

producer of crude oil and natural gases, among other things to cease entering into reciprocal dealings or understandings which systematically use actual or potential purchases to obtain or increase sales to certain companies.

Appearances

For the Commission: *Harold G. Munter and Louis Jordan.*

For the respondent: *Richard W. Pogue of Jones, Day, Cockley & Reavis, Cleveland, Ohio.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (15 U.S.C. Section 41, *et seq.*) and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Diamond Shamrock Corporation has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act, as amended, and it appearing to the Commission that a proceeding by it in respect thereof is in the public interest, hereby issues its complaint stating the following:

PARAGRAPH 1. Respondent Diamond Shamrock Corporation (hereinafter "Diamond") is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its principal place of business located at 1100 Superior Avenue, Cleveland, Ohio.

PAR. 2. Diamond's principal business is the manufacture and sale of chlorine and chlorine by-products, alkalis, silicates, chromates, organic chemicals, specialty chemical, fine chemicals, plastics, polyvinyl and coke and the exploration for and the production of crude oil and natural gases. Diamond's total assets as of Dec. 31, 1971, were \$702,924,000. Diamond's total net sales for 1971 were \$573,074,000 and it ranked 214th on *Fortune Magazine's* 500 Largest Industrial Companies list for 1971.

PAR. 3. In the course and conduct of its business as described above, Diamond has been and is now engaged in commerce as "commerce" is defined in the Federal Trade Commission Act, in that it has shipped and sold its products in the United States or caused them to be transported from its various places of manufacture and business for sale to other companies with places of business located in the several States of the United States.

PAR. 4. Except to the extent that competition has been frustrated, hindered, lessened and eliminated as hereinafter set forth, Diamond has been and is now engaged in competition with firms, partnerships and corporations engaged in the manufacture and marketing of the products described in Paragraph Two, above.

PAR. 5. In the course and conduct of its business as described above Diamond has been and is now engaged in unfair methods of competition and unfair acts and practices in commerce as described in Paragraph Three, above, in violation of Section 5 of the Federal Trade Commission Act in that Diamond has systematically utilized its actual or potential purchases to obtain or increase sales of its products, services or raw materials to certain companies.

In utilizing its purchases, as described above, to obtain or increase sales, Diamond has engaged in the following acts and practices but not limited thereto:

A. Compiled, coordinated or maintained sales and purchase informa-

tion which related Diamond's purchases from one or more companies to Diamond's sales to one or more companies.

B. Disclosed sales information to purchasing personnel or persons who by virtue of their responsibilities are able to influence purchases.

C. Utilized or attempted to utilize sales information to decide who should be a supplier or the extent to which a company should be a supplier of Diamond.

D. Disclosed purchase information to sales personnel or persons who by virtue of their responsibilities are able to influence sales.

E. Utilized or attempted to utilize purchases information to decide who should be a customer or to what extent a company should be a customer of Diamond.

F. Communicated with certain companies for the purpose of ascertaining, developing or furthering a relationship between Diamond's purchases from and its sales to such companies.

G. Purchased or agreed to purchase from certain companies on the understanding or condition that such companies would purchase from Diamond or its designees.

H. Purchased from certain companies in an attempt to induce such companies to purchase from Diamond.

I. Decreased or discontinued purchases from certain companies because such companies would not purchase or increase their purchases from Diamond.

PAR. 6. The acts and practices of Diamond, as alleged above, have had and still have the capacity, tendency and effect of (a) foreclosing actual or potential suppliers of Diamond, (b) foreclosing competitors of Diamond from selling to actual or potential suppliers of Diamond, (c) giving Diamond an unfair competitive advantage over its competitors or (d) depriving its competitors or actual or potential suppliers of full and free competition in the market place.

PAR. 7. The aforesaid acts and practices of Diamond constitute a restraint of trade and an unfair method of competition in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade 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 respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter

executed an agreement containing a consent order, an admission by the 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 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 thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Diamond Shamrock Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal place of business located at 1100 Superior Avenue, Cleveland, Ohio.

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

For the purposes of this order, the definitions below shall apply, although words of inclusion used herein are not words of limitation:

"Respondent Diamond" includes Diamond Shamrock Corporation, a corporation, its subsidiaries, successors, and assigns. "Respondent Diamond" shall not include Pickands, Mather & Co. ("PM"), Diamond Shamrock Oil & Gas Company ("Oil & Gas"), subsidiaries of PM or Oil & Gas, or successors and assigns of PM or Oil & Gas.

"Company" includes any business entity and its subsidiaries.

