

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: HYDROGEN PEROXIDE  
ANTITRUST LITIGATION

Civil Action No. 05-666

MDL Docket No. 1682

THIS DOCUMENT RELATES TO:  
DIRECT PURCHASER ACTIONS

CLASS ACTION

**NOTICE OF PROPOSED PARTIAL SETTLEMENT  
OF CLASS ACTION, SETTLEMENT HEARING, AND RIGHT TO APPEAR**

Pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Eastern District of Pennsylvania (the "Court"), this is to advise you that there is now pending in the Court a class action for alleged violations of the antitrust laws by several manufacturers of Hydrogen Peroxide, Sodium Perborate, and/or Sodium Percarbonate. As set forth hereafter, Plaintiffs have entered into a settlement agreement with defendants Solvay America, Inc., Solvay Chemicals, Inc., and Solvay S.A. (collectively "Solvay") under which they have agreed to pay forty-six million dollars and no cents (\$46,000,000.00).

**I. BACKGROUND OF THE LITIGATION**

This lawsuit was filed by Plaintiffs, individually and as representatives of all persons who purchased Hydrogen Peroxide (including Sodium Perborate and Sodium Percarbonate) in the United States or from a facility located in the United States, directly from any of the defendants listed below at any time during the period from September 14, 1994 to January 5, 2005 (the "Class Period"). The Court has specifically determined that this case may proceed as a class action with respect to the settlement agreement ("Settlement Agreement") with the Solvay defendants.

Defendants are:

AKZO NOBEL CHEMICALS INTERNATIONAL B.V.; AKZO NOBEL INC.; ARKEMA INC. (F/K/A ATOFINA CHEMICALS, INC. AND ELF ATOCHEM NORTH AMERICA, INC.); ARKEMA FRANCE (F/K/A ATOFINA S.A. AND ELF ATOCHEM S.A.); EVONIK DEGUSSA GMBH (F/K/A DEGUSSA A.G.); EVONIK DEGUSSA CORPORATION (F/K/A DEGUSSA CORPORATION); EKA CHEMICALS, INC.; FMC CORPORATION; KEMIRA CHEMICALS, CANADA, INC.; KEMIRA OYJ; SOLVAY AMERICA, INC.; SOLVAY CHEMICALS, INC. AND SOLVAY S.A.

The lawsuit asserts that, as a result of the alleged conduct of the defendants, the prices paid to the defendant manufacturers for Hydrogen Peroxide, Sodium Perborate and Sodium Percarbonate during the Class Period were higher than they otherwise would have been. The lawsuit seeks treble damages, injunctive relief, attorneys' fees and costs from defendants. No application for attorneys' fees is being made now. However, in connection with the approval of this settlement, plaintiffs' counsel will ask the Court for reimbursement of expenses incurred in prosecuting the case and to defray future litigation expenses up to \$500,000 from the Settlement Fund. Litigation expenses include but are not limited to, costs for economic experts.

Plaintiffs' Counsel have conducted an investigation into, and have engaged in extensive discovery with respect to, the facts and the law relevant to the lawsuit.

While Plaintiffs believe they have meritorious claims against Solvay, Solvay denies any liability. The parties entered into the Settlement Agreement to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation.

Plaintiffs and their counsel have concluded that a settlement with Solvay according to the terms of the Settlement Agreement entered into between Plaintiffs and Solvay is in the best interests of the members of the class represented by the Plaintiffs. To date, Plaintiffs have entered into the following settlement agreements in the following amounts: Degussa defendants: \$21,000,000; Akzo defendants: \$23,380,000 less a refund of \$7,996,920; Kemira defendants: \$5,000,000; and now Solvay defendants: \$46,000,000. As set forth herein, the lawsuit will continue against defendants other than Solvay, except those settling defendants whose settlements have been granted final approval by the Court.

For the purpose of litigating the claims in this lawsuit, the Court, on January 19, 2007, certified a plaintiff litigation class (the "Litigation Class") on behalf of all persons or entities, including state, local and municipal government entities "who purchased hydrogen peroxide, sodium perborate, or sodium percarbonate in the United States, its territories, or possessions, or from a facility located in the United States, its territories, or possessions, directly from any

of the defendants, or any of their parents, predecessors, successors, subsidiaries, or affiliates, at any time during the period from September 14, 1994 to January 5, 2005." Excluded from the Litigation Class are Defendants, their parents, predecessors, successors, subsidiaries and affiliates as well as federal government entities. On February 27, 2007, the Court of Appeals for the Third Circuit granted Defendants' petition for leave to appeal the Order certifying the Litigation Class pursuant to Fed. R. Civ. P 23(f). The parties have briefed the Rule 23(f) appeal, and an oral argument was held on April 17, 2008. In order to effectuate judicial economy and avoid any possible confusion, the Court approved a stipulation by the parties to defer dissemination of notice of the Litigation Class pending final action regarding the Rule 23(f) class appeal in the Third Circuit.

