

IN THE MATTER OF

SHELL OIL COMPANY, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3803. Complaint, April 21, 1998--Decision, April 21, 1998

This consent order requires, among other things, the two petroleum corporations to divest, to Commission-approved buyers, a package of assets, including a refinery, a terminal and certain retail gasoline stations.

Appearances

For the Commission: *Richard Liebeskind, Frank Lipson, Arthur Nolan, Phillip Broyles and William Baer.*

For the respondents: *Steven Newborn, Rogers & Wells, Washington, D.C. and Marc Schildkraut and Tim Boyle, Howrey & Simon, Washington, D.C.*

DECISION AND ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed joint ventures of Shell Oil Co. ("Shell") and Texaco Inc. ("Texaco"), and it now appearing that Shell and Texaco, hereinafter sometimes referred to as "respondents," have been furnished with a copy of a 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 respondents with violations of the Clayton Act and the Federal Trade Commission Act;

Respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents 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 respondents 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 respondents have violated the said Acts, and that the complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments received, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Shell Oil 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 One Shell Plaza, Houston, Texas.

2. Respondent Texaco 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 2000 Westchester Ave., White Plains, New York.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and over the respondents, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That, as used in this order, the following definitions shall apply:

- A. "*Shell*" means Shell Oil Company, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its joint ventures (including the Joint Venture), subsidiaries, divisions, groups and affiliates controlled by Shell, and the respective

directors, officers, employees, agents, representatives, successors, and assigns of each.

B. "*Texaco*" means Texaco Inc., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its joint ventures (including the Joint Venture), subsidiaries, divisions, groups and affiliates controlled by Texaco, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "*Additional Shell Oahu Retail Assets*" means one or more Retail Sites (including all Retail Assets relating to such Retail Sites) on Oahu owned by Shell having an aggregate 1996 gasoline sales volume and 1996 average gasoline sales volumes per month per station at least equal to the gasoline volume of:

(a) Texaco Historical Oahu Retail Assets that since October 1, 1996, became Shell Oahu Retail Assets; and

(b) Each of Texaco's Oahu Retail Sites that cannot be assigned without landlord approval and for which the necessary approvals could not be obtained after good faith, diligent effort.

D. "*Additional Texaco Oahu Retail Assets*" means one or more Retail Sites (including all Retail Assets relating to such Retail Sites) on Oahu owned by Texaco having an aggregate 1996 gasoline sales volume and 1996 average gasoline sales volumes per month per station at least equal to the gasoline sales volume of:

(a) Shell Historical Oahu Retail Assets that since October 1, 1996, became Texaco Oahu Retail Assets; and

(b) Each of Shell's Oahu Retail Sites that cannot be assigned without landlord approval and for which the necessary approvals could not be obtained after good faith, diligent effort.

E. "*Anacortes Refinery Assets*" means Shell's refinery located in Anacortes, Washington, and all tangible and intangible assets used in operating said refinery. "Anacortes Refinery Assets" shall also include all Assigned Northwest Seller Agreements and, at the acquirer's option, all contracts, agreements or understandings relating to the transportation, terminaling, storage or sale of the refinery's petroleum product output, provided, however, that respondents are not required to divest agreements with Northwest Branded Sellers other than Assigned Northwest Seller Agreements, and provided, further, that "Anacortes Refinery Assets" does not include Shell's proprietary trade names and trademarks. At the acquirer's option, "Anacortes Refinery Assets" shall include all agreements under

which Shell receives crude oil or other inputs at or for the Anacortes refinery, and all exchange agreements under which Shell delivers petroleum products refined at the Anacortes refinery. In the event that respondents are unable to satisfy all conditions necessary to divest any intangible asset, subject to Commission approval, respondents shall substitute equivalent assets. A substituted asset will not be deemed to be equivalent unless it enables the refinery to perform the same function at the same or less cost.

F. "*Applicable Consent Decree*" means (i) a consent decree in an action commenced by the States of Washington or Oregon, under which decree respondents will divest the Anacortes Refinery Assets; (ii) a consent decree in an action commenced by the State of California, under which decree respondents will divest the San Diego Divestiture Assets; or (iii) a consent decree in an action commenced by the State of Hawaii under which respondents will divest the Oahu Distribution Assets.

G. "*Assigned Northwest Seller Agreements*" means all Replacement Supply Contracts between respondents and any Northwest Branded Seller, which a Northwest Branded Seller has consented to be assigned and respondents have assigned to the acquirer of the Anacortes Refinery Assets.

H. "*Colonial*" means Colonial Pipeline Company.

I. "*Commission*" means the Federal Trade Commission.

J. "*Existing Supply Agreements*" means:

1. Each supply contract and related agreements between Shell and each Northwest Branded Seller that gives such Northwest Branded Seller the right to sell or resell gasoline using Shell's brand name at any Retail Site in Oregon or Washington, including all loan agreements, debts, obligations, promissory notes, and similar agreements with such Northwest Branded Seller; and

2. Each supply contract and related agreements between Texaco and each Former Shell Northwest Branded Seller that gives such Former Shell Northwest Branded Seller the right to sell or resell gasoline using Texaco's brand name at any Retail Site in Oregon or Washington that was a Shell branded Retail Site on or after October 1, 1996, including all loan agreements, debts, obligations, promissory notes, and similar agreements with such Former Shell Northwest Branded Seller.

K. "*Former Shell Northwest Branded Seller*" means any person that was a Shell Northwest Branded Seller as of October 1, 1996, and that, on the date of divestiture of the Anacortes Refinery Assets, has,

by virtue of a contract or agreement with Texaco, the right to sell or resell gasoline using Texaco's brand name at Retail Sites in Oregon or Washington, or to resell gasoline to such a person.

L. "*Huntway*" means Huntway Refining Company, with offices located at 1651 Alameda Street, Wilmington, California, and any of its successors or assigns that continue the operation of Huntway's asphalt refinery at Benicia, California.

M. "*Huntway Supply Agreement*" means the agreement or agreements between Huntway and Texaco pursuant to which Texaco will supply heavy crude oil to Huntway from the San Joaquin Valley, dated November 25, 1997, and attached hereto as Confidential Exhibit A. Subject to the provisions of paragraph VII.C of this order, Huntway and Texaco may from time to time amend the Huntway Supply Agreement.