"Purchase" and "purchases" include any receipt of products, services, or raw materials from another company in exchange for money, products, services, or raw materials, other than any such receipt in connection with any transaction not prohibited by this order.

"Sell" and "sales" include any conveyance of products or raw materials to, or any performance of services for another company in exchange for money, products, services, or raw materials, other than any such conveyance in connection with any transaction not prohibited by this order.

"Personnel" includes officers, directors, employees agents and representatives.

"Purchasing decision" includes any decision as to the selection of any supplier, the allocation of purchases among suppliers, the purchase of any products, services or raw materials, the failure or refusal to place any company on a bidders list, the failure or refusal to designate any company as a qualified bidder, the selection of a winning bidder, or the continuance, discontinuance, increase or decrease of purchases from any supplier.

I

It is ordered, That respondent Diamond, its officers, directors, employees, agents, and representatives, directly or through any corporate or other device, shall forthwith cease and desist from:

a. Purchasing or entering into or adhering to any agreement or understanding to purchase from an actual or potential supplier on the mutual understanding that any of such purchases are conditioned upon or related to any sales by respondent Diamond or any other company;

b. Selling or entering into or adhering to any agreement or understanding to sell to an actual or potential customer on the mutual understanding that any of such sales are conditioned upon or related to purchases by respondent Diamond or any other company;

c. Communicating to another company that:

1. respondent Diamond's purchasing decisions will or may be conditioned upon or related to sales by respondent Diamond or any other company;

2. sales by respondent Diamond will or may be conditioned upon or related to purchases by respondent Diamond or any other company.

Nothing contained in Subparagraphs a., b., or c. shall prevent respondent Diamond from entering into, adhering to, or performing under any contractual term pursuant to which the volume of a product, service, or raw material purchased or sold depends upon amounts of said product, service, or raw material used or resold by the purchaser.

d. Discussing, comparing, exchanging, or utilizing data regarding actual or potential sales by respondent Diamond to any actual or potential supplier in making any purchasing decision;

e. Discussing, comparing, or exchanging statistical data or other information with another company in order to ascertain, develop, facilitate, or further any relationship between purchases and sales of the nature prohibited by this order;

f. Preparing or maintaining statistical data which compares or otherwise relates respondent Diamond's actual or potential purchases from a company to its actual or potential sales to such company;

g. Causing or permitting any of respondent Diamond's personnel whose primary duties are to directly obtain sales on behalf of respondent Diamond, including, but not limited to, respondent Diamond's personnel holding any of the positions listed in Appendix 2, hereof, to:

1. engage in purchasing;
2. obtain statistical data or other information which shows actual or potential purchases from any company;
3. specify or recommend to any other of respondent Diamond's personnel that any purchasing decision should be made because of the status of any company as an actual or potential customer;

h. Causing or permitting any of respondent Diamond's personnel whose primary duties are to directly purchase on behalf of respondent Diamond, including, but not limited to, respondent Diamond's personnel holding any of the positions listed in Appendix 3, hereof, to:

1. engage in obtaining or attempting to obtain sales;
2. obtain statistical data or other information which shows actual or potential sales to any company;
3. specify or recommend to any other of respondent Diamond's personnel that sales could or should be made to any company because of the status of such company as an actual or potential supplier.

The obligations imposed under Paragraphs d., f., g., and h. shall terminate and cease to be effective on and after the tenth (10th) anniversary of the date of this order.

II

It is further ordered, That respondent Diamond shall, within thirty (30) days subsequent to the date of this order, withdraw (and provide for continued isolation of):

- a. From the possession, custody, and control of all of its personnel holding any of the positions listed in Appendix 2, hereof, all statistical data and other information which shows actual or potential purchases from another company;
- b. From the possession, custody, and control of all of its personnel holding any of the positions listed in Appendix 3, hereof, all statistical data and other information which shows actual or potential sales to another company.

DIAMOND SHAMROCK CORP.

Decision and Order

III

It is further ordered, That respondent Diamond shall within thirty (30) days subsequent to the date of this order:

- a. Issue a copy of Attachment A, hereof, together with a copy of this order, to each of its personnel who has, at any time since Jan. 1, 1970, held any of the positions listed in Appendices, 1, 2 or 3, hereof, or who has compiled or distributed statistical sales or purchasing data, or who has directed or supervised such compilation or distribution;
- b. Insert and maintain the language of Attachment A, hereof, within all manuals and other such documents which set out respondent Diamond's policies or procedures for purchasing or for obtaining sales or its personnel relating to the compilation or distribution of statistical purchase or sales data.
- c. Instruct each of its personnel holding any of the positions listed in Appendix 3, hereof, to refrain from purchasing from a company with the purpose or effect of promoting or inducing sales to such company.

