

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

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

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

DECISION AND ORDER
[Redacted Public Version]

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

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent 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, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, 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 Respondent has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and its Order to Hold Separate and Maintain Assets and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (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 hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

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 HEREBY ORDERED that, as used in this Order, the following definitions, and all other definitions used in the Order to Hold Separate and Maintain Assets, shall apply:

- A. “Air Products” means Air Products, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, divisions, groups and affiliates controlled by Air Products (including Airgas, after the Acquisition Date) and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Commission” means the Federal Trade Commission.
- C. “Acquirer” means any Person that acquires any of the Atmospheric Gases Assets or the Airgas Microbulk Assets (or Air Products Microbulk Assets, if applicable).
- D. “Acquisition Date” means the date on which Air Products acquires a majority of the Airgas Shares.
- E. “Air Products Microbulk Assets” means all of Air Products’ right, title, and interest in and to all property and assets, tangible or intangible, of every kind and description, wherever located, and any improvements or additions thereto, relating to the operation of the Air Products Microbulk Business, including but not limited to:
 1. All real property interests (including fee simple interests and real property leasehold interests), including all easements, appurtenances, licenses, and permits, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held;
 2. All Tangible Personal Property, including any Tangible Personal Property removed from any location of the Air Products Microbulk Business after the date the Commission accepts the Consent Agreement for public comment;

3. All inventories, wherever located, stored in any of the Tangible Personal Property assets at the time the Air Products Microbulk Assets are divested;
4. All (a) trade accounts receivable and other rights to payment from customers of Air Products and the full benefit of all security for such accounts or rights to payment, (b) all other accounts or notes receivable by Air Products and the full benefit of all security for such accounts or notes and (c) any claim, remedy or other right related to any of the foregoing;
5. All agreements, contracts, leases, and consensual obligations, and all outstanding offers or solicitations made by or to Air Products to enter into any of the foregoing; *provided, however*, that if such agreement, contract, lease, obligation, or offer also relates to businesses other than the Air Products Microbulk Business, then only those portions of such agreement, contract, lease, obligation, or offer that relate to the Air Products Microbulk Business shall be included;
6. All consents, licenses, certificates, registrations, or permits issued, granted, given or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement, and all pending applications therefor or renewals thereof, to the extent transferable;
7. All intangible rights and property, including Intellectual Property, going concern value, goodwill, telephone, telecopy, and e-mail addresses and listings;
8. All data and Records, including client and customer lists and Records, vendor lists, referral sources, research and development reports and Records, production reports and Records, service and warranty Records, equipment logs, operating guides and manuals, financial and accounting Records, creative materials, advertising materials, promotional materials, studies, reports, correspondence and other similar documents and Records and, subject to legal requirements, copies of all personnel Records and other Records described in proviso (iv) of this Paragraph I.E.; *provided, however*, that if such data and Records also contain information relating to the businesses other than the Air Products Microbulk Business, then only those portions of such data and Records that relate to the Air Products Microbulk Business shall be included;
9. All insurance benefits, including rights and proceeds;
10. All claims of Air Products against third parties, whether choate or inchoate, known or unknown, contingent or noncontingent; and
11. All rights relating to deposits and prepaid expenses, claims for refunds and rights to offset in respect thereof.

Provided, however, that the Air Products Microbulk Assets need not include:

- (i) assets whose use is shared with or among Air Products' businesses other than the Air Products Microbulk Business unless such assets are primarily related to the operation of the Air Products Microbulk Business;
 - (ii) commercial names, trade names, "doing business as" (d/b/a) names, registered and unregistered trademarks, service marks and applications using the words "Cryoease" or "Air Products;"
 - (iii) all rights in internet web sites and internet domain names presently used by Air Products;
 - (iv) all personnel Records and other Records that Respondent is required by law to retain; and
 - (v) any part of the Air Products Microbulk Assets if not needed by an Acquirer and the Commission approves the divestiture without such assets.
- F. "Air Products Microbulk Business" means Air Products' business relating to the distribution, marketing, or sale of Microbulk Atmospheric Gases in North Carolina and northern Georgia.
- G. "Airgas" 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.
- H. "Airgas Microbulk Assets" means all of Airgas's right, title, and interest in and to all property and assets, tangible or intangible, of every kind and description, wherever located, and any improvements or additions thereto, relating to the operation of the Airgas Microbulk Business, including but not limited to:
- 1. All real property interests (including fee simple interests and real property leasehold interests), including all easements, appurtenances, licenses, and permits, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held;
 - 2. All Tangible Personal Property, including any Tangible Personal Property removed from any location of the Airgas Microbulk Business after the date the Commission accepts the Consent Agreement for public comment;
 - 3. All inventories, wherever located, stored in any of the Tangible Personal Property assets at the time the Airgas Microbulk Assets are divested;

