

# SECURITIES AND EXCHANGE COMMISSION

## FORM 8-A12B

Form for the registration/listing of a class of securities on a national securities exchange pursuant to  
Section 12(b)

Filing Date: **1994-01-06**  
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### FILER

#### **SOUTHDOWN INC**

CIK: **313058** | IRS No.: **720296500** | State of Incorporation: **LA** | Fiscal Year End: **1231**  
Type: **8-A12B** | Act: **34** | File No.: **001-06117** | Film No.: **94500553**  
SIC: **3241** Cement, hydraulic

#### Mailing Address

*1200 SMITH STREET SUITE  
2400  
HOUSTON TX 77002*

#### Business Address

*1200 SMITH ST STE 2400  
HOUSTON TX 77002  
7136506200*

FORM 8-A

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FOR REGISTRATION OF CERTAIN CLASSES OF SECURITIES  
PURSUANT TO SECTION 12(b) OR 12(g) OF THE  
SECURITIES EXCHANGE ACT OF 1934

SOUTHDOWN, INC.  
(exact name of registrant as specified in its charter)

<TABLE>		<C>	
<S>	LOUISIANA		72-0296500
	(State of incorporation or organization)		(I.R.S. Employer Identification No.)
	1200 SMITH STREET, SUITE 2400		
	HOUSTON, TEXAS		77002
	(Address of principal executive offices)		(Zip Code)
</TABLE>			

Securities to be registered to Section 12(b) of the Act:

<TABLE>		<C>	
<CAPTION>			
	Title of each class to be so registered		Name of each exchange on which each class is to be registered
<S>	PREFERRED STOCK, \$___ CUMMULATIVE CONVERTIBLE SERIES D, PAR VALUE \$.05 PER SHARE		NEW YORK STOCK EXCHANGE, INC.
</TABLE>			

Securities to be registered pursuant to Section 12(g) of the Act:

NONE

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ITEM 1. DESCRIPTION OF REGISTRANT'S SECURITIES TO BE REGISTERED.

The information under the captions "Description of Series D Preferred

Stock" and "Description of Capital Stock" set forth in the Prospectus related to the Registration Statement on Form S-3 (No. 33-51133) to be filed pursuant to Rule 424(b) will, upon filing of such Prospectus with the Securities and Exchange Commission, be incorporated herein by reference. For convenience of reference, a copy of the information set forth in Amendment No. 1 to the Registration Statement under the captions "Description of Series D Preferred Stock" and "Description of Capital Stock" (which will be modified by the Prospectus referred to above) is filed as Exhibit 3 to this Registration Statement.

ITEM 2. EXHIBITS.

Listed below are the exhibits filed as part of this registration statement:

1. Restated Articles of Incorporation, as amended (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K dated December 21, 1993).
- 2.\* Form of Articles of Amendment to the Restated Articles of Incorporation designating the Series D Preferred Stock.
3. Information set forth under the captions "Description of Series D Preferred Stock" and "Description of Capital Stock" in Amendment No. 1 to the Registration Statement on Form S-3 (No. 33-51133).

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\* To be supplied by Amendment.

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SIGNATURE

Pursuant to the requirements of Section 12 of the Securities Exchange Act of 1934, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereto duly authorized.

SOUTHDOWN, INC.

By: /s/ JAMES L. PERSKY

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James L. Persky  
Senior Vice President

Date: January 5, 1994

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INDEX TO EXHIBITS

1. Restated Articles of Incorporation, as amended (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K dated December 21, 1993).
- 2.\* Form of Articles of Amendment to the Restated Articles of Incorporation designating the Series D Preferred Stock.
3. Information set forth under the captions "Description of Series D Preferred Stock" and "Description of Capital Stock" in Amendment No. 1 to the Registration Statement on Form S-3 (No. 33-51133).

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\* To be supplied by Amendment.

## DESCRIPTION OF CAPITAL STOCK

The following descriptions do not purport to be complete and are subject to, and qualified in their entirety by reference to, the following documents: (i) the Company's Restated Articles of Incorporation, as amended (the "Restated Articles"); (ii) the Company's Bylaws, as amended; (iii) the Rights Agreement dated as of March 4, 1991, between the Company and Chemical Shareholder Services Group, Inc., as Rights Agent; and (iv) the Warrant Agreement dated as of October 31, 1991 between the Company and Chemical Shareholder Services Group, Inc., as Warrant Agent.

The authorized capital stock of Southdown comprises 40,000,000 shares of Common Stock, \$1.25 par value, and 10,000,000 shares of Preferred Stock, \$.05 par value (the "Preferred Stock").

## COMMON STOCK

At December 31, 1993, 17,045,809 shares of Common Stock were issued and outstanding and held of record by approximately 1,956 shareholders, and approximately 7.6 million shares were reserved for future issuance upon exercise of options granted under employee benefit plans or warrants or upon conversion of convertible securities, excluding shares reserved for issuance upon conversion of the Series D Preferred Stock.

