

**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

THE LUBRIZOL CORPORATION,
 a corporation,

and

THE LOCKHART COMPANY,
 a corporation.

Docket No. C-4254

DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission (“Commission”), having initiated an investigation of the acquisition of various product lines of chemical additives used to make rust preventives and other assets by The Lubrizol Corporation (“Respondent Lubrizol”) from The Lockhart Company (“Respondent Lockhart”) (collectively referred to as “Respondents”), and Respondents 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 Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondents 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 Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission, having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having 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 makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent The Lubrizol Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of Ohio, with its office and principal place of business located at 29400 Lakeland Boulevard, Wickliffe, OH 44092.
2. Respondent The Lockhart Company is a corporation organized, existing and doing business under and by virtue of the laws of Pennsylvania, with its office and principal place of business located at 2873 West Hardies Road, Gibsonia, PA 15044.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

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

- A. “Lubrizol” means The Lubrizol Corporation its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Lubrizol Corporation, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Lockhart” means The Lockhart Company, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries (including Lockhart Chemical Company), divisions, groups and affiliates controlled by The Lockhart Company, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Commission” means the Federal Trade Commission.
- D. “Additives International” means Additives International LLC, a limited liability corporation, organized, existing and doing business under and by virtue of the laws of Ohio, with its office and principal place of business located at 635 Chicago Ave., #104, Evanston, IL 60602.

- E. “Flint Plant” means the Lockhart manufacturing facility located at 4302 James P. Cole Boulevard, Flint, Michigan 48505.
- F. “Flint Plant Lease Agreement” means the October 6, 2008, lease agreement between Additives International and Lockhart Chemical Company, as amended on January 6, 2009, and that includes, among other things, an option for Additives International to acquire all or part of the Flint Plant and an option for Additives International to renew and extend the lease.
- G. “Flint Plant Leased Area” means those areas described in Paragraph 1 of the Flint Plant Lease Agreement including, but not limited to, calcium sulfonate reactors, a calcium sulfonate filter press, additive blend tanks, storage and blend tanks, shared use of the oxidation reactor, shared use of laboratory space and hot room, and 4800 square feet of warehousing space, including shared use of the loading dock.
- H. “Flint Plant Lessee” means Additives International or any other Person who leases the Flint Plant Leased Area pursuant to this Order.
- I. “Flint Plant Operational Areas” means the:
 - 1. areas appurtenant to and used in the operation of the Flint Plant Leased Area including, but not limited to, loading and unloading areas, storage areas for inputs and inventory, at the Flint Plant;
 - 2. areas for the use of employees working at the areas leased pursuant to the Flint Plant Lease Agreement, similar to those areas available to Respondent Lockhart employees working at the Flint Plant, including, but not limited to, exits and entrances, parking areas, machine rooms, work rooms, break rooms, bathrooms, and locker rooms;
 - 3. existing easements and rights of way relating to the leased areas;
 - 4. related facilities required for the storage of products produced at the Flint Plant by the Flint Plant Lessee.
- J. “Lockhart Oxidates” means the products listed on Non-Confidential Exhibit A to this Order that were previously manufactured and sold by Respondent Lockhart and acquired from Respondent Lockhart by Respondent Lubrizol, whether or not currently manufactured or sold by Respondent Lubrizol.
- K. “Lockhart Oxidates Assets” means
 - 1. the non-exclusive rights to use trademarks, trade names, domain names, service marks and copyrights Relating To the Lockhart Oxidates solely to describe Additives International products as comparable, functionally equivalent, or chemically equivalent to the pertinent Lockguard product orally, in communications with individual customers,

or on Additives International's website for a period of two years after the date on which the order becomes final, if such products are made using the Lockhart formulae transferred pursuant to this Paragraph I.K.2;

