

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Joseph J. Simons, Chairman
Noah Joshua Phillips
Rohit Chopra
Rebecca Kelly Slaughter
Christine S. Wilson

_____)	
In the Matter of)	
)	
Tri Star Energy, LLC,)	Docket No. C-4720
a limited liability company,)	
)	
Hollingsworth Oil Company, Inc.,)	
a corporation,)	
)	
C & H Properties,)	
a general partnership, and)	
)	
Mr. Ronald L. Hollingsworth,)	
a natural person.)	
_____)	

DECISION

The Federal Trade Commission (“Commission”) initiated an investigation of the proposed acquisition by Respondent Tri Star Energy, LLC (“Tri Star”) of certain assets of Respondent Hollingsworth Oil Company, Inc. (“HOC”) and Respondent C & H Properties, among other entities, from Respondent Mr. Ronald L. Hollingsworth (“Hollingsworth”), collectively “Respondents.” The Commission’s Bureau of Competition prepared and furnished to Respondents the Draft Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint would charge Respondents 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.

Respondents and the Bureau of Competition executed an Agreement Containing Consent Orders (“Consent Agreement”) containing (1) an admission by Respondents of all the jurisdictional facts set forth in the Draft Complaint, (2) a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in the Draft Complaint, or that the facts as

alleged in the Draft Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as required by the Commission's Rules, and (4) a proposed Decision and Order and Order to Maintain Assets.

The Commission considered the matter and determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect. The Commission accepted the Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments; at the same time, it issued and served its Complaint and Order to Maintain Assets. The Commission duly considered any comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further conformity with the procedure described in Rule 2.34, the Commission makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. Respondent Tri Star is a limited liability company 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 1740 Ed Temple Boulevard, Nashville, Tennessee 37208.
2. Respondent HOC is a corporation, organized, existing, and doing business under and by virtue of the laws of the state of Tennessee, with its office and principal place of business located at 1503 Memorial Boulevard, Springfield, Tennessee 37172.
3. Respondent C & H Properties is a general partnership organized, existing, and doing business under and by virtue of the laws of the state of Tennessee, with its office and principal place of business located at 1503 Memorial Boulevard, Springfield, Tennessee 37172.
4. Respondent Hollingsworth is a natural person with his office and principal place of business located at 1503 Memorial Boulevard, Springfield, Tennessee 37172.
5. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of Respondents, and this proceeding is in the public interest.

ORDER

I. Definitions

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. "Tri Star" means Tri Star Energy, LLC, its directors, officers, employees, agents, representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates, in each case controlled by Tri Star, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. "HOC" means Hollingsworth Oil Company, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; its joint ventures, subsidiaries,

partnerships, divisions, groups, and affiliates, in each case controlled by HOC, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

- C. “C & H” means C & H Properties its partners, directors, officers, employees, agents, representatives, successors, and assigns; its joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates, in each case controlled by C & H, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- D. “Hollingsworth” means Ronald L. Hollingsworth, a natural person, all partnerships, joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Ronald L. Hollingsworth (including HOC and C & H), and the respective partners, directors, officers, employees, agents, representatives, successors, and assigns of each.
- E. “Commission” means the Federal Trade Commission.
- F. “Acquirer” means: (i) Cox Oil Company, Inc. or (ii) any other Person that acquires the Retail Fuel Assets pursuant to this Order.
- G. “Acquisition” means the proposed acquisition described in the Asset Purchase Agreement by and among Hollingsworth Oil Company, Inc., Lynn Transport, LLC, C&H Properties, Hollingsworth Family Limited Partnership, H&S Properties, Mid-Tenn Services, LLC, Ronald L. Hollingsworth, Tri Star Energy, LLC, and Tri Star Transport, LLC, dated March 6, 2020, as amended.
- H. “Acquisition Date” means the date the Acquisition is consummated.
- I. “Business Information” means books, records, data, and information, wherever located and however stored, including documents, written information, graphic materials, and data and information in electronic format, along with the knowledge of employees, contractors, and representatives. Business Information includes records and information relating to sales, marketing, advertising, personnel, accounting, business strategy, information technology systems, customers, suppliers, research and development, underground storage tank (UST) system registrations and reports, registrations, licenses, and permits (to the extent transferable), and operations. For clarity, Business Information includes Respondents’ rights and control over information and material provided to any other Person.
- J. “Confidential Business Information” means all Business Information not in the public domain that is related to or used in connection with the Retail Fuel Assets or the conduct of the Retail Fuel Outlet Business, except for any information that was or becomes generally available to the public other than as a result of disclosure by Respondents, and includes, but is not limited to, pricing information, marketing methods, market intelligence, competitor information, commercial information, management system information, business processes and practices, bidding practices and information,

procurement practices and information, supplier qualification and approval practices and information, and training practices.