IV

It is further ordered, That respondent Diamond shall, within sixty (60) days subsequent to the date of this order mail a copy of Attachment B, hereof, together with a copy of this order, to:

- a. Each company from which it has, in any of the three (3) calendar years preceding the date of this order, made purchases in excess of fifty thousand dollars (\$50,000) in value;
- b. Each company to which it has, in any of the three (3) calendar years preceding the date of this order, made sales in excess of fifty thousand dollars (\$50,000) in value.

V

It is further ordered, That respondent Diamond shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in its corporate structure, 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 respondent which may affect compliance obligations arising out of this order.

VI

It is further ordered, That respondent Diamond shall, within sixty (60) days subsequent to the date of this order cause each of its then current personnel who holds any of the positions listed in Appendix 1, :

Decision and Order

or 3, hereof, to complete and furnish to respondent Diamond's legal department a statement in the form of Attachment C, hereof.

VII

It is further ordered, That for a period of three years from the date of this order, respondent Diamond shall:

- a. Distribute a copy of Attachment A, hereof, together with a copy of this order, to each of its personnel who, at any time subsequent to the date of this order, succeeds to any of the positions listed in Appendix 1, 2 or 3, hereof;
- b. Cause each of its personnel referred to in Paragraph a., above, to complete and furnish to respondent Diamond's law department a statement in the form of Attachment C, hereof, within 30 days after succeeding to any position listed in Appendix 1, 2 or 3, hereof.

VIII

It is further ordered, That respondent Diamond shall submit to the Federal Trade Commission, within sixty (60) days subsequent to the third (3rd) anniversary of the date of this order, all statements which it has received pursuant to Sections VI and VII, above.

IX

It is further ordered, That respondent Diamond shall within sixty (60) days subsequent to the date of this order, file with the Federal Trade Commission a written report setting forth in detail the manner and form in which it has complied with this order, including, but not limited to the following:

- a. The name and title of each individual to whom copies of Attachment A, hereof, and this order were issued pursuant to Section III, above;
- b. The name of each company to which copies of Attachment B, hereof, and this order were mailed pursuant to Section IV, above;

X

It is further ordered, That respondent Diamond shall forthwith distribute a copy of this order to each of its operating divisions and units.

XI

It is further ordered, That nothing contained in this order shall:

- a. Prohibit respondent Diamond from entering into arrangements (whether tolling, purchase and sale or otherwise) for the conversion or fabrication of products or raw materials, whether such conversion or fabrication operations are performed by or for respondent Diamond;

DIAMOND SHAMROCK CORP.

Decision and Order

1389

- b. Prohibit respondent Diamond from contracting for construction work or for the manufacture or installation of equipment or facilities for its own use on the condition that respondent Diamond's products, goods or services are to be used in the performance of such contracts;
- c. Prohibit respondent Diamond from offering, in connection with the sale of its products or goods, to purchase from or convert for purchasers thereof byproducts, such as scrap and spent acid, which does not exceed the amount and of a kind of byproduct such as scrap and spent acid, normally generated by them in the use of the respondent Diamond's products or goods; *Provided, however*, That such purchasers shall not be obligated to sell such byproducts to respondent Diamond or to have them converted by respondent Diamond as a condition of respondent Diamond's sale to such purchasers;
- d. Prohibit respondent Diamond from receiving or conveying products, services or raw materials under any term of any agreement or other mutual undertaking where such term provides for the exchange of products, services or raw materials of like or substantially like kinds.
- e. Prohibit respondent Diamond from receiving or conveying products, services, or raw materials under any term of any agreement or other mutual undertaking by which a supplier or potential supplier of a product, service or raw material in short supply requires respondent Diamond, as a condition of purchase by respondent Diamond, unilaterally imposed by such actual or potential supplier, to supply certain products, services or raw materials to that supplier or potential supplier.
- f. Prohibit respondent Diamond's personnel holding any of the positions listed on Appendix 2, hereof, and followed by brackets (1), from purchasing products, services, or raw materials for purposes of resale by respondent Diamond in the same or altered form; *Provided, however*, That such purchasing does not have the purpose or effect of developing, facilitating, or furthering any relationship between purchases and sales of the nature prohibited by this order.
- g. Prohibit respondent Diamond's personnel holding any of the positions listed on Appendix 3, hereof, from making any sales of products, raw materials, capital goods, or inventory which is defective, obsolete, or similarly unusable; *Provided, however*, That such sales do not have the purpose or effect of developing, facilitating, or furthering any relationship between purchases and sales of the nature prohibited by this order;

