

APPENDIX A:

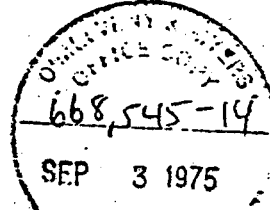
UNITED STATES v. PHILLIPS PETROL. CO., ET AL

CIVIL NO. 66-1154-WJF

JUDGMENT ENTERED: SEPT. 3, 1975

FILED

SEP 3 1975

CLERK, U. S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY _____ DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
PHILLIPS PETROLEUM COMPANY, and)
TIDEWATER OIL COMPANY,)
)
Defendants.)

Civil No. 66-1154-WJF
ORDER OF DIVESTITURE

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This Court having, on November 13, 1973, entered its Opinion requiring that defendant Phillips Petroleum Company (hereinafter "Phillips") divest assets acquired from Tidewater Oil Co.; and Phillips, having on June 5, 1975, filed its Amended Plan of Divestiture providing for sale of certain of said assets to The Oil Shale Corporation (hereinafter "TOSCO"), with an annexed Purchase and Sale Agreement, dated June 3, 1975, between Phillips and TOSCO; and the Court having, on June 30, 1975, approved TOSCO as a purchaser of said assets, subject to TOSCO's agreement to be bound by certain conditions set out below; and TOSCO, by its signature hereto, having agreed to be bound by said conditions; and to carry out the divestiture directed by the Court's said November 13, 1973 Opinion:

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, as follows:

I. DEFINITIONS

As used in this Order, the following terms shall have the meaning set forth:

A. "Oil Company" means any of the companies, their successors, subsidiaries and affiliates, listed on Schedule "A" attached to this Order.

B. "Beneficial ownership" shall have the meanings set forth in the Securities and Exchange Commission Releases No. 34-7793 (January 19, 1966) and No. 34-7824 (February 14, 1966) and No. 34-1965 (Opinion of Counsel dated December 21, 1938) which are attached hereto as Schedule "B".

C. "Avon Refinery" means the Phillips' refining facility located at Martinez, California; the Phillips Amorco and Diablo Terminals; the Phillips Port Costa Terminal; together with all buildings, processing units, equipment, pipeline fixtures, and improvements located on and part of said real property; and including all of Phillips' rights, titles and interests in and to all leases, contracts, and rights-of-way (with the pipelines therein) which are appurtenant to the premises and used in the operations of said refinery and terminals.

D. "Independent marketer" means any person engaged in California, Washington, Oregon, Nevada, and/or Arizona in the wholesale and/or retail marketing or distribution of motor gasoline (a) fifty percent (50%) or more of whose sales of such gasoline are not, to TOSCO's knowledge, sold or supplied, directly or indirectly, to retail outlets for resale under any one or more brand names owned or controlled by any company or companies set forth or described hereinafter in this subparagraph (D), and (b) who does not control, is not controlled by, or is not under common control with any company or companies set forth or described hereinafter in

1 this subparagraph (D): Standard Oil Company of California,
 2 Shell Oil Company, Atlantic Richfield Company, Union Oil
 3 Company of California, Texaco Incorporated, Mobil Oil Corporation,
 4 Gulf Oil Company, Exxon Corporation, Continental Oil Company,
 5 or any other company (except TOSCO or any of its subsidiaries)
 6 accounting for more than six percent (6%) of the tax paid
 7 motor gasoline sales as published by the State of California
 8 Board of Equalization, or any successor agencies thereto,
 9 for the most recent twelve (12) month period.

10 E. "Person" means an individual, corporation, partner-
 11 ship, association or any other legal or business entity.

12 II. CONDITIONS

13 1. Until July 1, 1985, or until the disposition by
 14 TOSCO or a wholly-owned subsidiary of TOSCO, or a subsidiary
 15 of a subsidiary of TOSCO, of the Avon Refinery in conformity
 16 with the restrictions of Paragraph II(2) below, whichever
 17 comes first:

18 A. No director or officer of TOSCO shall, on or after
 19 July 1, 1976, have any beneficial ownership of any common
 20 stock of any Oil Company, other than TOSCO, provided, however,
 21 that:

22 (i) Any present director or officer may own
 23 beneficially a number of shares of such stock equal to
 24 his holdings on the date of this Order (including any
 25 shares received as a stock split or stock dividend
 26 after the date of this Order) but not exceeding 1/100th
 27 of one percent of the total issued and outstanding
 28 shares of any Oil Company.

29 (ii) Any future director or officer may own
 30 beneficially common stock of an Oil Company, if such
 31 stock was acquired during that person's employment
 32 with, or as a part of his compensation from, that Oil

1 Company, but not exceeding 1/100th of one percent of
2 the total issued and outstanding shares of that Oil
3 Company.

4 (iii) No relationship between any director or
5 officer of TOSCO and a national or state bank or trust
6 company, investment banking firm or institutional
7 lender, shall cause any Oil Company common stock owned,
8 controlled or managed by such national or state bank or
9 trust company, investment banking firm or institutional
10 lender in the ordinary course of its business, to be
11 deemed owned beneficially, directly or indirectly, by
12 such officer or director, so long as such national or
13 state bank, trust company, or investment banking firm
14 or institutional lender owns beneficially no more than
15 1% of the common stock of such Oil Company, except when
16 such national or state bank, trust company, investment
17 banking firm or institutional lender is an underwriter
18 in a public distribution of such stock or engages in the
19 trading of such stock in the ordinary and usual course
20 of its business (other than for investment purposes) and
21 in such capacity temporarily holds more than the one (1)
22 percent referred to in this subparagraph, pending sale
23 or distribution thereof.