2. a copy of all processes, batch sheets, material data safety sheets, formulae, methods, quality control procedures, trade secrets, technology, know-how, inventions and tangible or intangible proprietary information or material received by Lubrizol from Lockhart, including, but not limited to, technical information, processes, procedures, and methods Relating To the Lockhart Oxidates; and
 3. a copy of all existing data and information relating to any of Respondent Lockhart's or Respondent Lubrizol's approvals, clearances, licenses, registrations, permits, franchises, product registrations or authorizations issued by any federal, state, municipal, or foreign authority, or any third party test house, registrar or certification body Relating To the Lockhart Oxidates including, without limitation, all clinical trial data, filings, engineering and design documentation, manufacturing and test results and procedures.
- L. "Material Confidential Information" means competitively sensitive, proprietary, and all other information that is not in the public domain owned by or pertaining to a Person or a Person's business, and includes, but is not limited to, all customer lists, price lists, contracts, cost information, marketing methods, patents, technologies, processes, or other trade secrets.
- M. "Person" means any natural person, partnership, corporation, association, trust, joint venture, government, government agency, division, or department, or other business or legal entity.
- N. "Relating To" means pertaining in any way to, and is not limited to that which pertains exclusively to or primarily to.

II.

IT IS FURTHER ORDERED that Respondent Lubrizol shall,

- A. Remove and rescind any prohibition or restraint including, but not limited to, any non-compete agreements, on the sale or use of all or any part of Respondent Lockhart's Flint Plant for the manufacture and sale of any products produced at the Flint Plant by Additives International or any other Person;
- B. Within thirty (30) days after the date this Order becomes final, divest to Additives International the Lockhart Oxidates Assets.

III.

IT IS FURTHER ORDERED that:

- A. Respondent Lockhart shall Lease the Flint Plant in good faith to Additives International, pursuant to and in accordance with the Flint Plant Lease Agreement (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of Additives International or to reduce any obligations of Respondent under such agreement), and such agreement, if approved by the Commission, is incorporated by reference into this Order and made a part hereof as Confidential Appendix B.
- B. For the length of time during which Respondent Lockhart leases the Flint Plant to the Flint Plant Lessee, Respondent Lockhart shall:
 1. except as requested by the Flint Plant Lessee, take such actions as are necessary to prevent the destruction, removal, wasting, deterioration, or impairment of the Flint Plant Leased Area and the Flint Plant Operational Area, *PROVIDED, HOWEVER*, Respondent Lockhart shall not be responsible for changes to or problems of the Flint Plant Leased Area and the Flint Plant Operational Area caused by the Flint Plant Lessee; *PROVIDED, FURTHER, HOWEVER*, Respondent Lockhart shall give the Flint Plant Lessee sixty (60) days prior notice of any facility maintenance, including ordinary and regular maintenance, when such maintenance may affect the operation of the Flint Plant Leased Area and the Flint Plant Operational Area; *PROVIDED, FURTHER, HOWEVER*, in the event Respondent Lockhart cannot give the Flint Plant Lessee sixty (60) days prior notice, then Respondent Lockhart shall notify the Flint Plant Lessee as soon as it first notifies any persons at the Flint Plant regarding maintenance or problems that may affect the operation of the Flint Plant Leased Area and the Flint Plant Operational Area; and
 2. maintain the Flint Plant Leased Area and the Flint Plant Operational Area in the same general way in which it maintains the other areas at the Flint Plant owned by Respondent Lockhart (to the extent the Flint Plant Lessee complies with the lease terms) including, but not limited to, the uninterrupted provision of utilities and services.
- C. Respondent Lockhart shall not, directly or indirectly, discuss with, or provide, disclose or otherwise make available to, Respondent Lubrizol, or any person working on behalf of Respondent Lubrizol, any Material Confidential Information Relating To the Flint Plant Lessee's manufacture or sale of products at the Flint Plant.
- D. The purpose of this Order is to remedy the lessening of competition alleged in the Commission's Complaint.

IV.

IT IS FURTHER ORDERED that, for the term of this Order, Respondent Lockhart shall not, without providing advance written notification to the Commission in the manner described in this paragraph directly or indirectly modify, change or amend the Flint Plant Lease Agreement. *PROVIDED HOWEVER*, advance written notice is not required if the Flint Plant Lease Agreement is being terminated because Additives International is acquiring all of the Flint Plant.

Said advance written notification shall contain (i) a detailed description of the proposed modification, change, or amendment to such agreements, or acquisition and (ii) documents discussing the reasons for the proposed modification, change, or amendment, or acquisition (hereinafter referred to as “the Notification”). Respondents shall provide the Notification to the Commission, with a copy to the Commission’s Compliance Division of the Bureau of Competition, at least thirty (30) days prior to instituting the modifications, changes, or amendments (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondents shall not institute changes to the agreements until thirty (30) days after submitting such additional information or documentary material. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition.

V.

IT IS FURTHER ORDERED that, for the term of this Order, Respondent Lubrizol shall not acquire, without prior Commission approval, all or any part of Additives International.

VI.

IT IS FURTHER ORDERED that:

- A. The Commission may, at any time after the Order becomes final, appoint a Monitor to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order. The Commission shall select the Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have 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 Respondents of the identity of any proposed Monitor, Respondents shall be deemed to have consented to the selection of the proposed Monitor. Respondents shall comply with the terms of Paragraph VI.B. and VI.C. after the appointment of the substitute Monitor pursuant to Paragraph VI.F.
- B. Not later than ten (10) days after appointment of a Monitor, Respondents 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 Respondents' compliance with the terms of this Order in a manner consistent with the purposes of this Order ("Monitor Agreement").
- C. No later than one (1) day after the Monitor Agreement is approved pursuant to Paragraph VI.B., Respondents shall, pursuant to the Monitor Agreement and to this Order, transfer to the Monitor all the rights, powers, and authorities necessary to permit the Monitor to perform his or her duties and responsibilities in a manner consistent with the purposes of this Order.
- D. Respondents 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 Respondents' compliance with the terms of this Order, 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 this Order and in consultation with the Commission, including, but not limited to, assuring that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order.
 2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.
 3. The Monitor shall serve for such time as is necessary to monitor Respondents' compliance with the provisions of this Order.
 4. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the

ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondents' compliance with their obligations under this Order. Respondents 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 Respondents' compliance with this Order.

5. The Monitor shall serve, without bond or other security, at the expense of Respondents on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Respondents, 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.
 6. Respondents 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, willful or wanton acts, or bad faith by the Monitor.
 7. Respondents shall report to the Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission. The Monitor shall evaluate the reports submitted to the Monitor by Respondents, with respect to the performance of Respondents' obligations under this Order.
 8. Within one (1) month from the date the Monitor is appointed pursuant to this paragraph, every sixty (60) days thereafter, and otherwise as requested by the Commission, the Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under this Order.
 9. Respondents 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.
- E. 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.
- F. If the Commission determines that the Monitor has ceased to act or failed to act diligently, or if the Monitor is otherwise unable to perform his or her duties, the Commission may appoint a substitute Monitor in the same manner as provided in this Paragraph VI.

- G. 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 this Order.

VII.

IT IS FURTHER ORDERED that:

- A. Thirty (30) days after the date this Order becomes final, each Respondent 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 the terms of this Order.
- B. If Respondent Lockhart sells the Flint Plant to Additives International, then within thirty (30) days of such sale, Respondent Lockhart shall submit a written report setting forth in detail the terms, including the contract for sale of the property, on which the Flint Plant was sold to Additives International.
- C. Beginning twelve (12) months after the date this Order becomes final, and annually thereafter on the anniversary of the date this Order becomes final, until the Order terminates, each Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which the Respondent is complying and has complied with this Order. Respondents shall submit at the same time a copy of these reports to the Monitor, if any Monitor has been appointed.

VIII.

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

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

IX.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to each Respondent made to its principal United States offices,

registered office of its United States subsidiary, or its headquarters address, each Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission to:

- A. access, during business office hours of Respondent 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 such Respondent related to compliance with this Order, which copying services shall be provided by such Respondent at the request of the authorized representative(s) of the Commission and at the expense of the Respondent; and
- B. interview officers, directors, or employees of such Respondent, who may have counsel present, regarding such matters.

X.

IT IS FURTHER ORDERED that this Order shall terminate on April 7, 2019.

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED: April 7, 2009

NON-CONFIDENTIAL EXHIBIT A
Lockhart Oxidates

LOCKHART OXIDATES*

LG 1216-47

LG 8000

LG 8000Z

LG 8002

LG 8020

LG 8022

LG 8080

LG 8085

LG 8855

LG 8870

LG 9005

LG 9008

LG 9009

LG 9010

LG 9013

LG 9015

LG 9017

LG 9020

LG 9021

LG 9024

LG 9025

LG 9056

LG 9057

LG 9060

LG 9070

LG 9072

LG 9075

LG 9080

* Product names may have a letter such as a "S" or "W" and all variations on each product name are intended to be included in this list.

CONFIDENTIAL EXHIBIT B
Flint Plant Lease Agreement

[Redacted From Public Record Version But Incorporated By Reference]