

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

GENERAL DYNAMICS CORPORATION;
AIR REDUCTION COMPANY, INC.;
CHEMETRON CORPORATION; and
OLIN MATHIESON CHEMICAL
CORPORATION,

Defendants.

Civil Action No. 07MC106

Judge: Johnson

Date Stamp: March 15, 2007

STIPULATION

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The BOC Group, Inc. ("BOC"), a successor in interest to defendant Air Reduction Company, Inc.; Praxair, Inc. ("Praxair"), a successor in interest to defendant General Dynamics Corporation; and American Air Liquide Holdings, Inc. ("Air Liquide"), on behalf of certain of its subsidiaries that acquired the carbon dioxide business of defendant Chemetron Corporation, have filed a motion requesting that the Court terminate the Final Judgments entered in this case on October 17, 1963 ("1963 Final Judgment"). The United States tentatively has agreed to the termination of the 1963 Final Judgment, pending the Court's decision as to whether further notice and comment procedures are appropriate.

2. In the event that the Court finds that no further notice is required, an order in the form of [Exhibit A](#) attached hereto may be filed and entered by the Court *sua sponte*, provided that the United States has not withdrawn its tentative consent.

3. In the event that the Court should order that further notice of the proposed termination be given,

- (a) BOC, Praxair, and Air Liquide shall publish at their own expense a notice of the proposed termination, in the form attached hereto as [Exhibit B](#), in issues of (1) Food Engineering and (2) Beverage World; and two consecutive issues of (3) Chemical Week. An order in the form of [Exhibit C](#) attached hereto, directing such publication, may be filed and entered by the Court forthwith, without further notice to any party or any other proceedings;
- (b) The United States will publish in the Federal Register a notice in the form of [Exhibit D](#) attached hereto, announcing the motion of BOC, Praxair, and Air Liquide to terminate the 1963 Final Judgment and the United States' tentative consent to it, summarizing the Complaint and the 1963 Final Judgment, describing the procedures for inspection and obtaining copies of relevant papers, and inviting the submission of comments;
- (c) A period for public comment shall end sixty days after the last publication of the notices required by this Stipulation. Within a reasonable time after the conclusion of the sixty-day public comment period, the United States will file copies of all comments received and its response to those comments; and
- (d) An order in the form of [Exhibit E](#) attached hereto, terminating the 1963 Final Judgment, may be filed and entered by the Court upon the request of any party or by the Court *sua sponte*, at any time after the United States has filed any

comments received and its responses and without further notice to any party or any other proceedings, provided that the United States has not withdrawn its tentative consent.

4. The United States may withdraw its tentative consent at any time before the entry of an order terminating the 1963 Final Judgment by filing a notice of withdrawal of its consent with the Court and serving a copy of said notice upon all other parties.

5. In the event that the United States withdraws its consent, or if the proposed order terminating the 1963 Final Judgment is not entered pursuant to this Stipulation, then this Stipulation shall be of no effect whatsoever; the making of this Stipulation shall be without prejudice to any party in this or any other proceeding; and the Stipulation shall not thereafter be used in this or any other action or for any other purpose.

Dated: March 13, 2007

FOR PLAINTIFF
UNITED STATES OF AMERICA

_____/s/_____
THOMAS O. BARNETT (TB, 1317)
Assistant Attorney General

_____/s/_____
DAVID L. MEYER (DM, 7166)
Deputy Assistant Attorney General

_____/s/_____
J. ROBERT KRAMER, II (JK, 3921)
Director of Operations

_____/s/_____
MARIBETH PETRIZZI (MP, 2337)
Chief, Litigation II Section

_____/s/_____
DOROTHY B. FOUNTAIN (DF, 3282)
Assistant Chief, Litigation II Section

Attorneys
U.S. Department of Justice
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_____/s/_____
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Dated: March 2, 2007

ON BEHALF OF
THE BOC GROUP, INC.

/s/

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ON BEHALF OF
AMERICAN AIR LIQUIDE HOLDINGS, INC.

/s/

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ON BEHALF OF
PRAXAIR, INC.

/s/

KIMBERLY N. REDDICK (KR, 2858)
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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

GENERAL DYNAMICS CORPORATION;
AIR REDUCTION COMPANY, INC.;
CHEMETRON CORPORATION; and
OLIN MATHIESON CHEMICAL
CORPORATION,

Defendants.