24 (iv) The ownership of common stock of an Oil Company
25 by an employee's savings, pension, profit-sharing or
26 other employee benefit plan in which a director or officer
27 has an interest shall not be attributed to such director
28 or officer for purposes of this condition.

29 B. No director or officer of TOSCO shall be a director
30 or officer of any other Oil Company.

31 C. TOSCO will not sell or originally issue any shares
32 of its common stock or any other of its equity security or

1 any other security having rights to vote for the election of.
2 directors of TOSCO, or convertible thereinto, to any Oil
3 Company, provided, however, that:

4 (i) TOSCO may issue shares of its common stock
5 upon the exercise by holders of presently outstanding
6 warrants previously issued by TOSCO.

7 (ii) Sales of TOSCO's securities pursuant to an
8 underwritten distribution registered with the Securities
9 and Exchange Commission for sale to the public shall
10 not be deemed a sale or issuance by TOSCO to an Oil
11 Company unless TOSCO has entered into an agreement,
12 understanding or arrangement with the underwriter or
13 underwriters of such distribution that any or all of
14 such securities be sold to Oil Companies.

15 2. Until July 1, 1985, TOSCO shall not, without the
16 permission of this Court, sell, lease, transfer, or alienate
17 the Avon Refinery; provided, however that:

18 A. The Avon Refinery or interests therein may be
19 leased or transferred to a wholly-owned subsidiary of TOSCO,
20 or from one such subsidiary to another, or a subsidiary of a
21 subsidiary of TOSCO, or to TOSCO.

22 B. The Avon Refinery or portions thereof may be mort-
23 gaged, pledged or encumbered, other than to an Oil Company,
24 as security for a bona fide indebtedness, and upon the
25 occurrence of an event of default pursuant to the documents
26 evidencing such indebtedness, or upon the insolvency or
27 bankruptcy of TOSCO or the subsidiary of TOSCO which then
28 owns the Avon Refinery, such security may be realized upon
29 and sold, leased, transferred or alienated in the manner
30 provided by such documents evidencing indebtedness or by
31 law, for the benefit of the lenders under such indebtedness,
32 or creditors generally, as the case may be.

1 C. Subject to the obligation imposed by subparagraph 3
2 below, TOSCO may retire or dispose of obsolete, surplus or
3 worn out equipment or facilities, and revise, amend, or
4 terminate leases and contractual rights at the Avon Refinery.

5 3. For a period of five (5) years from the Transfer
6 Date (as defined in the Purchase and Sale Agreement), TOSCO
7 shall make no alterations in the processing units of the
8 Avon Refinery, which are designed or intended to, or which
9 have the effect of, materially reducing the motor gasoline
10 production capacity of the Avon Refinery below that level
11 required to supply the independent marketers pursuant to
12 subparagraph 4 below.

13 4. For a period of five (5) years from the Transfer
14 Date (as defined in the Purchase and Sale Agreement), TOSCO
15 shall, on non-discriminatory terms and conditions with
16 respect to each class of customer, (i) offer to sell at
17 least eighty percent (80%) of the motor gasoline produced in
18 the Avon Refinery (or received on exchange therefor) to or
19 through independent marketers and consumer accounts, subject
20 to its obligations to Phillips under the Product Supply
21 Contract which is Exhibit 7 to the Purchase and Sale Agreement,
22 and (ii) offer to sell to or through independent marketers
23 (other than itself or its subsidiaries) not less than (a)
24 thirty percent (30%) of the motor gasoline produced in the
25 Avon Refinery (or received on exchange therefor), plus (b)
26 fifty percent (50%) of any motor gasoline received on exchange
27 for jet fuel produced in the Avon Refinery, plus (c) fifty
28 percent (50%) of any volumes of motor gasoline released from
29 TOSCO's commitment to Phillips pursuant to the aforesaid
30 Product Supply Contract. In no event, however, shall the
31 amount (measured on an average daily basis) of motor gasoline
32 to be offered for sale to or through independent marketers

1 pursuant to the requirement of (ii) above, fall below thirty
2 percent (30%) of the average daily motor gasoline output of
3 the Avon Refinery measured over the period January 1 -
4 June 30, 1975.

5 5. (A) Should TOSCO be unable to comply with the
6 requirements of this Order because of force majeure, TOSCO
7 shall notify the Court and Plaintiff of the existence thereof,
8 and shall use its best efforts to overcome such force majeure.

9 (B) This Order shall be subject to the Emergency
10 Petroleum Allocation Act of 1973, (Public Law 93-159, 87
11 Stat. 627) and successor legislation relating to the alloca-
12 tion of petroleum or petroleum products.

13 6. Notwithstanding any other provision of this Order,
14 the terms of the Purchase and Sale Agreement relating to
15 Series A Preferred Stock and the rights of holders thereof,
16 shall be effective, subject to the condition that Phillips
17 shall not sell or transfer any of said stock to any other
18 Oil Company, provided, however, that this condition shall
19 not apply to any underwritten public distribution registered
20 with the Securities and Exchange Commission of all or any
21 part of said stock unless Phillips has entered into an
22 agreement, understanding or arrangement with the underwriter
23 or underwriters of such distribution that any or all of such
24 stock be sold to Oil Companies. Directors elected by holders
25 of said stock pursuant to those terms of said Purchase and
26 Sale Agreement relating to the election of directors by
27 Series A Preferred stockholders voting as a separate class,
28 shall not be subject to the prohibitory provisions of subpara-
29 graph II(1)(A) herein with respect to any holding of stock
30 of any Oil Company, or subject to the provisions of subpara-
31 graph II(1)(B) herein.