N. "*Joint Venture*" means the joint venture between Shell and Texaco known as "Westco" (publicly announced on March 18, 1997, and described in a Memorandum of Understanding of the same date); the joint venture among Shell, Texaco and Saudi Refining, Inc. known as "Eastco" (publicly announced July 16, 1997, and described in a Memorandum of Understanding of the same date); and any other combination of the United States petroleum refining, product transportation, or marketing assets or operations of respondents, and all of their directors, officers, employees, agents and representatives, successors, and assigns; subsidiaries, divisions, groups and affiliates, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

O. "*Long-term lease*" means a lease the terms of which allow respondents to divest to the acquirer of Retail Assets a right to occupy the Retail Assets for ten (10) years or longer from the date on which the order becomes final, and where such divestiture is not subject to a landlord approval or, if subject to such approval, respondents have obtained the necessary approval prior to the divestiture. "Long-term lease" does not include a leasehold interest in which any respondent is a lessor.

P. "*Northwest Branded Seller*" means Shell Northwest Branded Sellers and Former Shell Northwest Branded Sellers.

Q. "*Oahu Distribution Assets*" means either the Shell Oahu Distribution Assets or the Texaco Oahu Distribution Assets.

R. "*Person*" means any individual, partnership, association, company or corporation.

S. "*Plantation*" means Plantation Pipe Line Company.

T. "*Replacement Supply Contract*" means a supply contract and related agreements identical to Existing Supply Agreements between

respondents and any Northwest Branded Seller, except for terms relating to respondents' trademarks, trade names, logos, trade dress, identification signs, additized product inventory, credit card agreements, satellite-based or centralized credit card processing equipment not incorporated in gasoline dispensers, or system-wide software and databases, which Replacement Supply Contract with the Northwest Branded Seller's consent shall be assigned to the acquirer of the Anacortes Refinery Assets.

U. "*Respondents*" means Shell and Texaco, individually and collectively, and the Joint Venture.

V. "*Retail Assets*" means, for each Retail Site, all assets, tangible or intangible, that are used at that Retail Site, including but not limited to all related permits and contracts, and all assets relating to all ancillary businesses (such as automobile mechanical service, convenience store, restaurant or car wash) located at each Retail Site. Respondents shall make good faith, diligent efforts to obtain all third-party approvals necessary to convey all licenses, permits, consents and ancillary businesses with each Retail Site. "*Retail Assets*" do not include respondents' proprietary trademarks, trade names, logos, trade dress, identification signs, additized product inventory, petroleum franchise agreements, petroleum product supply agreements, credit card agreements, satellite-based or centralized credit card processing equipment not incorporated in gasoline dispensers, or system-wide software and databases. Upon divestiture, respondents shall cancel all dealer leases, dealer loans, building incentive agreements, and related dealer agreements between respondents and their lessee dealers applicable to divested Retail Sites.

W. "*Retail Site*" means a business establishment from which gasoline is sold to the general public.

X. "*San Diego Divestiture Assets*" means a package of San Diego Retail Assets, to be identified by respondents but approved by the Commission, that (i) includes individual Retail Sites each of which sold an average of at least 85,000 gallons of gasoline per month during 1996; (ii) each of which complies with all 1998 environmental requirements for underground storage tanks; (iii) for each of which respondents can convey fee ownership or a long-term lease; and (iv) in the aggregate had retail gasoline sales from Retail Sites of at least 43,200,000 gallons during calendar year 1996.

Y. "*San Diego Retail Assets*" means all Retail Assets in San Diego County, California, that are owned by respondents or leased by respondents from another person.

Z. "*Shell Historical Oahu Retail Assets*" means all Retail Assets on the island of Oahu, Hawaii, that were owned by Shell on or after October 1, 1996, or leased by Shell from another person on or after October 1, 1996.

AA. "*Shell Northwest Branded Seller*" means any person (other than Shell) who has, by virtue of a contract or agreement with Shell, the right to sell gasoline using Shell's brand name at Retail Sites in Oregon or Washington, or the right to resell gasoline to any such person.

BB. "*Shell Oahu Distribution Assets*" means Shell's Oahu Terminal, Shell Oahu Retail Assets, and Additional Texaco Oahu Retail Assets.

CC. "*Shell Oahu Retail Assets*" means all Retail Assets on the island of Oahu, Hawaii, owned by Shell or leased by Shell from another person.

DD. "*Shell's Oahu Terminal*" means all of Shell's interest in its petroleum storage and distribution terminal on the island of Oahu, Hawaii, including all tangible or intangible assets that are used to operate the terminal for the storage and distribution of petroleum products, including but not limited to all real estate, storage tanks, loading and unloading facilities, permits and contracts pertaining to the terminal facilities. "Shell's Oahu Terminal" does not include respondents' proprietary additive packages, trademarks, trade names and identification signs; respondents' proprietary equipment, computer hardware and software used to monitor and verify product specifications; and system-wide software, databases and respondents' proprietary equipment used to control, operate and manage the terminal.

EE. "*Texaco's Oahu Terminal*" means all of Texaco's interest in its petroleum storage and distribution terminal on the island of Oahu, Hawaii, including all tangible or intangible assets that are used to operate the terminal for the storage and distribution of petroleum products, including but not limited to all real estate, storage tanks, loading and unloading facilities, permits and contracts pertaining to the terminal facilities. "Texaco's Oahu Terminal" does not include respondents' proprietary additive packages, trademarks, trade names and identification signs; respondents' proprietary equipment, computer hardware and software used to monitor and verify product specifications; and system-wide software, databases and respondents' proprietary equipment used to control, operate and manage the terminal.

FF. "*Texaco Historical Oahu Retail Assets*" means all Retail Assets on the island of Oahu, Hawaii, that were owned by Texaco on

or after October 1, 1996, or leased by Texaco from another person on or after October 1, 1996.

GG. "*Texaco Oahu Distribution Assets*" means Texaco's Oahu Terminal, Texaco Oahu Retail Assets, and Additional Shell Oahu Retail Assets.

