

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Timothy J. Muris, Chairman  
Sheila F. Anthony  
Mozelle W. Thompson  
Orson Swindle  
Thomas B. Leary

In the Matter of )  
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 )  
**Conoco Inc.**, )  
 a corporation, )  
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 and )  
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**Phillips Petroleum Company**, )  
 a corporation. )  
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**DOCKET NO. C-4058**

**ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS**

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed merger involving Respondents, Conoco Inc. (“Conoco”) and Phillips Petroleum Company (“Phillips”), and Respondents having been furnished thereafter with a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. §18; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents 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 Respondents 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 Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having determined to accept the executed Consent Agreement and to place 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 issues its Complaint, makes the following jurisdictional findings and issues this Order to Hold Separate and Maintain Assets (“Hold Separate Order”):

1. Respondent Conoco Inc. is 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 600 North Dairy Ashford, Houston, TX 77079.
2. Respondent Phillips Petroleum Company is 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 411 South Keeler, Bartlesville, OK 74004.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

## **ORDER**

### **I.**

**IT IS ORDERED that**, as used in this Hold Separate Order, the following definitions and provisions shall apply:

- A. Unless otherwise defined herein, any capitalized term in this Hold Separate Order shall have the same meaning as in the Decision and Order.
- B. “Decision and Order” means the Decision and Order contained in the Agreement Containing Consent Orders executed by Respondents in this matter.
- C. “Held Separate Business” means
  1. Phillips Woods Cross Assets, as defined in the Decision and Order;
  2. Colorado Assets, as defined in the Decision and Order;
  3. Phillips Spokane Terminal, as defined in the Decision and Order;
  4. Propane Marketing Operations; and
  5. All personnel of Respondents listed on Confidential Attachment D.
- D. “Hold Separate Period” means the time period during which the Hold Separate Order is in effect, which shall begin no later than ten (10) days after the date the Hold Separate Order becomes final and terminates pursuant to Paragraph VI. hereof.
- E. “Material Confidential Information” means competitively sensitive or proprietary information not independently known to an entity from sources other than the entity to which the information pertains, and includes, but is not limited to, all customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets.

The Held Separate Business shall be considered an entity separate from ConocoPhillips (as defined in the Decision and Order) for this purpose.

- F. “Propane Marketing Operations” means the management and oversight responsibilities for marketing, pricing, and the supply of propane to customers from the Propane Terminal Assets, effective as of the date Respondents executed the Consent Agreement.

## II.

### **IT IS FURTHER ORDERED that:**

- A. During the Hold Separate Period, Respondents shall hold the Held Separate Business separate, apart, and independent as required by this Hold Separate Order and shall vest the Held Separate Business with all rights, powers, and authority necessary to conduct its business; Respondents shall not exercise direction or control over, or influence directly or indirectly, the Held Separate Business or any of its operations, or the Hold Separate Trustee, except to the extent that Respondents must exercise direction and control over the Held Separate Business as is necessary to assure compliance with this Hold Separate Order, the Consent Agreement, and with all applicable laws, including, in consultation with the Hold Separate Trustee, continued oversight of the Held Separate Business’ compliance with policies and standards concerning the safety, health, and environmental aspects of their operations and the integrity of their financial controls; and Respondents shall have the right to defend any legal claims, investigations or enforcement actions threatened or brought against any Held Separate Business.
- B. Until the Effective Date of Divestiture, Respondents shall take such actions as are necessary to maintain the viability and marketability of the (1) Held Separate Business (2) New Mexico Assets, (3) Texas Assets, and (4) Propane Business to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets, except for ordinary wear and tear, including, but not limited to, continuing in effect and maintaining proprietary trademarks, trade names, logos, trade dress, identification signs, franchise agreements, and renewing or extending any base leases or ground leases that expire or terminate prior to the Effective Date of Divestiture.
- C. The purpose of this Hold Separate Order is to: (1) preserve the Held Separate Business as a viable, competitive, and ongoing business independent of Respondents until the divestitures required by the Decision and Order are achieved; (2) assure that the purpose of the Decision and Order is achieved; (3) assure that no Material Confidential Information is exchanged between Respondents and the Held Separate Business, except in accordance with the provisions of this Hold Separate Order; (4) prevent interim harm to competition pending the relevant divestitures and other relief; and (5) help remedy any anticompetitive effects of the proposed Merger.

