

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO.

STATE OF MAINE,

Plaintiff

v.

IRVING OIL LIMITED,

and

IRVING OIL TERMINALS INC.,

Defendants

COMPLAINT
(Injunctive Relief Requested)

INTRODUCTION

This is an antitrust enforcement action brought by the Attorney General of the State of Maine pursuant to 10 M.R.S. §§ 1101, 1102-A, 1104 and 5 M.R.S. § 207, seeking injunctive relief to remedy and prevent adverse effects on competition which may result from the consummation of an acquisition agreement between Irving Oil Limited and Irving Oil Terminals Inc. (collectively "Irving") and ExxonMobil Oil Corporation and Mobil Pipe Line Company (collectively "ExxonMobil"), whereby Irving would acquire terminal and pipeline assets of ExxonMobil located in the state of Maine.

I. PARTIES

1. Plaintiff, the State of Maine, sues in its sovereign capacity. The State, through the Office of the Attorney General, is charged by statute with the enforcement of the antitrust laws, including 10 M.R.S. §§ 1101, 1102, 1102-A, 1104, and 5 M.R.S. § 207.

2. Defendant Irving Oil Limited is a privately-held energy processing, transporting, and marketing company organized, existing, and doing business under, and by virtue of, the laws of Canada, with its office and principal place of business located at 10 Sydney Street, Saint John, New Brunswick, Canada E2L 4K1. Irving Oil Limited is the ultimate parent entity of Irving Oil Terminals Inc.

3. Defendant Irving Oil Terminals Inc. is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its office and principal place of business located at 190 Commerce Way, Portsmouth, New Hampshire 03801.

4. Defendant Irving Oil Terminals Inc. supplies branded and unbranded petroleum products throughout New England to third-party distributors, retailers, various other re-sellers, and governmental and commercial end-users. Irving, through other subsidiaries, also owns retail travel plazas that sell gasoline and diesel petroleum products. In Maine, Irving Oil Terminals Inc. owns a petroleum products terminal in Searsport and co-owns a petroleum products terminal with CITGO in South Portland.

II. JURISDICTION

5. This court has jurisdiction of this action pursuant to 4 M.R.S. § 105, 10 M.R.S. § 1104, 5 M.R.S. § 209 and 14 M.R.S. § 6051(13).

6. Venue is proper in this court pursuant to 14 M.R.S. § 501 and 5 M.R.S. § 209.

7. Defendants Irving Oil Limited and Irving Oil Terminals Inc. are, and at all relevant times have been, engaged in commerce for purposes of 10 M.R.S. § 1102-A and 5 M.R.S. § 207.

III. PROPOSED ACQUISITIONS

8. On November 3, 2009, Irving announced an agreement with ExxonMobil whereby Irving would acquire ExxonMobil's petroleum products terminals located in Bangor and South Portland, Maine and pipeline connecting the two terminals (collectively "Proposed Acquisitions").

IV. TRADE AND COMMERCE

Relevant Product Markets

9. For purposes of this Complaint, the relevant lines of commerce in which to analyze the effects of the Proposed Acquisitions are gasoline terminaling services and distillates terminaling services.

10. Terminals generally consist of several storage tanks and loading racks that pump fuels into tanker trucks for further delivery. Terminals are specialized facilities connected to one

or more fuel supply sources, have the capacity to store fuel shipments, and must be configured properly to distribute the fuel to customers. Light petroleum products terminals are specialized facilities that receive gasoline, diesel fuel, heating oil, kerosene, and jet fuel, among other products, by pipeline, by water, by rail, or directly from refinery production. These products are stored or redistributed by pipeline, water, rail, or truck. Terminals are critical to the sale and distribution of transportation fuels.

11. Terminaling services consist of a cluster of services related to the bulk receipt, storage, and throughput of petroleum products. Terminals also perform value-added services, such as handling and injection of motor fuel additives (including ethanol) as petroleum products are redelivered across the truck rack.

12. Only terminals with vapor recovery equipment, internal floating roofs, and specialized environmental and safety permits can store gasoline. However, tanks configured and permitted to store gasoline can always store distillates. Thus terminals that store gasoline compete in both the gasoline terminaling services and distillates terminaling services markets. Terminals that store only distillates compete only in the distillates terminaling services market.