HH. "*Texaco Oahu Retail Assets*" means all Retail Assets on the island of Oahu, Hawaii, owned by Texaco or leased by Texaco from another person.

II.

It is further ordered, That:

A. Respondents shall divest, absolutely and in good faith and at no minimum price, within six (6) months from the date the order becomes final, the Anacortes Refinery Assets.

B. Respondents shall divest the Anacortes Refinery Assets only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

C. The purpose of the divestiture of the Anacortes Refinery Assets is to ensure the continued use of the Anacortes Refinery Assets in the same businesses in which the Anacortes Refinery Assets were engaged at the time of the announcement of the proposed Joint Venture, and to remedy the lessening of competition in the refining of conventional gasoline, CARB gasoline and jet fuel resulting from the proposed Joint Venture as alleged in the Commission's complaint.

D. Respondents shall offer each Northwest Branded Seller a Replacement Supply Contract. Within five (5) days of final approval of this order by the Commission, respondents shall send a notice, in the form of Exhibit B to this order, to each Northwest Branded Seller, offering each Northwest Branded Seller a Replacement Supply Contract that would give the Northwest Branded Seller the option of affiliating with the acquirer of the Anacortes Refinery Assets upon divestiture of the Anacortes Refinery Assets. Within two (2) days after respondents sign a letter of intent with a prospective acquirer of the Anacortes Refinery Assets, respondents shall send a notice, in the form of Exhibit B to this order, to each Northwest Branded Seller, again offering each Northwest Branded Seller a Replacement Supply Contract, identifying the prospective acquirer, and stating the deadline for accepting the Replacement Supply Contract and consenting to the assignment of that Contract to the acquirer. Respondents shall not attempt in any way to discourage any Northwest Branded Seller from accepting a Replacement Supply Contract. Respondents shall identify each Northwest Branded Seller to each prospective acquirer of the Anacortes Refinery Assets that

has received other confidential information of respondents in connection with its inquiry. Respondents shall allow any Northwest Branded Seller to consent to the assignment of the Replacement Supply Contract for at least thirty (30) days after the second notice is mailed.

E. Until the divestiture required by paragraph II.A has been completed, respondents shall not permit or approve any branding application by any of their jobbers to supply any Shell Northwest Branded Seller, under which such Shell Northwest Branded Seller would sell or resell Texaco branded gasoline, except to the extent respondents have the right to assign or release that Shell Northwest Branded Seller without the jobber's consent or approval.

F. Respondents shall comply with all terms of the Agreement to Hold Separate, attached to this order and made a part hereof as Exhibit C. The Agreement to Hold Separate shall continue in effect until such time as respondents have divested all the Anacortes Refinery Assets as required by this paragraph II, or until such other time as provided in the Agreement to Hold Separate.

III.

It is further ordered, That:

A. Respondents shall divest to a single acquirer, absolutely and in good faith and at no minimum price, within six (6) months from the date the order becomes final, the San Diego Divestiture Assets.

B. Respondents shall divest the San Diego Divestiture Assets to a single acquirer that receives the prior approval of the Commission, only in a manner that receives the prior approval of the Commission, and in a package of specific Retail Sites that receives the prior approval of the Commission.

C. The purpose of the divestiture of the San Diego Divestiture Assets is to ensure the continued use of the San Diego Divestiture Assets in the same business in which the San Diego Divestiture Assets were engaged at the time of the announcement of the proposed Joint Venture, and to remedy the lessening of competition in the wholesale and retail sale of gasoline in San Diego County, California, resulting from the proposed Joint Venture, as alleged in the Commission's complaint.

D. Pending divestiture of the San Diego Divestiture Assets, respondents shall take such actions as are necessary to maintain the viability and marketability of the San Diego Retail Assets and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the San Diego Retail Assets except for ordinary wear and tear. Respondents shall continue at least at their scheduled

pace all capital projects involving the San Diego Retail Assets that were ongoing, planned, or approved as of or after October 1, 1997, and otherwise maintain the San Diego Retail Assets to at least the same standards and on the same schedule as respondents have been maintaining the San Diego Retail Assets until the date of divestiture. Respondents shall not remove or degrade the brand identification at the San Diego Retail Assets, until the San Diego Divestiture Assets are divested.

IV.

It is further ordered, That:

A. Respondents shall divest, absolutely and in good faith and at no minimum price, within six (6) months from the date the order becomes final, either the Texaco Oahu Distribution Assets or the Shell Oahu Distribution Assets.

B. Respondents shall divest the Texaco Oahu Distribution Assets or the Shell Oahu Distribution Assets only to a single acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission.

C. The purpose of the divestiture of the Oahu Distribution Assets is to ensure the continued use of the Oahu Distribution Assets in the same business in which the Oahu Distribution Assets were engaged at the time of the announcement of the proposed Joint Venture, and to remedy the lessening of competition resulting from the proposed Joint Venture in the terminaling of gasoline and diesel fuel on Oahu and the wholesale and retail sale of gasoline and diesel fuel on Oahu, as alleged in the Commission's complaint.

D. Pending divestiture of the Oahu Distribution Assets, respondents shall take such actions as are necessary to maintain the viability and marketability of the Oahu Distribution Assets and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Oahu Distribution Assets except for ordinary wear and tear. Respondents shall continue at least at their scheduled pace all capital projects involving the Oahu Distribution Assets that were ongoing, planned, or approved as of or after October 1, 1997, and otherwise maintain the Oahu Distribution Assets to at least the same standards and on the same schedule as respondents have been maintaining the Oahu Distribution Assets, until the date of divestiture. Respondents shall not remove or degrade the brand identification at the Oahu Distribution Assets, until the Oahu Distribution Assets are divested.

V.

It is further ordered, That:

A. Respondents shall divest, absolutely and in good faith and at no minimum price, within six (6) months from the date the order becomes final, either all of Texaco's interest in Colonial or all of Shell's interest in Plantation.

