

IN THE MATTER OF

SAFE BRANDS CORPORATION, ET AL.

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

Docket C-3647. Complaint, March 26, 1996--Decision, March 26, 1996

This consent order requires the respondents, among other things, to have reliable scientific evidence to substantiate certain claims regarding the environmental benefits, the level of engine protection and the safety of any antifreeze, coolant or deicer. The consent order also requires the respondents to provide a disclosure statement cautioning consumers that Sierra antifreeze may be harmful if swallowed. In addition, the consent order prohibits the respondents from misrepresenting the recyclability of such products and their packages.

Appearances

For the Commission: *Joel Winston, Michael Dershowitz, C. Lee Peeler and Michael Ostheimer.*

For the respondents: *Robert Magielnicki, Kutak & Rock, Washington, D.C. V. Peter Wynne, in-house counsel for ARCO Chemical Co., Newton Square, PA.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Safe Brands Corporation, a corporation, Warren Distribution, Inc., a corporation, and ARCO Chemical Company, a corporation ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Safe Brands Corporation ("Safe Brands") is a Nebraska corporation which is a wholly owned subsidiary of respondent Warren Distribution, Inc. ("Warren Distribution"), a Nebraska corporation. Respondents Safe Brands and Warren Distribution have their principal offices or places of business at 727 South 13th Street, Omaha, Nebraska.

Respondent ARCO Chemical Company ("ARCO Chemical") is a Delaware corporation with its principal office or place of business at 3801 West Chester Pike, Newtown Square, Pennsylvania.

PAR. 2. Respondents Safe Brands and Warren Distribution have advertised, labeled, offered for sale, sold, and distributed a propylene glycol-based automobile antifreeze, under the trade name "Sierra Antifreeze-Coolant" (hereinafter "Sierra antifreeze"), and other products to the public. Respondent ARCO Chemical sold the propylene glycol used in the manufacture of Sierra antifreeze.

PAR. 3. Respondent ARCO Chemical has furnished the means and instrumentalities to respondents Safe Brands and Warren Distribution to engage in the acts and practices alleged in paragraphs five through twenty-one herein by providing information for, participating in the preparation of, paying for, and reviewing and/or approving Sierra antifreeze advertising and promotional materials, including but not limited to the attached Exhibits A through G. In addition, respondent ARCO Chemical has itself disseminated advertisements under its own name for propylene glycol-based antifreeze generally, including but not limited to the attached Exhibit H. Respondents Safe Brands and Warren Distribution have also disseminated ARCO Chemical advertisements for propylene glycol-based antifreeze generally, including but not limited to the attached Exhibit H.

PAR. 4. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PAR. 5. Respondents have disseminated or have caused to be disseminated advertisements, including television advertisements, product labeling, and other promotional materials, for Sierra antifreeze, and propylene glycol-based antifreeze generally, including but not necessarily limited to the attached Exhibits A through H. These advertisements contain the following statements and depictions:

- A. If you care about this big beautiful world, show me.
Depiction of clouds, sky, trees.
Don't give me another toxic antifreeze.
Give me something different. Depiction of containers of Sierra antifreeze.
Don't just tell me it protects to seventy below. And guards against rust.
Any antifreeze can do that. Depiction of sunlight through the trees.
Tell me it's safer. For my dog. Depiction of dog and car.

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My family. Depiction of father with child and mother in background.
 The kids. Depiction of family walking together holding hands.
 Tell me nothing protects better.
 And it's biodegradable. Depiction of a field with flowers.
 That's what I want to know. Depiction of body of water with green plants in foreground.
 That's what I want to hear.
 New Sierra. It's not just antifreeze. Super: It's not just Antifreeze.
 It's safety freeze. Depiction of adult holding little girl.
 Super: It's Safety Freeze.™
 (Exhibit A, television advertisement).

B. Depiction of house with sky and trees in background. They care about the world these days. They just don't want me to put another toxic antifreeze in their car. I mean, who needs toxic. Depiction of girl on tire swing. So what if it protects to seventy below. Depiction of tree branches. Any antifreeze can do that. Tell me it's different. Depiction of container of Sierra antifreeze. Safer. Depiction of little girl with dog.
 Tell me nothing protects better. Depiction of boy looking under car hood as man pours Sierra into car radiator. Depiction of woman with girl and dog. And it's biodegradable. Depiction of lake and trees. I mean, what if their dog gets into it? Depiction of dog with man by garage. Or their kids? Depiction of little girl with a barrel. This is serious. Depiction of little girl looking into barrel. It's a changing world. Poison's out.
 New Sierra. It's not just antifreeze. Super: It's not just Antifreeze. It's safety freeze. Depiction of little girl with cat. Super: It's Safety Freeze.™
 (Exhibit B, television advertisement).

C. Depiction of man and boy working on car. People care these days. They just don't want me to put another toxic antifreeze in their car. I mean, who needs something that toxic. Depiction of girl on tire swing. So what if it protects to seventy below. Depiction of man and boy working on car. Any antifreeze can do that. Give me something different. Depiction of container of Sierra antifreeze. Something safer. Depiction of little girl with dog. That's essentially non-toxic. Depiction of dog with bucket of clear liquid.
 I mean, what if their dog gets into it? Depiction of dog with man by garage.
 Or their kids? Depiction of girl and woman with dog. This is serious. Depiction of family with dog. Sierra. Its not just antifreeze. Super: Parents: Store safely. Not for drinking. It's safety freeze. Depiction of girl with cat. Super: It's Safety Freeze.™ Parents: Store safely. Not for drinking.
 (Exhibit C, television advertisement).

D. I. S I E R R A
 Antifreeze * Coolant
 * Essentially Non Toxic
 * Safer For People & Pets
 * Superior Engine Protection

B I O D E G R A D A B L E
 (Exhibit D.1, former product label - front).

Exhibit D.1 also included on the front a product logo that included the statement "ENVIRONMENTALLY SAFER" and depicted trees, mountains, water, and sky.