4. All (a) trade accounts receivable and other rights to payment from customers of Airgas and the full benefit of all security for such accounts or rights to payment, (b) all other accounts or notes receivable by Airgas and the full benefit of all security for such accounts or notes and (c) any claim, remedy or other right related to any of the foregoing;
5. All agreements, contracts, leases, and consensual obligations, and all outstanding offers or solicitations made by or to Airgas to enter into any of the foregoing; *provided, however,* that if such agreement, contract, lease, obligation, or offer also relates to businesses other than the Airgas Microbulk Business, then only those portions of such agreement, contract, lease, obligation, or offer that relate to the Airgas Microbulk Business shall be included;
6. All consents, licenses, certificates, registrations, or permits issued, granted, given or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement, and all pending applications therefor or renewals thereof, to the extent transferable;
7. All intangible rights and property, including Intellectual Property, going concern value, goodwill, telephone, telecopy, and e-mail addresses and listings;
8. All data and Records, including client and customer lists and Records, vendor lists, referral sources, research and development reports and Records, production reports and Records, service and warranty Records, equipment logs, operating guides and manuals, financial and accounting Records, creative materials, advertising materials, promotional materials, studies, reports, correspondence and other similar documents and Records and, subject to legal requirements, copies of all personnel Records and other Records described in proviso (iv) of this Paragraph I.H.; *provided, however,* that if such data and Records also contain information relating to the businesses other than the Airgas Microbulk Business, then only those portions of such data and Records that relate to the Airgas Microbulk Business shall be included;
9. All insurance benefits, including rights and proceeds;
10. All claims of Airgas against third parties, whether choate or inchoate, known or unknown, contingent or noncontingent; and
11. All rights relating to deposits and prepaid expenses, claims for refunds and rights to offset in respect thereof.

Provided, however, that the Airgas Microbulk Assets need not include:

- (i) assets whose use is shared with or among Airgas’s businesses other than the Airgas Microbulk Business unless such assets are primarily related to the operation of the Airgas Microbulk Business;
 - (ii) commercial names, trade names, “doing business as” (d/b/a) names, registered and unregistered trademarks, service marks and applications for the foregoing names and marks;
 - (iii) all rights in internet web sites and internet domain names presently used by Airgas;
 - (iv) all personnel Records and other Records that Respondent is required by law to retain; and
 - (v) any part of the Airgas Microbulk Assets if not needed by an Acquirer and the Commission approves the divestiture without such assets.
- I. “Airgas Microbulk Business” means Airgas’s business relating to the distribution, marketing, or sale of Microbulk Atmospheric Gases in North Carolina and northern Georgia.
- J. “Airgas Shares” means the issued and outstanding shares of common stock of Airgas on a fully diluted basis.
- K. “ASU” means air separation unit.
- L. “Atmospheric Gases” means oxygen, nitrogen, and argon.
- M. “Atmospheric Gases Assets” means all of Airgas’s right, title, and interest in and to all property and assets, tangible or intangible, of every kind and description, wherever located, and any improvements or additions thereto, relating to the operation of the Atmospheric Gases Business, including but not limited to:
- 1. All real property interests (including fee simple interests and real property leasehold interests), including all easements, appurtenances, licenses, and permits, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held;
 - 2. All Tangible Personal Property, including any Tangible Personal Property removed from any location of the Atmospheric Gases Business or the Airgas Microbulk Business after the date the Commission accepts the Consent Agreement for public comment;
 - 3. All of the ASU facilities listed in Appendix A of this Order;

