

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
William E. Kovacic
J. Thomas Rosch
Edith Ramirez
Julie Brill

_____)
In the Matter of)
)
Air Products and Chemicals, Inc.,) Docket No. C-4299
a corporation.)
)
_____)

ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Air Products and Chemicals, Inc. (“Air Products” or “Respondent”) of the outstanding voting securities of Airgas, Inc. (“Airgas”) and Respondent having been furnished thereafter with a copy of the draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondent that the Commission considered the matter

had reason to believe that Respondent has v

16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues this Order to Hold Separate and Maintain Assets (“Hold Separate”):

1. Respondent Air Products is a corporation organized, existing, and doing business under, and by virtue of, the laws of Delaware, with its office and principal place of business located at 7201 Hamilton Boulevard, Allentown, PA 18195.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Hold Separate, the following definitions, and all other definitions used in the Consent Agreement and the proposed Decision and Order (and when made final, the Decision and Order), shall apply:

- A. “Acquisition” means the acquisition of Airgas, Inc. by Air Products.
- B. “Airgas, Inc.” means 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 259 North Radnor-Chester Road, Suite 100, Radnor, PA 19087.
- C. “Decision and Order” means (i) the Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance and service of a final Decision and Order by the Commission; and (ii) the Final Decision and Order issued by the Commission following the issuance and service of a final Decision and Order by the Commission.
- D. “Divestiture Date” means, with regard to any of the Atmospheric Gases Assets or the Airgas Microbulk Assets (or Air Products Assets) the date on which the Commission issues its final Decision and Order.

- H. “HS Trustee” means the Person appointed pursuant to Paragraph II.C.1. of this Hold Separate.
- I. “Manager” means the Person appointed pursuant to Paragraph II.C.2. of this Hold Separate.
- J. “Orders” means the Decision and Order and this Hold Separate.

II.

IT IS FURTHER ORDERED that during the Hold Separate Period:

- A. Respondent shall:
 - 1. Hold the Hold Separate Business separate, apart, and independent as required by this Hold Separate and shall vest the Hold Separate Business with all rights, powers, and authority necessary to conduct its business.
 - 2. Not exercise direction or control over, or influence directly or indirectly, the Hold Separate Business or any of its operations, or the HS Trustee, except to the extent that Respondent must exercise direction and control over the Hold Separate Business as is necessary to assure compliance with this Hold Separate, the Consent Agreement, the Decision and Order, and all applicable laws.
- B. Respondent shall take such actions as are necessary to maintain and assure the continued maintenance of the viability, marketability and competitiveness of the Hold Separate Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets, except for ordinary wear and tear, and shall not sell, transfer, encumber or otherwise impair the Hold Separate Business (except as required by the Decision and Order).
- C. Respondents shall hold the Hold Separate Business separate, apart, and independent of Air Products on the following terms and conditions:
 - 1. At any time after Respondent signs the Consent Agreement, the Commission shall appoint one or more Persons to serve as HS Trustee to manage the Hold Separate Business and ensure that Respondent complies with its obligations as required by this Hold Separate and the Decision and Order:
 - (a) The Commission shall select the HS Trustee, subject to the consent of the Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) business days after notice by the staff of the Commission to Respondent of the

identity of any proposed HS Trustee, Respondent shall be deemed to have consented to the selection of the proposed trustee.

- (b) The HS Trustee shall have the responsibility for monitoring the organization of the Hold Separate Business; supervising the management of the Hold Separate Business by the Manager; maintaining the independence of the Hold Separate Business; and monitoring Respondent's compliance with its obligations pursuant to the Orders, including maintaining the viability, marketability and competitiveness of the Hold Separate Business pending divestiture.
- (c) No later than three (3) days after appointment of the HS Trustee, Respondent shall execute an agreement that, subject to the prior approval of the Commission, transfers to and confers upon the HS Trustee all rights, powers, and authority necessary to permit the HS Trustee to perform his duties and responsibilities pursuant to this Hold Separate, in a manner consistent with the purposes of the Cpo cm1.00 0.00000 1.000 TD(c)Tj5.280en 0.

- (h) Respondent may require the HS Trustee and each of the HS Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement; *provided, however,* that such agreement shall not restrict the HS Trustee from providing any information to the Commission.
- (i) The HS Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on reasonable and customary terms commensurate with the person's experience and responsibilities.
- (j) Respondents shall indemnify the HS Trustee and hold him harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the HS Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from gross negligence or willful misconduct by the HS Trustee.

