EXHIBIT B

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of RELCO, INC., a corporation doing business in its own name and as the WEL-DEX WELDER MFG. COMPANY and The Estate of Thomas H. Doss (deceased) formerly an officer of the corporation	CPSC DOCKET NO. 74-4

DECISION AND ORDER

On July 17, 1974, the Commission issued a notice of enforcement pursuant to section 15, Consumer Product Safety Act (CPSA), 15 U.S.C. 2064 alleging that Relco, Inc. and its chief operating officer Thomas H. Doss had manufactured and distributed an electric arc welder which presents a substantial product hazard. The product known as the Wel-Dex Electric Arc Welder was alleged to have design and performance defects which could cause electric shock, severe skin burns or fires. The product is an inexpensive mail order item which was manufactured and distributed from 1968 through early 1975. The record indicates that approximately 124,000 units had been sold.

r a hearing, presentation of documenta evidence and stipulations, the Administrative Law Judge on April 29, 1975 issued an interim initial decision and order finding that the product produces a potentially dangerous electrical shock as well as burns and fire and thus presents a substantial product hazard within the meaning of section 15(a)(2), CPSA. Respondents were ordered to stop manufacture and distribution of the product; to give public notice of the dangers presented; and to offer replacement welders or refunds.1/ The order continued the proceedings for a determination of the proper amount of refunds.

Further proceedings were held on the question of the proper amount of refund. On August 11, 1975 the Administrative Law Judge issued an addendum to the interim initial decision finding the usable life of the product to be one year and ordering replacement or full refunds for welders purchased within one year of actual notice of the hazard. Enforcement Counsel filed a notice of appeal but later requested the Commission to remand the matter for further hearings on newly discovered evidence concerning an injury caused by the welder. The request was granted and further hearings were held concerning the injury. 2/

1/ Although section 15(d) CPSA, permits the election of repair of the defect, this remedy was found to be impractical.

2/ On September 30, 1975, prior to the reopened hearing, respondent Thomas H. Doss died.

O ril 5, 1976 the Administrative Law Ju issued and served his amended initial decision and order on reopened proceedings. This amended decision reiterates the earlier decision that the Wel-Dex Electric Arc Welder creates a substantial product hazard which could lead to electric shocks, burns and fires. Respondents were again ordered to offer replacement welders or refunds. However, as a result of evidence received at the reopened hearings, the prior decision limiting relief only to persons who purchased the welders within one year of the notice was eliminated. The new decision required refunds in accordance with a percentage schedule based on length of possession and amount of use.

No appeals of the decision were filed by any of the parties. On May 6, 1976 the Commission, noting certain ambiguities in the refund aspects of the amended initial decision, issued an order allowing the parties ten days to file comments on specific provisions. No comments were filed by the parties; however, the Commission did receive a communication from the Administrative Law Judge advising that the Commission had misinterpreted his order in certain respects.

The Commission agrees with the Administrative Law Judge that the welder in question presents a substantial product hazard within the meaning of section 15(a)(2), CPSA. The Commission is for the most part in agreement with the

Admini tive Law Judge on the relief ordered. is, however, concerned with the policy implications of various portions of the order including the refund provisions insofar as they may not require tender of the welder from persons in possession of the product and the treatment of persons not in possession of the welder.

The amended initial decision requires that persons in possession of the welder who have possessed it for more than one year from the date of notice[3/] of the hazard to tender the welder or specific internal components to the manufacturer in order to receive a refund. In contrast, the decision provides that persons who have possessed the welder for less than one year from the date of notice are entitled to a full refund regardless of whether or not they tender the product or the internal components. The Commission believes that this approach is inconsistent with the statutory intent and on the basis of the record in this case tender should be mandatory for all persons seeking a refund who are in possession of the welder regardless of how long they may have possessed it.

Although the language of section 15(d)(3), CPSA, is silent as to any mandatory tender requirement, the legislative history clearly expresses the Congressional intent that the

3/ The date of notice under section 15(d)(3), (CPSA), 15 U.S.C. 2064(d)(3), is the date of public notice after hearings or the date the consumer receives actual notice of the defect, whichever occurs first.