- K. “Consent” means any approval, consent, ratification, waiver, or other authorization.
- L. “Contract” means all agreements, contracts, licenses, leases (including, but not limited to, ground leases and subleases), consensual obligations, binding commitments, promises and undertakings (whether written or oral and whether express or implied), whether or not legally binding.
- M. “Cost” means costs not to exceed the actual cost of labor, goods and material, travel, third-party vendors, and other expenditures that are directly incurred to provide Transition Assistance; *provided, however*, that with respect to the transitional supply of Fuel Products, Fuel Products Cost shall be calculated net of any rebates, Renewable Identification Number (“RIN”) sharing, or other discounts or allowances and shall not include any mark-up, profit, overhead, minimum volume penalties, or other upward adjustments by Respondents.
- N. “Cox” means Cox Oil Company, Inc., its partners, directors, officers, employees, agents, representatives, successors, and assigns; its joint ventures, partnerships, subsidiaries, divisions, groups, and affiliates, in each case controlled by Cox Oil Company, Inc. and the respective partners, directors, officers, employees, agents, representatives, successors, and assigns of each.
- O. “Divestiture Agreement” means (i) the Purchase and Sale Agreement between Cox and Respondent Tri Star, dated June 5, 2020, and the Agreement to Assign, Assume and Purchase by and among Respondent Tri Star, Cox Oil Company, Inc., Dipak Lachmandas, and wife, Harsha Lachmandas, dated June 5, 2020, and including related ancillary agreements, amendments, joinders, schedules, exhibits, and attachments, thereto and contemplated therein, that have been approved by the Commission to accomplish the requirements of this Order, attached as Non-Public Appendix I; or (ii) any other agreement between Respondents (or a Divestiture Trustee) and the Acquirer that receives the prior approval of the Commission to divest the Retail Fuel Assets, including all related ancillary agreements, schedules, exhibits, and attachments thereto that have received the Commission’s prior approval.
- P. “Divestiture Date” means the date on which Respondents (or the Divestiture Trustee) close on a transaction to divest the Retail Fuel Assets.
- Q. “Divestiture Trustee” means the Person appointed by the Commission pursuant to Paragraph IX of this Order.
- R. “Employee Information” means for each Retail Fuel Employee, to the extent permitted by law, the following information summarizing the employment history of each employee that includes:

1. Name, job title or position, date of hire, and effective service date;
 2. Specific description of the employee's responsibilities;
 3. The base salary or current wages;
 4. Most recent bonus paid, aggregate annual compensation for Respondent's last fiscal year, and current target or guaranteed bonus, if any;
 5. Written performance reviews for the past three years, if any;
 6. Employment status (*i.e.*, active or on leave or disability; full-time or part-time);
 7. Any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and
 8. At the Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the employee.
- S. "Equipment" means all tangible personal property (other than Inventories) of every kind owned or leased by Respondents in connection with the operation of the Retail Fuel Outlet Business, including, but not limited to all: fixtures, furniture, computer equipment and third-party software, office equipment, telephone systems, security systems, registers, credit card systems, credit card invoice printers and electronic point of sale devices, money order machines and money order stock, shelving, display racks, walk-in boxes, furnishings, signage, canopies, fuel dispensing equipment, UST systems (including all fuel storage tanks, fill holes and fill hole covers and tops, pipelines, vapor lines, pumps, hoses, Stage I and Stage II vapor recovery equipment, containment devices, monitoring equipment, cathodic protection systems, and other elements associated with any of the foregoing), parts, tools, supplies, and all other items of equipment or tangible personal property of any nature or other systems used in the operation of the Retail Fuel Outlet Business, together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part, to the extent such warranty is transferrable, and all maintenance records and other related documents.
- T. "Fuel Products" means refined petroleum gasoline and diesel products.
- U. "Governmental Permit" means all Consents, licenses, permits, approvals, registrations, certificates, rights, or other authorizations from any governmental entity necessary to effect the complete transfer and divestiture of the Retail Fuel Assets to the Acquirer and for such Acquirer to operate any aspect of the Retail Fuel Outlet Business.
- V. "Greenbrier Retail Fuel Outlet Business" means all business activities conducted by Respondent Tri Star, prior to the Acquisition Date, at or relating to 2222 Tom Austin Hwy, Greenbrier, TN 37073, including, but not limited to: (1) the promotion, marketing,

provision, and retail sale of Fuel Products, and other related services; and (2) the supply, installation, and maintenance of equipment for the purpose of dispensing Fuel Products at the location.