Subject to the preferences of each series of outstanding Preferred Stock, holders of Common Stock are entitled to receive ratably such dividends as may be declared by the Board of Directors out of funds legally available therefor. In the event of a liquidation or dissolution of the Company, holders of Common Stock are entitled to share ratably (except as described below under the caption "-- Series C Preferred Stock") in all assets remaining after payment of liabilities and the liquidation preferences of each series of outstanding Preferred Stock. Each share of Common Stock generally entitles the holder to one vote on matters submitted to a vote of shareholders of the Company, including the election of directors. The Board of Directors of the Company is divided into three classes, as nearly equal in number as possible, having staggered three-year terms. Holders of Common Stock have no preemptive rights and no rights to convert their Common Stock into any other securities. By the affirmative vote of the holders of 80% of the outstanding shares of all classes of the Company's stock entitled to vote in the election of directors, the Company's shareholders may remove any of the Company's directors from office. A similar vote is required to amend certain provisions of the Restated Articles. See "-- Change in Control Provisions." All of the outstanding shares of Common Stock are fully paid and nonassessable.

Chemical Shareholder Services Group, Inc., a subsidiary of Chemical Banking Corporation, serves as the registrar and transfer agent for the Common Stock and

the Series A Preferred Stock and the Series B Preferred Stock described below.

#### WARRANTS TO PURCHASE COMMON STOCK

In October 1991, the Company issued and sold an aggregate of 1,250,000 Warrants to purchase Common Stock (the "Warrants") pursuant to the terms of a Warrant Agreement dated as of October 31, 1991 (the "Warrant Agreement"), between the Company and First City, Texas -- Houston, N.A., as Warrant Agent. Chemical Shareholder Services Group, Inc. is now the Warrant Agent. Each Warrant entitles the holder to purchase one share of Common Stock at a price of \$16 per share, subject to adjustment in certain circumstances, until 5:00 p.m. New York City time on October 31, 1996. The number and kind of securities purchasable upon exercise of the Warrants are subject to adjustment from time-to-time upon the occurrence of certain reclassifications, mergers or consolidations, stock splits, stock dividends, certain other distributions and events and certain issuances or sales of Common Stock at prices less than market value (as defined in the Warrant Agreement). In lieu of an adjustment to the number of shares of Common Stock issuable pursuant to the exercise of the Warrants, the Company may elect to issue additional Warrants.

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\* The information set forth herein duplicates information set forth in Amendment No. 1 to the Registration Statement on Form S-3 (No. 33-51133) and will be modified by the information set forth under corresponding captions in a Prospectus to be filed with the Securities and Exchange Commission pursuant to Rule 424(b).

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#### RIGHTS

On March 4, 1991, the Board of Directors of the Company declared a dividend of one right to purchase preferred stock ("Right") for each outstanding share of the Company's Common Stock, to shareholders of record at the close of business on March 14, 1991. Each Right entitles the registered holder to purchase from the Company a unit consisting of one one-hundredth of a share (a "Unit") of Preferred Stock, Cumulative Junior Participating Series C, par value \$.05 per share (the "Series C Preferred Stock"), at a purchase price of \$60 per Unit, subject to adjustment (the "Purchase Price"). The description and terms of the Rights are set forth in a Rights Agreement dated as of March 4, 1991 (the "Rights Agreement") between the Company and First City, Texas-Houston, N.A., as Rights Agent. Chemical Shareholder Services Group, Inc. now serves as Rights Agent.

The Rights are attached to all certificates representing outstanding shares of Common Stock, and no separate certificates for the Rights ("Rights Certificates") have been distributed. The Rights will separate from the Common Stock and a "Distribution Date" will occur upon the earlier of (i) ten days following a public announcement that a person or group of affiliated or associated persons (an "Acquiring Person") has acquired, or obtained the right to acquire, beneficial ownership of 15% or more of the outstanding shares of

Common Stock (the date of the announcement being the "Stock Acquisition Date"), or (ii) ten business days (or such later date as may be determined by the Company's Board of Directors before the Distribution Date occurs) following the commencement of a tender offer or exchange offer that would result in a person's becoming an Acquiring Person. Until the Distribution Date, (a) the Rights will be evidenced by the Common Stock certificates (together with a copy of a Summary of Rights or bearing the notation referred to below) and will be transferred with and only with such Common Stock certificates, (b) new Common Stock certificates will contain a notation incorporating the Rights Agreement by reference and (c) the surrender for transfer of any certificate for Common Stock outstanding (with or without a copy of the Summary of Rights) will also constitute the transfer of the Rights associated with the Common Stock represented by such certificate.

The Rights are not exercisable until the Distribution Date and will expire at the close of business on March 14, 2001, unless earlier redeemed or exchanged by the Company as described below. In the Rights Agreement, the Company has generally agreed to use its best efforts to cause the securities of the Company issuable pursuant to the exercise of Rights to be registered under the Securities Act, as soon as practicable after the Rights become exercisable, and to take such action as may be necessary to ensure compliance with applicable state securities laws.

As soon as practicable after the Distribution Date, Rights Certificates will be mailed to holders of record of Common Stock as of the close of business on the Distribution Date and, from and after the Distribution Date, the separate Rights Certificates alone will represent the Rights. All shares of Common Stock issued prior to the Distribution Date will be issued with Rights. Shares of Common Stock issued after the Distribution Date in connection with certain employee benefit plans or upon exercise or conversion of certain securities (including the Series D Preferred Stock, except in certain limited circumstances) will be issued with Rights. Except as otherwise determined by the Board of Directors, no other shares of Common Stock issued after the Distribution Date will be issued with Rights.