B. Respondents shall divest the Colonial or Plantation interest identified in subparagraph V.A only to an acquirer or acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

C. The purpose of the divestiture of either Texaco's interest in Colonial or Shell's interest in Plantation is to prevent an interlock or common owner in both of these pipeline systems and to remedy the lessening of competition resulting from the proposed Joint Venture as alleged in the Commission's complaint.

D. Pending divestiture of either Texaco's interest in Colonial or Shell's interest in Plantation, respondents shall not serve on Colonial's board of directors or any committee thereof, attend meetings of Colonial's board of directors or any committee thereof, vote any of Texaco's stock in Colonial, or receive any information from Colonial not made available to all shippers or to the public at large, except that a Texaco representative may observe meetings of the Colonial board of directors and may receive and use nonpublic information of Colonial solely for the purpose of effectuating the divestiture of Texaco's interest in Colonial pursuant to this order. Said Texaco representative shall be identified to the Commission, shall not divulge any nonpublic Colonial information to respondents (other than employees of respondents whose sole responsibility relating to the Joint Venture is to effectuate the divestiture, and agents of respondents specifically retained for the purpose of effectuating the divestiture), and shall acknowledge these obligations in writing to the Commission.

VI.

It is further ordered, That:

A. If respondents have not divested the assets required to be divested pursuant to paragraphs II, III, IV, or V, absolutely and in good faith and with the Commission's prior approval within the time periods required, the Commission may appoint either David Prend or another person or persons to act as trustee (or trustees) to divest those assets that respondents have failed to divest as required by this order. If respondents have failed to divest the San Diego Divestiture Assets

as required by paragraph III above, the trustee may select Retail Assets from those San Diego Retail Assets that respondents own in fee or can divest a long-term lease, in accordance with the requirements of paragraph III. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, respondents shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a 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 trustee, pursuant to Section 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.

B. If a trustee is appointed by the Commission or a court pursuant to paragraph VI.A of this order, respondents shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall either (i) select David Prend to be the trustee; or (ii) select another person or persons as trustee, subject to the consent of respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee, other than David Prend, within ten (10) days after notice by the staff of the Commission to respondents of the identity of any proposed trustee, respondents shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the assets to be divested.

3. Within ten (10) days after appointment of the trustee, respondents shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestitures required by this order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in paragraph VI. B. 3 to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or

believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the assets to be divested or to any other relevant information, as the trustee may request. Respondents shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by respondents shall extend the time for divestiture under this paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondents' absolute and unconditional obligation to divest expeditiously at no minimum price. The divestiture shall be made in the manner and to the acquirer or acquirers as set out in paragraphs II, III, IV, or V of this order, as applicable; provided, however, if the 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 trustee shall divest to the acquiring entity or entities selected by respondents from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The 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 trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the respondents, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the assets to be divested.

8. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses

arising out of, or in connection with, the performance of the 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 liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph VI. A of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the assets to be divested.

12. The trustee shall report in writing to respondents and the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestitures.

VII.

It is further ordered, That:

A. Respondents shall provide heavy crude oil to Huntway pursuant to the Huntway Supply Agreement for a period of ten (10) years from the effective starting date of the Huntway Supply Agreement. The Huntway Supply Agreement shall be fully assignable to any successor of Huntway that continues to operate the asphalt refinery now operated by Huntway, and may be canceled by respondents only if Huntway's asphalt refinery ceases operations "permanently," as such "permanent" cessation is defined in the Huntway Supply Agreement.

B. The purpose of the requirements of this paragraph VII is to ensure that Texaco's volumes and prices of undiluted heavy crude oil supplied to Huntway are unaffected by changes in Texaco's incentives as a result of combining with Shell, so as to prevent (1) the raising of costs for undiluted heavy crude oil to Shell's asphalt competitor, and (2) the raising of prices for asphalt in northern California, as alleged in the Commission's complaint.

C. For a period of ten (10) years from the date this order becomes final, respondents shall not, without the prior approval of the Commission, directly or indirectly, reduce the volumes offered to Huntway, increase the price for crude oil supplied to Huntway, or terminate the Huntway Supply Agreement, except according to the

terms of the Huntway Supply Agreement. Any amendment to the Huntway Supply Agreement relating to an increase in price, a decrease in volume, or termination shall not be effective until approved by the Commission, provided, however, that any such amendment shall be deemed approved unless the Commission notifies respondents, within ninety (90) days of the Commission's receiving actual notice of the amendment, of the Commission's intention to consider the amendment further.

VIII.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, no respondent shall, without providing advance written notification to the Commission, directly or indirectly, through subsidiaries, partnerships, joint ventures, or otherwise:

A. Acquire any stock, share capital, equity, partnership, membership or other interest valued at \$100 million or more in any concern, corporate or non-corporate, engaged, at the time of such acquisition or within the year preceding such acquisition, in the refining of petroleum products in the States of Alaska, Washington, Oregon or California; or

B. Acquire any assets, valued at \$100 million or more and used, or used within the preceding year (and still suitable for use), in the refining of petroleum products in the States of Alaska, Washington, Oregon or California.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of respondents and not of any other party to the transaction. Respondents shall provide the Notification to the Commission at least thirty (30) days prior to consummating the transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. 803.20), respondents shall not consummate the transaction until twenty (20) days after submitting such additional information or documentary material. Early termination of the waiting periods in this paragraph may be requested and, where

appropriate, granted by letter from the Bureau of Competition. Provided, however, that prior notification shall not be required by this paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a.

IX.

It is further ordered, That:

A. Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until respondents have fully complied with the provisions of paragraphs II, III, IV, V, VI, and VII of this order, respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with paragraphs II, III, IV, V, VI, and VII of this order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with paragraphs II, III, IV, V, VI, and VII of the order, including a description of all substantive contacts or negotiations for the divestitures and the identity of all parties contacted. Respondents shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One (1) year from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which they have complied and are complying with each provision of this order.

X.

It is further ordered, That:

A. Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the order.

B. Upon formation of the Joint Venture, respondents shall cause the Joint Venture to be bound by the terms of this order.

XI.

It is further ordered, That, for the purpose of determining or securing compliance with this order, upon written request, respondents shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of each respondent relating to any matters contained in this order; and

B. Upon five days' notice to each respondent and without restraint or interference from it, to interview officers, directors, or employees of respondent.

