

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 Microbulk Assets, if applicable), the date on which Respondent (or a Divestiture Trustee) closes on the divestiture of those assets completely and as required by Paragraph II (or Paragraph V) of the Decision and Order to an Acquirer approved by the Commission.
- E. “Hold Separate” means this Order to Hold Separate and Maintain Assets.
- F. “Hold Separate Business” means Airgas, Inc.
- G. “Hold Separate Period” means the time period during which the Hold Separate is in effect, which shall begin on the Acquisition Date and terminate pursuant to Paragraph VI hereof.

- 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 Decision and Order.
- (d) Subject to all applicable laws and regulations, the HS Trustee shall have full and complete access to all personnel, books, records, documents and facilities of the Hold Separate Business, and to any other relevant information as the HS Trustee may reasonably request including, but not limited to, all documents and records kept by Respondent in the ordinary course of business that relate to the Hold Separate Business. Respondent shall develop such financial or other information as the HS Trustee may reasonably request and shall cooperate with the HS Trustee.
- (e) Respondent shall take no action to interfere with or impede the HS Trustee's ability to monitor Respondent's compliance with this Hold Separate, the Consent Agreement or the Decision and Order or otherwise to perform his duties and responsibilities consistent with the terms of this Hold Separate.
- (f) The HS Trustee shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the HS Trustee's duties and responsibilities.
- (g) The Commission 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 relating to materials and information received from the Commission in connection with performance of the HS Trustee's duties.

- (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.
 - (k) Thirty (30) days after the Acquisition Date, and every thirty (30) days thereafter until the Hold Separate terminates, the HS Trustee shall report in writing to the Commission concerning the efforts to accomplish the purposes of this Hold Separate and Respondent's compliance with its obligations under the Hold Separate and the Decision and Order. Included within that report shall be the HS Trustee's assessment of the extent to which the Hold Separate Business is meeting (or exceeding) its projected goals as are reflected in operating plans, budgets, projections or any other regularly prepared financial statements.
 - (l) If the HS Trustee ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate, the Commission may appoint a substitute HS Trustee consistent with the terms of this Hold Separate.
 - (m) The HS Trustee shall serve until the day after the Divestiture Date; *provided, however,* that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.
2. No later than ten (10) days after the Acquisition Date, Respondent shall appoint a Manager, approved by the HS Trustee in consultation with Commission staff, from among the current employees of the Hold Separate Business to manage and maintain the operations of the Hold Separate Business in the regular and ordinary course of business and in accordance with past practice:

- (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 enter into a management agreement with the Manager that, subject to the prior 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) Respondent shall provide the Manager with reasonable financial incentives to undertake this position. Such incentives shall include a continuation of all employee benefits, including regularly scheduled raises, bonuses, vesting of pension benefits (as permitted by law), and additional incentives as may be necessary to assure the continuation and prevent any diminution of the Hold Separate Business's viability, marketability and competitiveness until the Divestiture Date, and as may otherwise be necessary to achieve the purposes of this Hold Separate.
- (g) The HS Trustee shall be permitted, in consultation with the Commission staff, to remove the Manager for cause. Within three (3) days of such removal, Respondent shall appoint a replacement Manager on the same terms and conditions as provided in this Hold Separate. In the event that the Manager voluntarily ceases to act as a Manager, then Respondent shall appoint a substitute Manager within three (3) days on the same terms and conditions as provided in this Hold Separate.

- (h) The Manager shall serve, without bond or other security, at the cost and expense of Respondent, on reasonable and customary terms commensurate with the person's experience and responsibilities.
 - (i) Respondent shall indemnify the Manager and hold him harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Manager'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 Manager.
- 3. The Hold Separate Business shall be staffed with sufficient employees to maintain the viability and competitiveness of the Hold Separate Business. To the extent that such employees leave or have left the Hold Separate Business prior to the Divestiture Date, the Manager, with the approval of the HS Trustee, may replace departing or departed employees with persons who have similar experience and expertise or determine not to replace such departing or departed employees.
- 4. Respondent shall provide the Hold Separate Business with sufficient financial and other resources:
 - (a) as are appropriate in the judgment of the HS Trustee to operate the Hold Separate Business as it is currently operated (including efforts to generate new business);
 - (b) to perform all maintenance to, and replacements of, the assets of the Hold Separate Business in the ordinary course of business and in accordance with past practice;
 - (c) to carry on existing and planned capital projects and business plans; and
 - (d) to maintain the viability, competitiveness, and marketability of the Hold Separate Business.

Such financial resources to be provided to the Hold Separate Business shall include, but shall not be limited to, (i) general funds, (ii) capital, (iii) working capital, and (iv) reimbursement for any operating losses, capital losses, or other losses; *provided, however*, that, consistent with the purposes of the Decision and Order and in consultation with the HS Trustee, the Manager may reduce in scale or pace any capital or research and development project, or substitute any capital or research and development project for another of the same cost.