- W. “Intellectual Property” means intellectual property of any kind including, but not limited to, patents, patent applications, mask works, trademarks, service marks, copyrights, trade dress, commercial names, internet web sites, internet domain names, inventions, discoveries, written and unwritten know-how, trade secrets, and proprietary information.
- X. “Inventories” means all inventories of every kind and nature for retail sale associated with the Retail Fuel Assets, including: (1) all Fuel Products, kerosene, and other petroleum-based motor fuels stored in bulk and held for sale to the public; and (2) all usable, non-damaged and non-out-of-date products and items held for sale to the public, including, without limitation, all food-related items requiring further processing, packaging, or preparation and ingredients from which prepared foods are made to be sold.
- Y. “Monitor” means any Person appointed by the Commission to serve as a monitor pursuant to this Order or the Order to Maintain Assets.
- Z. “Order to Maintain Assets” means the Order to Maintain Assets incorporated into and made a part of the Consent Agreement.
- AA. “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization, or other entity or governmental body.
- BB. “Prior Notice Outlet” means the Retail Fuel Assets.
- CC. “Products” means any Fuel Products or merchandise products relating to the Retail Fuel Outlet Business.
- DD. “Respondents’ Brands” means all of Respondents’ trademarks, trade dress, logos, service marks, trade names, brand names, and all associated Intellectual Property rights used in connection with or related to the Retail Fuel Outlet Business.
- EE. “Retail Fuel Assets” means all of Respondents’ right, title, and interest in and to all property and assets, real, personal, or mixed, tangible and intangible, of every kind and description, wherever located, relating to, used in, or reserved for use in, the Retail Fuel Outlet Business, including, but not limited to:
 - 1. All real property interests (including fee simple interests and real property leases and leasehold interests), including all easements and rights-of-way, together with all buildings and other structures, facilities, appurtenances, and improvements located thereon or affixed thereto (including all attached machinery, fixtures, and heating, plumbing, electrical, lighting, ventilating and air-conditioning equipment), whether owned, leased, or otherwise held;

2. All Equipment, including any Equipment removed from any location of the Retail Fuel Outlet Business since the date of the announcement of the Acquisition and not replaced;
3. All Inventories;
4. All Contracts and all outstanding offers or solicitations to enter into any Contract, and all rights thereunder and related thereto, to the extent transferable, and at the Acquirer's option;
5. All Governmental Permits, and all pending applications therefor or renewals thereof, to the extent transferable;
6. All intangible rights and property, including Intellectual Property, owned or licensed (as licensor or licensee) by Respondents (to the extent transferable or licensable), going concern value, goodwill, and telephone and telecopy listings; and
7. Business Information; *provided, however*, that in cases in which Business Information included in the Retail Fuel Assets contain information: (a) that relates both to the Retail Fuel Assets and to other, retained businesses of Respondents and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the Retail Fuel Assets, or (b) where Respondents have a legal obligation to retain the original copies, then Respondents shall be required to provide only copies of the materials containing such information with appropriate redactions to the Acquirer. In instances where such copies are provided to the Acquirer, the Respondents shall provide to such Acquirer access to original materials under circumstances where copies of materials are insufficient for regulatory or evidentiary purposes;

Provided, however, that the Retail Fuel Assets need not include the Retained Assets.

- FF. "Retail Fuel Employee" means any full-time, part-time, or contract individual employed by Respondents, as applicable, at the Retail Fuel Outlet Business, as of March 6, 2020.
- GG. "Retail Fuel Outlet Business" means:
1. The Greenbrier Retail Fuel Outlet Business; and
 2. The Whites Creek Retail Fuel Outlet Business.
- HH. "Retained Assets" means those assets listed on Non-Public Appendix II.
- II. "Third Party" means any Person other than the Respondents or the Acquirer.