Relevant Geographic Markets

13. For purposes of this Complaint, the relevant geographic areas in which to analyze the effects of the Proposed Acquisitions on terminaling services are the Bangor/Penobscot Bay and the South Portland areas of Maine.

14. The Bangor/Penobscot Bay area encompasses the state of Maine north of Waterville, including Bangor, Searsport, and Bucksport.

15. The South Portland area encompasses the state of Maine south of Waterville, including South Portland.

V. AFFECTED MARKETS

Gasoline Terminaling Services in the Bangor/Penobscot Bay Area

16. Irving's terminal in Searsport and ExxonMobil's terminal in Bangor are two of three terminals in the Bangor/Penobscot Bay area capable of independently offering gasoline terminaling services. Only ExxonMobil and Irving independently offer gasoline terminaling services today.

17. If the Proposed Acquisitions are consummated, Irving will control the infrastructure that delivers bulk gasoline to the Bangor/Penobscot Bay area. This control would allow Irving unilaterally to raise the price for or restrict the availability of gasoline terminaling

services in the Bangor/Penobscot Bay area and raise gasoline prices to customers served from Bangor/Penobscot Bay area terminals.

Distillates Terminating Services in the Bangor/Penobscot Bay Area

18. There are five petroleum products terminals in the Bangor/Penobscot Bay area, owned by Irving (Searsport), ExxonMobil (Bangor), Coldbrook (Bangor), Webber (Bucksport), and Sprague (Searsport).

19. Four terminals in the Bangor/Penobscot Bay area independently provide, or could provide, distillates terminating services. The Proposed Acquisitions reduce the number of independent distillates terminating services competitors from four to three in the Bangor/Penobscot Bay market.

20. Post-acquisition, without competition from ExxonMobil, the remaining three independent firms would be substantially more likely to coordinate in raising fees or reducing the quality and availability of distillates terminating services in the Bangor/Penobscot Bay market.

Gasoline Terminating Services in the South Portland Area

21. Six firms own five terminals in the South Portland area, with Irving and CITGO sharing ownership of one of these terminals. Only three of these terminals are capable of storing gasoline. These terminals are owned by Irving and CITGO (sharing ownership of one terminal), ExxonMobil, and Gulf Oil LP ("Gulf"). The terminals owned by Sprague Energy Corporation and Global Partners LP terminals in South Portland do not store gasoline.

22. The Proposed Acquisitions reduce the number of participants in the South Portland gasoline terminating services market from four to three and enhance the ability and incentive of the remaining participants to coordinate to increase gasoline terminating services fees.

23. Maine receives gasoline virtually exclusively via marine vessels. Importing gasoline from Europe on large cargo vessels is less costly than the alternative of shipping it from domestic ports on smaller barges. Therefore, most Maine gasoline is imported from outside the United States. Post-acquisition, Irving will control sufficient terminal capacity in Maine to constrain the ability of others to import gasoline into South Portland terminals at current prices.

24. Because the Bangor terminals receive gasoline via the ExxonMobil pipeline from South Portland, Irving's control of this pipeline, its Searsport terminal, and the ExxonMobil South Portland terminal gives Irving the unfettered ability to raise the cost of gasoline supplied from Bangor/Penobscot Bay area terminals to retail stations and other consumers.

Distillates Terminaling Services in the South Portland Area

25. There are five petroleum products terminals in the South Portland area. Each of the five terminals in the South Portland area participates in the distillates terminaling services market. Irving and CITGO share ownership of one of these terminals. ExxonMobil, Global, Gulf, and Sprague each own one of the remaining four terminals.

26. The acquisition reduces the number of participants in the South Portland distillates terminaling services market from six to five. Post-acquisition, without competition from ExxonMobil, the remaining five firms would be substantially more likely to coordinate in raising fees for and reducing the quality and availability of distillates terminaling services in the South Portland area.

VI. ENTRY CONDITIONS

27. Entry into the relevant markets would not be timely, likely, or sufficient to prevent or defeat the anticompetitive effects of the Proposed Acquisitions.

28. Entry into the relevant markets is costly, difficult, and unlikely because of, among other things, the difficulty of obtaining regulatory approvals and the presence of excess terminal capacity in both markets. A new entrant would be unlikely to invest in a new terminal, with substantial sunk costs, in these markets which already have sufficient capacity.