For purposes of, and in connection with the proposed settlement with Solvay, the Court has also certified a class for settlement purposes on behalf of all persons or entities, including state, local and municipal government entities who purchased Hydrogen Peroxide, Sodium Perborate, or Sodium Percarbonate in the United States, its territories or possessions, or from a facility located in the United States, its territories or possessions, directly from any of the defendants named in the Complaint, or any of their parents, predecessors, successors, subsidiaries or affiliates, at any time during the period from September 14, 1994 to January 5, 2005 (the "Settlement Class"). Excluded from the Settlement Class are defendants, their parents, predecessors, successors, subsidiaries and affiliates as well as federal government entities.

**The Settlement Class is being certified solely for the purposes of settling potential claims against Solvay. As described in more detail below, this Settlement Class is distinct from any other class that may be or has already been certified in this case. Regardless of whether you decide to remain in the Settlement Class or exclude yourself from the Settlement Class, your rights are fully preserved with respect to any and all claims against all remaining defendants from whose settlement you have not elected to be excluded and whose settlement has not already been granted final approval by the Court.**

## **II. THE PROPOSED SETTLEMENT**

Plaintiffs, on behalf of the Settlement Class defined above, have entered into a proposed Settlement Agreement with Solvay in this lawsuit. The following is a summary of the terms of the Settlement Agreement itself.

Under the Settlement Agreement, Solvay has paid \$46,000,000.00 into an account to be administered in accordance with the provisions of the Settlement Agreement. Solvay has the right to terminate the Settlement Agreement based on the occurrence of certain conditions set forth in the settlement agreement and in a separate letter agreement that will be filed in camera and under seal if so ordered by the Court.

The amount that Solvay has paid in settlement is subject to reduction by a refund owed to defendants Eka Chemicals, Inc., Akzo Nobel Inc., and Akzo Nobel Chemicals International B.V. (collectively "Akzo"). The amount previously paid by Akzo in a separate settlement of this litigation is subject to a "most favored nations" ("MFN") clause included in Paragraph 30 of the Akzo Settlement Agreement. Paragraph 30 of the Akzo Settlement Agreement provides that if the Akzo Settlement Class enters into a future settlement with a defendant, which, prior to the date of the Akzo Settlement Agreement, was indicted or pled guilty to U.S. price-fixing charges relating to the pricing of Hydrogen Peroxide in the United States, and if the amount of that settlement is proportionately less than the Akzo settlement amount (based on a comparison of estimated total U.S. sales of Hydrogen Peroxide by Akzo and the settling defendant during the relevant time period (the "MFN Ratio")), Akzo may, in certain circumstances, be entitled to a refund of a portion of its settlement amount and that, if that were to occur, the refund would be payable out of funds paid by the settling defendant and would not reduce the amount of the Akzo settlement, the full amount of which (*i.e.*, \$23,380,000.00) has already been paid by Akzo. Solvay S.A. has pled guilty to U.S. price-fixing charges, and, by now entering into this Settlement Agreement, the amount of which is proportionately less than the Akzo Settlement (based on the MFN Ratio), the MFN clause applies to the settlement with Solvay, and Akzo will receive a refund of \$7,996,920 to be paid out of the Solvay Settlement Fund.

**THIS NOTICE APPLIES ONLY TO THE SETTLEMENT WITH SOLVAY. IF THERE IS A SETTLEMENT WITH ANY REMAINING DEFENDANT YOU WILL BE PROVIDED WITH NOTICE THEREOF AND AN OPPORTUNITY TO BE HEARD WITH RESPECT THERETO.**

The settlement payment by Solvay will be the sole source of payment for the costs of notice and administration of this settlement, the payment of attorneys' fees, and for satisfaction of the Settlement Class members' claims against Solvay. At a later date, the amounts paid in settlement by Solvay, after payment of any court-ordered attorneys' fees, reimbursement of litigation expenses as approved by the Court, and expenses of providing notice to the Settlement Class and of administering and distributing the settlement fund (including tax-related expenses), will be distributed among the members of the Settlement Class.