- JJ. “Transition Assistance” means technical services, personnel, assistance, training, the supply of Products, and other logistical, administrative, and other transitional support as required by the Acquirer and approved by the Commission to facilitate the transfer of the Retail Fuel Assets from the Respondents to the Acquirer, including, but not limited to, services, training, personnel, and support related to: audits, finance and accounting, accounts receivable, accounts payable, employee benefits, payroll, pensions, human resources, information technology and systems, maintenance and repair of facilities and equipment, Fuel Products supply, purchasing, quality control, R&D support, technology transfer, use of Respondents’ brands for transitional purposes, operating permits and licenses, regulatory compliance, sales and marketing, customer service, and supply chain management and customer transfer logistics.
- KK. “Whites Creek Retail Fuel Outlet Business” means all business activities conducted by Respondent Hollingsworth, as applicable, prior to the Acquisition Date at or relating to Sudden Service Site 15 located at 500 Hickory Hills Blvd., Whites Creek, TN 37189, including, but not limited to: (1) the retail sale, promotion, marketing, and provision of Fuel Products, and other fuels, automotive products, and related services; and (2) the operation of associated convenience stores and related businesses and services, including, but not limited to the retail sale, promotion, marketing and provision of food and grocery products (including dairy and bakery items, snacks, gum, and candy), foodservice and quick-serve restaurant items, beverages (including alcoholic beverages), tobacco products, general merchandise, ATM services, gaming and lottery tickets and services, money order services, car wash services, and all other businesses and services associated with the business operated or to be operated at the location.

II. Divestiture

IT IS FURTHER ORDERED that:

- A. No later than 10 days after the Acquisition Date, Respondents shall divest the Retail Fuel Assets, absolutely and in good faith, as an ongoing business, to Cox pursuant to the Divestiture Agreement.

Provided, however, that, if within 12 months after issuing the Order, the Commission determines, in consultation with the Acquirer and the Monitor should one be appointed, the Acquirer needs one or more Retained Assets to operate the Retail Fuel Assets in a manner that achieves the purposes of the Order, Respondents shall divest, absolutely and in good faith, such needed Retained Assets to the Acquirer.

- B. If Respondents have divested the Retail Fuel Assets to Cox prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that:
1. Cox is not acceptable as the acquirer of the Retail Fuel Assets, then Respondents shall immediately rescind the Cox Acquisition Agreement, and shall divest the Retail Fuel Assets no later than 120 days from the date this Order is issued,

absolutely and in good faith, at no minimum price, to a Person that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission; or

2. The manner in which the divestiture of the Retail Fuel Assets to Cox was accomplished is not acceptable, the Commission may direct Respondents, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the Retail Fuel Assets as the Commission may determine are necessary to satisfy the requirements of this Order.

- C. Respondents shall obtain, no later than the Divestiture Date and at their sole expense, all Consents from Third Parties and all Governmental Permits that are necessary to effect the complete transfer and divestiture of the Retail Fuel Assets to the Acquirer and for the Acquirer to operate any aspect of the Retail Fuel Outlet Business;

Provided, however, that:

1. Respondents may satisfy the requirement to obtain all Consents from Third Parties by certifying that the Acquirer has entered into equivalent agreements or arrangements directly with the relevant Third Party that are acceptable to the Commission, or has otherwise obtained all necessary Consents and waivers; and
2. With respect to any Governmental Permits relating to the Retail Fuel Assets that are not transferable, Respondents shall, to the extent permitted under applicable law, allow the Acquirer to operate the Retail Fuel Assets under Respondents' Governmental Permits pending the Acquirer's receipt of its own Governmental Permits, and Respondents shall provide such assistance as the Acquirer may reasonably request in connection with its efforts to obtain such Governmental Permits.

III. Transition Assistance

IT IS FURTHER ORDERED that:

- A. Until Respondents have transferred all Business Information included in the Retail Fuel Assets, Respondents shall ensure that the Business Information is maintained and updated in the ordinary course of business and shall provide the Acquirer with access to records and information (wherever located and however stored) that Respondents have not yet transferred to the Acquirer, and to employees who possess the records and information.
- B. Respondents shall provide the Acquirer with Transition Assistance sufficient to (i) efficiently transfer the Retail Fuel Assets to the Acquirer and (ii) assist the Acquirer in operating the Retail Fuel Assets and Retail Fuel Outlet Business in all material respects in the manner in which Respondents did so prior to the Acquisition.
- C. Respondents shall Provide Transition Assistance:

1. As set forth in the Divestiture Agreement, or as otherwise reasonably requested by the Acquirer (whether before or after the Divestiture Date);
 2. At the price set forth in the Divestiture Agreement, or if no price is set forth, at Cost; and
 3. For a period sufficient to meet the requirements of this Paragraph, which shall be, at the option of the Acquirer, for up to 12 months after the Divestiture Date.
- D. Respondents shall allow the Acquirer to terminate, in whole or part, any Transition Assistance provisions of the Divestiture Agreement upon commercially reasonable notice and without cost or penalty.
- E. Respondents shall not cease providing Transition Assistance due to a breach by the Acquirer of the Divestiture Agreement, and shall not limit any damages (including indirect, special, and consequential damages) that the Acquirer would be entitled to receive in the event of Respondent's breach of the Divestiture Agreement.