D.2. THE ULTIMATE IN AUTOMOTIVE PROTECTION AND ENVIRONMENTAL SAFETY

ULTIMATE AUTOMOTIVE PROTECTION:

SIERRA protects cars from freeze-ups during the harshest winter conditions and from boil-overs in extreme summer temperatures....

ESSENTIALLY NON-TOXIC

ENVIRONMENTALLY SAFER

SIERRA's essentially non-toxic formula guards against poisonings of children and pets. All other leading brands of antifreeze contain ethylene glycol which is highly toxic.

SIERRA is naturally biodegradable and is converted to harmless components in activated treatment systems.

... However, mixing SIERRA

with ethylene glycol antifreeze eliminates the toxicity and performance advantages of SIERRA.

SIERRA contains propylene glycol and although it is not "toxic" as defined by the regulations of the Consumer Product Safety Commission at 16 CFR 1500.3(c)(2), it is not for human consumption and should be kept out of reach of children.

(Exhibit D.2., former product label - back).

Exhibit D.2 also included on the back the statement "Recyclable Plastic Container" below a depiction of a three chasing arrow symbol.

E.1. SIERRA

Antifreeze * Coolant

* Essentially Non Toxic

To People & Pets

S A F E T Y F R E E Z E

(Exhibit E.1., subsequent product label - front).

Exhibit E.1. also includes on the front a product logo that includes the statement "SAFER PROTECTION" and depicts a man, a girl, a dog, and a bird.

E.2. SAFER AND PHOSPHATE FREE - SIERRA PROTECTS YOUR FAMILY . . .

ENVIRONMENTAL BENEFITS

* Toxicity -- Because it is essentially non toxic, SIERRA is safer for people, pets, and wildlife in the environment than other leading brands. Many poisonings of animals are caused by their drinking conventional antifreeze that has spilled or leaked from cars. SIERRA greatly reduces this risk.

* Biodegradability -- Sierra biodegrades readily in the natural environment and in activated sewage treatment systems as may other brands. All antifreeze can become contaminated with trace amounts of lead or other metals and should be disposed of properly and in accordance with local regulations. Even if contaminated with trace metals, used SIERRA is far less poisonous to animal life than conventional antifreeze.

* Recyclability -- Used SIERRA can be mixed with conventional antifreeze in collection systems and recycling processes. This SIERRA container . . . can be further recycled. Recycling may not be available in all areas.

CAUTIONARY INFORMATION

SIERRA contains propylene glycol and although it is not "toxic" as defined by the regulations of the Consumer Product Safety Commission, SIERRA is NOT INTENDED FOR HUMAN OR ANIMAL CONSUMPTION so:

KEEP OUT OF REACH OF CHILDREN.

(Exhibit E.2., subsequent product label - back).

F. Safety & Environmental Advantages

ANTIFREEZE - A TOXIC PROBLEM

SIERRA - THE SAFER ANTIFREEZE

With its mission being to develop effective but environmentally safer products for the automotive market, Safe Brands Corporation initiated research to find a non-toxic, environmentally safer alternative to existing EG based antifreeze brands. We discovered that it was possible to formulate a highly effective, heavy duty antifreeze from essentially non-toxic components -- completely omitting ethylene glycol. The results of this research is SIERRA -The Safer Antifreeze.

Sierra is formulated with propylene glycol. Unlike EG, propylene glycol (PG) is safe. It is so safe that it is used in the formulation of many consumer products such as cosmetics including lipstick and medicines such as Children's Tylenol. It is also a key moisturizing ingredient used in . . . pet foods. Pharmaceutical grade PG has received a "generally recognized as safe" designation from the Food and Drug Administration. . . .

SIERRA IS BIODEGRADABLE

PG does not persist in the environment. It is readily consumed by microorganisms. In addition to its natural biodegradability, it is fully degraded within 24 hours in activated sludge treatment plants operating at 65°F.

Performance Advantages

COOLING SYSTEM

PERFORMANCE ADVANTAGES

OF SIERRA

SUPERIOR FREEZE PROTECTION

. . . Unlike EG based antifreeze solutions which begin expanding soon after their initial freezing point is reached, SIERRA solutions do not begin to expand until the temperature becomes considerably lower than the initial freezing point. This characteristic of SIERRA adds a margin of safety against the expansion breakage of engines and cooling systems components.

SUPERIOR CORROSION PROTECTION

. . . In a paper presented at the 1990 Society of Automotive Engineers (SAE) Convention in Detroit, representatives of Cummins Engine Fleetguard Division and Arco Chemical Company presented data which demonstrated the superior corrosion protection characteristics of propylene glycol over ethylene glycol based coolants. (Exhibit F, former neck tag pamphlet).

G. Depiction of products including Dolly Madison Bakery Zingers, Wyler's Bouillon Cubes, Vicks Children's NyQuil, Infant's Tylenol, Chubs Baby Wipes, Maybelline Great Lash Mascara, ALPO Beef Jerky Bits, and Ken-L Ration Kibbles 'n Bits.

In addition to consumer safety, these trusted products have one thing in common... They all contain propylene glycol.

So does ...

Depiction of the front of a Sierra antifreeze container including the statements, "Essentially Non Toxic," "Safer For People & Pets," "Superior Engine Protection," "BIODEGRADABLE," and "ENVIRONMENTALLY SAFER" and the depiction of trees, mountains, water, and sky.

It's Not Just Antifreeze.

It's Safety Freeze.

(Exhibit G, promotional material).

H. PG Antifreeze Safety and Environmental Advantages

Although EG is effective as a car and truck antifreeze, it is toxic to humans and animals if ingested. EG is metabolized to oxalic acid, which crystallizes in the kidney, causing death.

There Is A Safer Alternative...

PG has received a "generally recognized as safe" designation from the Food and Drug Administration. PG has been used safely for many years as an ingredient in foods, cosmetics, and medicinal products.