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1 III. RETENTION OF JURISDICTION

2 Jurisdiction is retained for the purpose of enabling
3 any of the parties subject to this Order to apply to this
4 Court at any time for such further orders and directions as
5 may be necessary or appropriate for the construction, modifi-
6 cation or carrying out of any of the provisions of this
7 Order, for the enforcement of compliance therewith, and for
8 the punishment of violations thereof.

9 IV. COMPLIANCE

10 For a period of five (5) years from the Transfer Date
11 (as defined in the Purchase and Sale Agreement), TOSCO shall
12 file annually with the Plaintiff a written report describing
13 in detail its compliance with the provisions of subparagraphs
14 II(3) and (4) of this Order.

15 V. VISITORIAL CLAUSE

16 A. For the purpose of determining or securing compliance
17 with this Order, duly authorized representatives of the
18 Department of Justice shall, upon the written request of the
19 Attorney General, or the Assistant Attorney General in
20 charge of the Antitrust Division, and upon reasonable notice
21 to either Phillips or TOSCO made to its principal office, be
22 permitted subject to any legally recognized privilege:

23 (a) Access during office hours of Phillips and
24 TOSCO, as applicable, to all books, ledgers,
25 accounts, correspondence, memoranda, and
26 other records and documents in the possession
27 of or under the control of Phillips and TOSCO
28 relating to any of the matters contained in
29 this Order; and

30 (b) Subject to the reasonable convenience of
31 Phillips and TOSCO to interview officers or
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1 employees of such parties, who may have
2 counsel present, regarding any such
3 matters.

4 B. Upon the written request of the Attorney General or
5 the Assistant Attorney General in charge of the Antitrust
6 Division, Phillips and TOSCO shall submit such written
7 reports with respect to any of the matters contained in this
8 Order as from time to time may be requested.

9 No information obtained by the means provided in this
10 paragraph V shall be divulged by any representative of the
11 Department of Justice to any person other than a duly authorized
12 representative of the Executive Branch of the United States,
13 except in the course of legal proceedings to which the
14 United States is a party for the purpose of securing compliance
15 with this Order or as otherwise required by law.

16 VI. PETITION TO EXTEND ORDER

17 Plaintiff shall have the right to petition the Court to
18 extend beyond July 1, 1985, the period during which the pro-
19 visions of paragraph II (1) and (2) of this Order are
20 operative, if and when Plaintiff deems any such extension to
21 be warranted.

22 VII. APPLICABILITY

23 A. This Order is final upon entry, but shall become
24 binding on Phillips and TOSCO upon the transfer of the Avon
25 Refinery to TOSCO.

26 B. Should the divestiture approved by this Order not
27 be completed, Phillips shall accomplish the divestiture
28 ordered by the Court in its November 13, 1973 Opinion in
29 accordance with such terms and conditions as the Court may
30 then direct.

VIII. NOTIFICATION OF ORDER

A. Within 30 days after the transfer of the Avon Refinery to TOSCO, TOSCO shall publish a copy of this Order in the Oil and Gas Journal, National Petroleum News, and The Oil Daily, and shall send a copy of this Order to all of its customers who are independent marketers as defined in paragraph I (D) hereof, and to each of the Oil Companies listed in Schedule "A" attached hereto.

B. Within 30 days after the transfer of the Avon Refinery to TOSCO, Phillips shall furnish a copy of this Order to all of its motor gasoline customers of the Avon Refinery to the extent such customers are not included in subparagraph A. above.

DATED this 3 day of ^{Sept} August 1975.

/s/ Ferguson
UNITED STATES DISTRICT JUDGE

Approved:

KRUSE & KATSKY

By:

Ronald L. Katsky

Ronald L. Katsky
Attorney for The Oil Shale Corporation

SULLIVAN & CROMWELL
WILLIAM PIEL, JR.
JOHN DICKEY

O'MELVENY & MYERS
EVERETT B. CLARY

By:

Everett B. Clary

Everett B. Clary
Attorneys for Defendant
Phillips Petroleum Company

DEPARTMENT OF JUSTICE

By:

Irene S. Holmes
Irene S. Holmes

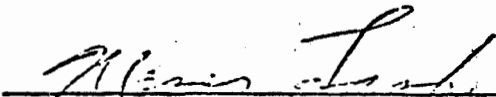
1 Tidewater Oil Company takes no position on, and does not object
2 to, entry of this order.