Decision and Order

Provided, however, That nothing in this paragraph or any of its subparagraphs shall be construed as having application to, or limiting in any manner whatsoever, any other proceeding or investigation initiated by the Federal Trade Commission, and that the Federal Trade Commission reserves the right to take further action including the issuance of a complaint with respect to transactions of the nature described in this paragraph and each of its subparagraphs in the event that it shall at any time in the future have reason to believe that any of such transactions may violate any of the statutes administered by it.

XII

It is further ordered, That respondent Diamond shall, for a period of five (5) years subsequent to the date of this order, maintain and retain:

- a. All written contracts and agreements of the nature described in Paragraph XI-d, above, and
 - b. Documents sufficient to disclose the terms and substance of all oral contracts and agreements of the nature described in Paragraph XI-d, above;
- together with documents sufficient to show the total annual dollar value and/or volume of deliveries and receipts pursuant to each such written or oral contract and agreement.

ATTACHMENT A

Re: Federal Trade Commission Order Concerning the Selling and Purchasing Activities of Diamond Shamrock Corporation and its Subsidiaries.
Pursuant to an Order of the Federal Trade Commission, we issue the following policies and guidelines:

General

No personnel of the Company shall:

1. discuss, compare, or exchange statistical data or other information with another company in order to ascertain, develop, facilitate, or further any relationship between our purchases and our sales.
2. prepare, maintain or in any manner obtain statistical data which compares or otherwise relates our actual or potential purchases from a company to our actual or potential sales to such company.

Purchasing

It is our policy to purchase solely on the basis of price, quality, and service. Purchasing personnel shall be prepared to justify all purchases in light of these criteria. No purchase may be conditioned upon or related to our sales or sales by any other company, nor shall any employee suggest or imply to any actual or potential supplier that any purchase is so conditioned or related.

No purchasing personnel shall:

1. engage in obtaining or attempting to obtain sales;
2. in any manner obtain statistical data or other information which shows actual or potential sales to any company;

DIAMOND SHAMROCK CORP.

1389

Decision and Order

3. specify or recommend to any of our non-purchasing personnel that sales could or should be made to any company.

Selling

No personnel of the Company promoting or obtaining sales to any actual or potential customer shall suggest or imply that such sales are conditioned upon or related to our purchases or purchases by any other company.

No sales personnel shall:

1. engage in purchasing;
2. in any manner obtain statistical data or other information which shows actual or potential purchases from any company;
3. specify or recommend to any of our non-sales personnel that purchases could or should be made from any company.

The provisions of the Order contain various conditions, and in the case of any conflict between the above statement of policies and guidelines and the terms of the Order, the latter shall prevail.

ATTACHMENT B

To Our Customers and Suppliers:

Pursuant to the attached Order of the Federal Trade Commission, we herewith advise you that it is the policy of Diamond Shamrock Corporation and its subsidiaries to purchase solely on the basis of price, quality, and service. We wish to assure you that our purchases will in no way be conditioned upon or related to our sales to you or any other company.

Chief Executive Officer

ATTACHMENT C

Name and address
Position

I have been supplied with a copy of the Order of the Federal Trade Commission against Diamond Shamrock Corporation dated _____, and a copy of Attachment A thereto. I have read those documents and have received an explanation of the Order from counsel for the Company and counsel has answered my questions concerning it. I understand that the Order may affect the manner in which my duties may be conducted on behalf of the Company and that violation of its provisions may subject me to disciplinary proceedings which may include dismissal from my employment. I further understand that I may in the future be required to respond to inquiries by authorized representatives of the Federal Trade Commission regarding the manner in which I have conducted such duties. Accordingly, I am filing for my reference a copy of the Order and Attachment A thereto.