- (a) The Manager shall report directly and exclusively to the HS Trustee and shall manage the Hold Separate Business independently of the management of Respondent. The Manager shall not be involved, in any way, in the operations of the other businesses of Respondent during the term of this Hold Separate.
- (b) No later than three (3) days after appointment of a Manager, Respondent shall transfer to the Manager, with the approval of the HS Trustee, shall transfer all rights, powers, and authority necessary to permit the Manager to perform his duties and responsibilities pursuant to this Hold Separate, in a manner consistent with the purposes of the Decision and Order.
- (c) The Manager shall make no material changes in the ongoing operations of the Hold Separate Business except with the approval of the HS Trustee, in consultation with the Commission staff.
- (d) The Manager shall have the authority, with the approval of the HS Trustee, to remove Hold Separate Business employees and replace them with others of similar experience or skills. If any Person ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate, the Manager, in consultation with the HS Trustee, may request Respondents to, and Respondents shall, appoint a substitute Person, which Person the Manager shall have the right to approve.
- (e) In addition to Hold Separate Business employees, the Manager may, with the approval of the HS Trustee, employ such Persons as are reasonably necessary to assist the Manager in managing the Hold Separate Business.
- (f) The Manager shall include the a

5. Respondent shall cause the HS Trustee, the Manager, and each of Respondent's employees (excluding those employed in the Hold Separate Business) having access to Confidential Business Information of or pertaining to the Hold Separate Business to submit to the Commission a signed statement that the individual will maintain the confidentiality required by the terms and conditions of this Hold Separate. These individuals must retain and maintain all Confidential Business Information of or pertaining to the Hold Separate Business on a confidential basis and, except as is permitted by this Hold Separate or the Decision and Order, such Persons shall be prohibited from disclosing, providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other Person whose employment involves any of Respondent's businesses or activities other than the Hold Separate Business.
6. Except for the Manager and Hold Separate Business employees, and except to the extent provided in this Hold Separate, Respondent shall not permit any other of its employees, officers, or directors to be involved in the operations of the Hold Separate Business.
7. Respondent's employees (excluding the Hold Separate Business employees) shall not receive, or have access to, or use or continue to use any Confidential Business Information of the Hold Separate Business except:
 - (a) as required by

Nor shall the Manager or any Hold Separate Business employees receive or have access to, or use or continue to use, any Confidential Business Information relating to Respondent's businesses (not subject to the Hold Separate), except such information as is nec

Respondent until the divestiture required by the Decision and Order is achieved; (2) assure that no Confidential Business Information is exchanged between Respondent and the Hold Separate Business, except in accordance with the provisions of this Hold Separate and the Decision and Order; (3) prevent interim harm to competition pending the divestiture and other relief; and (4) maintain the full economic viability, marketability and competitiveness of the Atmospheric Gases Assets and Airgas Microbulk Assets, and prevent the destruction, removal, wasting, deterioration, or impairment of any of the Atmospheric Gases Assets or Airgas Microbulk Assets except for ordinary wear and tear.

III.

IT IS FURTHER ORDERED that from the date Respondent executes the Consent Agreement and during the Hold Separate Period, Respondent shall take such actions as are necessary to maintain the viability, marketability, and competitiveness of the Air Products Microbulk Business. Among other things that may be necessary, Respondent shall:

- A. Maintain the operations of the Air Product 0.00000 0.03600 0.0000 TD(e)Tj5.2800880oper

- H. Assure that Respondent's employees with primary responsibility for managing and operating the Air Products Microbulk Business are not transferred or reassigned to other areas within Respondent's organizations except for transfer bids initiated by employees pursuant to Respondent's regular, established job posting policy; and
- I. Use best efforts to preserve and maintain the existing relationships with customers, suppliers, vendors, private and governmental entities, and others having business relations with the Air Products Microbulk Business.

IV.

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

V.

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

- B. The day after the Divestiture Date of the Atmospheric Gases Assets and Airgas Microbulk Assets (or Air Products Microbulk Assets, if applicable) required to be divested pursuant to the Decision and Order.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: September 8, 2010

Appendix A

NOTICE OF DIVESTITURE AND REQUIREMENT FOR CONFIDENTIALITY

Air Products and Chemicals, Inc. (“Air Products”), referred to as “Respondent,” has entered into an Agreement Containing Consent Orders (“Consent Agreement”) with the Federal Trade Commission (“Commission”) providing for divestiture of certain businesses and assets and other relief, in connection with the acquisition of Airgas, Inc. (“Airgas”) by Air Products. Under the terms of the Consent Agreement, Air Products must divest certain businesses and assets, to an acquirer approved by the Commission and in a manner acceptable to the Commission, within 120 days of the consummation of Air Products’ acquisition of Airgas.

As used in the Consent Agreement, the term “Hold Separate Business” means the businesses and assets operated by Airgas, and all full-time, part-time or contract employees of those businesses. During the Hold Separate Period, which begins on the date Air Products acquires Airgas and ends after Air Products has completed the required divestitures, Air Products must hold the Hold Separate Business separate, apart, and independent from Air Products’ other businesses. The businesses within the Hold Separate Business must be maintained as ongoing, competitive businesses until Air Products has completed the required divestitures.

All competitive information relating to the businesses within the Hold Separate Business must be retained and maintained on a confidential basis by the persons who have been and continue to be involved in the operations or sale of any of the businesses within the Hold Separate Business. Except as provided in the Decision and Order or the Order to Hold Separate and Maintain Assets, all such persons are prohibited from disclosing, providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person employed by Air Products or whose employment relates to any of Air Products’ businesses other than the Hold Separate Business, and may be required to sign a statement agreeing to keep such information confidential. Similarly, persons involved in similar activities with respect to Air Products’ businesses are prohibited from disclosing, providing, discussing, exchanging, circulating, or otherwise furnishing any similar Air Products information to or with any other person whose employment involves the Hold Separate Business, except as otherwise provided in the Decision and Order and Order to Hold Separate and Maintain Assets.

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