3 BROBECK, PHLEGER & HARRISON
4 MOSES LASKY
5 CHARLES B. COHLER

6 HAYS, LANDSMAN & HEAD
7 C. LANSING HAYS, JR.

8 R.D. COPLEY, JR.

9 By:


Moses Lasky

10 Attorneys for Defendant
11 Tidewater Oil Company
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SCHEDULE "A"

1 Agway Petroleum Corporation
2 Amerada Hess Corporation
3 American Petrofina, Incorporated
4 APCO Oil Corporation
5 Armour Oil Company
6 Ashland Oil, Incorporated
7 Atlantic Richfield Company
8 Beacon Oil Company
9 Belco Petroleum Corporation
10 Burmah Oil & Gas Company
11 Cenex (Farmers Union Central Exchange, Inc.)
12 Charter Company
13 Cities Service Company
14 Clark Oil & Refining Corporation
15 Coastal States Gas Corporation
16 Commonwealth Oil Refining Company, Incorporated
17 Continental Oil Company
18 Crown Central Petroleum Corporation
19 Diamond Shamrock Corporation
20 Earth Resources Company
21 Edgington Oil Company, Incorporated
22 Esmark, Incorporated
23 Ethyl Corporation
24 Exxon Corporation
25 Fletcher Oil & Refining Company
26 Getty Oil Company
27 Gulf Oil Corporation
28 Gull Oil Company
29 Harris Enterprises, Incorporated
30 Hudson Oil Company
31 Hunt Oil Company
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SCHEDULE "A", p. 1

- 1 Husky Oil Company
- 2 Kerr-McGee Corporation
- 3 Koch Industries, Incorporated
- 4 Marathon Oil Company
- 5 Mobil Oil Corporation
- 6 Murphy Oil Corporation
- 7 Natoma Company
- 8 Occidental Petroleum Corporation
- 9 Pacific Resources Incorporated
- 10 Pacific Supply Corporation
- 11 Paulay Petroleum, Incorporated
- 12 Pennaco Company
- 13 Phillips Petroleum Company
- 14 Quaker State Oil Refining Corporation
- 15 Reserve Oil & Gas Company
- 16 Rothchild Oil Company
- 17 Shaheen Natural Resources, Incorporated
- 18 Shell Oil Company
- 19 Southern Pacific Company
- 20 Standard Oil Company of California
- 21 Standard Oil Company (Indiana)
- 22 Standard Oil Company (Ohio)
- 23 Studabaker-Worthington, Incorporated
- 24 Sun Oil Company
- 25 Sunland Refining Company
- 26 Superior Oil Company
- 27 Tenneco, Incorporated
- 28 Tesoro Petroleum Corporation
- 29 Texaco, Incorporated
- 30 U.S. Oil & Refining Company
- 31 USA Petroleum Corporation
- 32 Ultramar Company, Ltd.

SCHEDULE "A" - p. 2

1 Union Oil Company of California

2 Union Pacific Corporation

3 United Refining Company

4 UOP Inc.

5 Urich Oil Company

6 Williams Companies

7 Western Farmers Association

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SCHEDULE "A" - p. 3

[¶ 26,030]

[Beneficial Ownership—Applicability
of SEC Staff Opinions]

Schedule "B"

Release No. 34-7824 (33-4819, 35-15403, 39-229, IC-4516, 40-196), February 14, 1966,
31 F. R. 3175.

17 CFR 241.7824 (§§ 231.4819, 251.15403, 261.229, 271.4516, 276.196).

The Securities and Exchange Commission published a release on January 19, 1966 (Securities Exchange Act Release No. 7793) concerning the beneficial ownership of securities held by family members. The staff of the Commission has received a number of inquiries about the application of the opinions expressed in the release to filings that had been made with the Commission prior to its publication. The text of the release is set forth in full below *** [at ¶ 26,031—26,032].

The Commission did not intend that opinions expressed in the release would be applied retroactively; accordingly, prior reports need not be amended. In order that ample time may be afforded to give effect to the opinions expressed in the release, it will be sufficient if reports, proxy solicitation material, registration statements and other material filed after May 1, 1966 reflect beneficial ownership as described in the release. Reports filed for the month of April under Section 16(a) of the Securities Exchange Act of 1934 should reflect beneficial ownership as described in the release. If no transactions occurred during that month, a report should nevertheless be filed under Section 16(a) by May 10, 1966, if the last report filed does not reflect current beneficial ownership as described in the release.*

The Commission also wishes to point out that the opinions expressed in the release were directed to the information contained in reports and other material filed with the Commission. The fact that ownership of securities and transactions in those securities are reported under Section 16(a) of the Securities Exchange Act of 1934 does not necessarily mean that liability will result therefrom under Section 16(b). The question whether liabilities under Section 16(b) will arise from transactions is, of course, to be determined by the facts of each particular case in an appropriate action brought by the issuer or its security holders.

* See next page for footnote. CCH.

¶ 26,027 17 CFR 241.7824

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874 2-20-75

Directors; Officers; Stockholders—Sec. 16(a) 19,057-3

[¶ 26,031] Beneficial Ownership of Securities
Held by Family Members

Release No. 34-7793 (33-4817, 35-15381, 39-227, IC-4483, 40-194), January 19, 1966,
31 F. R. 1005.

17 CFR 241.7793 (§§ 231.4817, 251.15381, 261.227, 271.4483, 276.194).

The Securities and Exchange Commission is publishing this release to restate¹ and clarify the meaning of "beneficial ownership of securities"² under the securities acts administered by the Commission as such term relates to the beneficial ownership of securities held in the name of family members.

Although the discussion below relates to the reporting of beneficial ownership of securities under Section 16(a) of the Securities Exchange Act of 1934 (Exchange Act), it should be noted that generally the same principles apply to disclosing beneficial ownership in registration statements,³ annual reports,⁴ proxy statements,⁵ applications for registration as a broker-dealer or as an investment adviser,⁶ and statements of eligibility and qualification to act as indenture trustee⁷ under the securities acts where such disclosure is required.

