

IN THE MATTER OF

DIAMOND SHAMROCK CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT AND SEC. 8 OF THE CLAYTON
ACT

Docket C-2685. Complaint, July 17, 1975-Decision, July 17, 1975

Consent order requiring a Cleveland, Ohio, energy company, among other things to cease permitting any individual to serve on its board of directors if such individual is or would be at the same time a director of The Standard Oil Company, an Ohio Corporation.

Appearances

For the Commission: *Barry L. Malter.*

For the respondent: *John A. Wilson, Cleveland, Ohio.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the above named respondents have violated the provisions of Section 8 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, as amended, and that a proceeding in respect thereof would be in the interest of the public, issues this complaint, stating its charges as follows:

PARAGRAPH 1. Respondent The Standard Oil Company (hereinafter referred to as Sohio) is a corporation organized and existing under and by virtue of the laws of the State of Ohio, maintaining its principal place of business at 101 W. Prospect Ave., Cleveland, Ohio. At all times relevant to this complaint, Sohio had capital, surplus, and undivided profits aggregating in excess of \$1 million. In 1972, Sohio had sales and operating revenues of \$1,446,636,000.

PAR. 2. Respondent Diamond Shamrock Corporation (hereinafter referred to as Diamond Shamrock) is a corporation organized and existing under and by virtue of the laws of the State of Delaware,

maintaining its principal place of business at 1100 Superior Ave., Cleveland, Ohio. At all times relevant to this complaint, Diamond Shamrock had capital, surplus and undivided profits aggregating in excess of \$1 million. In 1972 Diamond Shamrock had sales and operating revenues of \$617,337,000.

PAR. 3. In 1974, and previously thereto, Mr. Horace A. Shepard served simultaneously as a director of Sohio and Diamond Shamrock. Mr. Shepard resigned from the board of directors of Diamond Shamrock on July 26, 1974, after having been notified of the Commission's intention to issue a complaint in this matter.

PAR. 4. (a) The business of Sohio and Diamond Shamrock encompasses, but is not limited to, the exploration, production and sale of crude petroleum and natural gas.

(b) Respondents engage in the aforesaid activities in the same geographic areas of the United States including, but not limited to, Louisiana, Oklahoma, Texas and Wyoming.

PAR. 5. (a) Sohio and Diamond Shamrock have been and are, by virtue of their business and location of operations, competitors of each other.

(b) The elimination of competition by agreement or otherwise between Sohio and Diamond Shamrock would hinder, foreclose, and restrain competition or tend to create a monopoly in the exploration, production, and sale of crude petroleum and natural gas.

(c) Sohio and Diamond Shamrock each engages in commerce as that term is defined in the Clayton Act and the Federal Trade Commission Act.

PAR. 6. The director interlock, as herein alleged, constitutes a violation of Section 8 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereto with violation of the Federal Trade Commission Act, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; 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 complaint to issue herein, 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 considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, and having duly considered the comment filed thereafter pursuant to Section 2.34(b) of its rules, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, in the form contemplated by said agreement, makes the following jurisdictional finding, and enters the following order:

1. Respondent, Diamond Shamrock Corporation (Diamond Shamrock), 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 1100 Superior Ave., 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

I

It is ordered, That Diamond Shamrock Corporation (Diamond Shamrock), its successors and assigns, do forthwith cease and desist from permitting any individual to serve on its board of directors if such individual is or would be at the same time a director of The Standard Oil Company, an Ohio corporation (Sohio).

II

It is further ordered, That Diamond Shamrock shall, within thirty days after service of this order, and annually for a period ending five (5) years thereafter, request from each member of its board of directors a written statement which discloses the name, business, and location of operations of each other corporation of which such member is also a director, exclusive of any corporation in which Diamond Shamrock controls, directly or indirectly through subsidiaries, more than 50 percent of the voting stock; exclusive of any corporation which derives annual gross revenues of less than \$1 million from the exploration, production and sale of natural gas and crude petroleum; and exclusive of any corporation not engaged in "commerce" as defined in Section 1 of the Clayton Act as amended or Section 4 of the Federal Trade Commission Act.

III

It is further ordered, That for a period ending five (5) years after service of this order, Diamond Shamrock shall, at least thirty (30) days prior to any directors' meeting at which one or more directors will be elected or the mailing of proxy statements for any shareholder meeting at which one or more directors will be elected, request from each person who is being considered as a member of the board of directors, but has not been a member of the board of directors during the previous year, a written statement which discloses the information described in Paragraph II.

IV

It is further ordered, That for a period ending five (5) years after service of this order, Diamond Shamrock shall not permit on its board of directors any person who fails to submit a written statement pursuant to Paragraphs II and III or any person who is a director of another corporation named in response to the statements required pursuant to Paragraphs II and III when said statement reveals or when a reasonably diligent investigation would reveal to respondent that such other corporation is a competitor of Diamond Shamrock by virtue of its business and location of operations in the exploration, production or sale of crude petroleum or natural gas. If compliance with Paragraphs I and IV requires any member of Diamond Shamrock's board of directors to resign or to be removed from the board of directors of either Diamond Shamrock or such other corporation, Diamond Shamrock shall be allowed a reasonable period of time within which to take any legal or other steps which are necessary to secure compliance with this order.

V

It is further ordered, That Diamond Shamrock notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent which may affect compliance obligations arising out of this order, such changes to include, but not be limited to, dissolution, assignment or sale resulting in the emergence of a successor corporation.

VI

It is further ordered, That respondent Diamond Shamrock shall, within thirty (30) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and

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form in which it has complied with this order, and shall within sixty (60) days submit copies of those lists provided by all current directors of Diamond Shamrock pursuant to Paragraphs II and III designating all other corporations of which they are directors.