4. All inventories, wherever located, including all finished product, work in process, raw materials, spare parts and all other materials and supplies to be used or consumed by Airgas in the production of finished products;
5. All (a) trade accounts receivable and other rights to payment from customers of Airgas and the full benefit of all security for such accounts or rights to payment, (b) all other accounts or notes receivable by Airgas and the full benefit of all security for such accounts or notes and (c) any claim, remedy or other right related to any of the foregoing;
6. All agreements, contracts, leases, and consensual obligations, and all outstanding offers or solicitations made by or to Airgas to enter into any of the foregoing; *provided, however*, that if such agreement, contract, lease, obligation, or offer also relates to businesses other than the Atmospheric Gases Business, then only those portions of such agreement, contract, lease, obligation, or offer that relate to the Atmospheric Gases Business shall be included; *provided, further*, that in the matter of a swap agreement, all portions of the agreement with respect to Atmospheric Gases shall be included if any portion is related to the Atmospheric Gases Business;
7. All consents, licenses, certificates, registrations, or permits issued, granted, given or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement, and all pending applications therefor or renewals thereof, to the extent transferable;
8. All intangible rights and property, including Intellectual Property, subject to an Atmospheric Gases License-Back, going concern value, goodwill, telephone, telecopy, and e-mail addresses and listings;
9. All data and Records, including client and customer lists and Records, vendor lists, referral sources, research and development reports and Records, production reports and Records, service and warranty Records, equipment logs, operating guides and manuals, financial and accounting Records, creative materials, advertising materials, promotional materials, studies, reports, correspondence and other similar documents and Records and, subject to legal requirements, copies of all personnel Records and other Records described in proviso (iv) of this Paragraph I.M.; *provided, however*, that if such data and Records also relate to businesses other than the Atmospheric Gases Business, then only those portions of such data and Records that relate to the Atmospheric Gases Business shall be included;
10. All insurance benefits, including rights and proceeds;
11. All claims of Airgas against third parties, whether choate or inchoate, known or unknown, contingent or noncontingent; and

12. All rights relating to deposits and prepaid expenses, claims for refunds and rights to offset in respect thereof.

Provided, however, that the Atmospheric Gases Assets need not include:

- (i) assets whose use is shared with or among Airgas's businesses other than the Atmospheric Gases Business unless such assets are primarily related to the operation of the Atmospheric Gases Business;
 - (ii) commercial names, trade names, "doing business as" (d/b/a) names, registered and unregistered trademarks, service marks and applications for the foregoing names and marks;
 - (iii) all rights in internet web sites and internet domain names presently used by Airgas;
 - (iv) all personnel Records and other Records that Respondent is required by law to retain; and
 - (v) any part of the Atmospheric Gases Assets if not needed by an Acquirer and the Commission approves the divestiture without such assets.
- N. "Atmospheric Gases Business" means Airgas's business relating to (1) the production or refinement of Atmospheric Gases at any Airgas on-site facilities or the ASU facilities listed in Appendix A of this Order and (2) the distribution, marketing, or sale of such Atmospheric Gases (wherever located) by pipeline, from such on-site facilities, or as Bulk Atmospheric Gases; *provided, however,* that Atmospheric Gases Business does not include Airgas's Packaged Atmospheric Gases or Microbulk Atmospheric Gases businesses.
- O. "Atmospheric Gases Employee" means, as of the Acquisition Date, (i) any full-time, part-time, or contract employee of the Atmospheric Gases Business or the Airgas Microbulk Business (or Air Products Microbulk Business, if applicable), (ii) any other person employed by Airgas whose work primarily relates to the Atmospheric Gases Business, or (iii) any other person employed by Airgas whose work primarily relates to the Airgas Microbulk Business (or employed by Air Products whose work primarily relates to the Air Products Microbulk Business, if applicable).
- P. "Atmospheric Gases License" means:
1. A worldwide, royalty-free, paid-up, perpetual, irrevocable, transferable, sublicensable, non-exclusive license under all Intellectual Property relating to operation of the Atmospheric Gases Business or the Airgas Microbulk Business (or the Air Products Microbulk Business, if applicable) other than Intellectual

Property already included in the Atmospheric Gases Assets or Airgas Microbulk Assets (or Air Products Microbulk Assets, if applicable); and

2. Such tangible embodiments of the licensed rights (including but not limited to physical and electronic copies) as may be necessary or appropriate to enable an Acquirer to use the rights.

Q. “Atmospheric Gases License-Back” means:

1. A worldwide, royalty-free, paid-up, perpetual, irrevocable, transferable, sublicensable, non-exclusive license under any Intellectual Property that is included in the Atmospheric Gases Assets or the Airgas Microbulk Assets (or Air Products Microbulk Assets, if applicable) and is not solely related to the operation of the Atmospheric Gases Business or the Airgas Microbulk Business (or the Air Products Microbulk Business, if applicable); and
2. Such tangible embodiments of the licensed rights (including but not limited to physical and electronic copies) as may be necessary or appropriate to enable an Acquirer to use the rights.