The complete terms of the proposed Settlement Agreement are on file and may be examined or copied during regular business hours at the office of the Clerk of the United States District Court for the Eastern District of Pennsylvania, 601 Market Street, Philadelphia, Pennsylvania 19106. Copies of the Settlement Agreement are also available from Plaintiffs' counsel identified in this Notice. A copy of the Settlement Agreement is also available at [www.HydrogenPeroxideAntitrustLitigation.com](http://www.HydrogenPeroxideAntitrustLitigation.com).

PLEASE DO NOT TELEPHONE THE COURT REGARDING ANY INQUIRIES CONCERNING THE PROPOSED SETTLEMENT.

### **III. CONSEQUENCES OF SETTLEMENT CLASS MEMBERSHIP — OPTION TO REQUEST EXCLUSION FROM THE SETTLEMENT CLASS**

If you come within the definition of the Settlement Class, you are a member of that class and have the following options:

1. You May Do Nothing and Remain a Member of the Settlement Class. If you are a member of the Settlement Class and wish to remain a member, you do not have to do anything. If you choose to take no action, your interests as a member of the Settlement Class will be represented by the Plaintiffs and their counsel. You will be bound by the terms of the Settlement Agreement and any final judgment that may be entered.

As a member of the Settlement Class, you will not be responsible for attorneys' fees or litigation expenses.

In addition, if the Court grants final approval of the Settlement Agreement, you will be bound by the terms of that agreement and by any judgment entered in accordance with that agreement.

2. You May Remain A Member of the Settlement Class and Hire Your Own Attorney to Represent You. If you are a member of the Settlement Class and do not wish to be represented by the Plaintiffs and their counsel, you may enter an appearance through your own attorney. To do so, your attorney must file a Notice of Appearance with the Clerk of the United States District Court for the Eastern District of Pennsylvania, 601 Market Street, Philadelphia, Pennsylvania 19106, and send a copy of the Notice of Appearance to counsel for the Plaintiffs and Solvay identified at the end of this Notice. You will then continue, as a member of the Settlement Class with representation by your own attorney, and you will be responsible for the fees and costs of that attorney.

3. You May Request Exclusion from the Settlement Class. If you elect to exclude yourself from the Settlement Class, you must mail a written request to be excluded from the class to the Clerk of the Court c/o Settlement Administrator at the following address: Hydrogen Peroxide Antitrust Litigation, P.O. Box 58309, Philadelphia, PA 19102-8309. The written request for exclusion must include the full name of the purchaser, including any predecessor or successor entities, and your address and specifically state that you request exclusion from the Solvay Settlement Class. The written request for exclusion must be sent by certified mail, return receipt requested and be received no later than June 20, 2008. If you elect to be excluded from the class and the proposed Settlement Agreement is finally approved, you will not be entitled to share in the proceeds of the settlement and will remain free to pursue any legal rights you may have against Solvay.

4. You May Object to the Settlement. If you are a member of the Settlement Class and do not elect exclusion from the Settlement Class, you may object to the terms of the Settlement Agreement prior to final approval. If you wish to object to the Settlement Agreement, you must mail a written objection, including a statement of the nature and grounds for your objection, to the Clerk of the Court at the following address: 601 Market Street, Philadelphia, Pennsylvania 19106, and copies of any objections must also be mailed to counsel for the Plaintiffs and Solvay identified at the end of this Notice. The written objection must include the caption of this litigation, be signed, and must be sent by certified mail, return receipt requested and be received no later than July 1, 2008. **As indicated above, this notice applies only to the settlement with Solvay. If there is a settlement with any remaining defendant you will be provided with notice thereof and an opportunity to be heard with respect thereto. The settlement with Solvay does not affect or in any way compromise your rights with respect to any future settlements.**

**Your decision with respect to the Settlement Class does not determine one way or the other whether you will remain a member of any other class that may be or has already been certified in this case against defendants other than Solvay. In particular, remaining a member of the Settlement Class, or requesting exclusion from the Settlement Class, has no bearing on your rights to be a member of the Litigation Class that has been certified pending resolution of Rule 23(f) appeal in the Third Circuit. As noted earlier, the parties in this action have entered into a stipulation to defer class notice for the Litigation Class pending final action regarding the Rule 23(f) class appeal. At that time, should it be necessary, you will have an opportunity to determine whether you will remain in the Litigation Class, or exclude yourself from such a class.**

### **IV. CLASS COUNSEL**

The counsel for the members of the Settlement Class believe that the proposed Settlement Agreement with Solvay is fair, reasonable, and adequate. Counsel for the Settlement Class have entered into the proposed Settlement Agreement after weighing the benefits of the settlement against the probabilities of success or failure of the lawsuit against Solvay.