- D. Respondents shall hold the Held Separate Business separate, apart, and independent on the following terms and conditions:
1. A person, having received the prior approval of the Commission, shall serve as Hold Separate Trustee, pursuant to the Hold Separate Trustee Agreement executed by the Hold Separate Trustee and Respondents and attached as Confidential Attachment C (“HS Trustee Agreement”).
    - a. The HS Trustee Agreement shall require that, no later than ten (10) days after this Hold Separate Order becomes final, Respondents transfer to the Hold Separate Trustee all rights, powers, and authorities necessary to permit the Hold Separate Trustee to perform his/her duties and responsibilities, pursuant to this Hold Separate Order and consistent with the purposes of the Decision and Order.
    - b. No later than ten (10) days after this Hold Separate Order becomes final, Respondents shall, pursuant to the HS Trustee Agreement, transfer to the Hold Separate Trustee all rights, powers, and authorities necessary to permit the Hold Separate Trustee to perform his/her duties and responsibilities, pursuant to this Hold Separate Order and consistent with the purposes of the Decision and Order.
    - c. The Hold Separate Trustee shall have the responsibility, consistent with the terms of this Hold Separate Order and the Decision and Order, for monitoring the organization of the Held Separate Business; for managing the Held Separate Business through the Manager; for maintaining the independence of the Held Separate Business; and for monitoring Respondents’ compliance with their obligations pursuant to this Hold Separate Order and the Decision and Order.
    - d. The Hold Separate Trustee shall have full and complete access, subject to any legally recognized privilege of Respondents, to all personnel, books, records, documents and facilities of the Held Separate Business or to any other relevant information as the Hold Separate Trustee may reasonably request including, but not limited to, all documents and records kept by Respondents in the ordinary course of business that relate to the Held Separate Business. Respondents shall develop such financial or other information as the Hold Separate Trustee may request and shall cooperate with the Hold Separate Trustee. Respondents shall take no action to interfere with or impede the Hold Separate Trustee’s ability to monitor Respondents’ compliance with this Hold Separate Order and the Consent Agreement or otherwise to perform his/her duties and responsibilities consistent with the terms of this Hold Separate Order.
    - e. The Hold Separate Trustee shall have the authority to employ, at the reasonable cost and expense of Respondents, such consultants,

accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Hold Separate Trustee's duties and responsibilities.

f. The Commission may require the Hold Separate Trustee to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with performance of the Hold Separate Trustee's duties.

g. Respondents may require the Hold Separate Trustee to sign a confidentiality agreement prohibiting the disclosure of any Material Confidential Information gained as a result of his or her role as Hold Separate Trustee to anyone other than the Commission.

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Manager all rights, powers and authorities necessary to permit the substitute Manager to perform his/her duties and responsibilities, pursuant to this Hold Separate Order.

- b. The Manager shall report directly and exclusively to the Hold Separate Trustee and shall manage the Held Separate Business independently of the management of Respondents. The Manager shall not be involved, in any way, in the operations of the other businesses of Respondents during the term of this Hold Separate Order.
- c. The Manager shall have no financial interests affected by Respondents' revenues, profits or profit margins, except that the Manager's compensation for managing the Held Separate Business may include economic incentives dependent on the financial performance of the Held Separate Business if there are also sufficient incentives for the Manager to operate the Held Separate Business at no less than current rates of operation (including, but not limited to, current rates of production and sales) and to achieve the objectives of this Hold Separate Order.
- d. The Manager shall make no material changes in the present operation of the Held Separate Business except with the approval of the Hold Separate Trustee, in consultation with the Commission staff.
- e. The Manager shall have the authority, with the approval of the Hold Separate Trustee, to remove employees and replace them with others of similar experience or skills. If any person ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate Order, the Manager, in consultation with the Hold Separate Trustee, may request Respondents to, and Respondents shall, appoint a substitute person, which person the Manager shall have the right to approve.
- f. In addition to those employees within the Held Separate Business, the Manager may employ such employees as are reasonably necessary to assist the Manager in managing the Held Separate Business, including, without limitation, pricing services personnel, employee relations personnel, legal services personnel, public relations personnel, supply personnel, earnings consolidation and analysis personnel, business performance personnel (balanced scorecard, expense, volume, shared services reporting), customer relations personnel, and marketing administration personnel.
- g. The Hold Separate Trustee shall be permitted, in consultation with the Commission staff, to remove the Manager for cause. Within fifteen (15) days after such removal of the Manager, Respondents shall appoint a replacement Manager, subject to the approval of the Commission, on

the same terms and conditions as provided in Paragraph II.D.2 of this Hold Separate Order.