Pet and Animal Exposure

Dogs and cats are naturally attracted to EG because of its sweet taste and smell, but EG-based antifreeze can be lethal to pets and other animals if ingested. . . . By contrast, PG is harmless. In fact, it is used as a moisturizing ingredient in many pet foods.

EG also can be toxic to poultry. PG on the other hand is used in many animal feed formulations to keep the feed moist and palatable.

Biodegradability

PG does not persist in the environment. It is readily consumed by microorganisms. In an activated sludge treatment plant operating at 65 degrees Fahrenheit, PG is fully degraded within 24 hours.

(Exhibit H, promotional material).

PAR. 6. Through the use of the statements and depictions contained in the advertisements referred to in paragraph five, including but not necessarily limited to the advertisements attached as Exhibits A, B, D, E, F, G, and H, respondents have represented, directly or by implication, that:

- a. Compared to conventional, ethylene glycol-based antifreeze, Sierra antifreeze, and other propylene glycol-based antifreezes, are safer for the environment generally;
- b. Sierra antifreeze, and other propylene glycol-based antifreezes, are absolutely safe for the environment after ordinary use; and
- c. Because Sierra antifreeze, and other propylene glycol-based antifreezes, are biodegradable, they are absolutely safe for the environment after ordinary use.

PAR. 7. Through the use of the statements and depictions contained in the advertisements referred to in paragraph five, including but not necessarily limited to the advertisements attached as Exhibits A, B, D, E, F, G, and H, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraph six, respondents possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 8. In truth and in fact, at the time respondents made the representations set forth in paragraph six, while they possessed and relied upon a reasonable basis to substantiate that when compared to conventional, ethylene glycol-based antifreeze, Sierra antifreeze, and other propylene glycol antifreezes, are less toxic, and therefore safer for that part of the environment that is composed of humans, pets, and wildlife that may accidentally ingest it, respondents did not possess and rely upon a reasonable basis to substantiate that (a) compared to conventional, ethylene glycol-based antifreeze, Sierra antifreeze, or other propylene glycol-based antifreezes, are safer for the environment generally, *e.g.*, the air, water, soil, plants, or aquatic life; or (b) Sierra antifreeze, or other propylene glycol-based antifreezes, are absolutely safe for the environment after ordinary use; or (c) because Sierra antifreeze, and other propylene glycol-based antifreezes, are biodegradable, they are absolutely safe for the environment after ordinary use. One reason for this is that used antifreeze, whether ethylene glycol-based or propylene glycol-based, may contain lead and/or other substances that are hazardous to the environment. Therefore, the representation set forth in paragraph seven was, and is, false and misleading.

PAR. 9. Through the use of the statements and depictions contained in the advertisements referred to in paragraph five, including but not necessarily limited to the advertisements attached as Exhibits A through H, respondents have represented, directly or by implication, that:

a. Sierra antifreeze, and other propylene glycol-based antifreezes, are absolutely safe for people and pets; and

b. Because Sierra antifreeze, and other propylene glycol-based antifreezes, contain the same ingredient designated by the FDA as "generally recognized as safe" and found in foods, drugs, cosmetics, and pet foods, they are absolutely safe for people and pets.

PAR. 10. Through the use of the statements and depictions contained in the advertisements referred to in paragraph five, including but not necessarily limited to the advertisements attached as Exhibits A through H, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraph nine, respondents possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 11. In truth and in fact, at the time respondents made the representations set forth in paragraph nine, while they possessed and relied upon a reasonable basis to substantiate that when compared to conventional, ethylene glycol-based antifreeze, Sierra antifreeze, and other propylene glycol-based antifreezes, are less toxic and therefore safer for people and pets if accidentally ingested, respondents did not possess and rely upon a reasonable basis to substantiate that Sierra antifreeze, or other propylene glycol-based antifreezes are absolutely safe for people and pets. Therefore, the representation set forth in paragraph ten was, and is, false and misleading.

PAR. 12. Through the use of the statements contained in the advertisements referred to in paragraph five, including but not necessarily limited to the advertisements attached as Exhibits D, F, and G, respondents have represented, directly or by implication, that compared to conventional, ethylene glycol-based antifreeze, Sierra antifreeze provides superior automotive protection from freezing temperatures, boil-overs, and corrosion.

PAR. 13. Through the use of the statements contained in the advertisements referred to in paragraph five, including but not necessarily limited to the advertisements attached as Exhibits D, F, and G, respondents have represented, directly or by implication, that at the time they made the representation set forth in paragraph twelve, respondents possessed and relied upon a reasonable basis that substantiated such representation.

PAR. 14. In truth and in fact, at the time they made the representation set forth in paragraph twelve, respondents did not possess and rely upon a reasonable basis that substantiated that when compared to conventional, ethylene glycol-based antifreeze, Sierra antifreeze provides superior automotive protection from freezing temperatures, boil-overs, and corrosion. Therefore, the representation set forth in paragraph thirteen was, and is, false and misleading.

PAR. 15. Through the use of the statements contained in the advertisements referred to in paragraph five, including but not

necessarily limited to the advertisement attached as Exhibit E, respondents have represented, directly or by implication, that Sierra antifreeze is recyclable.

PAR. 16. In truth and in fact, while Sierra antifreeze is capable of being recycled, the vast majority of consumers cannot recycle it because there are few collection facilities nationwide that will accept propylene glycol-based antifreeze for recycling. Therefore, the representation set forth in paragraph fifteen was, and is, false and misleading.

PAR. 17. Through the use of the statements and depictions contained in the advertisements referred to in paragraph five, including but not necessarily limited to the advertisements attached as Exhibits D and E, respondents have represented, directly or by implication, that the container in which Sierra antifreeze is sold is recyclable.

PAR. 18. In truth and in fact, while the plastic container in which Sierra antifreeze is sold is capable of being recycled, the vast majority of consumers cannot recycle it because there are few collection facilities nationwide that will accept high-density polyethylene plastic antifreeze containers for recycling. Therefore, the representation set forth in paragraph seventeen was, and is, false and misleading.