In the event (a "Flip-In Event") that a person becomes an Acquiring Person, (except pursuant to a tender or exchange offer for all outstanding shares of Common Stock at a price and on terms that a majority of the independent directors of the Company determines to be fair to and otherwise in the best interests of the Company and its shareholders (a "Permitted Offer")) each holder of a Right will thereafter have the right to receive, upon exercise of such Right, a number of shares of Common Stock (or, in certain circumstances, cash, property or other securities of the Company) having a Current Market Price (as defined in the Rights Agreement) equal to two times the exercise price of the Right. Notwithstanding the foregoing, following the occurrence of any Flip-In Event, all Rights that are, or (under certain circumstances specified in the Rights Agreement) were, beneficially owned by any Acquiring Person (or by certain related parties) will be null and void in the circumstances set forth in the Rights Agreement. However, Rights are not exercisable following the occurrence of any Flip-In Event until such time as the Rights are no longer redeemable by the Company as set forth below.

For example, at an exercise price of \$60 per Right, each Right not owned by an Acquiring Person (or by certain related parties) following an event set forth in the preceding paragraph would entitle its holder to purchase \$120 worth of Common Stock (or other consideration, as noted above), based upon its then Current Market Price, for \$60. Assuming that the Common Stock had a Current Market Price of \$15 per share at such time, the holder of each valid Right would be entitled to purchase 8 shares of Common Stock for \$60.

In the event (a "Flip-Over Event") that, at any time on or after the Stock Acquisition Date, (i) the Company is acquired in a merger or other business combination transaction (other than a specified type of merger that follows a Permitted Offer), or (ii) 50% or more of the Company's assets or earning power is sold or transferred, each holder of a Right (except Rights that previously have been voided as set forth above) shall thereafter have the right to receive, upon exercise, a number of shares of common stock of the acquiring company (or in certain cases its controlling person) having a Current Market Price equal to two times the exercise price of the Right. Flip-In Events and Flip-Over Events are collectively referred to as "Triggering Events."

The Purchase Price payable, and the number of Units or other securities or property issuable, upon exercise of the Rights are subject to adjustment from time to time to prevent dilution (i) in the event of a stock dividend on, or a subdivision, combination or reclassification of, the Series C Preferred Stock, (ii) if holders of the Series C Preferred Stock are granted certain rights or warrants to subscribe for Series C Preferred Stock or convertible securities at less than the current market price of the Series C Preferred Stock, or (iii) upon the distribution to holders of the Series C Preferred Stock of evidences of indebtedness or assets (excluding regular quarterly cash dividends) or of subscription rights or warrants (other than those referred to above).

No adjustment in the Purchase Price will be required until cumulative adjustments amount to at least 1% of the Purchase Price. No fractional Units are required to be issued and, in lieu thereof, an adjustment in cash may be made based on the market price of the Series C Preferred Stock on the last trading date prior to the date of exercise. Pursuant to the Rights Agreement, the Company reserves the right to require prior to the occurrence of a Triggering Event that, upon any exercise of Rights, a number of Rights be exercised so that only whole shares of Series C Preferred Stock will be issued.

At any time until ten days following the Stock Acquisition Date, the Company may redeem the Rights in whole, but not in part, at a price of \$.01 per Right, payable, at the option of the Company, in cash, shares of Common Stock or such other consideration as the Board of Directors may determine. After the redemption period has expired, the Company's right of redemption may be reinstated prior to the occurrence of any Triggering Event if (i) an Acquiring Person reduces its beneficial ownership to 10% or less of the outstanding shares of Common Stock in a transaction or series of transactions not involving the Company and (ii) there are no other Acquiring Persons. Immediately upon the effectiveness of the action of the Board of Directors ordering redemption of the



Rights, the Rights will terminate and the only right of the holders of Rights will be to receive the \$.01 redemption price.

At any time after the occurrence of a Flip-In Event and prior to a person's becoming the beneficial owner of 50% or more of the shares of Common Stock then outstanding, the Company may exchange the Rights (other than Rights owned by an Acquiring Person or an affiliate or an associate of an Acquiring Person, which will have become void), in whole or in part, at an exchange ratio of one share of Common Stock, and/or other equity securities deemed to have the same value as one share of Common Stock, per Right, subject to adjustment.

Until a Right is exercised, the holder thereof, as such, will have no rights as a shareholder of the Company, including, without limitation, the right to vote or to receive dividends. Shareholders may, depending upon the circumstances, recognize taxable income in the event that the Rights become exercisable for Common Stock (or other consideration) of the Company or for the common stock of the acquiring company as set forth above or are exchanged as provided in the preceding paragraph.

Other than certain provisions relating to the principal economic terms of the Rights, any of the provisions of the Rights Agreement may be amended by the Board of Directors of the Company prior to the Distribution

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Date. Thereafter, the provisions of the Rights Agreement may be amended by the Board of Directors in order to cure any ambiguity, defect or inconsistency, to make changes that do not materially adversely affect the interests of holders of Rights (excluding the interests of any Acquiring Person), or to shorten or lengthen any time period under the Rights Agreement; provided, however, that no amendment to lengthen the time period governing redemption shall be made at such time as the Rights are not redeemable.