3. The Held Separate Business shall be staffed with sufficient employees to maintain the viability and competitiveness of the Held Separate Business. Employees of the Held Separate Business shall include, but not be limited to: (i) all personnel listed on Confidential Attachment D, and (ii) any persons transferred to the Held Separate Business by Respondents or hired from other sources. To the extent that any employees of the Held Separate Business leave or have left the Held Separate Business prior to the Effective Date of Divestiture, the Manager, with the approval of the Hold Separate Trustee, may replace departing or departed employees with persons who have similar experience and expertise or determine not to replace such departing or departed employees.
4. In connection with support services or products not included within the Held Separate Business, Respondents shall continue to provide, or offer to provide, the same support services to the Held Separate Business as are being provided to such business by Respondents as of the date the Consent Agreement is signed by Respondent. For services that Conoco or Phillips previously provided to the Held Separate Business, Respondents may charge the same fees, if any, charged by Respondents for such support services as of the date this Consent Agreement is signed by Respondents. For any other services or products that Respondents may provide the Held Separate Business, Respondents may charge no more than the same price they charge others for the same services or products. Respondents' personnel providing such services or products must retain and maintain all Material Confidential Information of the Held Separate Business on a confidential basis, and, except as is permitted by this Hold Separate Order, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any person whose employment involves any of Respondents' businesses, other than the Held Separate Business. Such personnel shall also execute confidentiality agreements prohibiting the disclosure of any Material Confidential Information of the Held Separate Business.
  - a. Respondents shall offer and the Held Separate Business shall obtain the following services and products only from Respondents:
    - (1) National brand advertising and promotion programs;
    - (2) Federal and state regulatory policy development and compliance;
    - (3) Human resources administrative services, including but not limited to labor relations support, pension administration, and health benefits;

- (4) Environmental health and safety services, which develops corporate policies and insures compliance with federal and state regulations and corporate policies;
  - (5) Preparation of tax returns; and
  - (6) Audit services.
- b. Respondents shall offer to the Held Separate Business any services and products that Respondents provide to their other businesses directly or through third party contracts, or that they have provided directly or through third party contracts to the businesses constituting the Held Separate Business at any time since January 1, 2002. The Held Separate Business may, at the option of the Manager with the approval of the Hold Separate Trustee, obtain such services and products from Respondents. The services and products that Respondents shall offer the Held Separate Business shall include, but shall ne BManager with the approval



- (13) Procurement of goods and services utilized in the ordinary course of business by the Held Separate Business;
    - (14) Legal services;
    - (15) Service station design, maintenance, and construction;
    - (16) Real estate services, including the identification and development of new sites; and
    - (17) Communication services, including electronic data gathering and transmission systems.
  - c. In connection with services and products other than those listed in a. above, and including but not limited to those listed in b. above, the Held Separate Business shall have, at the option of the Manager with the approval of the Hold Separate Trustee, the ability to acquire services and products from third parties unaffiliated with Respondents.
5. Respondents shall cause the Hold Separate Trustee, the Manager, and each employee of the Held Separate Business having access to Material Confidential Information to submit to the Commission a signed statement that the individual will maintain the confidentiality required by the terms and conditions of this Hold Separate Order. These individuals must retain and maintain all Material Confidential Information relating to the Held Separate Business on a confidential basis and, except as is permitted by this Hold Separate Order, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any of Respondents' businesses other than the Held Separate Business. These persons shall not be involved in any way in the management, production, distribution, sale, marketing, or financial operations of the competing products of Respondents.
  6. No later than ten (10) days after the date this Hold Separate Order becomes final, Respondents shall establish written procedures, subject to the approval of the Hold Separate Trustee, covering the management, maintenance, and independence of the Held Separate Business consistent with the provisions of this Hold Separate Order.
  7. No later than ten (10) days after the date this Hold Separate Order becomes final, Respondents shall circulate to employees of the Held Separate Business and to Respondents' employees who are responsible for the sale or distribution of Motor Fuels in the Colorado, Utah, Idaho, Montana, or Wyoming, a notice of this Hold Separate Order and the Consent Agreement, in the form attached as Attachments A and B.

8. The Hold Separate Trustee and the Manager shall serve, without bond or other security, at the cost and expense of Respondents, on reasonable and customary

the purposes of the Decision and Order, the Manager may reduce in scale or pace any capital or research and development project, or substitute any capital or research and development project for another of the same cost.