29. A terminal that cannot currently store gasoline is unlikely to reconfigure its tanks to store gasoline in response to an anticompetitive price increase in gasoline terminaling due to the significant cost and limited ability to attract large customer volumes.

VII. EFFECTS OF THE PROPOSED ACQUISITIONS

30. The effects of the Proposed Acquisitions, if consummated, will be to restrain trade in violation of 10 M.R.S. § 1101, and may be substantially to lessen competition and to tend to create a monopoly in the relevant markets in violation of 10 M.R.S. § 1102-A in the following ways, among others:

- a. by eliminating actual, direct, and substantial competition between Defendants and ExxonMobil;
- b. by increasing the likelihood that Defendants would unilaterally exercise market power in the relevant markets; and
- c. by enhancing the likelihood of collusion or coordinated interaction between or among the remaining firms in the relevant markets.

VIII. CAUSE OF ACTION

Count 1--Violation of Monopolies & Profiteering Law

31. The allegations of Paragraphs 1 through 30 above are incorporated by reference as though fully set forth here.

32. The agreement described in Paragraph 8 constitutes a contract in restraint of trade or commerce in violation of 10 M.R.S. § 1101.

Count 2--Violation of Monopolies & Profiteering Law

33. The allegations of Paragraphs 1 through 30 above are incorporated by reference as though fully set forth here.

34. The effect of the Proposed Acquisitions described in Paragraph 8, if consummated, may be to substantially lessen competition or tend to create a monopoly in violation of 10 M.R.S. § 1102-A.

Count 3 -- Violation of Unfair Trade Practices Act

35. The Proposed Acquisitions described in Paragraph 8, if consummated, would constitute an unfair method of competition in the conduct of trade or commerce in violation of 5 M.R.S. § 207.

IX. REQUEST FOR RELIEF

WHEREFORE, the State of Maine requests that this court:

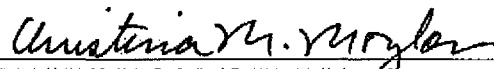
- A. Declare that the agreement described in Paragraph 8 constitutes a violation of 10 M.R.S. § 1101;
- B. Declare that the Proposed Acquisitions described in Paragraph 8, if consummated, would constitute a violation of 10 M.R.S. § 1102-A;
- C. Declare that the Proposed Acquisitions described in Paragraph 8, if consummated, would constitute a violation of 5 M.R.S. § 207;
- D. Permanently enjoin the Defendants from consummating the Proposed Acquisitions described in Paragraph 8;
- E. Award the Attorney General his costs of investigation, costs of suit

and reasonable attorney fees; and

- F. Award such further relief as the Court deems just and proper.

Dated at Augusta, Maine this 26th day of May, 2011.

WILLIAM J. SCHNEIDER
Attorney General


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STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV11-131

STATE OF MAINE,)	
)	
Plaintiff)	
)	
v.)	CONSENT JUDGMENT
)	
IRVING OIL LIMITED,)	
)	
and)	
)	
IRVING OIL TERMINALS INC.,)	
)	
Defendants)	
)	

WHEREAS, Irving Oil Limited and Irving Oil Terminals Inc. (collectively "Irving" or "Defendant") desire to acquire the terminal and pipeline assets of ExxonMobil Oil Corporation and Mobil Pipe Line Company (collectively "ExxonMobil") located in the state of Maine; and

WHEREAS, the State of Maine, by and through its Attorney General, filed the Complaint herein alleging violations of 10 M.R.S. §§ 1101, 1102-A, 1104, and 5 M.R.S. § 207, seeking injunctive relief to remedy and prevent potential adverse effects on competition which may result from the proposed acquisition, on May 26, 2011; and

WHEREAS, the parties have consented to the entry of this Consent Judgment for the purposes of settlement only, without this Judgment constituting evidence against or any admission by any party, and without trial of any issue of fact or law, and without this Consent Judgment constituting any admission of liability or wrongdoing by Defendants or any other party, and with the understanding that Defendants' position is that they have at all times been in compliance with all

applicable laws, and with the understanding that by entering into this Consent Judgment, Defendants do not agree or concede that the claims or allegations asserted by the State have merit, except that the Defendants admit to this court's jurisdiction;

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED and DECREED as follows:

ORDER

I.

