.

**IT IS FURTHER ORDERED** that within thirty (30) days after the date this Hold Separate Order becomes final, and every sixty (60) days thereafter until Respondent Agrium has fully complied with its obligations under Paragraphs II.A. or II.B., and Paragraphs III.A. or III.B. of the related Decision and Order in this matter, Respondent Agrium shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Hold Separate Order and the related Decision and Order; *PROVIDED, HOWEVER*, that, after the Decision and Order in this matter becomes final, the reports due under this Hold Separate Order shall be consolidated with, and submitted to the Commission at the same time as, the reports required to be submitted by Respondent Agrium pursuant to Paragraph IX of the Decision and Order.

#### IX.

**IT IS FURTHER ORDERED** that Respondent Agrium shall notify the Commission at least thirty (30) days prior to any proposed:

- A. dissolution of the Respondent Agrium;
- B. acquisition, merger or consolidation of Respondent Agrium; or
- C. other change in the Respondent Agrium, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order to Maintain Assets.

**X.**

**IT IS FURTHER ORDERED** that, for purposes of determining or securing compliance with this Order to Maintain Assets, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondent Agrium, Respondent Agrium shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

- A. access, during business office hours of Respondent Agrium 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 Respondent Agrium related to compliance with this Order to Maintain Assets, which copying services shall be provided by Respondent Agrium at its expense; and
- B. to interview officers, directors, or employees of Respondent Agrium, who may have counsel present, regarding such matters.

**XI.**

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

- A. Three (3) 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. The latter of:
  - 1. the day after the Ritzville Terminal Divestiture Date; or
  - 2. the day after the Marseilles Terminal Divestiture Date; or
  - 3. the day after the Commission otherwise directs that this Hold Separate Order is terminated.

By the Commission.

Donald S. Clark  
Secretary

SEAL  
ISSUED: December 22, 2009