PAR. 19. Through the use of the statements and depictions contained in the advertisements referred to in paragraph five, including but not necessarily limited to the advertisements attached as Exhibits D and E respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraphs fifteen and seventeen, respondents possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 20. In truth and in fact, at the time they made the representations set forth in paragraphs fifteen and seventeen, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph nineteen was, and is, false and misleading.

PAR. 21. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

Commissioner Starek recused.

Complaint

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EXHIBIT A

RADIO TV REPORTS

41 East 42nd Street, New York, NY 10017 (212) 309-1400

PRODUCT: SIERRA ANTIFREEZE
TITLE: "ENVIRONMENTALLY SAFE"
PROGRAM: NOTRE DAME FOOTBALL
STATION: NBC

REPLY DATE: 09-19-93
NEW YORK: 11:50PM



(MUSIC) 1st MAN: If you care about this big beautiful world show me.



WOMAN: Don't give me another toxic antifreeze. 2nd MAN: Give me something



different.



3rd MAN: Don't just tell me how it protects to seventy below.
WOMAN: And guards against rust.



(MUSIC)



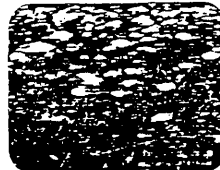
2nd MAN: Any antifreeze can do that.



1st MAN: Tell me it's safer for



my dog, my family, The kids.
WOMAN: Tell me nothing protects better.



1st MAN: And its biodegradable.



WOMAN: That's what I want to know. 2nd MAN: That's what I want to hear.



MALE ANCHOR: New Sierra-it's not just antifreeze



It's Sierra Antifreeze.
It's safety freeze. (MUSIC OUT)

Exhibit A

ALSO AVAILABLE IN COLOR VIDEO-TAPE CASSETTE
While Sierra Antifreeze is the most environmentally safe antifreeze available, it is not a substitute for proper maintenance. Always use Sierra Antifreeze in accordance with the manufacturer's instructions.

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EXHIBIT B

RADIO TV REPORTS

41 East 42nd Street New York, NY 10017 212 309 1400

MECHANIC LISTING SERVICE
PROGRAM NATIONAL FOOTBALL
STATION NEW YORK



(MUSIC) MAN: They care about the world these days.



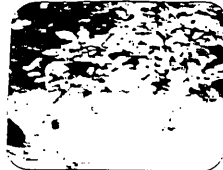
They just don't want me to put another toxic antifreeze



in their car.



I mean, who needs toxic?



So what if it protects to 70 below; any antifreeze can do that.



Tell me that it's different, safer. Tell me nothing protects better



and it's biodegradable.



I mean, what if their dog gets into it.



or their kids? This is serious.



It's a changing world. Poison's out.



ANCHOR: New Sierra. It's not just ant freeze



it's safety freeze (MUSIC OUT

Exhibit B

ALSO AVAILABLE IN COLOR VIDEO-TAPE CASSETTE

Please Note: This document contains the text of the transcript of the deposition of the defendant, SAFE BRANDS CORPORATION, in the case of SAFE BRANDS CORPORATION v. RADIO TV REPORTS, INC., et al., Case No. 80 Civ. 1000, Southern District of New York, dated 10/12/80. This document is not intended for distribution outside the parties to the case.

Complaint

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EXHIBIT C

**RADIO
TV REPORTS**

41 East 42nd Street, New York, NY 10017 (212) 309-1400

PRODUCT:	SIERRA ANTIFREEZE	94-12730 B1
TITLE:	"PEOPLE CARE THESE DAYS"	
PROGRAM:	NOTRE DAME FOOTBALL	9/24/94 30
STATION:	NBC (NEW YORK)	11:00PM
	REVISION OF COMMERCIAL 93-10469	



(MUSIC)



LARRY: People care these days.



They just don't want me to put another toxic antifreeze in their ca



I mean, who needs something that toxic?



So what if it protects to 70 below?



Any antifreeze can do that.



Give me something different, something safer that's essentially non-toxic.



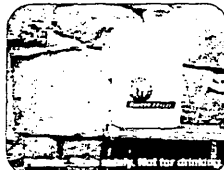
I mean, what if their dog gets into it?



Or their kids?



This is serious.



ANNCR: Sierra. It's not just antifreeze.



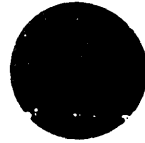
It's safety freeze. (MUSIC OUT)

Exhibit C

ALSO AVAILABLE IN COLOR VIDEO-TAPE CASSETTE

Complaint

EXHIBIT D.1



SIERRA

Antifreeze · Coolant

ENVIRONMENTALLY SAFER

- ▲ *Essentially Non Toxic*
- ▲ *Safer For People & Pets*
- ▲ *Superior Engine Protection*

BIODEGRADABLE

Exhibit D.1.

Complaint

EXHIBIT E.1

6 YEAR • 60,000 MILE
 Newer Car Cooling System • Limited
WARRANTY

FOR OPEN
 SYSTEMS
 INTEG

SIERRA

Antifreeze • Coolant

SAFER PROTECTION

- ▲ Essentially Non Toxic To People & Pets
- ▲ Helps Protect Wildlife In The Environment
- ▲ Outstanding Engine Protection

SAFETY FREEZE™

Exhibit E.1.

Complaint

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EXHIBIT E.2

SAFER AND PHOSPHATE FREE - SIERRA PROTECTS YOUR FAMILY AND YOUR CAR

COOLING SYSTEM BENEFITS

In addition to quality freeze up and boil over protection, SIERRA contains no phosphates and provides outstanding cooling system corrosion protection. SIERRA passes the ASTM D 5216 tests for propylene glycol coolants and the key performance requirements of ASTM D 3306.

SIERRA meets many important car maker requirements including the Ford Dynamometer BL2-2 test and ASTM D 1384, D 2570, D 2809 and D 4340 tests specified in GM's standards GM 1825M and GM 1899M. No conventional antifreeze prevents corrosion better.

