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MARY E. WELTY
RECORDER
MADISON COUNTY, IOWA
Fee 18.00

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Nos. 80B-10472-73
PENN-DIXIE INDUSTRIES, INC.,	:	(Chapter 11)
Debtor.	:	
In re	:	
PENN-DIXIE STEEL CORPORATION,	:	
Debtor.	:	

FILED
FEB 27 1981
BURTON R. LIFLAND
Bankruptcy Judge

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ORDER AUTHORIZING PENN-DIXIE INDUSTRIES, INC. TO SELL PROPERTY

Upon the application of Penn-Dixie Industries, Inc., the debtor herein, for an order authorizing it to sell certain cement manufacturing assets and certain other property, as more particularly set forth in the application dated January 22, 1981 (the "Application"), and in the Asset Purchase Agreement, dated as of January 21, 1981, described in and which form Exhibit "A" to the Application; the Order of the Court dated January 23, 1981 (the "Order"); due notice of the proposed sale having been given as provided in the Order to counsel to the Creditors' Committees of Penn-Dixie Industries, Inc. and Penn-Dixie Steel Corporation, counsel to the Equity Security Holders' Committee, all creditors or other persons who have filed a request that all notices be mailed to them, those creditors identified in the Amended

Return to Duncan Law Firm, 404 Equitable Bldg., Des Moines, IA 50309

and Supplemental Schedule of Unsecured Creditors of Penn-Dixie Industries, Inc. and Penn-Dixie Steel Corporation filed with the Clerk of the Bankruptcy Court on June 16, 1980, the holders as of April 8, 1980 of 5% convertible subordinated debentures of Penn-Dixie Industries, Inc. due periodically to 1982, counsel to the Indenture Trustee with respect to such convertible subordinated debentures, parties who have claims relating to the properties, parties to executory contracts relating to the properties, the West Des Moines State Bank, the trustee with respect to certain pollution control and industrial revenue bonds relating to the properties, and the United Cement, Lime and Gypsum Workers International Union (AFL-CIO); it is

ORDERED, that:

1. Penn-Dixie Industries, Inc. is authorized to sell the assets of its West Des Moines, Iowa, Tennessee cement manufacturing facility, including the plant, the real estate on which the plant is located, the quarry located in Winterset, Iowa, the machinery and equipment, and spare parts therefor, used exclusively in connection with such facility, the inventories of clinker, cement, gypsum and coal in place at such facility, and all other assets used exclusively in connection with such facility (except as are specifically excluded by the Asset Purchase Agreement) (the "Cement Manufacturing Assets"), as more fully set forth in the Asset Purchase Agreement, to Martin Marietta Corporation (the "Buyer"), upon the terms and conditions set forth in the Asset Purchase Agreement.

2. The sale of the Cement Manufacturing Assets to the Buyer shall conform substantially to the terms and provisions of the Asset Purchase Agreement, including, but not limited to, the provision that the cash purchase price shall be $5,800,000 (subject to closing adjustments as provided in the Asset Purchase Agreement), plus the value (as defined in the Asset Purchase Agreement) of the inventories.

3. If prior to the closing of the transaction which is the subject of the Application, any person or entity (other than the City of West Des Moines, Iowa and the Bank, defined below), including The Tom Davis Corporation, which has filed liens or other security interests which encumber the Cement Manufacturing Assets (each a "lienor") shall not have delivered to the Buyer prior to the closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction and other documents for the purpose of documenting the release of all liens or other security interests which the lienor has upon the aforementioned assets, Penn-Dixie Industries, Inc. is authorized to execute and file such statements, instruments and other documents on behalf of the lienor with respect to the Cement Manufacturing Assets.

4. All liens or other security interests of any person or entity (other than those subject to which the Cement Manufacturing Assets are being sold pursuant to the

terms of the Asset Purchase Agreement), including those of The Tom Davis Corporation, which encumber the Cement Manufacturing Assets, shall attach to the proceeds of the sale and Penn-Dixie Industries, Inc. shall deposit, upon the closing of the transaction, a sum equal to the aggregate amount of the liens or other security interests into a separate interest bearing account to which the liens or other security interests shall attach until further order of this Court.

5. If prior to the closing of the transaction which is the subject of the Application, the City of West Des Moines, Iowa (the "City") and the West Des Moines State Bank as indenture trustee (the "Bank") which are parties to certain sale contracts, indentures of trust, easements or licenses, and U.C.C. statements, all of which affect the Cement Manufacturing Assets (such sale contracts, indentures of trust, easements, licenses, and U.C.C. statements, together with all right, title and interest of the City and the Bank in and to the Cement Manufacturing Assets are collectively called the "Security Interest"), shall not have delivered to the Buyer prior to the closing, in proper form for filing and executed by the appropriate parties, a termination agreement and such other statements, instruments and documents for the purpose of documenting the termination or release of the Security Interest, Penn-Dixie Industries, Inc. is authorized to execute and file such agreements, statements, instruments and documents on behalf of the City and the Bank with respect to the Cement Manufac-

turing Assets.

6. Notwithstanding paragraph 4 herein, upon the closing of the transaction which is the subject of the Application, Penn-Dixie Industries, Inc. shall deposit from the proceeds thereof into a separate interest bearing account the sum of $2,000,000, and the Security Interest of the Bank and the City in the Cement Manufacturing Assets shall attach to the funds in that account.

7. Penn-Dixie Industries, Inc. is authorized to sell the Cement Manufacturing Assets to the Buyer free and clear of the Security Interest and all other mortgages, liens, encumbrances, obligations, liabilities, contractual commitments, claims and other matters.

8. Penn-Dixie Industries, Inc. hereby is authorized to execute, assume, assign and deliver all such contracts, agreements, assignments, conveyances or other documents, including but not limited to the contracts set forth in Schedule "C" of the Asset Purchase Agreement, and to take such other action that may be necessary to perform the terms and provisions of the Asset Purchase Agreement.

9. Upon the closing of the Asset Purchase Agreement, the Cement Manufacturing Assets shall be transferred to the Buyer free and clear (except as permitted by the Asset Purchase Agreement) of the Security Interest and all other mortgages, liens, encumbrances, obligations, liabilities, contractual commitments, claims, and other matters;

and (except as permitted by the Asset Purchase Agreement) all persons holding the Security Interest or other mortgages, liens, encumbrances, obligations, liabilities, contractual commitments and claims of any kind and nature, shall be barred from asserting such Security Interest and all other mortgages, liens, encumbrances, obligations, liabilities, contractual commitments and claims of any kind and nature against the Buyer and the Cement Manufacturing Assets; but nothing contained herein shall prejudice the rights, if any, as against the Penn-Dixie Industries, Inc. of those interests affected by this provision.

Dated: February 27, 1981

United States Bankruptcy Judge

United States of America)
Southern District of New York) ss
I, BURTON R. LIFLAND, Bankruptcy Judge, in and for the said district, do hereby certify that the within instrument is a true and correct copy of the original as the same appears of record in my office.

In Witness Whereof, I hereunto set my hand this 27th day of February, 1981

BURTON R. LIFLAND
Bankruptcy Judge
By
Chief Clerk