IT IS HEREBY ORDERED that this court has jurisdiction of the subject matter of this action and over the Defendants. The Complaint states a claim upon which relief can be granted against the Defendants under 10 M.R.S. § 1102-A and 1104, and 5 M.R.S. § 207.

II.

IT IS FURTHER ORDERED that, as used in this Consent Judgment, the following definitions shall apply:

- A. "Irving" means Irving Oil Limited and Irving Oil Terminals Inc., their directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, divisions, groups and affiliates controlled by Irving and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. "Commission" means the Federal Trade Commission.
- C. "Buckeye" means Buckeye Pipe Line Holdings, L.P., a limited partnership, and Buckeye Partners, L.P., a publicly-traded master limited partnership, both organized, existing, and doing business under and by virtue of the laws of Delaware, with their offices and principal place of business located at One Greenway Plaza, Suite 600, Houston, Texas 77046.
- D. "Buckeye Assignment Agreements" means the (i) Agreement Concerning Assignment of Contracts, dated May 4th, 2011, (ii) Assignment And Assumption Agreement For and Amendment To Terminals Sales and Purchase Agreement, dated May 4th, 2011, and (iii) Assignment And Assumption Agreement For and Amendment To Pipeline Sale and

Purchase Agreement, dated May 4th, 2011, including all exhibits, attachments, agreements, and schedules attached to each agreement; *provided, however*, that for purposes of Paragraph III.E., the Buckeye Assignment Agreements shall not include Exhibits D or E of the Agreement Concerning Assignment of Contracts.

- E. "Financial Statements" means income statements, balance sheets, cash flow statements, cash distribution statements, and capital account statements that contain aggregate information only.
- F. "Irving Divestiture Team" means (i) the Irving JV Oversight Team and (ii) one senior manager of Irving appointed by the Irving General Manager, the Irving Executive Team and/or the board of directors of Irving to oversee and manage a divestiture of Irving's interest in the Portland Terminal Joint Venture and no more than three (3) of his or her direct subordinates.
- G. "Irving Executive Team" means Irving's senior-most team of executive managers that is directly subordinate and accountable to the board of directors of Irving.
- H. "Irving General Manager" means Irving's senior-most manager that is directly subordinate and accountable to the Irving Executive Team.
- I. "Irving JV Oversight Team" means (i) Irving's JV Representative, (ii) Irving's inside legal counsel and their direct administrative subordinates, (iii) Irving's finance director and no more than one of his or her direct administrative subordinates, (iv) the Irving General Manager and no more than one of his or her direct administrative subordinates, (v) the Irving Executive Team, and (vi) Irving's board of directors.
- J. "Irving's JV Representative" means the person (and no more than one alternative) appointed by Irving pursuant to the Portland Terminal Agreement and through whom Irving will act as a member of the Portland Terminal Joint Venture.
- K. "Irving's Maine Business" means any Irving business relating to the marketing, transportation, or storage of energy products in the State of Maine.
- L. "Irving Non-Public Information" means competitively sensitive, proprietary and all other business information of any kind owned by or pertaining to Defendant, other than Portland Terminal JV Non-Public Information (including, but not limited to, product nominations; shipment volumes, scheduling, and customer identification information; receipt, rates, storage, and inventory of products; financial statements, plans and forecasts; operating plans; price lists and cost information; supplier and vendor contracts; marketing analyses; customer lists and contracts; employee lists, salary and benefits information; and technologies, processes, and other trade secrets), except for any information that Defendant demonstrates

(i) was or becomes generally available to the public other than as a result of a disclosure by Defendant or (ii) was available, or becomes available, to Defendant on a non-confidential basis, but only if, to the knowledge of Defendant, the source of such information is not in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the information.