XII.

If (i) respondents have fully complied with all terms of this order; (ii) respondents within four (4) months after final approval of this order by the Commission have submitted a complete application in support of the divestiture of the assets and businesses to be divested pursuant to paragraphs II, III, IV or V of this order, as the case may be (including the buyer, manner of divestiture and all other matters subject to Commission approval); and (iii) the Commission has approved the divestiture and has not withdrawn its acceptance; but (iv) respondents have certified to the Commission within ten (10) days after the Commission's approval of the divestiture that a State, notwithstanding timely and complete application by respondents to the State, has failed to approve the divestiture under an Applicable Consent Decree of the particular assets or businesses whose divestiture is also required under this order, then, with respect to the particular divestiture that remains unconsummated, the time in which the divestiture is required under this order to be complete shall be extended for sixty (60) days. During such sixty (60) day period, respondents shall exercise utmost good faith and best efforts to resolve the concerns of the particular State.

Commissioner Thompson not participating.

EXHIBIT A

[Confidential Exhibit A to Decision & Order
Redacted From Public Record Version]

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EXHIBIT B

Exhibit B
to
AGREEMENT CONTAINING CONSENT ORDER

Notification Letter

To be given within five (5) days of Order becoming final

The Federal Trade Commission has entered into a consent order with Shell and Texaco, in connection with their announced joint venture, that requires Shell to sell its refinery and related assets in Anacortes, Washington ("Shell Anacortes Refinery") to an acquirer approved by the Commission by _____, 1998. The States of Washington and Oregon have also entered into a consent decree with Shell and Texaco. Pursuant to the consent order of the Federal Trade Commission, Shell is required to give certain retail sellers of Shell branded gasoline in the States of Washington and Oregon the option to replace their existing supply agreements, together with all ancillary agreements (*i.e.*, all leases, contracts, debts, loans and understandings), with a supply agreement that, at your option, can be assigned to the acquirer of the Shell Anacortes Refinery. If you elect to replace your existing agreements with such a Replacement Supply Contract, your Shell station will *not* be assigned to the acquirer *unless you choose to become affiliated with the acquirer*. This option will also be made available to Shell jobbers in Washington and Oregon, and to Texaco jobbers and retail dealers that have a direct contractual relationship with Texaco, and that operated or supplied Shell branded gasoline stations on or after October 1, 1996. This option for Texaco jobbers and dealers concerns only those stations that were selling Shell branded gasoline on or after October 1, 1996.

Please review the enclosed agreements. Signing these agreements gives you the option of electing to affiliate with the acquirer of the Shell Anacortes Refinery once the acquirer has been identified. The agreements are for the same term that remains on your current agreements, for the same volume, and require you to meet the same obligations, including performance on debt obligations. *You do not need to do anything now.* You will receive a second notice identifying the prospective acquirer of the Shell Anacortes Refinery and giving you the opportunity to affiliate with that acquirer. If you have any questions regarding this option, please write to the Federal Trade Commission, Bureau of Competition, Compliance Division, Washington, D.C. 20580.

Second Notice — to be mailed withing two (2) days of the signing of a letter of intent to divest the Anacortes Refinery Assets

The Federal Trade Commission has entered into a consent order with Shell and Texaco, in connection with their announced joint venture, that requires Shell to sell its refinery and related assets in Anacortes, Washington ("Shell Anacortes Refinery") to an acquirer approved by the Commission by _____, 1998. The States of Washington and Oregon have also entered into a consent decree with Shell and Texaco. Pursuant to the consent order of the Federal Trade Commission, Shell is required to give certain retail sellers of Shell branded gasoline in the States of Washington and Oregon the option to replace their existing supply agreements, together with all ancillary agreements (*i.e.*, all leases, contracts, debts, loans and understandings), with a supply

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agreement that, at your option, can be assigned to the acquirer of the Shell Anacortes Refinery. This option is also being made available to Shell jobbers in Washington and Oregon, and to Texaco jobbers and retail dealers that have a direct contractual relationship with Texaco, and that operated or supplied Shell branded gasoline stations on or after October 1, 1996. This option for Texaco jobbers and dealers concerns only those stations that were selling Shell branded gasoline on or after October 1, 1996.

You were sent a notice on _____, 1998, that enclosed agreements for you to review. A second copy of these agreements is enclosed. These agreements give you the option to replace your existing supply agreements, together with all ancillary agreements (*i.e.*, all leases, contracts, debts, loans and understandings), with a supply agreement that, at your option, can be assigned to the acquirer of the Shell Anacortes Refinery. Please review the enclosed agreements. The agreements are for the same term that remains on your current agreements, for the same volume, and require you to meet the same obligations, including performance on debt obligations.

Shell and Texaco intend to apply to the Federal Trade Commission, and to the Attorneys General of the States of Washington and Oregon, for approval to divest the Shell Anacortes Refinery to _____.

If the governmental entities approve the proposed divestiture, you will have an opportunity to affiliate with _____. You have thirty (30) days from the date of this notice, or until _____, 1998, to affiliate with _____. If you elect to affiliate with _____, please sign the enclosed agreements and return them to the address set forth on the enclosed instruction sheet. Your affiliation with _____ will begin on the day _____ consummates the acquisition of the Shell Anacortes Refinery.

The Federal Trade Commission has retained the right to disapprove the sale of the Shell Anacortes Refinery to an acquirer identified by Shell and Texaco. If the Commission determines not to approve this divestiture, the divestiture will not occur and you will not become affiliated with _____ pursuant to the enclosed agreements. In that event, Shell and Texaco will send you new agreements when a new acquirer is identified. If you have any questions regarding this option, please write to the Federal Trade Commission, Bureau of Competition, Compliance Division, Washington, D.C. 20580.

Exhibit C

In the matter of

and

File No. 971-0026

This Agreement to Hold Separate the Anacortes Refinery Assets ("Hold Separate") is by and between Shell Oil Company, 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 at One Shell Plaza, Houston, Texas 77002 ("Shell"); Texaco Inc., 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 at 2000 Westchester Avenue, White Plains, N.Y. 10650 ("Texaco"); and the Federal Trade Commission ("Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. § 41, *et seq.* Shell and Texaco may be referred to herein collectively as "Respondents."