Commi[illegible] possesses the authority to specify a [illegible]nder requirement where the refund option is elected. The legislative history indicates that Congress, while favoring tender, even contemplated a mandatory tender requirement in all refund situations. However, the Congress decided on a more flexible approach which allows the Commission discretion to specify such a requirement after recognizing that a product may not be in a tenderable form or that tender may present a danger to persons in the chain of recall. The pertinent legislative history states:

> ...the Commission is intended to have authority to specify...whether the product must be tendered....
>
> * * *
>
> The Committee has decided against an absolute requirement that consumers must tender products in order to be entitled to the refund in favor of this more flexible approach. The Committee was concerned that, in some instances, to require the tender of the product might unduly expose consumers and persons within the distribution chain to the hazards associated with the product. Also, the offending product may no longer be in a form which would allow its tender. See H.R. Rep. No. 92-1153, 92d Cong., 2d Sess. p. 43 (1972).

Neither of the two situations mentioned in the legislative history warranting elimination of a tender requirement appear to be applicable here. The record demonstrates that the welder or the designated components are in a

tendered in form and no danger is presented to persons in the recall channels. Given the strong Congressional intent and the obvious statutory purpose of section 15, to protect the public by encouraging removal of dangerous products from the marketplace and consumers' homes, the Commission believes that tender should be required whenever practicable and where no danger is presented in the tender process. A prime example of the danger to the public of a product which is not removed from the home was presented in this case. A defective welder which had been stored by the owner after not working properly was retrieved and caused a serious injury to a family member. As the example in this case demonstrates, a refund allowance not accompanied by a tender requirement would not advance the purposes of the legislation and might expose unwary consumers and other users to the dangers posed by the hazardous product. 4/

The Commission is also concerned with the treatment in the amended initial decision of refunds for persons no longer in possession of the welder. Under the order, persons

4/ The Commission is in agreement with the difference in refund allowed by the Administrative Law Judge based on the time of possession and the use received for persons in possession over one year. The Commission also agrees that section 15 mandates a full refund to persons in the under one year possession category.

who pc ssed the welder less than one year anc e no longer in possession are entitled to a 100% refund upon filing a claim. No requirement is included for the claimants in this class to specify why they are not in possession; and the order, as drafted, would allow persons who sold the welder, gave it away, or disposed of it for non-safety related reasons to receive a full refund. For persons who possessed the welder for longer than one year and are no longer in possession, a 50%, second priority refund is permitted if they file an affidavit that they disposed of the product after learning, through their own inspection, or otherwise, of its dangerous characteristics.

The Commission sees no rational basis in the record for allowing one group of non-possessors to recover regardless of why they disposed of the product and to limit the other group to recovery only on the basis of disposal for safety reasons. Moreover, the Commission sees no furtherance of the statutory goals by allowing recovery to a person who has sold or disposed of the product in question for non-safety related reasons. Conversely, the Commission believes it is important that safety conscious consumers who take the initiative to protect themselves and others from a dangerous product by destroying it should not be penalized

and sh d be given a right of recovery. 5/ Acc ingly, the Commission has amended the order to require an affidavit from all claimants not in possession. To minimize the potential abuse from false or multiple claims, the Commission has added a provision requiring proof of purchase to be submitted with the affidavit and has expanded the affidavit provisions requiring the claimants to certify that they have not sold, given away or otherwise transferred the welder to anyone. 6/

The amended initial decision provides for a scheme of priorities in the event that sufficient assets are not available to provide complete relief to persons entitled to a refund. The order provides that respondents' assets would first be used for payment for notice, then to pay refunds to consumers who tender the welder and lastly to pay refunds to persons tendering affidavits on a first-come, first-serve basis. Because the number of claims to be made is unknown, the record is unclear as to the ability of respondents to

5/ Both section 15(d)(3) and the supporting legislative history explicitly indicate that the Commission has the authority to specify the persons to whom refunds must be made as well as the necessary proof of purchase.