R. “Bulk Atmospheric Gases” means Atmospheric Gases delivered in bulk liquid form (as the term “bulk” generally is defined by participants in the Atmospheric Gases industry, including by Respondent in the ordinary course of its business), typically to an on-site storage tank with a capacity greater than 2,000 liters.

S. “Confidential Business Information” means competitively sensitive, proprietary and all other business information of any kind owned by or pertaining to any business or assets specified in the relevant provisions of this Order or the Order to Hold Separate and Maintain Assets (including, but not limited to, financial statements, financial plans and forecasts, operating plans, price lists, cost information, supplier and vendor contracts, marketing analyses, customer lists, customer contracts, employee lists, salary and benefits information, technologies, processes, and other trade secrets), except for any information that Respondent demonstrates (i) was or becomes generally available to the public other than as a result of a disclosure by Respondent, or (ii) was available, or becomes available, to Respondent on a non-confidential basis, but only if, to the knowledge of Respondent, the source of such information is not in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the information.

T. “Direct Cost” means the actual cost of labor, including employee benefits, materials, resources, and services plus the actual cost of any third-party charges.

U. “Divestiture Agreement” means any purchase and sale agreement approved by the Commission between Respondent (or between a Divestiture Trustee appointed pursuant to Paragraph V of this Order) and an Acquirer to purchase all or any of the Atmospheric

Gases Assets or the Airgas Microbulk Assets (or the Air Products Microbulk Assets, if applicable) including all amendments, exhibits, attachments, agreements, and schedules thereto.

- V. “Intellectual Property” means all intellectual property owned or licensed (as licensor or licensee) by Airgas or Air Products (as the case may be), in which Airgas or Air Products has a proprietary interest, including (i) commercial names, trade names, “doing business as” (d/b/a) names, registered and unregistered trademarks, logos, service marks and applications; (ii) all patents, patent applications and inventions and discoveries that may be patentable; (iii) all registered and unregistered copyrights in both published works and unpublished works; (iv) all know-how, trade secrets, confidential or proprietary information, protocols, quality control information, software, technical information, data, process technology, plans, drawings and blue prints; and (v) all rights in internet web sites and internet domain names presently used by Airgas or Air Products.
- W. “Microbulk Atmospheric Gases” means Atmospheric Gases delivered in microbulk liquid form (as the term “microbulk” generally is defined by participants in the Atmospheric Gases industry, including by Respondent in the ordinary course of its business), typically to an on-site storage tank with a capacity greater than or equal to 230 liters and less than or equal to 2,000 liters.
- X. “Packaged Atmospheric Gases” means Atmospheric Gases delivered in packaged form (as the term “packaged” generally is defined by participants in the Atmospheric Gases industry, including by Respondent in the ordinary course of its business), typically in a gaseous cylinder, a liquid dewar, or delivered as bulk gas in a tube trailer.
- Y. “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization, or other entity.
- Z. “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- AA. “Tangible Personal Property” means all machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles (including delivery vehicles of any kind), and other items of tangible personal property (other than inventories) of every kind owned or leased by Airgas or Air Products (as the case may be), together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part thereof and all maintenance records and other documents relating thereto.
- BB. “Transitional Assistance” means any (i) administrative services (including, but not limited to, order processing, shipping, accounting, and information transitioning services) or (ii) technical assistance with respect to the production, refinement, distribution, marketing, or sale of Atmospheric Gases.

II.

IT IS FURTHER ORDERED that:

- A. Respondent shall divest the Atmospheric Gases Assets and the Airgas Microbulk Assets at no minimum price, absolutely and in good faith, as an on-going business, no later than 120 days from the Acquisition Date, to one or more Acquirers that receive the prior approval of the Commission and in a manner that receives the prior approval of the Commission; *provided, however*, that Respondent shall divest the Air Products Microbulk Assets instead of the Airgas Microbulk Assets at the option of an Acquirer.
- B. At any time after February 15, 2011, if Respondent has not acquired a majority of the Airgas Shares, the Commission may, at its discretion, notify Respondent that it shall be required to divest the Atmospheric Gases Assets and Airgas Microbulk Assets pursuant to the following terms:
1. Respondent shall not acquire a majority of the Airgas Shares until it receives the Commission's prior approval of (a) the Acquirer(s) and (b) the manner of divestiture of the Atmospheric Gases Assets and the Airgas Microbulk Assets; and
 2. Upon obtaining such Commission approval and after acquiring a majority of the Airgas Shares, Respondent shall divest the Atmospheric Gases Assets and the Airgas Microbulk Assets at no minimum price, absolutely and in good faith, as an on-going business, no later than ten (10) days from the Acquisition Date.
- Provided, however*, that Respondent shall divest the Air Products Microbulk Assets instead of the Airgas Microbulk Assets at the option of an Acquirer.
- C. If Respondent has not acquired a majority of the Airgas Shares as of one year from the date the Commission accepts the Consent Agreement for public comment ("Expiration Date") or if Respondent withdraws its tender offer to acquire Airgas and does not have a letter of intent or agreement to purchase Airgas, Respondent shall:
1. Notify the Commission within five (5) days of withdrawal of its tender offer ("Withdrawal Date"); and
 2. Shall divest on the New York Stock Exchange absolutely and in good faith all its interest in Airgas Shares within six (6) months from the earlier of the (i) Expiration Date or (ii) Withdrawal Date.
- D. Respondent shall divest the (1) Atmospheric Gases Assets in any relevant market area (as set forth in Appendix A) to no more than one Acquirer and (2) Airgas Microbulk Assets (or the Air Products Microbulk Assets, if applicable) to the Acquirer of the Atmospheric Gases Assets located in the Southeast market (as set forth in Appendix A).

- E. The Commission may order Respondent to divest additional assets relating to Airgas's business of distribution, marketing, or sale of Bulk Atmospheric Gases not included in the Atmospheric Gases Business as the Commission determines will ensure the divestiture of the Atmospheric Gases Assets as ongoing viable enterprises.
- F. No later than the date of divestiture of the Atmospheric Gases Assets, Respondent shall grant to an Acquirer an Atmospheric Gases License for any use in any business and take all actions necessary to facilitate the unrestricted use of the license.
- G. In the event that Respondent is unable to obtain any consents, licenses, certificates, registrations, permits, or other authorizations granted by:
 - 1. Any governmental entity that are necessary to operate the Atmospheric Gases Assets or Airgas Microbulk Assets (or Air Products Microbulk Assets, if applicable), Respondent shall provide such assistance as an Acquirer may reasonably request in an Acquirer's efforts to obtain a comparable authorization; and
 - 2. Any other Person that are necessary to divest the Atmospheric Gases Assets or Airgas Microbulk Assets (or Air Products Microbulk Assets, if applicable), Respondent shall, with the acceptance of an Acquirer and the prior approval of the Commission, substitute equivalent assets or arrangements.
- H. At the option of an Acquirer and subject to the prior approval of the Commission, Respondent shall enter into a supply agreement, not to exceed a period of forty-eight (48) months, through which the Acquirer shall supply Respondent with Atmospheric Gases in substantially the same volumes that Airgas historically obtained from the Atmospheric Gases Assets (or relevant portions thereof) for use in its Packaged Atmospheric Gases and Microbulk Atmospheric Gases businesses (excluding the volume obtained for its Airgas Microbulk Business or the volume used by Air Products in the Air Products' Microbulk Business if the Air Products' Microbulk Assets are divested pursuant to this Order) prior to the Acquisition Date; *provided, however*, that Respondent shall not terminate its obligation under such supply agreement because of a material breach by an Acquirer, in the absence of a final order of a court of competent jurisdiction or arbitration proceeding (if an Acquirer agrees to arbitration).
- I. At the option of an Acquirer and subject to the prior approval of the Commission, Respondent shall enter into one or more agreements to provide Transitional Assistance to an Acquirer. In such case, Respondent shall provide Transitional Assistance sufficient to enable an Acquirer to operate the divested assets and business:
 - 1. In substantially the same manner that Airgas or Air Products (as the case may be) operated the divested assets and business prior to the Acquisition Date; and

2. At substantially the same level and quality as such services were provided by Airgas or Air Products (as the case may be) in connection with its operation of the divested assets and business prior to the Acquisition Date.

Provided, however, that Respondent shall not (i) require an Acquirer to pay compensation for Transitional Assistance that exceeds the Direct Cost of providing such Transitional Assistance or (ii) terminate its obligation to provide Transitional Assistance because of a material breach by an Acquirer of any agreement to provide such assistance, in the absence of a final order of a court of competent jurisdiction or arbitration proceeding (if an Acquirer agrees to arbitration).