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 law; and
 - (b) to the extent that necessary information is exchanged:
 - (1) in the course of consummating the Acquisition;
 - (2) in negotiating agreements to divest assets pursuant to the Decision and Order and engaging in related due diligence;
 - (3) in complying with or as permitted by this Hold Separate or the Decision and Order;
 - (4) in overseeing compliance with policies and standards concerning the safety, health and environmental aspects of the operations of the Hold Separate Business and the integrity of the financial controls of the Hold Separate Business;
 - (5) in defending legal claims, investigations or enforcement actions threatened or brought against or related to the Hold Separate Business; or
 - (6) in obtaining legal advice.

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 necessary to maintain and operate the Hold Separate Business. Respondent may receive aggregate financial and operational information relating to the Hold Separate Business only to the extent necessary to allow Respondent to comply with the requirements and obligations of the laws of the United States and other countries, to prepare consolidated financial reports, tax returns, reports required by securities laws, and personnel reports, and to comply with this Hold Separate or in complying with or as permitted by the Decision and Order. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph.

8. Respondent and the Hold Separate Business shall jointly implement, and at all times during the Hold Separate Period maintain in operation, a system, as approved by the HS Trustee, of access and data controls to prevent unauthorized access to or dissemination of Confidential Business Information of the Hold Separate Business, including, but not limited to, the opportunity by the HS Trustee, on terms and conditions agreed to with Respondent, to audit Respondent's networks and systems to verify compliance with this Hold Separate.
 9. No later than ten (10) days after the Acquisition Date, Respondent shall establish written procedures, subject to the approval of the HS Trustee, covering the management, maintenance, and independence of the Hold Separate Business consistent with the provisions of this Hold Separate.
 10. No later than ten (10) days after the Acquisition Date, Respondent shall circulate to employees of the Hold Separate Business, and to persons who are employed in Respondent's businesses that compete with the Hold Separate Business, a notice of this Hold Separate and the Consent Agreement, in the form attached hereto as Appendix A.
- D. Respondent shall provide each Atmospheric Gases Employee with reasonable financial incentives to continue in his or her position consistent with past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of the Atmospheric Gases Assets and Airgas Microbulk Assets pending divestiture. Such incentives shall include a continuation of all employee benefits, including regularly scheduled raises, bonuses, vesting of pension benefits (as permitted by law), and additional incentives as may be necessary to assure the continuation and prevent any diminution of the viability, marketability and competitiveness of the Atmospheric Gases Assets and Airgas Microbulk Assets until the applicable Divestiture Date, and as may otherwise be necessary to achieve the purposes of this Hold Separate.
- E. The purpose of this Hold Separate is to: (1) preserve the assets and businesses within the Hold Separate Business as viable, competitive, and ongoing businesses independent of

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 Products Microbulk Business in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance) until either the Air Products Microbulk Assets or Airgas Microbulk Assets have been divested;
- B. Provide sufficient working capital to operate the Air Products Microbulk Business at least at current rates of operation, to meet all capital calls with respect to the Air Products Microbulk Business and to carry on, at least at their scheduled pace, all capital projects, business plans and promotional activities;
- C. Make available for use by the Air Products Microbulk Business funds sufficient to perform all routine maintenance and all other maintenance as may be necessary to, and all replacements of, the Air Products Microbulk Business;
- D. Continue, at least at their scheduled pace, any additional expenditures relating to the Air Products Microbulk Business authorized prior to the date the Consent Agreement was signed by Respondent including, but not limited to, all marketing expenditures;
- E. Use best efforts to maintain and increase sales of the Air Products Microbulk Business, and to maintain at budgeted levels for the year 2009 or the current year, whichever are higher, all administrative, technical, and marketing support for the Air Products Microbulk Business;
- F. Provide such support services to the Air Products Microbulk Business as were being provided to these businesses as of the date the Consent Agreement was signed by Respondent;
- G. Maintain a work force at least equivalent in size, training, and expertise to what has been associated with the Air Products Microbulk Business prior to the Acquisition Date;

- 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 Commission:

- A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of the Respondent, which copying services shall be provided by the Respondent at its expense; and
- B. To interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

VI.

IT IS FURTHER ORDERED that this Hold Separate shall terminate at the earlier of:

- A. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or

- 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.

In addition, until divestiture occurs, Air Products must take such actions as are necessary to maintain the economic viability, marketability, and competitiveness of each of the businesses and assets to be divested, and must prevent the destruction, removal, wasting, deterioration, sale, disposition, transfer, or impairment of these businesses and assets except for ordinary wear and tear.

The Commission may appoint a person to serve as a hold separate trustee until the divestitures are completed to oversee compliance with the hold separate and asset maintenance requirements of the Consent Agreement. Contact information of the hold separate trustee shall be provided when available. Because any violation of the Consent Agreement may subject Air Products to civil penalties and other relief as provided by law, it is important that the letter and spirit of the Consent Agreement be honored.