[¶ 26,032] Section 16 of the Exchange Act

Section 16(a) of the Exchange Act requires every person owning beneficially, directly or indirectly, more than 10% of a class of equity security registered on a national securities exchange or registered pursuant to new Section 12(g) of the Act, or who is a director or an officer of the issuer of such security, to file an initial report disclosing the amount of each class of the issuer's equity securities, whether or not registered, which are beneficially owned by such person at the time the issuer's securities become registered, or at the time a person becomes such a director, officer or beneficial owner after registration.⁸ Thereafter, each such person must report any change in his beneficial ownership of the issuer's equity securities within 10 days after the end of each calendar month during which any change

* Similar reports should be filed by persons filing under Section 30(f) of the Investment Company Act of 1940 and Section 17 of the Public Utility Holding Company Act of 1935.

² An early interpretation concerning beneficial ownership of securities held by members of a family was published in S. E. A. Release No. 175 (April 16, 1935). This release supercedes S. E. A. Release No. 175.

³ The term "beneficial ownership" as used herein includes both direct and indirect beneficial ownership.

⁴ E.g., Item 19, *Principal Holders of Securities*, Form S-1 under the Securities Act of 1933 [15.210]; Item 11, *Principal Holders of Securities*, Form 10 under the Exchange Act [17.203]; Item 15, *Twenty Largest Holders of Capital Stock*, Form US-3 under the Public Utility Act of 1935 [14.226]; Item 14(b), *Persons Owning Equity Securities of Registrant*, Form N-3B-1 under the Investment Company Act of 1940 [15.1.203].

⁵ E.g., Item 5, *Principal Holders of Securities*, and Item 6, *Directors of Registrant*, Form 10-K under the Exchange Act [13.1.203]; Item 8, *Holdings of Capital Stock*, Form US-3 under the Public Utility Act of 1935 [14.2.223]; Item 1.09(b), *Persons Owning Equity Securities of Registrant*, Form N-1R under the Investment Company Act of 1940 [15.1.563].

⁶ E.g., Item 5, *Voting Securities and Principal Holders Thereof*, and Item 6, *Nominees and Directors*, Schedule 14A under the Exchange Act [17.2.036; 24.027].

⁷ E.g., Item 3(c) of Form BD under Section 15(b) of the Exchange Act [13.2.703] and Item 3(c) of Form ADV under Section 203(c) of the Investment Advisers Act of 1940 [15.7.124].

⁸ E.g., Item 6, *Voting Securities of the Trustee Owned by the Obligor or its Officials*, Form T-1 [14.3.104]; Item 4, *Securities of the Obligor Owned or Held by the Trustee*, Form T-2 under Section 310(b), (subsections 5, 6, 7 and 8), of the Trust Indenture Act of 1939 [14.3.123].

⁹ Similarly, under Section 17 of the Public Utility Act of 1935 periodic ownership reports disclosing the beneficial ownership of officers and directors of a registered holding company in all securities of their company and any subsidiary company thereof are required. Also, by virtue of Section 20(f) of the Investment Company Act of 1940, the provisions of Section 16 of the Exchange Act attach to beneficial owners of more than ten percent of any class of securities, other than, short-term paper, issued by a registered closed-end investment company, officers and directors of such a company, as well as other persons specified in Section 20(f), having specified relationships with such a company.

Federal Securities Law Reports

17 CFR 241.7793 ¶ 26,032

19,057-4

Insiders—Liabilities

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occurs.⁹ Persons required to file reports under Section 16(a) are also subject to Section 16(b) and (c) of the Act.¹⁰

Thus, the determination of whether a person is the beneficial owner of securities held in the name of his spouse, minor children or other relatives is significant in deciding whether such securities should be included in the reports filed by officers, directors and beneficial owners pursuant to Section 16(a). It is also significant in determining whether a person is subject to Section 16 as the beneficial owner of more than 10% of a class of registered equity security.

Generally a person is regarded as the beneficial owner of securities held in the name of his or her spouse and their minor children. Absent special circumstances such relationship ordinarily results in such person obtaining benefits substantially equivalent to ownership, e.g., application of the income derived from such securities to maintain a common home, to meet expenses which such person otherwise would meet from other sources, or the ability to exercise a controlling influence over the purchase, sale,* or voting of such securities. Accordingly, a person ordinarily should include in his reports filed pursuant to Section 16(a) securities held in the name of a spouse or minor children as being beneficially owned by him.

* The initial report form, designated Form 3, is required to be filed within 10 days after registration is effective or after a person becomes the beneficial owner of more than 10% of a registered class of equity security or a director or officer of the issuer of such security. Changes in beneficial ownership are required to be reported on Form 4. By virtue of Rule 72 under the Public Utility Act of 1935 and Rule 206-1 under the Investment Company Act of 1940, Forms 3 and 4 are made applicable to the persons required by those acts to file periodic beneficial ownership reports.

¹⁰ Section 16(b) provides that profits realized by persons required to report pursuant to Sec-

tion 16(a) from the purchase and sale, or sale and purchase, of any equity security, whether or not registered, of the issuer, within a period of less than six months inure to and are recoverable by or on behalf of the issuer. Section 16(c) prohibits the sale by such persons of any equity security of such issuer if the person selling the security or his principal (1) does not own the security sold, or (2) if owning the security does not promptly deliver it against such sale—sometimes referred to as selling against the box.