6/ No proof of purchase is required for claimants who tender the welder or the designated components. This allows claimants who may have obtained the welder second hand to obtain a refund. This appears to satisfy the overriding statutory purpose of removing the hazardous product from consumer use.

satisf l claims. It appears sound to deal w the potential problem of priorities at this time so as to alert claimants of the possibility that their claims may not be satisfied and to avoid any unnecessary delay which might result if the Commission is later called upon to make a priority determination. 7/

A further provision of the amended initial order which merits consideration is the provision permitting return of the welders to Commission offices. The decision does not elaborate the reasons for including this provision in the order, but the Commission presumes that it is intended to reduce shipping costs and to provide a convenient dropping off point for consumers who may live near such offices. The decision also does not specify the mechanics for using the Commission offices, including provisions for the respondents to reclaim the products, the manner of disposal, or other disposition of welders or components which are returned. Since either the consumer who returns a welder or respondents will have a property interest in the items, the Commission believes it is essential

7/ The Commission believes it important that claimants be advised of the potential lack of assets in the notice of recall. While such a warning may deter consumers from tendering their welders or otherwise seeking refunds, such reluctance should be alleviated somewhat by amending the priorities set forth in the order to allow claimants in the tender category as well as the affidavit group to be repaid on a first-come, first-serve basis. This change should also serve as an incentive for claimants to quickly return the product.

that a order which allows the use of Commissi offices must specifically deal with these problems. In the present case the Administrative Law Judge has included an innovative practical solution for reducing shipping and handling costs by allowing consumers to return certain vital components instead of the entire welder. The Commission believes that this provision will adequately reduce shipping and handling costs so as to eliminate any necessity for using the Commission offices and the multitude of problems which accompany the involvement of these offices. To enhance the utility of the component tender provision, the Commission believes that it is necessary to include detailed and illustrated instructions for dismantling the welder in the letter sent to consumers under the recall.

Although the use of Commission office facilities is not warranted in this case, the Commission believes that it can assist in the recall through its communication resources. In addition to an extensive written communications facility, the Commission maintains a toll-free "hotline" in its national headquarters which can be used to assist consumers seeking to return the product in question or otherwise filing a claim. To utilize this resource, the Commission has drafted a form public notice to be used which advises claimants to contact the Commission or the manufacturer for details

concer g the recall. In conjunction with thi. notice, the Commission has also ordered the parties to draft a letter to reply to inquiries which will include the necessary warning and the details of the recall. This format will serve two principal purposes. It will first provide a simple and convenient manner for claimants to obtain information concerning the recall. Secondly, it will avoid the use of a complex, confusing and possibly misleading published notice which could not include all of the necessary details. The Commission believes that it is important that the letter used to respond to inquiries be in clear, plain language. It should also include a specific disclaimer advising that the Commission assumes no responsibility for replacing the product or providing refunds. The same letter can also be sent to purchasers and dealers whose identity and addresses are ascertainable from the manufacturers records.

One final matter which the Commission has considered is the provision of the amended initial decision ordering relief against the Estate of Thomas H. Doss. The original notice of enforcement was issued against Relco, Inc. and Thomas H. Doss individually and as an officer of the corporation. The record reflects that, at the time the notice of enforcement was issued and prior thereto, Mr. Doss was the sole shareholder and chief operating officer of respondent Relco, Inc. In camera proceedings were conducted concerning,

inter[illegible], the financial condition of the corp[illegible]tion and Mr. Doss personally. Shortly after Mr. Doss's death, enforcement counsel filed a motion to amend the heading of the notice of enforcement naming the Estate of Thomas H. Doss. Counsel for respondents, although not opposing the moti[illegible] insofar as it sought to reflect the death of Mr. Doss, objected to the request insofar as it sought to hold the Estate liable. Counsel for the Estate on October 14, 1975 sent a letter to the Office of the Secretary of the Commission advising of the death of Mr. Doss and seeking to extend the time to respond to an appeal to the first initial order (August 11, 1975). In the amended initial decision of April 5, 1976, the motion to amend was granted and relief was ordered jointly against the corporation and the Estate.