The provisions of the Rights and the Rights Agreement may in some cases discourage or make more difficult the acquisition of control of the Company by means of a tender offer, open market purchase or similar means. These provisions are intended to discourage, or may have the effect of discouraging, partial tender offers, front-end loaded two-tier tender offers and certain other types of coercive takeover tactics and inadequate takeover bids and to encourage persons seeking to acquire control of the Company first to negotiate with the Company. The Company believes that these provisions, which are similar to those of many other publicly held companies, provide benefits by enhancing the Company's potential ability to negotiate with the proponent of any unfriendly or unsolicited proposal to take over or restructure the Company that outweigh the disadvantages of discouraging such proposals because, among other things, negotiation of such proposals could result in an improvement in their terms.

#### PREFERRED STOCK

The Board of Directors is authorized to designate series of Preferred Stock and fix the powers, preferences and rights of the shares of such series and the

qualifications, limitations or restrictions thereon.

Series A Preferred Stock. Pursuant to the terms of the Restated Articles, the Board of Directors has created a series of Preferred Stock consisting of 1,999,998 shares of Preferred Stock, \$.70 Cumulative Convertible Series A (the "Series A Preferred Stock"). The Series A Preferred Stock is senior to the Series B Preferred Stock with respect to dividends and assets. As of December 31, 1993, 1,999,000 shares of Series A Preferred Stock were issued and outstanding. All such shares are fully paid and nonassessable.

The Series A Preferred Stock (a) has a stated value and liquidation preference of \$10 per share, plus accrued and unpaid dividends, (b) carries a cumulative dividend of \$.70 per year, payable quarterly, and entitles the holders of a majority thereof to elect two directors if dividends are in arrears for at least 540 days, (c) is initially convertible into one-half of a share of Common Stock for each share of Series A Preferred Stock, subject to adjustment, (d) is redeemable at the option of the Company at 120% of the stated value thereof (declining to 100% of the stated value after April 30, 1997) plus accrued and unpaid dividends, and (e) is entitled to one vote per share, voting as a class with the Common Stock and any other capital stock of the Company entitled to vote, on all matters submitted to shareholders. In addition, the holders of Series A Preferred Stock have certain class voting rights, including the right to approve certain mergers, consolidations and sales of assets; however, if a holder of Series A Preferred Stock does not grant a proxy to the Board of Directors to vote in favor of any such merger, consolidation or sale of assets, the Company may redeem such holder's shares of Series A Preferred Stock without the payment of any redemption premium. The Company has reserved 999,500 shares of Common Stock for issuance upon conversion of the Series A Preferred Stock.

Series B Preferred Stock. Pursuant to the terms of the Restated Articles, the Board of Directors has created a series of Preferred Stock consisting of 960,000 shares of Preferred Stock, \$3.75 Convertible Exchangeable Series B (the "Series B Preferred Stock"). The Series B Preferred Stock is junior to the Series A Preferred Stock with respect to dividends and assets. As of December 31, 1993, 959,000 shares of Series B Preferred Stock were issued and outstanding. All such shares are fully paid and nonassessable.

The Series B Preferred Stock (a) has a stated value and liquidation preference of \$50 per share, plus accrued and unpaid dividends, (b) carries a cumulative dividend of \$3.75 per year, payable semi-annually, and entitles the holders of a majority thereof to elect two directors if dividends are in arrears for at least 180 days, (c) is initially convertible into two and one-half shares of Common Stock for each share of Series B Preferred Stock, subject to adjustment, (d) is redeemable at the option of the Company at the stated value thereof plus accrued and unpaid dividends, and (e) is entitled to one vote per share, voting as a class with the Common Stock and any other capital stock of the Company entitled to vote, on all matters submitted to shareholders. In addition, the holders of the Series B Preferred Stock have certain class voting rights. The Company has

reserved 2,397,500 shares of Common Stock for issuance upon conversion of the Series B Preferred Stock. In addition, the Series B Preferred Stock is exchangeable, in whole but not in part, at the option of the Company at any time for the Company's 7 1/2% Convertible Subordinated Debentures Due 2013 (the "Debentures") at a rate of \$50 in principal amount of Debentures per share of Series B Preferred Stock, provided that all dividends on the Series B Preferred Stock have been paid through the date of such exchange. The Company's Restated Revolving Credit Facility requires the Company to obtain the consent of the lenders thereunder as a condition to the exchange of the Series B Preferred Stock for the Debentures.

Series C Preferred Stock. In connection with the distribution of the Rights on March 14, 1991, the Board of Directors of the Company authorized 400,000 shares of Series C Preferred Stock, none of which are outstanding. The Series C Preferred Stock would be issued only upon the exercise of Rights and only if the Rights were exercised prior to a Flip-In Event or a Flip-Over Event. The Rights are not exercisable as of the date hereof. See "-- Rights." If issued, the Series C Preferred Stock would be junior to the Series A Preferred Stock, the Series B Preferred Stock and the Series D Preferred Stock with respect to dividends and assets.