* The words "or the ability to exercise a controlling influence over the purchase, sale," were inadvertently omitted from the release.

¶ 26,032 17 CFR 241.7793

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Number 118-67
10-19-66

Directors; Officers; Stockholders—Sec. 16(a) 19,057.5

A person also may be regarded as the beneficial owner of securities held in the name of another person, if by reason of any contract, understanding, relationship, agreement, or other arrangement, he obtains therefrom benefits substantially equivalent to those of ownership. Accordingly, where such benefits are present such securities should be reported as being beneficially owned by the reporting person. Moreover, the fact that the person is a relative or relative of a spouse and sharing the same home as the reporting person may in itself indicate that the reporting person would obtain benefits substantially equivalent to those of ownership from securities held in the name of such relative. Thus, absent countervailing facts, it is expected that securities held by relatives who share the same home as the reporting person will be reported as being beneficially owned by such person.¹¹

A person also is regarded as the beneficial owner of securities held in the name of a spouse, minor children or other person, even though he does not obtain therefrom the aforementioned benefits of ownership, if he can vest or re-vest title in himself at once, or at some future time.

In order to determine Section 16(a) obligations to report options and similar rights, and securities held in a trust or other fiduciary capacity, the applicable provisions of the rules and regulations promulgated under Section 16 should be consulted.

The final determination of the existence of beneficial ownership under Section 16 is, of course, a question to be determined in the light of the facts of the particular case. It should be noted that although a report includes the holdings of other members of the family of the person filing reports, a person may avail himself of the privilege granted by Rule 16a-3 and disclaim that such report is an admission of beneficial ownership of any securities included in the report.

If special circumstances exist indicating that a person is not the beneficial owner of securities held in the name of members of his family, e.g., the person is divorced or legally separated from his spouse and does not receive any benefits of ownership from the securities held by such spouse—or if he wishes advice as to whether he should report securities held by family members as being beneficially owned—he may write to the Securities and Exchange Commission, Washington, D. C. 20549, setting forth the relevant facts involved and request from the staff of the Commission an expression of opinion with respect to whether such securities should be reported as being beneficially owned.

[Release No. 34-7793, January 19, 1966, 31 F. R. 1005.]

[¶ 26,041] [Indirect Beneficial Ownership]

➡ See also Reg. § 240.16a-3 [¶ 26,004]; Reg. § 240.16a-8 [¶ 26,009]. Form 3, Instruction 10 [¶ 33,701]; and Form 4, Instruction 9 [¶ 33,721]. CCH.

Release No. 34-1965, December 21, 1938, 11 F. R. 10567.

Reg. § 241.1965. Opinion of General Counsel Relating to Section 16(a).

Beneficial ownership of securities held by holding companies, partnerships and trusts. In order to show the recent redesignation of the rules referred to therein and a supplemental opinion of its General Counsel with regard to

¹¹ Where individual members of a family hold less than 10% of a class of registered equity security, but when combined in accordance with the standards herein discussed,

such holdings exceed 10%, a single filing by the head of the family group as the beneficial owner of more than 10% of a class of registered equity security will suffice.

Federal Securities Law Reports

§ 241.1965 ¶ 26,041

: 19,058

Insiders—Liabilities

Number 119-68
10-19-66

[¶ 26,041] Reg. § 241.1965—Continued

indirect beneficial ownership through holding companies, the Securities and Exchange Commission today reprinted the opinions of its General Counsel heretofore published in Release No. 79 dated January 13, 1935, as follows:¹

[¶ 26,042]

Holding Companies

I understand that you represent a director of the B. M. Company whose stock is listed on the New York and Detroit Stock Exchanges and registered pursuant to Rule JE1.² I further understand that your client owns approximately two-thirds of the stock of the B. C. Company, a business corporation whose stock is rather closely held and is not registered on any national securities exchange. The B. C. Company owns over ten percent of the listed stock of the B. M. Company, and during the month of November, 1934, purchased a few hundred additional shares of that stock in the market. You ask whether your client is required to file reports pursuant to Rule 16a-1³ (formerly designated Rule NA1), as amended, in respect to the November purchases by the B. C. Company.

[¶ 26,043]

[Filing Reports]

→ See also Reg. § 240.16a-3 [¶ 26,004]; Reg. § 240.16a-8 [¶ 26,009].
Form 3, Instruction 10 [¶ 33,701]; and Form 4, Instruction 9 [¶ 33,721]. CCH.

The question whether the holder of stock in a holding company should file reports in respect of securities owned by the holding company, is a question of fact to be determined in the light of all the circumstances involved.

¹ While these opinions were prepared in response to questions presented under Section 16 (a) of the Securities Exchange Act of 1934, they would seem to be equally applicable to corresponding situations arising under section 17(c) of the Public Utility Holding Company Act of 1935.

² While the rule cited had to do with temporary registration of securities, the opinions apparently apply equally to cases arising out of permanent registration of securities.

³ See footnote 2 * * * [above].