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PREMISES

WHEREAS, Shell and Texaco intend to enter into the Joint Venture, as defined in Paragraph I of the Agreement Containing Consent Order (attached hereto and subsequently referred to herein as "Consent Order;" each capitalized term used in this Hold Separate shall have the same definition as contained in the Consent Order) and Shell and Texaco intend to contribute to said Joint Venture certain of their petroleum refining and marketing assets and operations in the United States, including their petroleum refining and marketing assets and operations in the States of Washington, Oregon and California; and

WHEREAS, Shell and Texaco each owns and operates, among other things, a petroleum refinery at Anacortes, Washington; and

WHEREAS, the Commission is now investigating the formation of the proposed Joint Venture to determine if it would violate any of the statutes enforced by the Commission; and

WHEREAS, if the Commission accepts the attached Consent Order, which would require, among other things, the divestiture of the Anacortes Refinery Assets, the Commission must place the Consent Order on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

WHEREAS, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of the Anacortes Refinery Assets during the period prior to the divestiture of said assets, the divestiture required by the Consent Order or resulting from any proceeding challenging the legality of the proposed Joint Venture might not be possible, or might be less than an effective remedy; and

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WHEREAS, the Commission is concerned that if the proposed Joint Venture is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of the Anacortes Refinery Assets, and the Commission's right to have the Anacortes Refinery Assets continue as a viable petroleum refining business independent of the Respondents and the Joint Venture; and

WHEREAS, the purposes of this Hold Separate and the Consent Order are to:

- (i) preserve the Anacortes Refinery Assets as a viable, competitive, and ongoing petroleum refining business, independent of the Respondents and the Joint Venture, until divestiture is achieved;
- (ii) prevent interim harm to competition pending divestiture and other relief; and
- (iii) remedy any anticompetitive effects of the proposed Joint Venture;

WHEREAS, Respondents, entering into this Hold Separate shall in no way be construed as an admission by Respondents that the proposed Joint Venture is illegal; and

WHEREAS, Respondents understand that no act or transaction contemplated by this Hold Separate shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Hold Separate.

NOW, THEREFORE, upon the understanding that the Commission has not yet determined whether it will challenge the proposed Joint Venture, and in consideration of the Commission's agreement that the Commission will accept the Consent Order for public comment and will excuse Respondents from their obligation to comply with all outstanding data requests and their obligation not to consummate the proposed Joint Venture until 21 days after their compliance with said data requests, the parties agree as follows:

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1. Respondents agree to execute and be bound by the attached Consent Order.
2. Respondents agree that from the date the Consent Order is accepted by the Commission for public comment until the earlier of the dates listed in subparagraphs 2.a. or 2.b. ("Hold Separate Period"), they will comply with the provisions, with the exception of subparagraph 3.s., of this Hold Separate:
 - a. three (3) business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's Rules; or
 - b. the day after the divestiture of the Anacortes Refinery Assets, as required by the Consent Order, is completed.

Respondents agree to comply with subparagraph 3.s. until one (1) year after the Anacortes Refinery Assets are divested.

3. To assure the complete independence and viability of the Anacortes Refinery Assets, and to assure that no Material Confidential Information ("Material Confidential Information," as used herein, 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, customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets.) is exchanged between the Respondents, the Joint Venture and the Anacortes Refinery Assets. Respondents shall hold the Anacortes Refinery Assets separate and apart on the following terms and conditions:

- a. The Anacortes Refinery Assets shall be held separate and apart and shall be managed and operated independently of Respondents (meaning here and

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hereinafter, Shell, Texaco and the Joint Venture excluding the Anacortes Refinery Assets), except to the extent that Respondent must exercise direction and control over such assets to assure compliance with this Hold Separate or the Consent Order, and except as otherwise provided in this Hold Separate.

- b. Shell shall appoint Robert C. Harrell as Independent Auditor, at least three (3) days prior to the formation of NEWCO. Respondents shall give the Independent Auditor all powers and authority necessary to effectuate his/her responsibilities pursuant to this Hold Separate.
- c. Within five (5) business days of the Commission's acceptance of the Consent Order for public comment, Respondents shall (1) organize a distinct and separate legal entity, either a corporation, limited liability company, or general or limited partnership ("NEWCO") to be composed of the Anacortes Refinery Assets; provided, however, that Respondents may designate as NEWCO under this Hold Separate, Shell Anacortes Refinery Company ("SARC"), an existing Delaware corporation; (2) cause NEWCO to adopt constituent documents that are consistent with the provisions of the Hold Separate and the Consent Order; and (3) transfer all ownership and control of all Anacortes Refinery Assets to NEWCO.
- d. NEWCO shall be staffed with sufficient employees to maintain the viability and competitiveness of the Anacortes Refinery Assets. The NEWCO employees shall include (i) all personnel employed by SARC as of the date the Commission accepts the Consent Order for public comment; (ii) those

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persons employed by Shell, but transferred to NEWCO by Respondents pursuant to this Hold Separate for the duration of the Hold Separate Period, including employees working in refinery management, production, supply and trading, sales, marketing, and finance areas, who are listed on Confidential Attachment B ("Transferred Employees"); and (iii) those persons hired from other sources. The Management Team, with the approval of the Independent Auditor, shall have the authority to replace employees who were transferred to Shell Oil Products Company or have otherwise left their positions with SARC since March 18, 1997. To the extent that NEWCO employees leave NEWCO prior to the divestiture of the Anacortes Refinery Assets, the Management Team may replace the departing NEWCO employees, subject to the approval of the Independent Auditor, with persons who have similar experience and expertise.