- M. "Manager" means the Person who manages the business and affairs of the Portland Terminal Joint Venture pursuant to the Portland Terminal Agreement.
- N. "Person" means any individual, partnership, firm, trust, association, corporation, joint venture, unincorporated organization, or other business or governmental entity.
- O. "Portland Terminal" means ExxonMobil Oil Corporation's energy fuels terminal and business located at or about 170 Lincoln Street, South Portland, Maine 04108.
- P. "Portland Terminal Agreement" means the Limited Liability Company Agreement of South Portland Terminal LLC, between Buckeye and Irving, dated May 4th, 2011.
- Q. "Portland Terminal Joint Venture" means the joint venture entered into by Irving and Buckeye for the purpose of acquiring the Portland Terminal pursuant to the Portland Terminal Agreement.
- R. "Provisional FTC Order" means the Agreement Containing Consent Order, as accepted by the Commission for public comment In the Matter of Irving Oil Limited and Irving Oil Terminals Inc.
- S. "Operator" means the Person who conducts the day-to-day operations of the Portland Terminal Joint Venture pursuant to the Portland Terminal Agreement and under a management, operations, and maintenance agreement.
- T. "Terminal & Pipeline Assets" means all of the right, title, and interest in and to all property and assets that Irving agreed to purchase from (i) ExxonMobil Oil Corporation pursuant to a certain Terminals Sale and Purchase Agreement, dated November 2, 2009, and (ii) Mobil Pipe Line Company pursuant to a certain Sale and Purchase Agreement for Portland to Bangor Refined Products Pipeline System, dated November 2, 2009; *provided, however*, that the Terminal & Pipeline Assets shall not include an interest in the Portland Terminal that Irving may acquire through the Portland Terminal Joint Venture pursuant to the Buckeye Assignment Agreements.
- U. "Portland Terminal JV Non-Public Information" means competitively sensitive, proprietary and all other business information of any kind owned by or pertaining to the Portland Terminal Joint Venture or Portland Terminal assets (including, but not limited to, product

nominations; shipment volumes, scheduling, and customer identification information; receipt, rates, storage, and inventory of products; financial statements, plans and forecasts; operating plans; price lists and cost information; supplier and vendor contracts; marketing analyses; customer lists and contracts; employee lists, salary and benefits information; and technologies, processes, and other trade secrets), except for any information that Defendant demonstrates (i) was or becomes generally available to the public other than as a result of a disclosure by Defendant or (ii) was available, or becomes available, to Defendant on a non-confidential basis, but only if, to the knowledge of Defendant, the source of such information is not in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the information.

III.

IT IS FURTHER ORDERED that:

- A. Defendant shall divest all rights to acquire the Terminal & Pipeline Assets, absolutely and in good faith, to Buckeye pursuant to the Buckeye Assignment Agreements, no later than five (5) days after the Commission accepts the Consent Agreement for public comment; *provided, however*, that:
 - 1. If, at the time the Commission determines to make the Provisional FTC Order final, the Commission determines that Buckeye is not acceptable as the assignee of Defendant's rights to acquire the Terminal & Pipeline Assets, or that the Buckeye Assignment Agreements are not an acceptable manner of divestiture, and so notifies Defendant, Defendant shall immediately terminate or rescind the Buckeye Assignment Agreements and shall not enter into any other agreement to assign its rights to acquire the Terminal & Pipeline Assets without obtaining the prior approval of the Maine Attorney General, provided the Defendant has the right to seek Superior Court review of any determination by the Maine Attorney General relating to the Consent Judgment.
 - 2. In the event that the Buckeye Assignment Agreements are rescinded pursuant to Paragraph III.A.1. of this Judgment, or if Buckeye does not acquire the Terminal & Pipeline Assets for any other reason, Defendant shall not acquire, directly or indirectly, any interest, in whole or in part, in the Terminal & Pipeline Assets without obtaining the prior approval of the Maine Attorney General, provided the Defendant has the right to seek Superior Court review of any determination by the Maine Attorney General relating to the Consent Judgment.
- B. With respect to the organization, structure, and management of the Portland Terminal Joint Venture and the Portland Terminal, Defendant shall not, without obtaining the prior approval of the Maine Attorney General, provided the Defendant has the right to seek Superior Court

review of any determination by the Maine Attorney General relating to the Consent Judgment:

1. Serve as either Manager or Operator, *provided however*, that in the event that Buckeye is unable (or is legally declared to be unable) to serve as Operator, Defendant shall notify the Maine Attorney General and may serve as Operator, for an interim period of up to sixty (60) days without obtaining the prior approval of the Maine Attorney General, when reasonably necessary to provide for the continuous operation of the Portland Terminal;
 2. Acquire storage or throughput rights in the Portland Terminal that exceed those Defendant will have pursuant to the Buckeye Assignment Agreements; *provided, however*, that Defendant may acquire such additional rights for terms of up to one (1) month without prior approval; or
 3. Acquire, directly or indirectly, through subsidiaries or otherwise, any additional ownership interest, or any other interest, in whole or in part, in the Portland Terminal Joint Venture.
- C. Defendant shall not invite, enter into, implement, continue, enforce, or attempt to enter into, implement, continue or enforce, any condition, policy, practice, agreement, contract understanding, or any other requirement that discourages or prevents the Operator from offering the same terms and conditions to any other Person that it offers Defendant for the handling and throughput of energy fuels at the Portland Terminal.
- D. Irving's JV Representative shall not (i) have any responsibilities (other than as Irving's representative to the Portland Terminal Joint Venture) relating to Irving's Maine Business or (ii) access to Irving Non-Public Information relating to Irving's Maine Business.
- E. Defendant shall comply with all terms of the Buckeye Assignment Agreements, and any breach of the Buckeye Assignment Agreements shall constitute a violation of this Consent Judgment. If any term of the Buckeye Assignment Agreements varies from or contradicts any term of this Consent Judgment ("Consent Judgment Term"), then to the extent that Defendant cannot fully comply with both terms, the Consent Judgment Term shall determine Defendant's obligations under this Consent Judgment. Any modification of the Buckeye Assignment Agreements, without the approval of the Maine Attorney General, shall constitute a failure to comply with this Consent Judgment, provided the Defendant has the right to seek Superior Court review of any determination by the Maine Attorney General relating to the Consent Judgment.
- F. The purpose of the divestiture of the Terminal & Pipeline Assets and of the related obligations imposed by this Consent Judgment is to (i) ensure the continued use of the assets

in the same businesses in which the Terminal & Pipeline Assets were engaged at the time of assignment to Buckeye, (ii) ensure that the Portland Terminal is operated independently of, and in competition with, other Maine terminals, and (iii) remedy the lessening of competition resulting from the acquisition as alleged in the State of Maine's Complaint.

IV.

IT IS FURTHER ORDERED that:

A. Defendant shall not (i) receive any Portland Terminal JV Non-Public Information, (ii) provide, disclose or otherwise make available such information to any Person, or (iii) use such information for any reason or purpose; *provided, however*, that:

1. The Irving JV Representative may receive and use Portland Terminal JV Non-Public Information for the purpose of (i) conducting his or her duties as Irving's JV Representative, (ii) exercising Irving's rights as a member under the Portland Terminal Agreement or applicable law, and (iii) evaluating the Operator's compliance with applicable performance metrics or standards established by the Portland Terminal Joint Venture.
2. The Irving JV Oversight Team may receive and use the following Portland Terminal JV Non-Public Information:
 - (a) Monthly, quarterly, and annual Financial Statements relating to the Portland Terminal Joint Venture solely for the purpose of evaluating Irving's participation in the Portland Terminal Joint Venture;
 - (b) Aggregate financial information (including estimated cash flows, return on investment, and net present value) relating to any proposed new investment in the Portland Terminal Joint Venture solely for the purpose of evaluating such proposal; and
 - (c) Information describing any capital contribution to the Portland Terminal Joint Venture required by the Portland Terminal Agreement that exceeds \$50,000 solely for the purpose of approving disbursement.
3. Defendant may receive, disclose, or use the following Portland Terminal JV Non-Public Information:
 - (a) Information relating solely to Irving and its own transactions in the course of conducting its business as a (i) throughput customer of the Portland Terminal

or (ii) bulk supplier of energy fuels and additives through the Portland Terminal.

- (b) Information that Defendant is required to include in its corporate financial, accounting, or tax documents, *provided, however*, that such information shall be disclosed under the direction of Irving's JV Representative and only to those persons who need it to prepare such consolidated documents;
- (c) Information that Defendant requires in the course of obtaining legal advice or defending or prosecuting any dispute, claim, or litigation pertaining to the Portland Terminal Joint Venture, *provided, however*, that such information shall be disclosed under the direction of Irving's JV Representative and only to those persons who need it to provide legal advice or to prosecute or defend any such dispute;
- (d) Information that Defendant requires in operating or managing the Portland Terminal on an emergency basis pursuant to Paragraph III.B.1. of this Consent Judgment, *provided, however*, that such information shall be disclosed under the direction of Irving's JV Representative and only to those persons who need it to operate the Portland Terminal, *provided, further*, that Irving's JV Representative may also describe the general circumstances of the emergency to the Irving JV Oversight Team; and
- (e) Information that Defendant requires to comply with any legal requirement, *provided, however*, that such information shall be disclosed under the direction of Irving's JV Representative and only to those persons who need it to comply with such legal requirement.