IV. Divestiture Agreement

IT IS FURTHERED ORDERED that:

- A. The Divestiture Agreement shall be incorporated by reference into this Order and made a part hereof, and any failure by Respondents to comply with the terms of the Divestiture Agreement shall constitute a violation of this Order; *provided, however*, that the Divestiture Agreement shall not limit, or be construed to limit, the terms of this Order. To the extent any provision in the Divestiture Agreement varies from or conflicts with any provision in the Order such that Respondents cannot fully comply with both, Respondents shall comply with the Order.
- B. Respondents shall not modify or amend the terms of the Divestiture Agreement after the Commission issues the Order without the prior approval of the Commission, except as otherwise provided in Commission Rule 2.41(f)(5), 16 C.F.R. § 2.41(f)(5).

V. Asset Maintenance

IT IS FURTHER ORDERED that until the Retail Fuel Assets have been fully transferred to the Acquirer, Respondents shall, subject to their obligations under the Order to Maintain Assets, ensure that the Retail Fuel Assets and Retail Fuel Outlet Business are operated and maintained in the ordinary course of business consistent with past practices, and shall:

- A. Take such actions as are necessary to maintain the full economic viability, marketability, and competitiveness of the Retail Fuel Assets and Retail Fuel Outlet Business, to minimize any risk of loss of competitive potential of the Retail Fuel Assets and Retail Fuel Outlet Business, to operate the Retail Fuel Assets and Retail Fuel Outlet Business in

a manner consistent with applicable laws and regulations, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Retail Fuel Assets and Retail Fuel Outlet Business, except for ordinary wear and tear. Respondents shall not sell, transfer, encumber, or otherwise impair the Retail Fuel Assets and Retail Fuel Outlet Business (other than in the manner prescribed in this Order and the Order to Maintain Assets), nor take any action that lessens the full economic viability, marketability, or competitiveness of the Retail Fuel Assets and Retail Fuel Outlet Business; and

- B. Not terminate the operations of the Retail Fuel Assets and Retail Fuel Outlet Business, and shall conduct or cause to be conducted the operations of the Retail Fuel Assets and Retail Fuel Outlet Business in the ordinary course of business and in accordance with past practice (including regular repair and maintenance efforts) and as may be necessary to preserve the full economic viability, marketability, and competitiveness of the Retail Fuel Assets and Retail Fuel Outlet Business, and shall use best efforts to preserve the existing relationships with suppliers, customers, employees, governmental authorities, vendors, landlords, and others having business relationships with the Retail Fuel Assets and Retail Fuel Outlet Business.

Provided, however, that Respondents may take actions that the Acquirer has requested or agreed to in writing and that has been approved in advance by Commission staff, in all cases to facilitate the Acquirer's acquisition of the Retail Fuel Assets and consistent with the purposes of this Order and the Order to Maintain Assets.

VI. Employees

IT IS FURTHER ORDERED that:

- A. Until one year after the Divestiture Date, Respondents shall cooperate with and assist the Acquirer of the Retail Fuel Assets to evaluate independently and offer employment to the Retail Fuel Employees.
- B. Until one year after the Divestiture Date, Respondents shall:
1. No later than 10 days after a request from the Acquirer, provide to the Acquirer a list of all Retail Fuel Employees and provide Employee Information for each;
 2. No later than 10 days after a request from the Acquirer, provide the Acquirer an opportunity to meet outside the presence or hearing of any employee or agent of any Respondent with any of the Retail Fuel Employees, and to make offers of employment to any of the Retail Fuel Employees;
 3. Remove any impediments within the control of Respondents that may deter Retail Fuel Employees from accepting employment with the Acquirer, including, but not limited to, removal of any non-compete or confidentiality provisions of employment or other contracts with Respondents that may affect the ability or incentive of those individuals to be employed by the Acquirer, and shall not make any counteroffer to a Retail Fuel Employee who receives an offer of employment from the Acquirer; *provided, however,* that nothing in this Order shall be

construed to require Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee;