Signature

APPENDIX 1

EXECUTIVE PERSONNEL—DIAMOND SHAMROCK CORPORATION

Chairman of the Board and Chief Executive Officer
President and Chief Operating Officer
Executive Vice President, Corporate Development

FEDERAL TRADE COMMISSION DECISIONS

Decision and Order

83 F.T.C.

Vice President, Finance
Vice President, Research & Corporate Development
Vice President, Administration
Vice President and Secretary
Treasurer
Controller

EXECUTIVE PERSONNEL—DIAMOND SHAMROCK CHEMICAL COMPANY

President
Vice President, Diamond Shamrock Corporation
Executive Vice President
Group Vice President
Senior Vice President
Vice President

APPENDIX 2

Personnel whose primary duties are directly to obtain sales on behalf of Respondent

Diamond:

AG CHEM SALES SPECIALIST
Ag Chem Division
ASSISTANT DISTRICT SALES
MANAGER
District Sales Offices
ASSISTANT PRODUCT
MANAGER []
Electro Chemicals Division-Soda
Products Division
AUTOMOTIVE ACCOUNT
REPRESENTATIVE
Dacromet
DIRECTOR OF SALES
Industrial Chemicals Sales Office
DISTRICT PRODUCT MANAGERS
District Sales Offices
DISTRICT SALES MANAGERS
District Sales Offices
DIVISION SALES MANAGER []
Electro Chemicals Division
FIELD SALES MANAGER
Nopco Division
FIELD SALES SUPERVISOR
Nopco Division
GROUP MARKET MANAGER []
Nopco Division
MANAGER-MARKETING AND
SALES []
Soda Products Division
MANAGER SANURIL SYSTEMS
Concord
MANAGER SANILEC SYSTEMS

Concord
MARKET DEVELOPMENT
SPECIALIST
Concord
MARKET MANAGER []
Nopco Division
MARKETING SPECIALIST
Nopco Division
NATIONAL ACCOUNTS
MANAGER
Agricultural Chemicals Division
NATIONAL ACCOUNTS SALES
REPRESENTATIVE
Fine Chemicals Division
NATIONAL ACCOUNTS
SUPERVISOR
Nopco Division
PRODUCT MANAGER []
Ag Chem Division-Soda Products
Division-Electro Chemicals
Division
REGIONAL MANAGER
Plastics Division
REGIONAL SALES MANAGER
Ag Chem Division-Fine
Chemicals Division
SALESMAN
Chemicals Division-Nopco
Division-Fine Chemicals
Division-District Sales Offices
SALES COORDINATOR
Chemicals Division-Nopco

1401

Decision and Order

Division
 SALES MANAGER
 Chemetals Division-Dacromet-
 Nopco Division-Harte & Co.
 SALES REPRESENTATIVE
 Harte & Co.
 SALES TECHNICAL SERVICE
 MAN
 Plastics Division
 SENIOR TECHNICAL SALES

REPRESENTATIVE
 Plastics Division
 TECHNICAL SALES
 REPRESENTATIVE
 Nopco Division-Plastics Division
 TECHNICAL SPECIALIST
 Concord
 VICE PRESIDENT, MARKETING
 Harte & Co.

APPENDIX 3

Personnel whose primary duties are directly to purchase on behalf of
 Respondent Diamond:

ASSISTANT PURCHASING AGENT
 Nopco Division
 BUYER
 Purchasing Department-Deer
 Park Works
 JUNIOR BUYER
 Purchasing Department
 MANAGER ADMINISTRATION
 Chemetals Division
 MANAGER PRODUCT
 DEVELOPMENT AND
 COORDINATION
 Fine Chemicals Division
 MANAGER/PURCHASING AND
 STORES
 Purchasing Department
 MATERIALS MANAGER
 Purchasing Department
 NATIONAL ACCOUNTS/FLEET
 ADMINISTRATION
 Purchasing Department

PLANT PURCHASING AGENT
 Purchasing Department
 PROJECT COORDINATOR
 Purchasing Department
 PURCHASING AGENT
 Purchasing Department
 PURCHASING FIELD
 ADMINISTRATOR
 Purchasing Department
 PURCHASING MANAGER
 Purchasing Department
 PURCHASING STORE MANAGER
 Deer Park Works
 SENIOR BUYER
 Purchasing Department-Deer
 Park Works
 SUPERVISOR OF CONSTRUCTION
 Purchasing Department
 WORKS PURCHASING AGENT
 Deer Park Works

IN THE MATTER OF

FOOD FAIR STORES, INC., ET AL.

Docket 8935. Interlocutory Order, Mar. 19, 1974

Order denying respondents' application for review, including briefs and oral argument, of
 administrative law judge's denial of motion to quash certain subpoenas *duces tecum*.

Appearances

For the Commission: *Lewis F. Parker* and *Robert W. Fleishman*.
 For the respondents: *Alex Akerman, Shipley, Akerman, Stein &*
Kaps, Wash., D.C., Warren J. Kaps, Stein & Rosen, New York City
and Stein, Mitchell & Mezines, Wash., D.C.