The Series C Preferred Stock has a liquidation preference of \$100 per share, plus accrued and unpaid dividends and distributions (the "Series C Liquidation Preference"). Following the payment of the Series C Liquidation Preference, no additional distribution shall be made to the holders of shares of Series C Preferred Stock unless the holders of Common Stock have received an amount per share (the "Common Adjustment") equal to the quotient obtained by dividing (i) the Series C Liquidation Preference by (ii) the Adjustment Number. The Adjustment Number initially is 100, and is subject to adjustment in the event the Company (i) declares any dividend on Common Stock payable in shares of Common Stock, (ii) subdivides the outstanding Common Stock or (iii) combines the Common Stock into a smaller number of shares. Following the payment of the full amount of the Series C Liquidation Preference and the Common Adjustment in respect of all outstanding shares of Series C Preferred Stock and Common Stock, respectively, holders of Series C Preferred Stock and holders of Common Stock shall receive their ratable and proportionate share of the remaining assets to be distributed in the ratio of the Adjustment Number to one with respect to the Series C Preferred Stock and Common Stock, on a per share basis, respectively.

If issued, the Series C Preferred Stock would carry a cumulative dividend per share equal to the greater of (i) \$2.00 or (ii) subject to certain adjustments, the Adjustment Number times the aggregate per share amount of all cash dividends, and the Adjustment Number times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions other than dividends or distributions payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the Common Stock since the immediately preceding quarterly dividend payment date for the Series C Preferred Stock. The Series C Preferred Stock is redeemable, at the option of the Company, at any time at a redemption price

equal to the Adjustment Number times the current per share market price (as defined) of the Common Stock, together with accrued and unpaid dividends. Each share of Series C Preferred Stock entitles the holder thereof to the number of votes equal to the Adjustment Number for each share held and, except as otherwise provided by law, the Series C Preferred Stock votes together as a single class with the Common Stock and any other capital stock of the Company entitled to vote. The Series C Preferred Stock entitles the holders thereof (together with the holders of all Preferred Stock (other than the Series A Preferred Stock and the Series B Preferred Stock) upon which similar voting rights have been conferred) to elect two directors if dividends are in arrears for at least 540 days.

#### LIMITATIONS ON DIVIDENDS AND CERTAIN OTHER PAYMENTS

The Company's ability to pay dividends and make certain other payments with respect to its capital stock is restricted in certain circumstances by certain provisions of its debt instruments, including the Company's Restated Revolving Credit Facility and the Indenture relating to its 14% Senior Subordinated Notes Due 2001. That Indenture provides a limitation on Restricted Payments, which are defined to include, among other things, cash dividends or distributions and repurchases or redemptions of capital stock. Subject to limited exceptions, the Indenture prohibits Restrictive Payments unless, at the time of or after giving effect to the proposed Restricted Payment, no Default or Event of Default shall have occurred and be continuing. The aggregate amount of all Restricted Payments declared or made after October 31, 1991 may not equal or

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exceed an amount calculated from time to time based on, among other things, the Company's consolidated net income (with certain adjustments) since October 1, 1991, and the proceeds from most sales of capital stock. As of September 30, 1993 (after giving effect to the completion of the Preferred Stock Offering and the application of the proceeds therefrom as set forth under "Use of Proceeds"), the amount available under the Indenture for dividends and other Restricted Payments would have been approximately \$45 million.

So long as there is no Event of Default or Unmatured Event of Default under the Restated Revolving Credit Facility, that facility does not restrict the Company's payment of regularly scheduled cash dividends on the Series A Preferred Stock, Series B Preferred Stock or Series D Preferred Stock. So long as there is no Event of Default or Unmatured Event of Default under the Restated Revolving Credit Facility, the Company may also pay cash dividends with respect to the Common Stock so long as the Company's Adjusted Free Cash Flow Ratio (i) on the first date on which such dividends are commenced, and (ii) on the final day of each fiscal year in which such Common Stock dividends are paid, exceeds 1.00:1.00 (for 1993 and 1994), 1.30:1.00 (for 1995) and 1.60:1.00 (for 1996). As of September 30, 1993 (after giving effect to the Preferred Stock Offering and the use of proceeds thereof as set forth under "Use of Proceeds"), the Company's Adjusted Free Cash Flow Ratio would have been 1.10:1.00.

The Company believes that, after giving effect to the Preferred Stock

Offering, these limitations will not materially affect its ability to make dividend payments on the Series D Preferred Stock.

#### CHANGE IN CONTROL PROVISIONS

Charter Provisions. The Restated Articles require the affirmative vote or consent of the holders of 80% of all classes of stock of the Company entitled to vote in the election of directors to approve (a) any merger or consolidation of the Company with or into any other corporation, (b) any sale or lease of all or any substantial part of the assets of the Company or (c) any sale or lease to the Company or any subsidiary thereof of assets with an aggregate fair market value of \$2 million or more in exchange for voting securities of the Company or any subsidiary thereof (or securities convertible into or exchangeable for such securities), if as of the record date for the determination of shareholders entitled to vote or consent with respect to such merger, consolidation, sale or lease, the other party to such transaction is the beneficial owner (as defined), directly or indirectly, of 5% or more of the outstanding shares of stock of the Company entitled to vote in the election of directors ("5% Beneficial Owner"). The foregoing provisions of the Restated Articles are inapplicable to (a) any merger or similar transaction if the Board of Directors of the Company has approved a memorandum of understanding with such other corporation prior to the time such corporation became a 5% Beneficial Owner or (b) transactions with a majority-owned subsidiary of the Company.