4. Continue to provide Retail Fuel Employees compensation and benefits, including regularly scheduled raises and bonuses and the vesting of benefits;
 5. Provide reasonable financial incentives for Retail Fuel Employees to continue in their positions, and as may be necessary, to facilitate the employment of such Retail Fuel Employees by the Acquirer; and
 6. Not interfere, directly or indirectly, with the hiring or employing by the Acquirer of any Retail Fuel Employee, not offer any incentive to such employees to decline employment with the Acquirer, and not otherwise interfere with the recruitment of any Retail Fuel Employee by the Acquirer.
- C. Respondents shall not, for a period of one year following the Divestiture Date, directly or indirectly, solicit or otherwise attempt to induce any of the Retail Fuel Employees who have accepted offers of employment with the Acquirer to terminate his or her employment with the Acquirer; *provided, however*, Respondents may:
1. Hire an employee whose employment has been terminated by the Acquirer;
 2. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at one or more of Retail Fuel Employees; or
 3. Hire an employee who has applied for employment with Respondents, as long as such application was not solicited or induced in violation of this Paragraph.

VII. Confidentiality

IT IS FURTHER ORDERED that:

- A. Respondents shall (i) not disclose (including as to Respondents' employees) and (ii) not use for any reason or purpose, any Confidential Business Information received or maintained by Respondents, *provided, however*, that Respondents may disclose or use such Confidential Business Information in the course of:
1. Performing their obligations or as permitted under this Order, the Order to Maintain Assets, or the Divestiture Agreement; or
 2. Complying with financial reporting requirements, obtaining legal advice, prosecuting or defending legal claims, investigations, or enforcing actions threatened or brought against the Retail Fuel Assets or Retail Fuel Outlet Business, or as required by law.

- B. If disclosure or use of any Confidential Business Information is permitted to Respondents' employees or to any other Person under Paragraph VII.A of this Order, Respondents shall limit such disclosure or use (i) only to the extent such information is required, (ii) only to those employees or Persons who require such information for the purposes permitted under Paragraph VII.A, and (iii) only after such employees or Persons have signed an agreement to maintain the confidentiality of such information.
- C. Respondents shall enforce the terms of this Paragraph as to their employees or any other Person, and take such action as is necessary to cause each of their employees and any other Person to comply with the terms of this Paragraph, including implementation of access and data controls, training of employees, and all other actions that Respondents would take to protect their own trade secrets and proprietary information.

VIII. Monitor

IT IS FURTHER ORDERED that:

- A. At any time after the Respondents sign the Consent Agreement in this matter, the Commission may appoint a Monitor to assure that the Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order, the Order to Maintain Assets, and the Divestiture Agreement.
- B. The Commission shall select the Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within 10 days after notice by the staff of the Commission to Respondents of the identity of any proposed Monitor, Respondents shall be deemed to have consented to the selection of the proposed Monitor.
- C. No later than 5 days after the Commission appoints the Monitor, Respondents shall:
 - 1. Confer on the Monitor all rights, power, and authorities necessary to permit the Monitor to monitor Respondents' compliance with the terms of this Order and the Order to Maintain Assets as set forth in Paragraph VIII.D;
 - 2. Consent to the terms and conditions regarding such rights, powers, and authorities of the Monitor set forth in Paragraph VIII.D; and
 - 3. Enter into an agreement with the Monitor that is approved by the Commission. If Respondents and the Monitor fail to sign an agreement within the allotted time, the Commission will approve, and Respondents agree to consent to, an agreement with terms and provisions typical of Commission monitor agreements and require that the Monitor's fees will be his or her standard and customary fees plus expenses reasonably incurred performing duties as the Monitor.
- D. The Monitor:

1. Shall have the authority to monitor Respondents' compliance with the obligations set forth in this Order and the Order to Maintain Assets;
 2. Shall act in consultation with the Commission or its staff;
 3. Shall serve as an independent third party and not as an employee, agent, or fiduciary of Respondents or of the Commission;
 4. Shall serve at the expense of Respondents, without bond or other security;
 5. May employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;
 6. Shall enter into a confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants shall enter into such a confidentiality agreement.
 7. Shall notify Respondents and staff of the Commission, in writing, of any potential financial, professional, personal, or other conflicts of interest within 5 days should they arise;
 8. Shall report in writing to the Commission concerning Respondents' compliance with this Order: (i) 30 days after appointment and every 30 days thereafter until Respondents have completed all obligations required by Paragraphs II and III of this Order; (ii) when Respondents have completed the obligations required by Paragraphs II and III of this Order; and (iii) at any other time requested by the staff of the Commission; and
 9. Shall serve until 30 days after Respondents have satisfied all obligations under Paragraph II and Paragraph III of this Order, or until such other time as may be determined by the Commission or its staff.
- E. Respondents shall (i) provide the Monitor full and complete access to all information and facilities, and, as necessary, make such arrangements with third parties, to allow the Monitor to monitor Respondents' compliance with its obligations under the Orders; and (ii) cooperate with, and take no action to interfere with or impede the ability of, the Monitor to perform his/her duties pursuant to this Order.
- F. Respondents shall indemnify and hold the Monitor harmless against losses, claims, damages, liabilities, and expenses (including attorneys' fees and out of pocket costs) that arise out of, or are connected with any claim concerning the Monitor's performance of the Monitor's duties under this Order, whether or not such claim results in liability, *except*, to the extent that such losses, claims, damages, liabilities, or expenses result from the Monitor's gross negligence or willful misconduct.