ENVIRONMENTAL BENEFITS

• **Toxicity** - Because it is essentially non toxic, SIERRA is safer for people, pets and wildlife in the environment than other leading brands. Many poisonings of animals are caused by their drinking conventional antifreeze that has spilled or leaked from cars. SIERRA greatly reduces this risk.

• **Biodegradability** - SIERRA biodegrades readily in the natural environment and in activated sewage treatment systems as many other brands. All antifreeze can become contaminated with trace amounts of lead or other metals and should be disposed of properly and in accordance with local regulations. Even if contaminated with trace metals, used SIERRA is far less poisonous to animal life than conventional antifreeze.

• **Recyclability** - Used SIERRA can be mixed with conventional antifreeze in collection systems and recycling processes. This SIERRA container contains at least 25% recycled plastic and can be further recycled. Recycling may not be available in all areas.

INSTALLATION

Install SIERRA like any antifreeze, but be careful not to leave the radiator cap when engine is hot. While SIERRA is compatible with conventional antifreeze, its safety benefit is eliminated if mixed, so thoroughly flush out old coolant with water. As not all fluid will drain from a cooling system, check car owners manual for system capacity to determine the proper amount of SIERRA to install to achieve desired protection.

SIERRA	Water	Protects against freeze-ups down to	Protects against boil-overs up to*
50%	50%	-28°F	256°F
60%	40%	-54°F	261°F
67%	33%	-76°F	262°F

*14 psi radiator cap

To maintain optimum corrosion protection, replace SIERRA annually

TESTING SIERRA COOLANT

SIERRA freeze point protection cannot be measured with conventional antifreeze. . . . SIERRA testers are available from SIERRA retailers or may be purchased from Safe Brands at the address below.

CAUTIONARY INFORMATION

SIERRA contains propylene glycol and although it is not "toxic" as defined by regulations of the Consumer Product Safety Commission, SIERRA is NOT INTENDED FOR HUMAN OR ANIMAL CONSUMPTION so:

KEEP OUT OF REACH OF CHILDREN.

Part No. 091

Do not store in open or unlabeled containers.



Safe Brands
Corporation
P.O. Box 3007
Omaha, NE 68103
800-289-7234

Exhibit E.2.

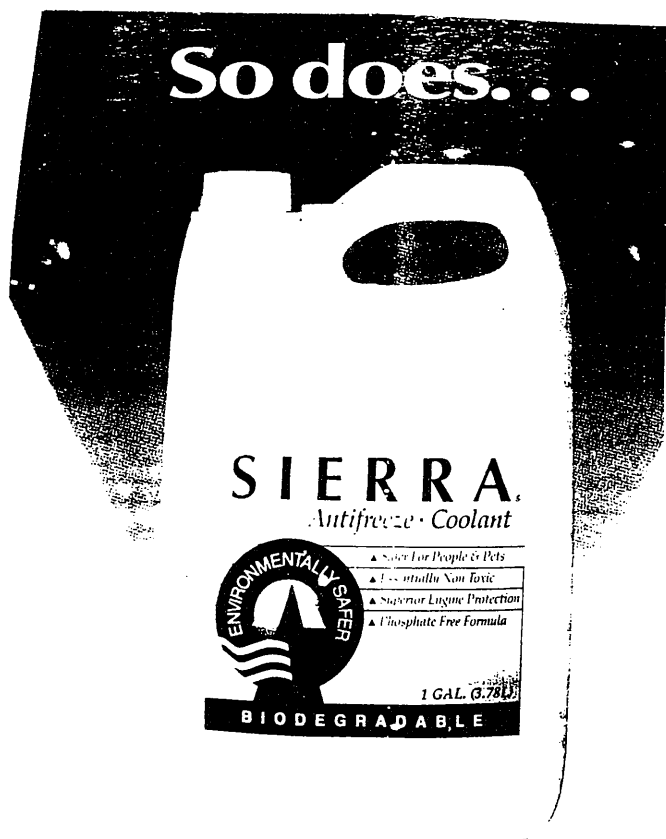
EXHIBIT G



In addition to
consumer safety,
these trusted products
have one thing in common . . .

Exhibit G

EXHIBIT G



It's Not Just Antifreeze.

It's Safety Freeze.

FEDERAL TRADE COMMISSION DECISIONS

Complaint

EXHIBIT G

121 F.T.C.

**They all contain
propylene glycol.**

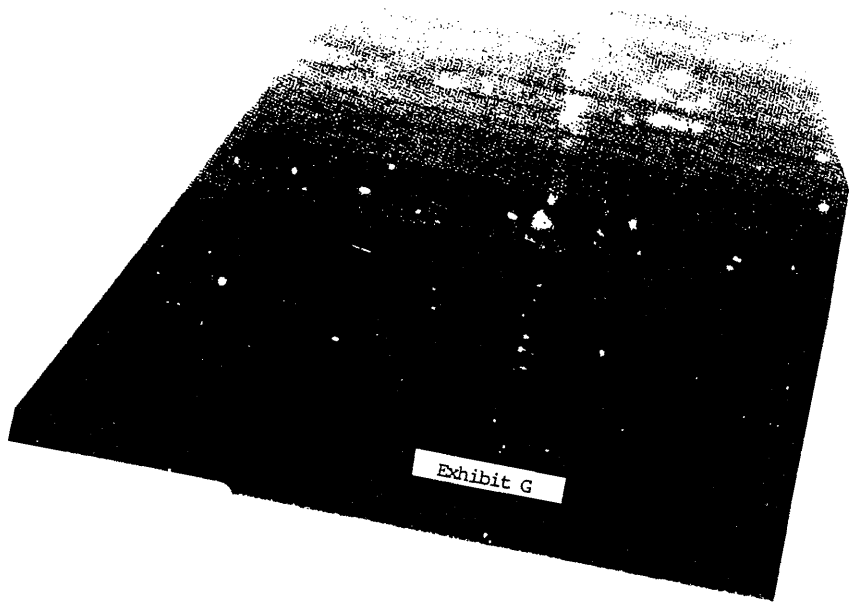


EXHIBIT H

PG Antifreeze Safety and Environmental Advantages

Although EG is effective as a car and truck antifreeze, it is toxic to humans and animals if ingested. EG is metabolized to oxalic acid, which crystallizes in the kidney, causing death.