Civil Action No. 07MC106

Judge: Johnson

Date Stamp: March 15, 2007

ORDER TERMINATING 1963 FINAL JUDGMENTS

The Court having received the motion of The BOC Group, Inc., a successor in interest to defendant Air Reduction Company, Inc.; Praxair, Inc., a successor in interest to defendant General Dynamics Corporation; and American Air Liquide Holdings, Inc., on behalf of certain of its subsidiaries that acquired the carbon dioxide business of defendant Chemetron Corporation, for termination of the Final Judgments entered by this Court on October 17, 1963 in the above-captioned matter (“1963 Final Judgment”); the United States having represented to the Court that it has no objection to the motion; notice of intention to seek termination of the 1963 Final Judgment having been published in Chemical Week on March 1, 2006 and March 8, 2006, Food Engineering on March 10, 2006, and Beverage World on March 15, 2006; all interested parties having been given an opportunity to submit comments concerning the proposed termination of the 1963 Final Judgment; the Court having considered all papers and comments

filed in connection with this motion; and the Court finding that it is in the public interest to terminate the 1963 Final Judgment, it is

ORDERED, ADJUDGED, AND DECREED:

That said 1963 Final Judgment is hereby terminated.

Dated: _____

UNITED STATES DISTRICT COURT JUDGE
EASTERN DISTRICT OF NEW YORK

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

GENERAL DYNAMICS CORPORATION;
AIR REDUCTION COMPANY, INC.;
CHEMETRON CORPORATION; and
OLIN MATHIESON CHEMICAL
CORPORATION,

Defendants.

Civil Action No. 07MC106

Judge: Johnson

Date Stamp: March 15, 2007

**NOTICE OF PROPOSED TERMINATION OF THE
1952 AND 1963 FINAL JUDGMENTS**

PLEASE TAKE NOTICE that motions have been filed asking this Court to enter orders terminating the Final Judgments entered in the above-captioned matter on October 17, 1963 (“1963 Final Judgment”) and the Final Judgment entered in United States v. Liquid Carbonic Corp., 1952 Trade Cas. (CCH) ¶ 67,248 (E.D.N.Y. 1952) on March 7, 1952, as amended (“1952 Final Judgment”).

The United States has filed with the Court a responsive memorandum setting forth the reasons it believes that termination of the 1952 Final Judgment and the 1963 Final Judgment would serve the public interest. Copies of the motions to terminate, the stipulations containing the United States’ tentative consent, the United States’ memorandum, and all further papers filed with the Court in connection with the termination motion will be available for inspection at the

Antitrust Documents Group, Antitrust Division, 325 7th Street, N.W., Room 215, Washington, DC 20530, on the website at www.usdoj.gov/atr, and at the Office of the Clerk of the United States District Court for the Eastern District of New York. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the 1952 Final Judgment and the 1963 Final Judgment to the United States. Such comments must be received by the Antitrust Division within sixty (60) days and will be filed with the Court by the United States. Comments should be addressed to Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, N.W., Suite 3000, Washington, DC 20530.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

GENERAL DYNAMICS CORPORATION;
AIR REDUCTION COMPANY, INC.;
CHEMETRON CORPORATION; and
OLIN MATHIESON CHEMICAL
CORPORATION,

Defendants.

Civil Action No. 07MC106

Judge: Johnson

Date Stamp: March 15, 2007

**ORDER ESTABLISHING NOTICE AND PUBLIC COMMENT
PROCEDURES FOR MOTION TO TERMINATE 1963 FINAL JUDGMENT**

The BOC Group, Inc. (“BOC”), a successor in interest to defendant Air Reduction Company, Inc.; Praxair, Inc. (“Praxair”), a successor in interest to defendant General Dynamics Corporation; and American Air Liquide Holdings, Inc. (“Air Liquide”), on behalf of certain of its subsidiaries that acquired the carbon dioxide business of defendant Chemetron Corporation, having moved for an order terminating the Final Judgments entered by this Court on October 17, 1963 (“1963 Final Judgment”); and plaintiff, the United States, having tentatively consented to the motion, and plaintiff having proposed, and BOC, Praxair, and Air Liquide having agreed, that notice of the motion and the United States’ tentative consent to it be published at the expense of BOC, Praxair, and Air Liquide, and that all interested persons be given an opportunity to submit comments concerning the proposed termination of the 1963 Final

Judgment; and it appearing to the Court desirable to invite such comments, and in consideration of the parties' Stipulation dated March __, 2007, it is

ORDERED that BOC, Praxair, and Air Liquide shall publish at their own expense a notice in the form attached as Exhibit B to the Stipulation in the above-captioned matter in issues of (a) Food Engineering and (b) Beverage World; and two consecutive issues of (c) Chemical Week – and file proof of such publications with the Court; and it is

FURTHER ORDERED, that copies of all comments received by plaintiff within sixty (60) days after the last publication of the notices required by this order shall be filed with this Court by plaintiff promptly after it receives such comments; and it is

FURTHER ORDERED, that this Court will not rule upon defendants' motion until at least the seventieth (70th) day after the last publication of the notices required by this order and the publication by the United States of a notice in the Federal Register announcing these proceedings.

DONE, this ____ day of _____, 2007.