For purposes of this Paragraph, the term "Monitor" shall include all persons retained by the Monitor pursuant to Paragraph VIII.D of this Order.

- G. Respondent may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to enter into a customary confidentiality agreement, *provided, however*, that such agreement does not restrict the Monitor from providing any information to the Commission.
- H. Respondent shall not require nor compel the Monitor to disclose to Respondents the substance of communications with the Commission, including written reports submitted pursuant to Paragraph VIII.D.8, or any Person with whom the Monitor communicates in the performance of his/her duties.
- I. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor and such substitute Monitor shall be afforded all rights, powers, and authorities and subject to all obligations of this Paragraph VIII:
1. The Commission shall select the substitute Monitor, subject to the consent of the Respondents, which consent shall not be unreasonably withheld. Respondents shall be deemed to have consented to the selection of the proposed substitute Monitor if, upon notice by staff of the Commission of the identity of the substitute Monitor, Respondents have not opposed, in writing, including the reasons for opposing the selection of the substitute Monitor within 10 days after such notice; and
 2. No later than 5 days after the Commission appoints a substitute Monitor, Respondents shall enter into an agreement with the substitute Monitor that (i) contains substantially the same terms as the agreement with the Monitor first appointed and referenced in Paragraph VIII.A, above; or (ii) is approved by the Commission and confers on the substitute Monitor the rights, powers, and authority of a Monitor under this Order.
- J. The Commission may on its own initiative or at the request of the Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.

IX. Divestiture Trustee

IT IS FURTHER ORDERED that:

- A. If Respondents have not fully complied with the divestiture and other obligations as required by Paragraph II of this Order, the Commission may appoint a Divestiture Trustee to divest the Retail Fuel Assets and perform Respondents' other obligations in a manner that satisfies the requirements of this Order. The Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Monitor.
- B. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute

enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to divest the relevant assets in accordance with the terms of this Order. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.

- C. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within 10 days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- D. Within 10 days after appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the relevant divestiture or other action required by the Order.
- E. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the relevant assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and to take such other action as may be required to divest the Retail Fuel Assets and perform Respondents' other obligations in a manner that satisfies the requirements of this Order;
 2. The Divestiture Trustee shall have 12 months from the date the Commission approves the trustee agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the 12-month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or in the case of a court-appointed Divestiture Trustee, by the court;
 3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed,

divested, delivered, or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph IX in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court;

4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to the Acquirer as required by this Order; *provided, however,* if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission; *provided further, however,* that Respondents shall select such entity within 5 days of receiving notification of the Commission's approval;
5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of the Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order;
6. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture 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 losses, claims, damages, liabilities, or expenses result from gross negligence or willful misconduct by the Divestiture Trustee. For purposes of this Paragraph IX.E.6, the term "Divestiture

Trustee” shall include all Persons retained by the Divestiture Trustee pursuant to Paragraph IX.E.5 of this Order;

7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the Retail Fuel Assets required to be divested by this Order;
 8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every 60 days concerning the Divestiture Trustee’s efforts to accomplish the divestiture; and
 9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee’s consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- F. The Commission may require the Divestiture Trustee and each of the Divestiture Trustee’s consultants, accountants, attorneys, and other representatives and assistants to sign a confidentiality agreement related to Commission materials and information received in connection with the performance of the Divestiture Trustee’s duties.
- G. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph IX, and who will have the same authority and responsibilities of the original Divestiture Trustee pursuant to this Paragraph IX.
- H. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures and other obligations or action required by this Order.