There Is A Safer Alternative...

PG has received a "generally recognized as safe" designation from the Food and Drug Administration. PG has been used safely for many years as an ingredient in foods, cosmetics, and medicinal products.

The United States Occupational Safety and Health Administration (OSHA) has established an exposure limit of 50 parts per million (ppm) for EG. OSHA has not found it necessary to set an exposure limit for PG because of PG's inherent low toxicity.

Concern over the handling of EG has led to the search for alternatives. Bus maintenance workers in the city of Copenhagen, Denmark, for example, have refused to

handle EG-based antifreeze due to health and safety concerns. As a result, Copenhagen has switched to the safer PG antifreeze.

Pet and Animal Exposure

Dogs and cats are naturally attracted to EG because of its sweet taste and smell, but EG-based antifreeze can be lethal to pets and other animals if ingested. The Colorado State University Veterinary Hospital reported that more than 50 percent of all poisoning deaths of dogs and cats were linked to EG. By contrast, PG is harmless. In fact, it is used as a moisturizing ingredient in many pet foods.

EG also can be toxic to poultry. PG, on the other hand, is used in many animal feed formulations to keep the feed moist and palatable.

Biodegradability

PG does not persist in the environment. It is readily consumed by microorganisms. In an activated sludge treatment plant operating at 65 degrees Fahrenheit, PG is fully degraded within 24 hours.



Recyclability

As with all spent engine coolants, PG antifreeze should be disposed of properly or recycled after use. Although biotreatment can be used effectively to dispose of spent coolants, many firms are moving to recycling. PG antifreeze is fully recyclable, and ARCO Chemical is working through the ASTM to develop specifications for recycled antifreeze.

For more information please call our toll free number, 1 800 321 7000.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the 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 sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, and having modified the order in one respect, 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 Safe Brands Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nebraska. It is a wholly-owned subsidiary of respondent Warren Distribution, Inc. Respondent Warren Distribution, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nebraska. Respondents Safe Brands Corporation and Warren Distribution, Inc. have their principal offices or places of business at 727 South 13th Street, Omaha, Nebraska.

Respondent ARCO Chemical Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office or place of business at 3801 West Chester Pike, Newtown Square, Pennsylvania.

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

ORDER

DEFINITION

For purposes of this order, the following definition shall apply:

"Competent and reliable scientific evidence" means tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

I.

It is ordered, That respondents, Safe Brands Corporation, a corporation, Warren Distribution, Inc., a corporation, and ARCO Chemical Company, a corporation, their successors and assigns, and their officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any antifreeze, coolant, or deicer product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that any such product will not harm the environment, is less harmful to the environment than other products, or offers any environmental benefit, unless at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation.

II.

It is further ordered, That respondents, Safe Brands Corporation, a corporation, Warren Distribution, Inc., a corporation, and ARCO Chemical Company, a corporation, their successors and assigns, and their officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any antifreeze, coolant, or deicer product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, about the safety or relative safety of such product for humans or animals unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates such representation.

III.

It is further ordered, That respondents, Safe Brands Corporation, a corporation, Warren Distribution, Inc., a corporation, and ARCO Chemical Company, a corporation, their successors and assigns, and their officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, offering for sale, sale, or distribution of any propylene glycol-based antifreeze or coolant product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall disclose on the front of the container of all such products the following:

"See Back Panel for CAUTIONARY INFORMATION"

and shall disclose on the back of the container of all such products the following:

"CAUTIONARY INFORMATION: This Product MAY BE HARMFUL IF SWALLOWED. STORE SAFELY AWAY FROM CHILDREN AND PETS. Do not store in open or unlabeled containers."

Each disclosure shall be in a conspicuous and prominent place on the container, in conspicuous and legible type in contrast by typography,

layout, or color with all other printed material on the container. The disclosure on the back of the container shall be surrounded by a one (1) point rule. The disclosure on the front of the container and the first two sentences of the disclosure on the back of the container shall be in type at least as large as the largest print type on the back of the container, except for the brand name, but, in any case, no smaller than ten (10) point type. The words "CAUTIONARY INFORMATION" on the front and back of the container shall be in bold type. The last sentence of the disclosure on the back of the container shall be in type at least as large as the type in which the majority of the printed material on the back of the container is printed.

The back of the container shall also contain the following statement, printed in type at least as large as the type in which the majority of the printed material on the back of the container is printed:

"Clean up any leaks or spills."

IV.

It is further ordered, That respondents, Safe Brands Corporation, a corporation, Warren Distribution, Inc., a corporation, and ARCO Chemical Company, a corporation, their successors and assigns, and their officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any antifreeze, coolant, or deicer product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, the level of vehicular engine protection provided by any such product, unless at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates such representation.

V.

It is further ordered, That respondents, Safe Brands Corporation, a corporation, Warren Distribution, Inc., a corporation, and ARCO

Chemical Company, a corporation, their successors and assigns, and their officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any antifreeze, coolant, or deicer product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the extent to which:

- A. Any such product or its package is capable of being recycled;
- or,
- B. Recycling collection programs for such product or its package are available.

VI.

It is further ordered, That the provisions of this order shall not apply to any label or labeling printed prior to the date of service of this order and shipped by respondents to distributors or retailers prior to one hundred (100) days after the date of service of this order.

VII.

It is further ordered, That for five (5) years after the last date of dissemination of any representation covered by this order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All materials that were relied upon in disseminating such representation; and
- B. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

VIII.