¶ 26,042 § 241.1965

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Number 118-69
10-19-66

Directors; Officers; Stockholders—Sec. 16(a) 19,059

In my opinion, no consideration need be given by the owner of stock in a holding company to the holdings of that company, except in a case where the holding merely provides a medium through which one person, or several persons in a small group, invest or trade in securities, and where such company has no other substantial business. In such a case, a person in control of the holding company who is an officer or director of the issuer of a listed equity security owned by the holding company, or whose interest in such security through the holding company (together with the amount of such security of which he is otherwise directly or indirectly the beneficial owner) aggregates more than ten percent of such security, should file a report in accordance with Rule 16a-1 (17 CFR. 240.16a-1)² (formerly designated Rule NA1). This report should include the holding company's ownership of such security, and transactions by it therein, to the extent of such person's interest. Such control might in fact be joint, and in such a case all persons sharing such control, regardless of whether one of such persons holds a majority of the voting stock of the holding company, would, to the extent of their respective interests, be under a similar duty to report in respect of securities owned by the holding company. The filing of reports by such controlling person or persons would not, in my opinion, relieve the holding company from itself filing reports pursuant to Rule 16a-1 (17 CFR, 240.16a-1)³ (formerly designated Rule NA1) if the holding company were the owner of more than ten percent of the equity security in question.

[¶ 26,044]

[Other Substantial Business]

→ See also Reg. § 240.16a-3 [¶ 26,004]; Reg. § 240.16a-8 [¶ 26,009].
Form 3, Instruction 10 [¶ 33,701]; and Form 4, Instruction 9 [¶ 33,721]. CCH.

The existence of other substantial business is merely of evidentiary value on the question whether the corporation is actually used by one person or a small group as a medium for investing or trading in securities. The basic question is whether the stockholders of the corporation are using it as a personal trading or investment medium, and to the extent that it is so used the stockholders are properly to be regarded as the beneficial owners, to the extent of their respective interests, of the stock thus invested or traded in.

Whether or not the circumstances in the case which you present are such that your client should file a report covering the transactions by the B. C. Company in stock of the B. M. Company is a matter for your determination, but I trust that the opinion expressed above will be helpful in this connection. I call your attention to Rule 16a-3(d) (17 CFR 240.16a-3)⁴ (formerly designated Rule NA3(d) of this Commission which will permit your client, in case of doubt, to file reports covering the ownership of and transactions by the B. C. Company while at the same time disclaiming beneficial ownership of the securities so reported. Your client should of course include in his reports information as to the ownership of and/or transactions in equity securities of the B. M. Company of which he is in any other manner the beneficial owner.

[¶ 26,045]

Partnerships

→ See also Reg. § 240.16a-3 [¶ 26,004]; Reg. § 240.16a-8 [¶ 26,009].
Form 3, Instruction 10 [¶ 33,701]; and Form 4, Instruction 9 [¶ 33,721]. CCH.

You present the case of a partnership, one partner of which is a director of a company, at least one class of whose equity securities is listed on a

² See footnote 2 * * * [above].

⁴ Redesignation as of September 10, 1933.

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Reg. § 241.1965 ¶ 26,045

: 19,060

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10-19-66

[¶ 26,045] Reg. § 241.1965—Continued

national securities exchange. If the partnership holds any equity securities of that company, the director should file reports in respect of the holdings of the partnership in such equity securities, to the extent of his pro-rata interest in the partnership. However, if the partner desires, he may exercise the option granted by Rule 16a-3(b) (17 CFR, 240.16a-3) ⁵ (formerly designated Rule NA3(b)) and report as to all such equity securities held by the partnership, with a notation that he owns only a partial interest in those shares.

You also present a case involving a partnership of three partners each of whom has an equal interest in the partnership, where the partnership holds 29 percent of a class of equity securities listed on a national securities exchange. In this case no reports would be required as to partnership holdings of such class of equity securities on the part of any individual partner who is not a director or an officer of the issuer, unless such partner's indirect interest in such security through the partnership (together with the amount of such security of which he is otherwise directly or indirectly the beneficial owner) were to amount to more than ten percent thereof, or unless such partner were the beneficial owner of more than ten percent of some other class of equity security of such issuer listed on a national securities exchange. Such partner could, of course, take advantage of Rule 16a-3(b) (17 CFR, 240.16a-3) ⁵ (formerly designated Rule NA3(b)) for the purpose of filing reports as to his ownership of equity securities through his interest in the partnership.

In any case where a partnership holds for its own account more than ten percent of a class of any equity security listed on a national securities exchange, it should file reports as to such holdings in accordance with the requirements of Rule 16a-1 (17 CFR, 240.16a-1) ⁵ (formerly designated Rule NA1), regardless of whether reports are filed by the partners, since the partnership would be the direct beneficial owner of more than ten percent of such class.

[¶ 26,047]

Trusts—I

➡ See also Reg. § 240.16a-3 [¶ 26,004]; Reg. § 240.16a-8 [¶ 26,009].
Form 3, Instruction 10 [¶ 33,701]; and Form 4, Instruction 9 [¶ 33,721]. CCH.

You put a case of an irrevocable personal trust of which A is trustee and under which B is entitled to the income for life with the principal payable to C upon the death of B. The trust holds an equity security of Corporation X which has been temporarily registered under the Securities Exchange Act pursuant to Rule JE1.⁶ You state that the trust has made purchases and sales of this equity security during the month of November and, on the basis of further facts indicated below, you ask various questions in regard to the filing of reports of such changes of ownership under Section 16(a) of the Securities Exchange Act and Rule 16a-1 (17 CFR, 240.16a-1) ⁵ formerly designated Rule NA1), as amended, of the Commission.