UNITED STATES DISTRICT COURT JUDGE
EASTERN DISTRICT OF NEW YORK

Exhibit D

FEDERAL REGISTER NOTICE

U.S. Department of Justice
Antitrust Division

Proposed Termination of Judgments

Notice is hereby given that The BOC Group, Inc. (“BOC”), a successor in interest to both defendant Air Reduction Company, Inc. (“Airco”) and defendant Pure Carbonic, Inc.; and Praxair, Inc. (“Praxair”), a successor in interest to defendant Liquid Carbonic Corporation have filed a motion to terminate the Final Judgment entered in *United States v. Liquid Carbonic Corp.*, 1952 Trade Cas. (CCH) ¶ 67,248 (E.D.N.Y. 1952), on March 7, 1952, as amended (“1952 Final Judgment”), and that the Antitrust Division of the U.S. Department of Justice (“the Department”), in a stipulation also filed with the Court, has tentatively consented to termination of the 1952 Final Judgment, but has reserved the right to withdraw its consent pending receipt of public comments.

Notice is also hereby given that BOC, a successor in interest to defendant Airco; Praxair, a successor in interest to defendant General Dynamics Corporation; and American Air Liquide Holdings, Inc. (“Air Liquide”), on behalf of certain of its subsidiaries that acquired the carbon dioxide business of defendant Chemetron Corporation, have filed a motion to terminate the Final Judgments entered in *United States v. General Dynamics Corp.*, 1963 Trade Cas. (CCH) ¶¶ 70, 890-70-892, 70,919 (E.D.N.Y. 1963) on October 17, 1963 (“1963 Final Judgment”), and that the Department, in a stipulation also filed with the Court, has tentatively consented to termination of the 1963 Final Judgment, but has reserved the right to withdraw its consent pending receipt of public comments.

On June 24, 1948, and August 22, 1961, the United States filed separate complaints alleging that certain defendants had conspired to restrain interstate trade and commerce in the manufacture, distribution and sale of carbon dioxide (CO₂), and had monopolized and attempted to monopolize such trade. The original defendants settled the charges by accepting entry of the 1952 Final Judgment and the 1963 Final Judgment. The Decrees perpetually enjoined the defendants' successors in interest from continuing the conspiracy or entering into similar conspiracies, and prohibited the defendants from engaging in exclusionary practices. In particular, BOC, Praxair, and Air Liquide are prohibited from using requirements contracts for the sale of bulk liquid or cylinder CO₂ if such contracts have a term in excess of one year. The defendants are also prohibited from tying their sales of CO₂ to the rental or lease of storage tanks (and vice versa). In addition, BOC and Praxair are prohibited from selling each other CO₂ except in cases of operational distress.

The Department has filed with the Court a memorandum setting forth the reasons why the United States believes that termination of the 1952 Final Judgment and the 1963 Final Judgment serves the public interest. Copies of the motions to terminate, the stipulations containing the United States' tentative consent, the United States' memorandum, and all further papers filed with the Court in connection with the motions will be available for inspection at the Antitrust Documents Group, Antitrust Division, Room 215, 325 7th Street, N.W., Washington, DC 20004, on the website at www.usdoj.gov/atr, and at the Office of the Clerk of the United States District Court for the Eastern District of New York. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the 1952 Final Judgment and the 1963 Final Judgment to the United States. Such comments must be received by the Antitrust Division within sixty (60) days and will be filed with the Court by the United States. Comments should be addressed to Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, N.W., Suite 3000, Washington, DC 20530 ((202) 307-0924).

J. Robert Kramer, II
Director of Operations

UNITED STATES DISTRICT COURT
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UNITED STATES OF AMERICA,

Plaintiff,

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GENERAL DYNAMICS CORPORATION;
AIR REDUCTION COMPANY, INC.;
CHEMETRON CORPORATION; and
OLIN MATHIESON CHEMICAL
CORPORATION,

Defendants.

Civil Action No. 07MC106

Judge: Johnson

Date Stamp: March 15, 2007

**ORDER TERMINATING 1963 FINAL JUDGMENT AFTER COURT-ORDERED
NOTICE, PERIOD OF PUBLIC COMMENT, AND GOVERNMENT RESPONSE**

The Court having received the motion of The BOC Group, Inc., a successor in interest to defendant Air Reduction Company, Inc.; Praxair, Inc., a successor in interest to defendant General Dynamics Corporation; and American Air Liquide Holdings, Inc., on behalf of certain of its subsidiaries that acquired the carbon dioxide business of defendant Chemetron Corporation, for termination of the Final Judgments entered by this Court on October 17, 1963 (“1963 Final Judgment”); the United States having represented to the Court that it has no objection to the motion; notice of the motion having been published in the Federal Register, Food Engineering, Beverage World, and Chemical Week; all interested parties having been given an opportunity to submit comments concerning the proposed termination of the 1963 Final Judgment; the Court having considered all papers and comments filed in connection with this

motion; and the Court finding that it is in the public interest to terminate the 1963 Final Judgment, it is

ORDERED, ADJUDGED, AND DECREED:

That said 1963 Final Judgment is hereby terminated.

Dated: _____

UNITED STATES DISTRICT COURT JUDGE
EASTERN DISTRICT OF NEW YORK