- J. Respondent shall allow an Acquirer an opportunity to identify, recruit, and employ any Atmospheric Gases Employee:

1. Respondent shall (i) identify for an Acquirer each Atmospheric Gases Employee, (ii) allow an Acquirer an opportunity to interview any Atmospheric Gases Employee, and (iii) allow an Acquirer to inspect the personnel files and other documentation relating to any such employee, to the extent permissible under applicable laws, no later than:
 - (a) Twenty (20) days prior to the date of divestiture of the Atmospheric Gases Assets or Airgas Microbulk Assets (or Air Products Microbulk Assets, if applicable) and continuing thereafter for a period of ninety (90) days after the date of divestiture of the relevant assets, if Respondent divests the relevant assets pursuant to Paragraph II.A. of this Order, or
 - (b) Five (5) days prior to the date of divestiture of the Atmospheric Gases Assets or Airgas Microbulk Assets (or Air Products Microbulk Assets, if applicable), or sooner, if permitted by Airgas, and continuing thereafter for a period of ninety (90) days after the date of divestiture of the relevant assets, if Respondent divests the relevant assets pursuant to Paragraph II.B. of this Order.
2. Respondent shall (i) not offer any incentive to any Atmospheric Gases Employee to decline employment with an Acquirer, (ii) remove any contractual impediments with Respondent that may deter any Atmospheric Gases Employee from accepting employment with an Acquirer, including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with Respondent that would affect the ability of such employee to be employed by the Acquirer, and (iii) not otherwise interfere with the recruitment or hiring of any Atmospheric Gases Employee by an Acquirer.
3. Respondent shall (i) vest all current and accrued pension benefits as of the date of transition of employment with an Acquirer for any Atmospheric Gases Employee who accepts an offer of employment from the Acquirer no later than thirty (30)

days from the date Respondent divests the relevant assets and (ii) provide any Key Employee (hereinafter defined) to whom an Acquirer has made a written offer of employment with reasonable financial incentives to accept a position with the Acquirer at the time of divestiture of the relevant assets and business, pursuant to the terms set forth in Confidential Appendix B attached to this Order.

4. For a period of two (2) years after the date of divestiture of the Atmospheric Gases Assets and Airgas Microbulk Assets (or Air Products Microbulk Assets, if applicable), Respondent shall not, directly or indirectly, solicit, induce or attempt to solicit or induce any Atmospheric Gases Employee who has accepted an offer of employment with an Acquirer, or who is employed by an Acquirer, to terminate his or her employment relationship with an Acquirer; *provided, however,* a violation of this provision will not occur if: (1) the individual's employment has been terminated by an Acquirer, (2) Respondent advertises for employees in newspapers, trade publications, or other media not targeted specifically at the employees, or (3) Respondent hires employees who apply for employment with Respondent, so long as such employees were not solicited by Respondent in violation of this paragraph.

For purposes of this Paragraph II.J. and Confidential Appendix B, "Key Employee" means any Atmospheric Gases Employee identified by agreement between Respondent and an Acquirer and made a part of a Divestiture Agreement.

- K. For a period of two (2) years from the date Respondent divests the Atmospheric Gases Assets and Airgas Microbulk Assets (or Air Products Microbulk Assets, if applicable), Respondent shall not, directly or indirectly, solicit, induce, or attempt to solicit or induce any Multi-Product Customer (hereinafter defined) to discontinue or reduce its purchases of Atmospheric Gases other than Packaged Atmospheric Gases from an Acquirer and purchase such products from Respondent; *provided, however,* that a violation of this provision will not occur if: (1) a customer initiates communications with Respondent regarding Atmospheric Gases purchases or (2) Respondent advertises in newspapers, trade publications, or other media in a manner not targeted specifically at customers of an Acquirer.

For purposes of this Paragraph II.K., "Multi-Product Customer" means a customer who purchased from Airgas as of the Acquisition Date both (i) Packaged Atmospheric Gases and (ii) Atmospheric Gases from the Atmospheric Gases Business or the Airgas Microbulk Business.

