

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,)	
a limited liability company,)	
)	
Hollingsworth Oil Company, Inc.,)	
a corporation,)	Docket No. C-4720
)	
C & H Properties,)	
a general partnership, and)	
)	
Mr. Ronald L. Hollingsworth,)	
a natural person.)	
_____)	

ORDER TO MAINTAIN ASSETS

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

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 to accept the executed Consent Agreement and to place such Consent Agreement on the public record for a period of 30 days for the receipt and consideration of public comments. Now, in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission issues its Complaint, makes the following jurisdictional findings, and issues this Order to Maintain Assets:

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.

I. Definitions

IT IS ORDERED that, as used in this Order to Maintain Assets, the following definitions, and all other definitions used in the Consent Agreement and the Decision and Order, 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. “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.
- F. “Decision and Order” means the:
 - 1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance of a final Decision and Order by the Commission; and
 - 2. Final Decision and Order issued by the Commission following the issuance and service of a final Decision and Order by the Commission in this matter.
- G. “Monitor” means any Person appointed by the Commission to serve as a Monitor pursuant to the Decision and Order and this Order to Maintain Assets.
- H. “Orders” means the Decision and Order and this Order to Maintain Assets.

II. Asset Maintenance

IT IS FURTHER ORDERED that until the Retail Fuel Assets have been fully transferred to the Acquirer, Respondents shall operate and maintain the Retail Fuel Assets and Retail Fuel Outlet Business in the ordinary course of business consistent with past practices. Included in these obligations, Respondents shall:

- A. Take all actions necessary to maintain the full economic viability, marketability, and competitiveness of the Retail Fuel Assets, to minimize the risk of loss of competitive potential of the Retail Fuel Outlet Business, to operate the Retail Fuel Outlet Business in a manner consistent with applicable laws and regulations, and to prevent the destruction,

removal, wasting, or deterioration of the Retail Fuel Assets, except for ordinary wear and tear.

- B. Not sell, transfer, encumber, or otherwise impair the Retail Fuel Assets, or terminate any of the operations of the Retail Fuel Outlet Business, other than in the ordinary course of business consistent with past practice or as prescribed in the Orders.
- C. Make all payments required to be paid under any contract or lease when due, and pay all liabilities and satisfy all obligations associated with the Retail Fuel Outlet Business.
- D. Provide the Retail Fuel Outlet Business with sufficient working capital to operate at least at current rates of operation, to meet all capital calls, to perform routine or necessary maintenance, to repair or replace facilities and equipment, and to carry on, at least at their scheduled pace, all capital projects, business plans, promotional plans, capital expenditure plans, research and development plans, and commercial activities for the Relevant Fuel Outlet Business.
- E. Use best efforts to preserve the existing relationships and goodwill with suppliers, customers, employees, vendors, distributors, landlords, licensors, licensees, government entities, brokers, contractors, and others having business relations with the Retail Fuel Outlet Business.
- F. Maintain the working conditions, staffing levels, and a work force of equivalent size, training, and expertise associated with the Retail Fuel Outlet Business, including by:
 - 1. Filling vacancies that occur in the regular and ordinary course of business consistent with past practice; and
 - 2. Not transferring any employees from the Retail Fuel Outlet Business to another of Respondents' businesses.
- G. Maintain and preserve the Business Information of the Retail Fuel Outlet Business.
- H. Provide the resources necessary for the Retail Fuel Outlet Business to respond to competition, prevent diminution in sales, and maintain its competitive strength.
- I. Continue providing customary levels of support services to the Retail Fuel Outlet Business.
- J. Maintain all licenses, permits, approvals, authorizations, or certifications used in the operation of the Retail Fuel Outlet Business, and operate the Retail Fuel Outlet Business in accordance and in compliance with all regulatory obligations and requirements.

- K. Maintain the levels of production, quality, pricing, service, or customer support typically associated with the 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 Divestiture Assets and consistent with the purposes of the Orders.

III. 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.

IV. 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 Decision and Order, 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 IV.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 IV.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.

V. 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 (“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 Decision and Order, 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 Decision and Order, as set forth in Paragraph V.D of this Order and in Paragraph VIII.D of the Decision and Order;
 - 2. Consent to the terms and conditions regarding such rights, powers, and authorities of the Monitor, as set forth in Paragraph V.D of this Order and Paragraph VIII.D of the Decision and Order; 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 Decision and Order;
 - 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 and the Decision and Order: (i) 30 days after appointment and every 30 days thereafter until Respondents have completed all obligations required by Paragraphs II and III of the Decision and Order; (ii) when Respondents have completed the obligations required by Paragraphs II and III of the Decision and 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 the Decision and 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 the Orders.
- 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 V.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 V.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 V:
1. The Commission shall select such 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 V.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 and the Decision and Order.

VI. Compliance Reports

IT IS FURTHER ORDERED that within 30 days after the date this Order to Maintain Assets is issued by the Commission, and every 30 days thereafter until Respondents have fully complied with this Order to Maintain Assets, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with all the provisions of this Order to Maintain Assets; *PROVIDED, HOWEVER*, that, after the Decision and Order in this matter becomes final, the reports due under this Order to Maintain Assets may be consolidated with, and submitted to the Commission on the same timing as the reports required to be submitted by Respondents pursuant the Decision and Order. Respondents shall submit at the same time a copy of their report concerning compliance with this Order to the Monitor. Respondents shall include in their reports, among other things that are required from time to time, a full description of the efforts to comply with this Order and the Decision and Order.

VII. Change in Respondents

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; and
- C. Any other change in the Respondent Tri Star, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Orders.

VIII. Access

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order to Maintain Assets, and subject to any legally recognized privilege, and upon 5 days' written notice to the applicable Respondent made to its principal United States offices, registered office of its United States subsidiaries, or headquarters addresses, such Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business hours of such 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 such Respondent related to compliance with this Order, which copying services shall be provided by such Respondent at the request of the authorized representative(s) of the Commission and at the expense of such Respondent; and
- B. The opportunity to interview officers, directors, or employees of such Respondent, who may have counsel present, related to compliance with this Order.

IX. Purpose

The purpose of this Order to Maintain Assets is to: (1) maintain and preserve the Retail Fuel Outlet Business locations as viable, marketable, competitive, and ongoing businesses until the divestiture required by the Decision and Order is achieved; (2) ensure that Respondents obtain no Confidential Business Information relating to the Retail Fuel Outlet Business, except in accordance with the provisions of the Orders; (3) prevent interim harm to competition pending the divestiture and other relief; and (4) remedy any anticompetitive effects of the Acquisition.

X. Term

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate on the later of:

- A. 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 Respondents' completion of the divestitures required by Paragraph II, and obligations required by Paragraph III, of the Decision and Order;

PROVIDED, HOWEVER, that if at the time such divestitures have been completed, the Decision and Order in this matter is not yet final, then this Order to Maintain Assets shall terminate 3 business days after the Decision and Order becomes final;

PROVIDED FURTHER, HOWEVER, that if the Commission, pursuant to Paragraph II of the Decision and Order, requires Respondents to rescind the divestiture to Cox, then, upon rescission, the requirements of this Order to Maintain Assets shall again be in effect until the day after Respondents's (or a Divestiture Trustee's) completion of the divestiture of the assets required by the Decision and Order.

By the Commission, Commissioner Slaughter not participating.

April J. Tabor
Secretary

SEAL:
ISSUED: June 23, 2020