Statutory Provision. Although the constitutionality of the control share provisions of the Louisiana Business Corporation Law ("LBCL") has not been judicially determined, the Company believes that it is an "issuing public corporation," subject to the control share provisions of the LBCL. Under the control share provisions of the LBCL, the voting rights of the Company's shares of voting stock are limited under certain circumstances. Subject to certain exceptions, generally if "control shares" of the Company are acquired in a "control share acquisition," the LBCL provides that such shares have the voting rights they had before the control share acquisition only to the extent granted by resolution of the shareholders of the Company. Such resolution must be adopted by a majority of all votes entitled to be cast, excluding all "interested shares."

"Interested shares" are defined as shares of the Company in respect of which any of the following persons may exercise or direct the exercise of the voting power of the Company in the election of directors: (a) an acquiring person or member of a group with respect to a control share acquisition, (b) any officer of the Company, or (c) any employee of the Company who is also a director of the Company. "Control shares" are defined generally as shares that, but for the control share provisions of the LBCL, would have voting power with respect to shares of the Company that, when added to all other shares of the Company owned by a person or in respect to which that person may exercise or direct the exercise of voting power, would entitle that person, immediately after acquisition of the shares, directly or indirectly, alone or as a part of a group, to exercise or direct the exercise of the voting power of the Company in the election of directors within any of the following ranges of voting power:

(a) one-fifth or more but less than one-third of all voting power, (b) one-

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third or more but less than a majority of all voting power, or (c) a majority or more of all voting power. Subject to certain exceptions, a "control share acquisition" means the acquisition, directly or indirectly, by any person of ownership of, or the power to direct the exercise of voting power with respect to, issued and outstanding control shares.

Under certain circumstances (including, but not limited to, the giving of an undertaking by the acquiring person to pay the Company's expenses of the meeting and, under certain circumstances, the obtaining by such person of commitments for the financing of any cash portion of the consideration to be paid), an acquiring person may compel the calling of a special meeting of the Company's shareholders for the purpose of considering the voting rights to be accorded the shares acquired or to be acquired in the control share acquisition. Unless the acquiring person agrees in writing to another date, the special meeting of shareholders shall be held within fifty days after the date on which definitive proxy materials (within the meaning of the Securities Exchange Act of 1934, as amended, and the regulations thereunder) related to the special meeting on behalf of the acquiring person and the Board of Directors of the Company have been filed with the Securities and Exchange Commission.

The Company's Bylaws provide that (i) if no acquiring person statement is filed by the acquiring person or (ii) if full voting rights are not approved, the Company may redeem control shares acquired in a control share acquisition (a) in the case of (i), within 60 days after the last acquisition of control shares by an acquiring person and (b) in the case of (ii), at any time during the period ending two years after the shareholder vote with respect to the voting rights of such control shares. Any such redemption shall be made at the fair value of the control shares and pursuant to such procedures as may be adopted by the Board of Directors of the Company. If control shares acquired in a control share acquisition representing a majority or more of all voting power are accorded full voting rights, then all shareholders of the Company will have dissenters' rights to receive the fair cash value of their shares, such amount not to be less than the highest price per share paid by the acquiring person in the control share acquisition.

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#### DESCRIPTION OF SERIES D PREFERRED STOCK

The following summary of certain provisions of the Series D Preferred Stock does not purport to be complete and is subject to, and qualified in its entirety by reference to, the provisions of the Company's Restated Articles and the Articles of Amendment relating to the Series D Preferred Stock, copies of which are available upon request from the Company.

When issued, the Series D Preferred Stock will be fully paid and nonassessable. The holders of the Series D Preferred Stock will have no



preemptive rights with respect to any shares of capital stock of the Company or any other securities of the Company convertible into or carrying rights or options to purchase any such shares. The Series D Preferred Stock will not be subject to any sinking fund or other obligation of the Company to redeem or retire the Series D Preferred Stock. The Company is making application to list the Series D Preferred Stock on the NYSE.

#### RANKING

The Series D Preferred Stock will rank senior to the Common Stock (and any shares of the Series C Preferred Stock that may be issued) with respect to the payment of dividends and amounts upon liquidation, dissolution or winding up of the Company. The Series D Preferred Stock will rank junior to the Series A Preferred Stock and pari passu with the Series B Preferred Stock with respect to the payment of dividends and amounts upon liquidation, dissolution or winding up of the Company.

So long as any shares of the Series D Preferred Stock are outstanding, the Company may not authorize or create any series or class of stock that ranks senior to the Series D Preferred Stock as to dividends or distribution of assets upon liquidation or winding up of the Company without the consent of the holders of a majority of the outstanding shares of Series D Preferred Stock. However, the Company may, without the consent of any holder of the Series D Preferred Stock, create additional series or classes or increase the authorized number of shares of any series or class of capital stock of the Company that ranks pari passu with or junior to the Series D Preferred Stock. See "-- Voting Rights" below.