- L. Respondent shall comply with all terms of any Divestiture Agreement, and any breach by Respondent of any term of such agreement shall constitute a violation of this Order. If any term of the Divestiture Agreement varies from the terms of this Order ("Order Term"), then to the extent that Respondent cannot fully comply with both terms, the Order Term shall determine Respondent's obligations under this Order. Respondent shall

provide written notice to the Commission no later than five days after any modification of the Divestiture Agreement.

- M. The purpose of the divestiture of the Atmospheric Gases Assets and the Airgas Microbulk Assets (or Air Products Microbulk Assets, if applicable) is to ensure the continued use of the assets in the same businesses in which such assets were engaged at the time this Order becomes final and to remedy the lessening of competition resulting from the acquisition as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

- A. Respondent shall not (i) provide, disclose or otherwise make available Confidential Business Information owned by or pertaining to the Divested Assets and Businesses (hereinafter defined) or the Air Products Microbulk Assets and Air Products Microbulk Business to any Person or (ii) use such Confidential Business Information for any reason or purpose; *provided, however*, that Respondent may disclose or use such Confidential Business Information:
1. In the course of performing its obligations or as permitted under this Order or the Order to Hold Separate and Maintain Assets;
 2. In the course of performing its obligations under any Divestiture Agreement (including any transitional services or supply agreements);
 3. In the course of complying with financial reporting requirements, obtaining legal advice, defending legal claims, investigations, or enforcing actions threatened or brought against the Divested Assets and Businesses, or as required by law; and
 4. Relating to the Air Products Microbulk Assets and the Air Products Microbulk Business in the ordinary course of business and in accordance with past practice until such time that Respondent has divested the Air Products Microbulk Assets, if applicable;

Provided, however, that Confidential Business Information relating to the Air Products Microbulk Assets and Air Products Microbulk Business shall not be subject to this Paragraph III as of the date of divestiture of the Airgas Microbulk Assets if Respondent divests such assets instead of the Air Products Microbulk Assets under this Order.

- B. If permitted under Paragraph III.A. of this Order, Respondent shall disclose Confidential Business Information owned by or pertaining to the Divested Assets and Businesses or the Air Products Microbulk Assets and Air Products Microbulk Business (i) only to those Persons who require such information, (ii) only to the extent such Confidential Business

Information is required, and (iii) only to those Persons who agree in writing to maintain the confidentiality of such information.

- C. Respondent shall enforce the terms of this Paragraph III as to any Person other than an Acquirer of the Atmospheric Gases Assets and take such action as is necessary to cause each such Person to comply with the terms of this Paragraph III, including training of Respondent's employees and all other actions that Respondent would take to protect its own trade secrets and proprietary information.

For purposes of this Paragraph III., "Divested Assets and Businesses" means the Atmospheric Gases Assets, Atmospheric Gases Business, Airgas Microbulk Assets, or Airgas Microbulk Business.

IV.

IT IS FURTHER ORDERED that:

- A. Prior to the Acquisition Date, Respondent may obtain Confidential Business Information owned by or pertaining to any Airgas business for the purposes of conducting customary due diligence as permitted by Airgas; *provided, however*, that:
1. Respondent may not obtain Confidential Business Information owned by or pertaining to the Atmospheric Gases Business or Airgas Microbulk Business relating to (i) current or future information about any price plans, or price, cost, or margin information at the customer level (but may obtain aggregated, non-customer specific cost and revenue information); (ii) Strategies or Policies Related to Competition (hereinafter defined); or (iii) Cost or Price Analyses (hereinafter defined);
 2. With respect to any Confidential Business Information that Respondent may obtain under this Paragraph IV.A., (i) no Person who is involved in the pricing, marketing, sale, or production of Atmospheric Gases in the United States (other than officers, directors, and counsel) shall have access to such information and (ii) any Person with access to such information shall agree in writing to maintain the confidentiality of the information.
- B. After the Acquisition Date, Respondent may obtain Confidential Business Information owned by or pertaining to businesses other than the Atmospheric Gases Business or Airgas Microbulk Business (until Respondent has divested the Air Products Microbulk Assets, if applicable) for the purposes of integration planning with respect to such other businesses; *provided, however*, that with respect to any Confidential Business Information that Respondent may obtain under this Paragraph IV.B., the Integration Clean Team (hereinafter defined) shall, until the end of the Hold Separate Period, (i) have sole access to such information (other than employees of the Hold Separate Business); (ii) agree in writing to maintain the confidentiality of the information; and (iii)

not provide such information to anyone other than in aggregated or summary form to Air Products' officers, directors, and counsel.