It is further ordered, That respondents shall distribute a copy of this order to each of their operating divisions and to each of their officers, agents, representatives, or employees engaged in the preparation and placement of advertisements, promotional materials, product labels or other such sales materials covered by this order.

IX.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporations such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporations which may affect compliance obligations under this order.

X.

This order will terminate on March 26, 2016, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this order that terminates in less than twenty years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline

for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

XI.

It is further ordered, That respondents shall, within sixty (60) days after service of this order upon them, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Commissioner Starek recused.

IN THE MATTER OF

PRAXAIR, INC.

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-3648. Complaint, April 1, 1996--Decision, April 1, 1996*

This consent order requires, among other things, Praxair, Inc., a Connecticut corporation, to divest, within 12 months to Commission-approved acquirers, four CBI atmospheric gases production plants, located in Vacaville and Irwindale, California; Bozrah, Connecticut; and Madison, Wisconsin. If the transaction is not completed in the prescribed time, a trustee may be appointed to divest the four plants.

Appearances

For the Commission: *Ann B. Malester, James Holden and William Baer.*

For the respondent: *Nathan Eimer, Sidley & Austin, Chicago, IL.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent, Praxair, Inc. ("Praxair"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire all of the common shares of CBI Industries, Inc. ("CBI"), a corporation subject to the jurisdiction of the Commission, in violation of Section 5 of the Federal Trade Commission Act ("FTC Act"), as amended, 15 U.S.C. 45, and that such acquisition, if consummated would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18 and Section 5 of the FTC Act, as amended, 15 U.S.C. 45; and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. RESPONDENT

1. Respondent Praxair is a corporation organized and existing under and by virtue of the laws of the United States, with its principal

executive offices located at 39 Old Ridgebury Road, Danbury, Connecticut.

2. For purposes of this proceeding, respondent is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

II. ACQUIRED COMPANY

3. CBI is a corporation organized and existing under and by virtue of the laws of the United States, with its principal executive offices located at 800 Jorie Boulevard, Oak Brook, Illinois.

4. CBI is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the FTC act, as amended, 15 U.S.C. 44.

III. THE ACQUISITION

5. On November 3, 1995, Praxair commenced a cash tender offer valued at approximately \$2 billion for all of the issued and outstanding common shares of CBI. On December 22, 1995, Praxair and CBI entered into a definitive agreement whereby Praxair will acquire all of the issued and outstanding common shares of CBI.

IV. THE RELEVANT MARKETS

6. For purposes of this complaint, the relevant lines of commerce in which to analyze the effects of the acquisition are the manufacture and sale of merchant nitrogen, merchant oxygen, and merchant argon, whether sold in liquid form or in cylinders.

7. For purposes of this complaint, the relevant geographic areas in which to analyze the effects of the acquisition on the merchant nitrogen and merchant oxygen markets are:

- a. Northern California;
- b. Southern California; and

c. The Northern Midwest and Northeast United States, and narrower markets contained therein, including the Eastern Connecticut area and the Western Wisconsin/Southeastern Minnesota area.

8. For purposes of this complaint, the relevant geographic area in which to analyze the effects of the acquisition on the merchant argon market is the United States, and narrower markets contained therein, including the Eastern Connecticut area and the Western Wisconsin/Southeastern Minnesota area.

9. The relevant markets are highly concentrated whether measured by Herfindahl-Hirschmann Indices ("HHI") or two-firm and four-firm concentration ratios. In addition, CBI's Madison, Wisconsin and Bozrah, Connecticut plants are the closest competing facilities, geographically, to Praxair's Minneapolis, Minnesota and Suffield, Connecticut plants, respectively.

10. New entry into the merchant nitrogen, merchant oxygen, and merchant argon markets would be time consuming, costly and unlikely.

11. Praxair and CBI are actual competitors in the relevant markets.

V. EFFECTS OF THE ACQUISITION

12. The effects of the acquisition may be substantially to lessen competition and to tend to create a monopoly in the relevant markets set forth above in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, in the following ways, among others:

a. By eliminating direct actual competition between Praxair and CBI;

b. By enhancing the likelihood of collusion or coordinated action between or among the remaining firms in Northern and Southern California;

c. By eliminating competition between the two closest competitors, geographically, in Eastern Connecticut, and the two closest competitors, geographically, in Western Wisconsin and Southeastern Minnesota;

d. By increasing the likelihood that Praxair would unilaterally exercise market power in Eastern Connecticut, and in Western Wisconsin and Southeastern Minnesota; and

e. By increasing the likelihood that consumers would be forced to pay higher prices for merchant nitrogen, merchant oxygen, and merchant argon in the relevant geographic areas.

VI. VIOLATIONS CHARGED

13. The acquisition agreement described in paragraph five constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

14. The acquisition described in paragraph five, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the proposed acquisition by respondent of all of the assets and businesses of CBI Industries, Inc. ("CBI"), and the respondent having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that a 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, now in further conformity with the procedure described 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 Praxair, Inc. ("Praxair") is a corporation organized, existing and doing business under and by virtue of the laws of the United States, with its principal executive offices located at 39 Old Ridgebury Road, Danbury, Connecticut.

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, as used in this order, the following definitions shall apply:

A. "*Respondent*" or "*Praxair*" means Praxair, Inc., its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, and groups and affiliates controlled by Praxair, Inc., and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

B. "*CBI*" means CBI Industries, Inc., its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, and groups and affiliates controlled by CBI, and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

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

D. "*Acquisition*" means Praxair's acquisition of issued and outstanding common shares of CBI, pursuant to a cash tender offer dated November 3, 1995.