#### DIVIDEND RIGHTS

The holders of the Series D Preferred Stock shall be entitled to receive, when and as declared by the Board of Directors out of the funds of the Company legally available therefor, cumulative preferential dividends per share in cash in an amount per annum equal to \$ \_\_\_\_\_ per share, and no more, until conversion or redemption. Dividends on the Series D Preferred Stock will be cumulative, will accrue from the date of original issuance and will be paid quarterly in arrears on the first day of each April, July, October and January commencing April 1, 1994.

Dividends in arrears may be declared and paid at any time, without reference to any regular dividend payment date, to holders of record on such date, not exceeding 45 days preceding the payment date thereof, as may be fixed by the Board of Directors of the Company. No dividend may be declared on any other series or class of stock ranking on a parity with the Series D Preferred Stock unless there shall also be or have been declared on the Series D Preferred Stock like dividends for all quarters at the dividend rates fixed therefor. If full cumulative dividends on the Series D Preferred Stock have not been paid or declared and set apart for payment, the Company may not declare or pay or set apart for payment any dividends or make any other distributions on any capital stock of the Company ranking junior to the Series D Preferred Stock (other than dividends or distributions paid in shares of Common Stock or such other junior

ranking stock), until full cumulative dividends on the Series D Preferred Stock are paid or declared and set apart for payment.

#### LIQUIDATION RIGHTS

In the event of any liquidation, dissolution, or winding up of the affairs of the Company, after payment or provision for payment of the debts and other liabilities of the Company (including any liquidation preferences payable in respect of capital stock of the Company ranking senior to the Series D Preferred Stock as to assets), the holders of the Series D Preferred Stock shall be entitled to receive \$50.00 in cash per share, plus

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accrued and unpaid dividends. If upon any liquidation, dissolution or winding up of the affairs of the Company, the amounts payable with respect to the Series D Preferred Stock (and the Series B Preferred Stock and any other capital stock of the Company ranking on a parity with the Series D Preferred Stock) are not paid in full, the holders of the Series D Preferred Stock (and the Series B Preferred Stock and any other capital stock of the Company ranking on a parity with the Series D Preferred Stock) will share ratably in any such distribution of assets in proportion to the respective amounts to which they are entitled.

#### OPTIONAL REDEMPTION

Shares of Series D Preferred Stock will not be redeemable prior to January , 2001. On or after January , 2001, the shares of Series D Preferred Stock are redeemable, in whole or in part, at any time at the option of the Company, at a redemption price of \$50.00 per share plus accrued and unpaid dividends to the redemption date. If the redemption date falls after a dividend payment record date but prior to the related payment date, the record holders of the Series D Preferred Stock on that record date will be entitled to receive the dividend payable on the Series D Preferred Stock notwithstanding the redemption thereof. Except as provided in this paragraph, no payment or allowance will be made for accrued dividends on any shares of Series D Preferred Stock called for redemption.

Notice of redemption on or after January , 2001 will be mailed at least 30 days but not more than 60 days before the redemption date to each holder of record of shares of Series D Preferred Stock to be redeemed at the address shown on the books of the Company. Shares of Series D Preferred Stock redeemed by the Company will be restored to the status of authorized but unissued shares of preferred stock, without designation as to series, and may thereafter be issued, but not as shares of Series D Preferred Stock.

If less than all of the outstanding shares of Series D Preferred Stock are to be redeemed, the Company will select those to be redeemed pro rata or by lot or in such other manner as the Board may determine. There is no mandatory redemption or sinking fund obligation with respect to the Series D Preferred Stock.



Provided that the Company has made available at the office of the transfer agent a sufficient amount of cash to effect the redemption, on and after the redemption date, dividends will cease to accrue on the Series D Preferred Stock called for redemption, such shares shall no longer be deemed to be outstanding, and all rights of the holders of such shares of Series D Preferred Stock will cease, other than the right to receive any cash payable upon such redemption, without interest.

## CONVERSION RIGHTS

### Conversion at the Option of the Company

On and after January , 1997 and until January , 2001, shares of Series D Preferred Stock will be convertible at the option of the Company, in whole but not in part, into fully paid and nonassessable shares of Common Stock at the Conversion Price. The Company may exercise this option only if, for 20 trading days within any period of 30 consecutive trading days, including the last trading day of such period, the closing price of the Common Stock on the NYSE exceeds 130% of the Conversion Price (initially \$ per share) and only if all dividends on the Series D Preferred Stock for all dividend periods ending on or prior to the dividend payment date next preceding the conversion date have been paid or declared and set aside for payment. To exercise this conversion option, the Company must issue a press release announcing the conversion and specifying the date on which such conversion will be effective prior to 9:00 A.M., New York City time on the second trading day after the end of any such 30 trading day period. The date for the conversion to become effective will be a date selected by the Company not less than 15 nor more than 60 days after the date on which the Company mails the required notice of conversion. On and after the conversion date, the rights of holders of the Series D Preferred Stock, as such, shall cease, the Series D Preferred Stock shall no longer be deemed to be outstanding, and the certificates theretofore representing the shares of Series D Preferred Stock shall represent the shares of Common Stock into which the shares of Series D Preferred Stock have been converted, and the right to receive cash in lieu of any fractional shares.