Plaintiffs' attorneys, at a future date, will apply to the Court for an award of reasonable attorneys' fees and for reimbursement of the costs and expenses of the litigation to be paid from the cash portion of the settlement. You will receive notice of any such application. You will also receive notice of any future plan for the distribution of Settlement proceeds to Settlement Class members.

## **V. EFFECT OF THE SETTLEMENT**

The proposed Settlement Agreement is intended to settle and contains a release of all claims against Solvay that members of the class under federal and state law as direct purchasers have asserted or could have asserted in the lawsuit arising out of any act or omission that is the subject matter of the lawsuit. A copy of the Release contained in the Settlement Agreement is attached hereto as Exhibit A. If you do not exclude yourself from the Settlement Class, you (and your respective past and present parents, subsidiaries, successors, affiliates, and agents) will be deemed to have entered into this Release if the settlement is approved by the Court and becomes effective. If you remain in the Settlement Class, you may not, after the Effective Date, seek to institute, maintain, prosecute or continue to maintain or prosecute any suit, action or other proceeding, or collect from or proceed against the Releasees based on the Released Claims.

If the settlement is approved by the Court and the approval becomes final, the settlement will be consummated on the terms set forth in the Settlement Agreement as described herein. If the proposed settlement is not approved by the Court, or does not become final for some other reason, the litigation shall continue against Solvay.

The above is only a summary of the basic terms of the proposed settlement. You are referred to the Settlement Agreement, which is on file with the Clerk of the Court for the precise terms and conditions of the settlement. You should rely on the precise terms and conditions of the Settlement Agreement, and not merely this summary of the basic terms, in evaluating this settlement and your options.

## **VI. HEARING**

The Court will hold a hearing at the United States District Court for the Eastern District of Pennsylvania, 601 Market Street, Courtroom 10B, Philadelphia, Pennsylvania 19106, on July 23, 2008 at 10:00 a.m., to determine whether the proposed settlement should be approved as fair, adequate and reasonable ("Fairness Hearing"). The Fairness Hearing may be continued without further notice. It is not necessary for you to appear at the Fairness Hearing unless you wish to be heard.

## **VII. NOTICE TO ATTORNEYS OF RECORD**

Copies of all documents filed with the Clerk of the Court (this does not include a written request for exclusion from the Settlement Class, which should be filed with the Settlement Administrator) should be sent to each of the following counsel on behalf of Plaintiff class representatives:

Anthony J. Bolognese  
Joshua H. Grabar  
**BOLOGNESE & ASSOCIATES, LLC**  
Two Penn Center  
1500 JFK Boulevard  
Suite 320  
Philadelphia, PA 19102

Steven A. Kanner  
William H. London  
Douglas A. Millen  
**FRED KANNER LONDON AND MILLEN LLC**  
2201 Waukegan Road  
Suite 130  
Bannockburn, IL 60015

Michael D. Hausfeld  
William P. Butterfield  
Reena Gambhir  
**COHEN, MILSTEIN, HAUSFELD & TOLL**  
1100 New York Avenue, N.W.  
Suite 500, West Tower  
Washington, D.C. 20005

Robert N. Kaplan  
Gregory A. Arenson  
Jason K. Zweig  
**KAPLAN FOX & KILSHEIMER LLP**  
850 Third Avenue  
14th Floor  
New York, NY 10022

and to the following counsel on behalf of SOLVAY:

Adam S. Paris  
**SULLIVAN & CROMWELL LLP**  
1888 Century Park East  
Los Angeles, CA 90067-1725

## **VIII. CHANGE OF ADDRESS**

If this Notice reached you at an address other than the one on the mailing label, or if your address changes, please send your correct address to the Settlement Administrator at the address set forth in paragraph 3 of Section III above.