I beg to express the following opinions in regard to your various questions:

[¶ 26,048]

[Reports of Trust Transactions]

1. If, at the time of the transactions in question, the trust held 12% of the registered equity security of Corporation X, a report as to such transactions should be filed by A as trustee not later than January 30, 1935. Such

⁵ See footnote 2 on page 19,053.
⁶ See footnote 3 on page 19,053.

¶ 26,047 Reg. § 241.1965

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11-2-67

Directors; Officers; Stockholders—Sec: 16(a) 19,061

report should contain a general designation of the beneficiaries of the trust. It would not seem necessary that the report include any amount of such equity security held by or for A in his own right, nor would it seem necessary that B or C file additional reports with respect to changes in the holdings of the trust.

2. If at the time of the transactions in question, the trust held 5% of the registered equity security of Corporation X, and A, B and C were at the time directors of Corporation X, no reports with respect to the transactions of the trust are required from A, B or C individually or from A as trustee. If B or C were the settler of the trust and/or were to exercise any power of control over A's administration of the trust, a case would be presented, the particular circumstances of which might well be such as to require the filing of reports by B or C.

3. If, at the time of the transactions in question, the trust held 5% of the registered equity security of Corporation X, and A, B and C each individually owned 7% of such registered equity security, no reports with respect to the transactions of the trust are required from A, B and C individually or from A as trustee. Here again I wish to call your attention to the fact that no opinion is expressed concerning the situation mentioned in the last sentence of the preceding paragraph.

[§ 26,049]

[Revocation of Trust]

4. If the trust were subject to revocation, the person who possesses the power to revoke the trust for his own benefit either alone or in conjunction with someone not having a substantial interest adverse to such person in the disposition of the securities held in the trust would appear to be the beneficial owner of the registered equity security of X held in the trust. However, if the trust held more than 10% of such security, the fact that a power of revocation existed would not relieve A as trustee from his duty to file reports concerning transactions of the trust in that security.

Trusts—II

[§ 26,050]

[Irrevocable Personal Ownership]

→ See also Reg. § 240.162-3 [§ 25,004]; Reg. § 240.16a-8 [§ 25,009].
Form 3, Instruction 10 [§ 33,701]; and Form 4, Instruction 9 [§ 33,721]. CCH.

You put the case of an irrevocable personal trust, which holds an equity security listed on a national securities exchange and which from time to time has transactions in such security. The trustee of this trust is a director of the issuer of such equity security. The daughter of the trustee is entitled to the income of the trust until reaching a specified age and is then entitled to the corpus. The trust deed provides that if the daughter dies before reaching the specified age, the trustee is to become entitled to the corpus of the trust.

You inquire whether the trustee, under section 16(a) of the Securities Exchange Act and Rule 16a-1 (17 CFR. 240.16a-1),⁷ (formerly designated Rule NA1) of the Commission, must file reports in regard to the above mentioned equity security held in the trust. Under these circumstances the trustee should in my opinion report the holdings and transactions of the trust as his own, indicating the nature of his interest.

[Release No. 34-1965, December 21, 1938, 11 F. R. 10967.]

⁷ See footnote 2 on page 19,053.

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17 CFR 241.1965 126,050

THE OIL SHALE CORPORATION

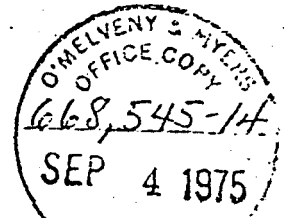
I, RICHARD A. SHORTZ, hereby certify that I am ~~are~~ Assistant Secretary of The Oil Shale Corporation, a Nevada corporation ("the Company"), and that at a meeting of the Board of Directors of the Company duly called and held in accordance with law and the by-laws of the Company, at which meeting a quorum of the Directors was present and acting throughout, the Resolutions attached hereto were duly adopted, each upon motion duly made and seconded, by the affirmative vote of all of the Directors present at said meeting. I further certify that such Resolutions have not been amended or repealed and that each such Resolution is in full force and effect on the date hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and the corporate seal of The Oil Shale Corporation, this 27th day of August, 1975.



RICHARD A. SHORTZ
Assistant Secretary

(Corporate Seal)



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RESOLVED, that the Order of Divestiture of the Honorable Warren J. Ferguson, proposed to be entered in the United States District Court for the Central District of California in the action, United States of America, Plaintiff, against Phillips Petroleum Company and Tidewater Oil Company, Defendants, Civil No. 66-1154-WJF, (the form of which has been exhibited to this meeting and which is ordered annexed to the minutes of this meeting and to these resolutions as certified to by the Secretary or Assistant Secretary of this Corporation), to the extent that it relates to obligations and undertakings of this Corporation, hereby is authorized and approved for and on behalf of this Corporation, together with such changes, amendments and modifications thereto as the appropriate officers of this Corporation, together with and upon the advice of counsel, may deem appropriate; and it was further

RESOLVED, that the Chairman of the Board, the President, or any Vice President of this Corporation each hereby is authorized and empowered to take such steps and execute and deliver such documents as such officer may deem necessary, appropriate or advisable to carry out the intent and purposes of said Order and of these resolutions, such determinations to be conclusively evidenced by the taking of such steps and the execution and delivery of such documents; and it was further

RESOLVED, that a copy of these resolutions may be certified to by the Secretary or Assistant Secretary of this Corporation and delivered to said United States District Court for the Central District of California in the aforesaid action.

U.S. Mot. and Mem. to Term.
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