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### Conversion at the Option of the Holder

At the option of the holder thereof, shares of Series D Preferred Stock may at any time be converted into fully paid and nonassessable shares of Common Stock at the Conversion Price, except that, with respect to shares of Series D Preferred Stock called for redemption, conversion rights will expire at the close of business on the redemption date (unless the Company defaults in the payment of the redemption price), and, with respect to shares of Series D Preferred Stock called for conversion at the option of the Company, conversion rights at the option of the holder will expire at the close of business on the conversion date selected by the Company.

### General

The Conversion Price is subject to adjustment upon the occurrence of certain events, including (a) certain reclassifications of the Common Stock, combinations and subdivisions of the Common Stock, (b) the issuance of shares of Common Stock as a stock dividend, (c) the issuance to all holders of Common Stock of any warrant, option or other right to subscribe for or to purchase Common Stock at a price per share less than the then-current Market Price (as defined) of the Common Stock, and (d) dividends to all holders of Common Stock of evidences of indebtedness of the Company, shares of capital stock of the Company (other than Common Stock) or assets or rights or warrants to subscribe for or purchase any of its securities (excluding those dividends, warrants, options and rights referred to above and dividends and other distributions paid in cash out of the profits or surplus of the Company legally available therefor under the laws of the State of Louisiana). No adjustment in the Conversion Price is required unless it would result in at least a \$.05 per share increase or decrease in the Conversion Price; however, any adjustment not made is carried forward.

In the event of any reclassification or change of the Common Stock (other than a change with respect to the par value thereof or as a result of a subdivision or combination of the outstanding shares thereof); any consolidation or merger of the Company with another entity, as a result of which the holders of Common Stock are entitled to receive stock, other securities or other assets with respect to or in exchange for such Common Stock; or any sale or conveyance, in a single transaction or a series of related transactions with the same person, of all or substantially all of the property or business of the Company in its entirety, then the holders of the Series D Preferred Stock then outstanding will have the right to convert such Series D Preferred Stock only into the kind and amount of shares of stock and other securities and property receivable upon such reclassification, change, consolidation, merger, sale or conveyance by a holder of the number of shares of Common Stock issuable upon conversion of such Series D Preferred Stock immediately prior to such reclassification, change, consolidation, merger, sale or conveyance.

If the conversion date falls after a dividend payment record date but prior to the related payment date, the record holders of the Series D Preferred Stock on that record date will be entitled to receive the dividend payable on the shares of Series D Preferred Stock being converted despite their conversion. No other payment or adjustment will be made upon any conversion on account of regular cash dividends declared or accrued on the Common Stock or the Series D Preferred Stock surrendered for conversion. No fractional share of Common Stock shall be issued and, in lieu of fractional shares, the Company will pay a cash adjustment based on the then-current Market Price of the Common Stock.

#### VOTING RIGHTS

The Series D Preferred Stock is entitled to one vote per share, voting as a class with the Common Stock and any other capital stock of the Company entitled to vote, on all matters submitted to the shareholders. In addition, the holders of the Series D Preferred Stock shall vote as a single class (and the affirmative vote or consent of the holders of at least two-thirds of the outstanding shares of Series D Preferred Stock shall be required) with respect

to any proposal to (a) change the dividend rate, liquidation preference, redemption price, voting rights or conversion rights of the shares of the Series D Preferred Stock or to increase the number of authorized shares of Series D Preferred Stock; (b) increase the authorized amount of any series or class of capital stock of the Company if the same ranks senior to the Series D Preferred Stock as to dividends or distributions of assets on liquidation; (c) authorize, create, issue or sell any shares of any series or class of

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capital stock of the Company that ranks senior to the Series D Preferred Stock as to dividends or assets; and (d) change or modify their voting rights.

Whenever dividends on the Series D Preferred Stock are in arrears for the equivalent of six quarterly dividend periods, the number of directors of the Company shall be increased by two and the holders of the Series D Preferred Stock, voting together as a single class with all other series or classes of preferred stock which rank pari passu with the Series D Preferred Stock as to dividends and which specifically state that they shall vote with the Series D Preferred Stock for the election of two directors in such a case, shall be entitled to elect such two additional directors of the Company, who shall be a Class I director and a Class II director, respectively, at any meeting of shareholders of the Company at which directors are to be elected during the period such dividends remain in arrears. The Series D Preferred Stock will not vote together with any of the Series A Preferred Stock, the Series B Preferred Stock or, if any is issued, the Series C Preferred Stock with respect to the election of two directors in such a case. The right of the holders of the Series D Preferred Stock to elect directors shall terminate when all such dividends accumulated have been paid in full. The term of office of all directors so elected shall terminate immediately upon such payment and the number of directors shall become the number otherwise provided by the Company's governing documents irrespective of such increase.

The Series D Preferred Stock shall have no other voting rights, except as required by law.

#### TRANSFER AGENT AND REGISTRAR

The transfer agent and registrar for the Series D Preferred Stock will be Chemical Shareholder Services Group, Inc., which also serves as transfer agent and registrar for the Common Stock, the Series A Preferred Stock and the Series B Preferred Stock and as Warrant Agent and Rights Agent for the Warrants and Rights, respectively.