Dated: April 29, 2008

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Clerk of Court  
United States District Court  
for the Eastern District of Pennsylvania

## EXHIBIT A

### **Definition of Releasees (Settlement Agreement ¶ 15)**

“Releasees’ shall refer jointly and severally, individually and collectively, to Solvay S.A.; Solvay America, Inc.; and Solvay Chemicals, Inc., their respective direct and indirect parents, subsidiaries, affiliates, divisions, and partners, their respective past and present officers, directors, members of any supervisory board or board of management, employees, agents, attorneys, servants, representatives of each of the aforesaid entities, and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing. Notwithstanding any part of the foregoing, however, for purposes of this Agreement, ‘Releasees’ does not include any of the entities identified in Exhibit 1 of this Agreement [attached hereto] or any entity that, on or before the Execution Date, is or was a subsidiary or affiliate of an entity identified in Exhibit 1. As used in this definition, ‘affiliates’ means entities controlling, controlled by or under common control with a Releasee or with any entity identified in Exhibit 1. Releasees shall not include any person who is determined by Class Counsel to have affirmatively refused to comply with a reasonable request by Class Counsel, properly made under the terms of this Settlement Agreement, that the person be interviewed or appear to testify at deposition or at trial and to testify substantively without invocation of his or her right against self incrimination concerning alleged anticompetitive behavior relating to Hydrogen Peroxide, Sodium Perborate, or Sodium Percarbonate.”

### **Release and Discharge (Settlement Agreement ¶ 27)**

“Upon the occurrence of the Effective Date and in consideration of the payment by Solvay of the Settlement Amount, as specified in paragraph 29 of this Agreement, the Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits, and causes of action, damages, and liabilities of any nature—including without limitation claims for costs, expenses, penalties, and attorneys’ fees—whether class, individual, or otherwise in nature, that Releasors, or any of them, ever had, now has, or hereafter can, shall, or may have directly, representatively, derivatively or in any other capacity against the Releasees or any of them, whether known or unknown, suspected or unsuspected, asserted or unasserted, in law or equity, on account of or arising out of or resulting from the purchase of Hydrogen Peroxide in the United States, its territories or possessions during the Class Period or from any conduct regardless of where it occurred at any time prior to the Effective Date concerning the pricing, selling, discounting, marketing, manufacturing, or distributing of Hydrogen Peroxide in the United States, based in whole or in part on the facts, occurrences, transactions, or other matters alleged in the Complaint filed in the Action or otherwise the subject of this litigation, which arise under any federal or state antitrust, unfair competition, unfair practices, price discrimination, unitary pricing, trade practice, consumer protection, or civil conspiracy law, including, without limitation, the Sherman Antitrust Act, 15 U.S.C. § 1 et seq., and California Business and Professions Code § 17200 et seq. and similar provisions in other states (the “Released Claims”). However, nothing herein shall release any claims (a) arising under the laws of a foreign jurisdiction solely with respect to Hydrogen Peroxide purchased directly from Releasees outside the United States and produced at a plant outside the United States, (b) made by indirect purchasers of Hydrogen Peroxide as to such indirect purchases, and/or (c) involving any product defect, breach of contract, or similar commercial claim between any of the Releasees and any of the Releasors relating to Hydrogen Peroxide. The foregoing release of claims shall not apply to any person who is determined by Settlement Class Counsel to have affirmatively refused to comply with a reasonable request by Settlement Class Counsel, properly made under the terms of this Settlement Agreement, that the person be interviewed or appear to testify at deposition or at trial and to testify without invocation of his or her right against self incrimination concerning alleged anticompetitive behavior relating to Hydrogen Peroxide, Sodium Perborate, or Sodium Percarbonate. With respect to former Solvay officers Gary Hall, Robert Monsen, Jean-Marie Demoulin and Jean Christiaens specifically, Messrs. Hall, Monsen, Demoulin and Christiaens shall only obtain the benefit of the Release contained in this paragraph if they provide such cooperation to Plaintiffs as set forth herein in paragraphs 46 through 50.”

**Settlement Agreement Exhibit 1**

The following entities, among others, are not Releasees under this Agreement:

1. EKA Chemicals, Inc., Akzo Nobel, Inc., and Akzo Nobel Chemicals International B.V.
2. Arkema Inc. (F/K/A Atofina Chemicals, Inc. and Elf Atochem North America, Inc.)
3. Arkema France (F/K/A Atofina S.A. and Elf Atochem S.A.)
4. Evonik Degussa GmbH (F/K/A Degussa GMBH and Degussa A.G.)
5. Evonik Degussa Corporation (F/K/A Degussa Corporation)
6. FMC Corporation
7. FMC Foret
8. Kemira Chemicals, Canada, Inc.
9. Kemira Oyj
10. Total S.A. (F/K/A Totalfinalelf S.A. and Total S.A.)

Hydrogen Peroxide Antitrust Litigation  
Settlement Administrator  
c/o Heffler, Radetich & Saitta LLP  
P.O. Box 58309  
Philadelphia, PA 19102-8309

**FIRST CLASS MAIL**

**PLEASE FORWARD—IMPORTANT LEGAL NOTICE**