- e. The Independent Auditor shall monitor the organization of NEWCO and shall have responsibility for managing NEWCO (including the Anacortes Refinery Assets) consistent with the terms of Hold Separate; for maintaining the independence of NEWCO (including the Anacortes Refinery Assets) consistent with the terms of this Hold Separate and Consent Order; and assuring Respondent's compliance with its obligations pursuant to the Hold Separate.
- f. Simultaneous with the organization of NEWCO, Shell shall appoint, subject to the approval of the Independent Auditor, four individuals from among the current employees of SARC or Shell Oil Products Company

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working in refinery management, production, supply and trading, sales, marketing, or financial operations to manage and maintain NEWCO. The Management Team, in its capacity as such, shall report directly and exclusively to the Independent Auditor and shall manage NEWCO independently of the management of the Respondents and the Joint Venture. The Management Team shall not be involved, in any way, in the operations of the businesses of the Respondents or the Joint Venture during the Hold Separate Period.

- g. Respondents shall not change the composition of the Management Team unless the Independent Auditor consents. Respondents shall not change the composition of the management of NEWCO, except that the Management Team shall be permitted to remove management employees for cause subject to approval of the Independent Auditor. The Independent Auditor shall have the power to remove members of the Management Team for cause and to require Respondents to appoint replacement members to the Management Team in the same manner as provided in subparagraph 3.f. of this Hold Separate.
- h. The Independent Auditor, each member of the Management Team, each NEWCO employee, and each Transferred Employee shall enter into a confidentiality agreement agreeing to be bound by the terms and conditions of this Hold Separate. These individuals must retain and maintain all confidential information relating to the held separate business on a confidential basis and, except as is permitted by this Hold Separate, such

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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' or the Joint Venture's business. These persons shall not be involved in any way in the refinery management, production, supply and trading, sales, marketing, and financial operations of the competing products of Respondents or the Joint Venture.

- i. Respondents shall establish written procedures to be approved by the Independent Auditor, covering the management, maintenance, and independence of the Anacortes Refinery Assets consistent with the provisions of the Hold Separate.
- j. Respondents shall circulate, to NEWCO employees and to Respondents' employees who are responsible for the operation of petroleum refineries or the refining or marketing of petroleum products in the United States, a notice of this Hold Separate and Consent Order in the form attached as Attachment A.
- k. The Independent Auditor shall have full and complete access to all personnel, books, records, documents and facilities of NEWCO and Shell Oil Products Company or to any other relevant information, as the Independent Auditor may reasonably request, including but not limited to all documents and records kept in the normal course of business that relate to the Anacortes Refinery Assets. Respondent shall develop such financial or other information as such Independent Auditor may request and shall

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cooperate with the Independent Auditor. Respondent shall take no action to interfere with or impede the Independent Auditor's ability to perform his/her responsibilities consistent with the terms of the Hold Separate or to monitor Respondent's compliance with the Hold Separate and the Consent Order.

- i. Respondents may require the Independent Auditor to sign a confidentiality agreement prohibiting the disclosure of any material information gained as a result of his or her role as Independent Auditor to anyone other than the Commission.
- m. The Independent Auditor shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, and other representatives and assistants as are necessary to carry out the Independent Auditor's duties and responsibilities.
- n. The Independent Auditor and the Management Team shall serve, without bond or other security, at the cost and expense of Respondents, on reasonable and customary terms commensurate with the person's experience and responsibilities. Respondents shall indemnify the Independent Auditor and the Management Team and hold the Independent Auditor and the Management Team harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Independent Auditor's or the Management Team'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

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not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Independent Auditor or the Management Team.

- o. Respondents shall provide NEWCO with sufficient working capital to operate the Anacortes Refinery Assets at least at current rates of operation, to meet all capital calls in respect of the Anacortes Refinery Assets, and to carry on, at least at their scheduled pace, all capital projects for the Anacortes Refinery Assets ongoing, planned, or approved as of or after October 1, 1997. During the period this Hold Separate is effective, Respondents shall make available for use by NEWCO funds sufficient to perform all necessary routine maintenance to, and replacements of, the Anacortes Refinery Assets. Respondents shall provide NEWCO with such funds as are necessary to maintain the viability, competitiveness, and marketability of the Anacortes Refinery Assets until the date of divestiture is completed.
- p. All NEWCO transactions valued at \$1,000,000 or more that are out of the ordinary course of business shall be subject to a majority vote of the Management Team. In case of a tie, the Independent Auditor shall cast the deciding vote.
- q. Respondents shall continue to provide the same support services (except for those services being provided by the Transferred Employees) to the Anacortes Refinery Assets as are being provided to such Assets by

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Respondents as of the date this Hold Separate is signed by Respondents. Respondents may charge NEWCO the same fees, if any, charged by Shell for such support services as of the date this Hold Separate is signed by Respondents. Respondents' personnel providing such support services must retain and maintain all Material Confidential Information of the Anacortes Refinery Assets on a confidential basis, and, except as is permitted by this Hold Separate, 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. Such personnel shall also execute confidentiality agreements prohibiting the disclosure of any Material Confidential Information of the Anacortes Refinery Assets.

- r. Except as provided in this Hold Separate, Respondents shall not employ or make offers of employment to NEWCO employees, during the Hold Separate Period. The acquirer of the Anacortes Refinery Assets shall have the option of offering employment to the NEWCO employees. After the Hold Separate Period, Respondents may offer employment to NEWCO employees who have not accepted employment with the acquirer of the Anacortes Refinery Assets. Respondents shall not interfere with the employment of such NEWCO employees by the acquirer of the Anacortes Refinery Assets; shall not offer any incentive to such NEWCO employees to decline employment with the acquirer of the Anacortes Refinery Assets or accept other employment with the Respondents or the Joint Venture.

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and shall remove any impediments that may deter such NEWCO employees from accepting employment with the acquirer of the Anacortes Refinery Assets, including but not limited to the payment, or the transfer for the account of the employee, of all accrued bonuses, pensions and other accrued benefits to which such employees would otherwise have been entitled had they remained in the employment of the Respondents or the Joint Venture.

- s. For a period of one (1) year from the date the Anacortes Refinery Assets are divested, Respondents shall not employ or make offers of employment to NEWCO employees who have accepted offers of employment with the acquirer of the Anacortes Refinery Assets.
- t. Notwithstanding the preceding subparagraph 3.r., Respondents may offer a bonus or severance to those NEWCO employees that continue their employment with NEWCO until the date that the Anacortes Refinery Assets are divested.
- u. Respondents shall not exercise direction or control over, or influence directly or indirectly, the Anacortes Refinery Assets, the Independent Auditor, the Management Team, or NEWCO or any of its operations; provided, however, that Respondents may exercise only such direction and control over NEWCO as is necessary to assure compliance with this Hold Separate or the Consent Order, or with all applicable laws.