C. For purposes of this Paragraph IV:

1. "Integration Clean Team" means (i) third parties that Respondent has retained for the purpose of acquiring and integrating Airgas, including but not limited to outside legal counsel, and (ii) no more than twelve (12) Persons from Air Products, provided that in no event shall such persons have direct responsibility for pricing, marketing, sale, or production of Atmospheric Gases in the United States (except Air Products' officers, directors, or counsel);
2. "Strategies or Policies Related to Competition" means information relating to a company's current or future approach to negotiating with customers, targeting specific customers, identifying or in any other manner attempting to win customers, retaining customers, or risk of loss of customers, including but not limited to all sales personnel call reports, market studies, forecasts, and surveys which contain such information; and
3. "Cost or Price Analyses" means a formula, analysis, method, study, test, program, examination, tool, or other type of logical reasoning used to determine a product's cost or price for an identifiable individual customer.

V.

IT IS FURTHER ORDERED that:

- A. If Respondent has not divested all of the Atmospheric Gases Assets as required by Paragraphs II.A. or II.B. of this Order, the Commission may appoint one or more Persons as Divestiture Trustee to divest the Atmospheric Gases Assets or Airgas Microbulk Assets (or Air Products Microbulk Assets, if applicable) 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 HS Trustee pursuant to the relevant provisions of the Order to Hold Separate and Maintain Assets.
- 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, Respondent 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 Respondent to comply with this Order.

- C. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Divestiture Trustee, Respondent shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- D. Within ten (10) days after appointment of a Divestiture Trustee, Respondent 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 transfer 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.
 2. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the trust 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 twelve (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.
 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. Respondent shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent shall extend the time for divestiture under this Paragraph V 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 Respondent's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an Acquirer as required by this Order; *provided, however,* that 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 Respondent from among those approved by the Commission; *provided further, however,* that Respondent shall select such entity within five (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 Respondent, 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 Respondent, 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 Respondent, 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. Respondent 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 V.E.6., the term "Divestiture Trustee" shall include all Persons retained by the Divestiture Trustee pursuant to Paragraph V.E.5. of this Order.
7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.

8. The Divestiture Trustee shall report in writing to Respondent and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
 9. Respondent or 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 customary confidentiality agreement; *provided, however*, that such agreement required by Respondent shall not restrict the Divestiture Trustee from providing any information to the Commission.
- F. 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 V.
- G. 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 divestiture required by this Order.

VI.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after the earlier of (i) the Acquisition Date or (ii) February 15, 2011, and every thirty (30) days thereafter until Respondent has fully complied with the provisions of Paragraphs II.A.-C. of this Order, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order and the Order to Hold Separate and Maintain Assets. Respondent shall include in its compliance reports, among other things that are required from time to time:
1. A full description of the efforts being made to comply with this Order and with the Order to Hold Separate and Maintain Assets, including a description of all substantive contacts or negotiations relating to the divestiture and approval, and the identities of all parties contacted.
 2. Copies, other than of privileged materials, of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestiture and approval, and, as applicable, a statement that the divestiture(s) approved by the Commission have been accomplished, including a description of the manner in which Respondent completed such divestiture and the date the divestiture was accomplished.
- B. One (1) year after the date this Order becomes final, annually thereafter for the next nine (9) years on the anniversary of the date this Order becomes final, and at such other times

as the Commission may request, Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with the Order and any Divestiture Agreement.

VII.

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

VIII.

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 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.

IX.

IT IS FURTHER ORDERED that this Order shall terminate ten (10) years from the date this Order becomes final.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED:

Appendix A

Airgas ASUs By Relevant Market

Northeast

Bozrah, Connecticut

Eastern Midwest

Carrollton, Kentucky

Canton, Ohio

Dayton, Ohio

Chicago-Milwaukee metropolitan area

New Carlisle, Indiana

Madison, Wisconsin

Waukesha, Wisconsin

Southeast

Carrollton, Georgia

Jefferson, Georgia

Gaston, South Carolina (2 ASUs)

Rock Hill, South Carolina

Chester, Virginia

Oklahoma and surrounding areas

Mulberry, Arkansas

Lawton, Oklahoma

The Atmospheric Gases Assets shall not include any assets relating to Airgas's Atmospheric Gases Business in Hawaii.

Confidential Appendix B

[Redacted From Public Record Version, But Incorporated By Reference]