Provided, further, that Irving's JV Representative shall require that each Person who may be permitted to receive, use, or disclose any Portland Terminal JV Non-Public Information under this Paragraph IV.A.3. to sign a statement in which such Person agrees to maintain the confidentiality of the information.

- 4. The Irving Divestiture Team may receive and use the following Portland Terminal JV Non-Public Information solely for the purpose of marketing Irving's interest in the Portland Terminal Joint Venture (should Defendant wish to sell its interest), evaluating offers received, negotiating transaction terms, and executing a sale of Defendant's interest in the Portland Terminal Joint Venture to any Person:
 - (a) Financial Statements relating to the Portland Terminal Joint Venture, and

(b) Non-financial information and documents pertaining to the Portland Terminal Joint Venture relating to real estate, improvements and personal property; environmental; safety and operations; permits and licenses; human resources; information technology; litigation and disputes; agreements among Irving, the Portland Terminal Joint Venture, the Manager or the Operator; insurance information properly in Irving's possession; and other proprietary or business information not of a competitively sensitive nature in the possession or control of the Manager, Operator or Irving.

5. Defendant may engage outside attorneys, accountants, independent consultants and/or auditors to review on Defendant's behalf Portland Terminal JV Non-Public Information provided that those attorneys, accountants, independent consultants and/or auditors shall not make such information available to Defendant except to the extent Defendant is permitted to receive the information under this Consent Judgment.

Provided, further, that prior to receiving and using any Portland Terminal JV Non-Public Information under this Paragraph IV.A., Irving's JV Representative, the Irving JV Oversight Team, the Irving Divestiture Team, independent consultants and outside attorneys, accountants and auditors shall agree in writing to maintain the confidentiality of such information.

B. Defendant shall not provide, disclose or otherwise make available any Irving Non-Public Information to any Person employed by or associated with the Portland Terminal Joint Venture; *provided, however,* that Defendant may provide or disclose such information to:

1. Irving's JV Representative, except for any such information relating to Irving's Maine Business; and
2. The Operator relating solely to Irving and its own transactions in the course of conducting its business as a (i) throughput customer of the Portland Terminal, or (ii) a bulk supplier of energy fuels and additives through the Portland Terminal.

C. Defendant shall within sixty (60) days of the date of the Closing as such term is defined in the Buckeye Assignment Agreements, and in consultation with the Monitor appointed pursuant to Paragraph V of the Provisional FTC Order, develop and implement procedures to insure compliance with this Paragraph IV, including training Defendant's employees.

V.

IT IS FURTHER ORDERED that:

- A. For a period of ten (10) years from the date this Consent Judgment becomes final, Defendant shall not, without providing advance written notification to the Maine Attorney General, acquire, directly or indirectly, through subsidiaries or otherwise, any leasehold, ownership interest, or any other interest, in whole or in part, in any concern, corporate or non-corporate, or in any assets engaged in the transportation or storage of energy fuels in Maine; *provided, however*, that this Paragraph V.A. shall not apply to a single asset acquisition (or group of asset acquisitions within any six month period) with a value of less than \$5,000,000.
- B. The prior notification required by this Paragraph V shall be given by providing the Maine Attorney General with a copy of any Notification and Report Form filed with the FTC in accordance with Paragraph IV.B of the Provisional FTC Order. Defendant shall provide the Notification to the Maine Attorney General at least thirty (30) days prior to consummating the transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Maine Attorney General make a written request for additional information or documentary material, Defendant shall not consummate the transaction until thirty (30) days after submitting such additional information or documentary material. Early termination of the waiting periods in this Paragraph V may be requested and, where appropriate, granted by letter from the Maine Attorney General.

VI.