X. Prior Notice

IT IS FURTHERED ORDERED that:

- A. For a period of 10 years from the date this Order is issued, Respondents shall not, without providing advance written notification to the Commission (“Notification”) in the manner described in this paragraph, acquire, directly or indirectly, through subsidiaries or otherwise, any leasehold, ownership interest, or any other interest, in whole or in part, in any Prior Notice Outlet.
- B. With respect to the Notification:
 1. The Notification required by this Paragraph X shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of

Federal Regulations as amended, and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such Notification, Notification shall be filed with the Secretary of the Commission, Notification need not be made to the United States Department of Justice, and Notification is required only of the Respondents and not of any other party to the transaction.

2. Respondents shall include a description of the proposed acquisition and provide:
 - (a) A map showing all retail fuel outlets by ownership (*e.g.*, OPIS Corporate Brand) within 5 driving miles of the relevant Prior Notice Outlet;
 - (b) For each retail fuel outlet owned by Respondents within 5 driving miles of the relevant Prior Notice Outlet, a list of the retail fuel outlets that Respondents monitored at any time within the preceding 12-month period (to the extent such information is available); and
 - (c) Respondents' pricing strategy in relation to each monitored retail fuel outlet identified in response to Paragraph X.B.2.(b) of this Order.
3. Respondents shall provide the Notification to the Commission at least 30 days prior to consummating the transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondents shall not consummate the transaction until 30 days after submitting such additional information or documentary material.
4. Early termination of the waiting periods in this Paragraph X may be requested and, where appropriate, granted by letter from the Bureau of Competition. *Provided, however*, that prior Notification shall not be required by this Paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

XI. Compliance Reports

IT IS FURTHER ORDERED that:

- A. Respondents Tri Star, HOC, and C & H shall:
 1. notify Commission staff via email at bccompliance@ftc.gov of the Acquisition Date no later than 5 days after the Acquisition Date, and;
 2. submit the complete Divestiture Agreement to the Commission at ElectronicFilings@ftc.gov and bccompliance@ftc.gov no later than 30 days after the Divestiture Date.

- B. Respondents Tri Star, HOC, and C & H shall submit verified written reports (“compliance reports”) in accordance with the following:
1. Respondents submit interim compliance reports 30 days after the Order is issued, and every 30 days thereafter until Respondents have fully complied with the provisions of Paragraphs II and III; annual compliance reports one year after the date this Order is issued, and annually for the next 9 years on the anniversary of that date; and additional compliance reports as the Commission or its staff may request;
 2. Each compliance report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondents are in compliance with this Order. Conclusory statements that Respondents have complied with its obligations under this Order are insufficient. Respondents shall include in its reports, among other information or documentation that may be necessary to demonstrate compliance a full description of the measures Respondents have implemented or plan to implement to ensure that Respondents have complied or will comply with each paragraph of the Order;
 3. Respondents shall retain all material written communications with each party identified in the compliance report and all non-privileged internal memoranda, reports, and recommendations concerning fulfilling Respondents’ obligations under the Order and provide copies of these documents to Commission staff upon request.
 4. Respondents shall verify each compliance report in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. Respondents shall submit an original and 2 copies of each compliance report as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a), including a paper original submitted to the Secretary of the Commission and electronic copies to the Secretary at ElectronicFilings@ftc.gov and to the Compliance Division at bccompliance@ftc.gov. In addition, Respondents shall provide a copy of each compliance report to the Monitor if the Commission has appointed one in this matter.

XII. Change in Respondent

IT IS FURTHER ORDERED that Respondent Tri Star shall notify the Commission at least 30 days prior to:

- A. Any proposed dissolution of Tri Star Energy, LLC;
- B. Any proposed acquisition, merger, or consolidation of Tri Star Energy, LLC; or

- C. Any other change in Respondent Tri Star, including assignment and the creation, sale, or dissolution of subsidiaries, if such change may affect compliance obligations arising out of this Order.

XIII. Access

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon 5 days' notice to Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondents 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 Respondents related to compliance with this Order, which copying services shall be provided by the Respondents at their expense; and
- B. To interview officers, directors, or employees of the Respondents, who may have counsel present, regarding such matters.

XIV. Purpose

IT IS FURTHER ORDERED that the purpose this Order is to ensure the continued use of the Retail Fuel Assets in the same Retail Fuel Outlet Business in which such assets were engaged at the time of the announcement of the Acquisition by Respondents and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

XV. Term

IT IS FURTHER ORDERED that this Order shall terminate 10 years from the date it is issued.

By the Commission.

April J. Tabor
Secretary

SEAL:
ISSUED: