

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Robert Pitofsky, Chairman**
 Mary L. Azcuenaga
 Janet D. Steiger
 Roscoe B. Starek, III
 Christine A. Varney

<p style="margin: 0;">In the Matter of</p> <p style="margin: 0;">American Cyanamid Company,</p> <p style="margin: 0;">a corporation.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>DOCKET NO. C-3739</p> <p>DECISION AND ORDER</p>
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The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure described in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent American Cyanamid Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maine, with its principal office and place of business at One Campus Drive, Parsippany, New Jersey 07054. Respondent is a wholly-owned subsidiary of American Home Products Corporation, a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business at Five Giralda Farms, Madison, New Jersey 07940.

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.

For purposes of this order, the following definitions shall apply:

(A) "Respondent" or "Am Cy" means American Cyanamid Company, its directors, officers, employees, agents and representatives, predecessors, successors (including American Home Products Corporation) and assigns, and its subsidiaries, divisions, groups, and affiliates controlled, directly or indirectly, by American Cyanamid Company, and the respective directors, officers, employees, agents and representatives, successors and assigns of each.

(B) "Commission" means the Federal Trade Commission.

(C) "Product" or "Products" means any crop protection chemicals, such as herbicides and insecticides used in commercial agriculture, that are manufactured, offered for sale, sold, or distributed by Am Cy to retail dealers or consumers located in the United States of America.

(D) "Dealer" means any person, corporation or entity not owned by Am Cy that in the course of its business purchases from Am Cy or a distributor and sells any Product in or into the United States of America.

(E) "Resale price" means any price, price floor, minimum price, maximum discount, price range, or any mark-up formula or margin of profit used by any dealer for pricing any Product. "Resale price" includes, but is not limited to, any established or customary resale price.

II.

IT IS ORDERED that Am Cy, directly or indirectly, or through any corporate or other device, in connection with the manufacturing, offering for sale, sale, or distribution of any Product in or into the United States of America in or affecting "commerce," as defined by the Federal Trade Commission Act, forthwith cease and desist from:

(A) Conditioning the payment of any rebate or other incentive to any dealer, in whole or in part, directly or indirectly, on the resale price at which the dealer offers for sale or sells any Product; and

(B) Otherwise agreeing with any dealer to control or maintain the resale price at which the dealer may offer for sale or sell any Product.

III.

IT IS FURTHER ORDERED that, for a period of three (3) years from the date on which this order becomes final, Am Cy shall clearly and conspicuously state the following on any list, advertising, book, catalogue, or promotional material where it has suggested any resale price for any Product to any dealer:

ALTHOUGH AMERICAN CYANAMID MAY SUGGEST RESALE PRICES FOR PRODUCTS, DEALERS ARE FREE TO DETERMINE ON THEIR OWN THE PRICES AT WHICH THEY WILL SELL AMERICAN CYANAMID PRODUCTS.

IV.

IT IS FURTHER ORDERED that respondent shall:

(A) Within thirty (30) days after the date on which this order becomes final, mail by first class mail the letter attached as Exhibit A, together with a copy of this order, to all of its officers, management employees, dealers, distributors, and agents or representatives having sales or policy responsibilities with respect to Am Cy's Products sold in or into the United States of America;

(B) For a period of three (3) years after the date on which this order becomes final, mail by first class mail the letter attached as Exhibit A, together with a copy of this order, to each person who becomes an officer, management employee, or agent or representative having sales or policy responsibilities with respect to Am Cy's Products sold in or into the United States of America, within thirty (30) days of the commencement of such person's employment or affiliation with Am Cy; and

(C) For a period of three (3) years after the date on which this order becomes final, require each of its officers, management employees, and agents or representatives having sales or policy responsibilities with respect to Am Cy's Products sold in or into the United States of America, to sign and submit to Am Cy within thirty (30) days of the receipt thereof a statement that: (1) acknowledges receipt of the order; (2) represents that the undersigned has read and understands the order; and (3) acknowledges that the undersigned has been advised and understands that non-compliance with the order may subject American Cyanamid Company to penalties for violation of the order.

V.

IT IS FURTHER ORDERED that respondent shall:

(A) Within sixty (60) days after the date on which this order becomes final, and annually thereafter for three (3) years on the anniversary of the date this order becomes final, and at such other times as the Commission shall request, file with the Commission a verified written report setting forth in detail the manner and form in which Am Cy has complied and is complying with this order;

(B) For a period of three (3) years after the order becomes final, maintain and make available to Commission staff for inspection and copying, upon reasonable notice, all records of communications with dealers, distributors, and agents or representatives having sales or policy responsibilities with respect to Am Cy's Products sold in or into the United States of America relating to any aspect of retail pricing in the United States of America, and records pertaining to any action taken in connection with any activity covered by paragraphs II, III, IV, and V of this order; and

(C) Notify the Commission at least thirty (30) days prior to any proposed changes in Am Cy such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of this order.

VI.

IT IS FURTHER ORDERED that this order shall terminate on May 12, 2017.

By the Commission, Commissioner Starek dissenting.

Donald S. Clark
Secretary

SEAL
ISSUED: May 12, 1997

EXHIBIT A
[AMERICAN CYANAMID LETTERHEAD]

Dear Dealer:

The Federal Trade Commission has conducted an investigation into American Cyanamid's sales policies, and in particular, American Cyanamid's C.R.O.P. and A.P.E.X. rebate programs, which were in effect from mid-1989 through August 1995. To expeditiously resolve the investigation and to avoid disruption to the conduct of its business, American Cyanamid has agreed, without admitting any violation of the law, to the entry of a Consent Order by the Federal Trade Commission prohibiting certain practices relating to resale prices. A copy of the Order is enclosed. This letter and the accompanying Order are being sent to all of our dealers, distributors, sales personnel and representatives.

The Order spells out our obligations in greater detail, but we want you to know and understand that you can sell our products at any price you choose. While we may send materials to you which contain suggested retail prices, you remain free to sell those products at any price you choose.

We look forward to continuing to do business with you in the future.

Sincerely yours,

President