E. "*Merchant atmospheric gases*" means oxygen, nitrogen and argon sold in liquid form or packaged in cylinders.

F. "*Atmospheric gases plant*" means a facility that produces Merchant atmospheric gases.

G. "*Merchant Divestiture Assets and Businesses*" means, the Vacaville Plant, Irwindale Plant, Bozrah Plant, and Madison Plant, whether divested individually or in some combination, including the assets, properties, business and goodwill, tangible and intangible, used in the manufacture and sale of merchant atmospheric gases at those plants, including, without limitation, the following:

1. All real property interests, including rights, title and interest in and to owned or leased property, together with all buildings, improvements, appurtenances, licenses and permits;
2. All machinery, fixtures, equipment, vehicles, transportation facilities, furniture, tools and other tangible personal property, including distribution equipment and cylinders;
3. All customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, technical information, management information systems, software, software licenses, inventions, patents, technology, know-how, specifications, designs, drawings, processes and quality control data;
4. Rights to and in contracts, including customer, dealer, distributor, supply and utility contracts;
5. Inventory, supplies and storage capacity, including storage vessels;
6. All rights under warranties and guarantees, express or implied;
7. All books, records, and files; and
8. All items of prepaid expense.

H. "*Vacaville Plant*" means CBI's atmospheric gases plant located in Vacaville, California, together with all associated Merchant Divestiture Assets and Businesses.

I. "*Irwindale Plant*" means CBI's atmospheric gases plant located in Irwindale, California, together with all associated Merchant Divestiture Assets and Businesses.

J. "*Bozrah Plant*" means CBI's atmospheric gases plant located in Bozrah, Connecticut, together with all associated Merchant Divestiture Assets and Businesses.

K. "*Madison Plant*" means CBI's atmospheric gases plant located in Madison, Wisconsin, together with all associated Merchant Divestiture Assets and Businesses.

II.

It is further ordered, That:

A. Praxair shall divest, absolutely and in good faith, within twelve (12) months of the date this order becomes final, the Merchant Divestiture Assets and Businesses, and shall also divest such additional ancillary CBI assets and effect such arrangements as are necessary to assure the marketability, viability and competitiveness of the Merchant Divestiture Assets and Businesses.

B. Praxair shall divest the Merchant Divestiture Assets and Businesses, either individually or in some combination, 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. The purpose of the divestiture is to ensure the continuation of the Merchant Divestiture Assets and Businesses as an ongoing, viable operation or operations, engaged in the same business in which the Merchant Divestiture Assets and Businesses are engaged at the time of the proposed divestiture, and to remedy the lessening of competition resulting from the proposed acquisition as alleged in the Commission's complaint.

C. Pending divestiture of the Merchant Divestiture Assets and Businesses, Praxair shall take such actions as are necessary to maintain the viability, marketability, and competitiveness of the Merchant Divestiture Assets and Businesses, and to prevent the destruction, removal, wasting, deterioration or impairment of the Merchant Divestiture Assets and Businesses except for ordinary wear and tear.

D. Praxair shall comply with all terms of the Agreement to Hold Separate attached to this order and made a part hereof as Appendix I. The Agreement to Hold Separate shall continue in effect until such time as respondent has divested all of the Merchant Divestiture Assets and Businesses as required by this order.

III.

It is further ordered, That:

A. If Praxair has not divested, absolutely and in good faith, and with the prior approval of the Commission, the Merchant Divestiture

Assets and Businesses within twelve (12) months of the date this order becomes final, the Commission may appoint a trustee to divest the Merchant Divestiture Assets and Businesses. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(1) of the Federal Trade Commission Act, 15 U.S.C. 45(1), or any other statute enforced by the Commission, Praxair 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 III 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(1) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Praxair to comply with this order.

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

1. The Commission shall select the trustee, subject to the consent of Praxair, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Praxair has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Praxair of the identity of any proposed trustee, Praxair 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 Merchant Divestiture Assets and Businesses.

3. Within ten (10) days after appointment of the trustee, Praxair 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 divestiture(s) required by this order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in paragraph III.C.3. to accomplish the divestiture(s), 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 Merchant Divestiture Assets and Businesses, or to any other relevant information, as the trustee may request. Praxair shall develop such financial or other information as the trustee may request and shall cooperate with the trustee. Praxair shall take no action to interfere with or impede the trustee's accomplishment of the divestiture(s). Any delays in divestiture caused by Praxair 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 Praxair's absolute and unconditional obligation to divest at no minimum price. The divestiture(s) shall be made in the manner and to the acquirer or acquirers as set out in paragraph II of this order, provided, however, if the trustee receives *bona fide* offers for any of the plants to be divested from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest that particular plant to the acquiring entity or entities selected by Praxair from among those approved by the Commission.

7. The trustee shall serve at the cost and expense of Praxair, without bond or other security unless paid for by Praxair, 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 Praxair, 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 Praxair, 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 Merchant Divestiture Assets and Businesses.

8. Praxair 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 III.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 divestiture required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the Merchant Divestiture Assets and Businesses.

12. In the event that the trustee determines that he or she is unable to divest the Merchant Divestiture Assets and Businesses in a manner consistent with the Commission's purpose as described in paragraph II, the trustee may divest additional ancillary CBI assets of Praxair and effect such arrangements as are necessary to satisfy the requirements of this order.

13. The trustee shall report in writing to Praxair and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV.

It is further ordered, That within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until Praxair has fully complied with paragraphs II and III of this order, Praxair shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with paragraphs II and III of this order. Praxair shall include in its 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 and III including a description of all substantive contacts or negotiations for the divestiture(s) required by this order, including the identity of all parties contacted. Praxair shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestiture(s).

V.

It is further ordered, That, for the purpose of determining or securing compliance with this order, Praxair shall permit any duly authorized representatives 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 Praxair, relating to any matters contained in this order; and

B. Upon five (5) days' notice to Praxair, and without restraint or interference from Praxair, to interview officers, directors, or employees of Praxair, who may have counsel present, regarding any such matters.

VI.

It is further ordered, That until Praxair has completed all of its obligations under this order, Praxair shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent 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.

VII.

It is further ordered, That respondent shall not be obligated to comply with this order if Praxair abandons the proposed acquisition of CBI. For purposes of this order, Praxair will be deemed to have abandoned the proposed acquisition of CBI after it provides written