11. Respondents shall not, during the Hold Separate Period, offer the employees listed on Confidential Attachment D positions with Respondents. The acquirer approved by the Commission pursuant to the Decision and Order shall have the option of offering employment to any employees of the Held Separate Business. Respondents shall not interfere with the employment, by the Commission-approved acquirer, of such employees; shall not offer any incentive to such employees to decline employment with the Commission-approved acquirer or to accept other employment with the Respondents; and shall remove any impediments that may deter such employees from accepting employment with

16. Except as required by law, and except to the extent that necessary information is exchanged in the course of consummating the Merger; negotiating agreements to divest assets pursuant to the Consent Agreement and engaging in related due diligence; complying with this Hold Separate Order or the Consent Agreement; overseeing compliance with policies and standards concerning the safety, health and environmental aspects of the operations of the Held Separate Business and the integrity of the Held Separate Business' financial controls; defending legal claims, investigations or enforcement actions threatened or brought against or related to the Held Separate Business; or obtaining legal advice, Respondents' employees (excluding support services employees involved in providing support to the Held Separate Business pursuant to Paragraph II.D.4.) shall not receive, or have access to, or use or continue to use any Material Confidential Information of the Held Separate Business not in the public domain. Nor shall the Manager or employees of the Held Separate Business receive or have access to, or use or continue to use, any Material Confidential Information not in the public domain about Respondents and relating to Respondents' businesses, except such information as is necessary to maintain and operate the Held Separate Business. Respondents may receive aggregate financial and

1. The Monitor shall have the power and authority to monitor Respondents' compliance with the terms of Paragraph IV. of the Decision and Order and all referenced agreements required by that Paragraph.
2. Within ten (10) days after appointment of the Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondents' compliance with Paragraph IV. of the Decision and Order and all referenced agreements required by that Paragraph.
3. The Monitor shall serve for such time as is necessary to monitor Respondents' compliance with the provisions of Paragraph IV. of the Decision and Order and all referenced agreements required by that Paragraph.
4. The Monitor shall have full and complete access, subject to any legally recognized privilege of Respondents, to Respondents' personnel, books, records, documents, facilities and technical information relating to any relevant information, as the Monitor may reasonably request, including, but not limited to, all documents and records kept in the normal course of business that relate to the Propane Business. Respondents shall cooperate with any reasonable request of the Monitor. Respondents shall take no action to interfere with or impede the Monitor's ability to monitor Respondents' compliance with Paragraph IV. of the Decision and Order and all referenced agreements required by that Paragraph.
5. The Monitor shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the reasonable expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are necessary to carry out the Monitor's duties and responsibilities.
6. Respondents shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparations 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 misfeasance, gross negligence, willful or wanton acts, or bad faith by the Monitor.
7. If the Commission determines that the Monitor has ceased to act or failed to act diligently, or if the individual appointed pursuant to Paragraph III.A. is unable to serve as Monitor, the Commission may appoint a substitute Monitor. The Commission shall select the substitute 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 any proposed substitute Monitor within ten (10) days after receipt of written notice by the staff of the Commission to Respondents of the identity of any proposed substitute Monitor, Respondents shall be deemed to have consented to the selection of the proposed substitute Monitor.

8. 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 Paragraph IV. of the Decision and Order and any agreements required by that Paragraph.
9. The Monitor shall report in writing to the Commission, concerning compliance by Respondents with the provisions of the Decision and Order and any agreements required by that Paragraph, within twenty (20) days from the date of appointment and every sixty days thereafter for the first six (6) months, and then every six (6) months thereafter throughout the Monitor's term. Such report shall include at least the following:
  - a. whether Respondents have given the Monitor reports and access to all information and records pursuant to this Order;
  - b. what Respondents have done to maintain non-public information; and
  - c. any other information that is requested by the Commission in determining whether Respondents are complying with the terms of the Decision and Order.
10. Respondents may require the Monitor to sign a customary confidentiality agreement; provided, however, such agreement shall not restrict the Monitor from providing any information to the Commission.

#### **IV.**



**VI.**

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

- A. three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. the day after the last of the divestitures required by the Consent Agreement is completed; provided, however, that when an Asset to be Divested (as defined in the Decision and Order) that is included within the Held Separate Business is divested pursuant to the Consent Agreement, that asset shall cease to be held by the Held Separate Business.

By the Commission.

Donald S. Clark  
Secretary

**SEAL:**

**ISSUED:** August 30, 2002