IT IS FURTHER ORDERED that Defendant shall authorize the Monitor appointed by the Commission to monitor Defendant's implementation of the confidentiality and nondisclosure requirements of Paragraph III of the Provisional FTC Order (which requirements are identical to the requirements of Paragraph IV of this Consent Judgment) to provide the Maine Attorney General all written reports provided to the Commission in accordance with Paragraph V.B.6 of the Provisional FTC Order.

VII.

IT IS FURTHER ORDERED that:

- A. Sixty (60) days from the date of the Closing as such term is defined in the Buckeye Assignment Agreements, Defendant shall submit to the Maine Attorney General 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 Consent Judgment.

- B. One (1) year after the date of the Closing as such term is defined in the Buckeye Assignment Agreements, annually thereafter for the next nine (9) years on the anniversary of the date this Consent Judgment becomes final, and at such other times as the Maine Attorney General may request, Defendant shall file a verified written report with the Maine Attorney General setting forth in detail the manner and form in which it has complied and is complying with this Consent Judgment.
- C. Within thirty (30) days from the date any dispute initiated by a party under the Portland Terminal Agreement becomes subject to arbitration or judicial review under the terms of the Portland Terminal Agreement, Defendant shall submit to the Maine Attorney General a report setting forth in detail a description of the dispute.

VIII.

IT IS FURTHER ORDERED that Defendant shall notify the Maine Attorney General at least thirty (30) days prior to any proposed (1) dissolution of the Defendant, (2) acquisition, merger or consolidation of Defendant, or (3) any other change in the Defendant that may affect compliance obligations arising out of this Consent Judgment, including but not limited to assignment, the creation or dissolution of subsidiaries, or any other change in Defendant.

IX.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Consent Judgment, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Defendant, Defendant shall, without restraint or interference, permit any duly authorized representative(s) of the Maine Attorney General:

- A. Access, during business office hours of the Defendant 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 the Defendant, which copying services shall be provided by the Defendant at its expense; and
- B. To interview officers, directors, or employees of the Defendant, who may have counsel present, regarding such matters.

X.

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

XI.

IT IS FURTHER ORDERED that, no later than thirty (30) days after the date of this Consent Judgment, Irving shall pay to the Maine Attorney General \$10,000 as reimbursement for costs.

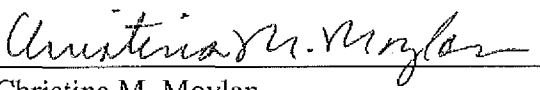
XII.

IT IS FURTHER ORDERED that entry of this Consent Judgment is in the public interest.

CONSENTED TO:

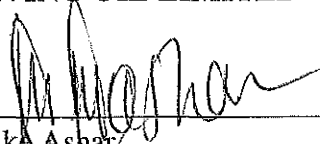
**THE STATE OF MAINE
WILLIAM J. SCHNEIDER
MAINE ATTORNEY GENERAL**

Dated: *May 26, 2011*


Christina M. Moylan
Assistant Attorney General
Consumer Protection Division

IRVING OIL LIMITED

Dated: *May 25, 2011*


Mike Ashar
President and Chief Executive Officer
IRVING OIL LIMITED

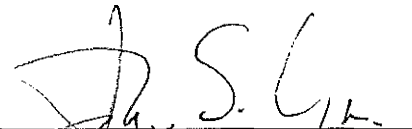
IRVING OIL TERMINALS INC.

Dated: *May 26, 2011*


Gary Bischof
President
IRVING OIL TERMINALS INC.

Dated:

May 26, 2011

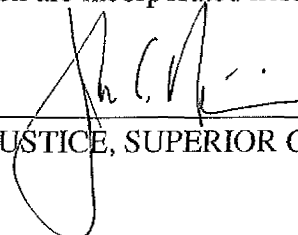


John S. Upton, Esq. Maine Bar # 2134
Perkins Thompson
One Canal Plaza
P.O. Box 426
Portland, Maine 04112-0426
Counsel to IRVING OIL LIMITED and IRVING
OIL TERMINALS INC.

It is hereby ORDERED, ADJUDGED and DECREED as set forth above. Judgment shall enter in accordance with the above terms, which are incorporated herein by this reference.

Dated:

6/2/11



JUSTICE, SUPERIOR COURT