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- v. Except for the Management Team and except to the extent provided in subparagraph 3.q., Respondents or the Joint Venture shall not permit any other of their employees, officers, or directors to be involved in the operations of NEWCO.
- w. Respondents shall maintain the viability, competitiveness, and marketability of the Anacortes Refinery Assets; shall not sell, transfer, or encumber said Assets (other than in the normal course of business); and shall not cause or permit the destruction, removal, wasting, or deterioration, or otherwise impair the viability, competitiveness, or marketability of the Anacortes Refinery Assets.
- x. If the Independent Auditor ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate, Respondents shall appoint a substitute Independent Auditor, subject to Commission approval.
- y. Respondents shall continue to pay to the Transferred Employees, until divestiture of the Anacortes Refinery Assets is accomplished, their salaries, all accrued bonuses, pensions and other accrued benefits to which the Transferred Employees would otherwise have been entitled had they remained in the employment of Shell during the Hold Separate period.
- z. Except as required by law, and except to the extent that necessary information is exchanged in the course of consummating the Joint Venture, defending investigations, defending or prosecuting litigation, obtaining legal advice, negotiating agreements to divest assets pursuant to the

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Consent Order, or complying with this Hold Separate or the Consent Order, Respondents shall not receive or have access to, or use or continue to use, any Material Confidential Information, not in the public domain, about NEWCO or the Anacortes Refinery Assets. Nor shall NEWCO or the Management Team 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' business. Respondents may receive, on a regular basis, aggregate financial information relating to NEWCO necessary to allow Respondents to prepare United States consolidated financial reports, tax returns, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph.

- aa. Within thirty (30) days after the date this Hold Separate is accepted by the Commission and every thirty (30) days thereafter until this Hold Separate terminates, the Independent Auditor shall report in writing to the Commission concerning the efforts to accomplish the purposes of this Hold Separate. Included within that report shall be the Independent Auditor's assessment of the extent to which NEWCO is meeting (or exceeding) its projected goals as are reflected in operating plans, budgets, projections or any other regularly prepared financial statements.

4. Should the Commission seek in any proceeding to compel Respondents to divest any of the Anacortes Refinery Assets, as provided in the Consent Order, or to seek any other injunctive or equitable relief for any failure to comply with the Consent Order or this Hold

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Separate, or in any way relating to the Joint Venture, as defined in the draft complaint, Respondents shall not raise any objection based upon the fact that the Commission has permitted the formation of the Joint Venture. Respondents also waive all rights to contest the validity of this Hold Separate.

5. To the extent that this Hold Separate requires Respondents to take, or prohibits Respondents from taking, certain actions that otherwise may be required or prohibited by contract, Respondents shall abide by the terms of this Hold Separate or the Consent Order and shall not assert as a defense such contract requirements in a civil action brought by the Commission to enforce the terms of this Hold Separate or Consent Order.

6. For the purposes of determining or securing compliance with this Hold Separate, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents made to its principal office, Respondents shall permit any duly authorized representatives of the Commission:

- a. Access, during office hours of Respondents and in the presence of counsel, 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 Respondents relating to compliance with this Hold Separate; and
- b. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

7. This Hold Separate Agreement shall not be binding until approved by the Commission.

ATTACHMENT A

NOTICE OF DIVESTITURE AND REQUIREMENT FOR CONFIDENTIALITY

Shell Oil Company and Texaco Inc. have entered into a Consent Order and Agreement to Hold Separate with the Federal Trade Commission relating to the divestiture of certain assets.

As used herein, the term "Anacortes Refinery Assets" means all assets as defined in paragraph I.E of the Consent Order. Under the terms of the Consent Order, Shell and Texaco must divest the Anacortes Refinery Assets within six (6) months from the date the FTC's Order becomes final.

The term "Joint Venture" means the joint venture between Shell and Texaco known as "Westco" (publicly announced on March 18, 1997, and described in a Memorandum of Understanding of the same date), and any other combination of the United States petroleum refining or marketing assets or operation of Shell and Texaco.

Until after the FTC's Order becomes final and Anacortes Refinery Assets are divested, the Anacortes Refinery Assets must be managed and maintained as separate, ongoing businesses, independent of all other Shell, Texaco, or Joint Venture businesses. All competitive information relating to the Anacortes Refinery Assets must be retained and maintained by the persons involved in the operation of the Anacortes Refinery Assets on a confidential basis, and such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any similar information to or with any other person whose employment involves the Shell Anacortes Refinery.

Any violation of the Consent Agreement or the Agreement to Hold Separate, incorporated by reference as part of the Consent Order, may subject Shell, Texaco, and Joint Venture to civil penalties and other relief as provided by law.

APPENDIX B

[Confidential Appendix B to Agreement to Hold Separate
Redacted From Public Record Version]

SEPARATE STATEMENT OF COMMISSIONER MARY L. AZCUENAGA
CONCURRING IN PART AND DISSENTING IN PART

Today, the Commission issues its final decision and order resolving allegations that the proposed joint venture of Shell Oil Company with Texaco Inc. and Star Enterprises would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. I find reason to believe that the joint venture, if consummated, would affect competition adversely in the refining of asphalt in Northern California and, therefore, support paragraph VII of the order, which provides relief in that market. I do not find reason to believe the other violations of law alleged in the complaint and, therefore, dissent from paragraphs II, III, IV and V of the order, which require divestitures in other markets. Although the allegation relating to refineries in the northwestern United States is arguably valid, on balance, I cannot support it and, therefore, cannot support paragraph II of the order. The complaint allegations that support paragraphs III, IV and V of the order seem to me far removed from our usual analysis under the merger guidelines.

I understand that the parties have negotiated identical relief with various state attorneys general and that the divestitures in the proposed Commission order will be required in any event. My obligation, however, is to apply federal law as I see it.