The Commission's review of the In camera record demonstrates a sufficient intertwinement between the personal finances of Mr. Doss and those of the corporation to render the Estate liable for the relief ordered herein. The Commission also notes that the Estate, having full notice of the proceeding, has failed to note an appeal of the amended initial decision and apparently has acquiesed in the order and will assume liability. Accordingly, the Commission will not disturb the order in this regard.

ccordance with the foregoing, the Com ion has altered the amended initial order in the following manner: (1) to require tender from persons in possession of the welder who seek a refund; (2) to provide that only those claimants not in possession who disposed of the product for safety related purposes and who execute appropriate affidavits and submit proof of purchase are to be entitled to a refund; and (3) to clarify and amend the notice requirements and the provisions permitting returns to Commission offices.

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of RELCO, INC., a corporation doing business in its own name and as the WEL-DEX WELDER MFG. COMPANY and Estate of THOMAS H. DOSS (deceased) formerly an officer of the corporation	)	CPSC DOCKET NO. 74-4

ORDER

Respondents, Relco, Inc., a corporation doing business in its own name or under any other name, its successors and assigns, and its officers, and the Estate of Thomas H. Doss, are hereby ordered as follows:

1. Respondents are to refrain from manufacturing and distributing in commerce or any manner affecting commerce, as defined in Section 3 of the Consumer Product Safety Act, 15 U.S.C. 2052, the Wel-Dex Electric Arc Welder, or any other electric welder of similar design or construction, containing any of the defects alleged to create a substantial product hazard in the Notice of Enforcement issued herein on July 17, 1974.

2(a) Respondents are to give the following public notice immediately upon receipt of this order in the name of Wel-Dex Welder Mfg. Co:

NOTICE TO ALL PURCHASERS AND PERSONS IN POSSESSION OF WEL-DEX ELECTRIC ARC WELDER.

The United States Consumer Product Safety Commission has found that the Wel-Dex Electric Arc Welder presents a substantial product hazard which could cause electric shock, burns or fires. The Wel-Dex Electric Arc Welder, manufactured by Wel-Dex Welder Mfg. Co., was sold primarily by mail order from 1968 to 1974. All persons in possession of a Wel-Dex Electric Arc Welder, purchased during this period, are advised to immediately stop using the product. The manufacturer has been ordered to replace the product with a substitute whose design has been approved by the Commission or to refund the purchase price in percentages based on the period of possession and use of the product. Due to potentially limited assets, replacement or refunds may only be made on a first-come, first-serve basis. For further information, concerning the return of the product and the requirements for obtaining a refund, call or write the United States Consumer Product Safety Commission, Washington, D.C. 20207, toll free number 800-638-2666 or write Wel-Dex Welder Mfg. Co, P.O. Box 10839, Houston, Texas 77018.

(b) The aforesaid notice shall be given immediately in the following manner:

(1) by issuing a joint press release with the Commission upon this Order being issued;

(2) by inserting an advertisement of at least the same size and prominence in the same publications as the advertise ments in which respondents offered the defective welder for sale, including: Columbia, Farmer Stockman, Complete Mens Group, Eagle Magazine, Field and Stream, Fur, Fish, Game, Mechanix World, Popular Mechanics, Popular Science, Official Detective Group, Outdoor Life, Sports Afield, Western Publications, Woodmen of the World, Workbench, Pro

gressive Farmer, Rustan's Men's [illegible] up, Adventure for Men, Real Detective, Police Detective, Men in Adventure, Science & Mechanics, and Spare Time; and

(3) by mailing a letter identical to that required under paragraph numbered 5 herein to all known purchasers, including dealers, of the defective welder, warning them of the alleged hazards and informing them of respondents' election under this Order;

3(a) Respondents shall have the option to replace the welder or provide a refund in accordance with the schedule set forth hereinafter.

(b) If respondents elect to replace the welder, a prototype of the replacement welder unit shall be submitted with all supporting technical data, electrical drawings and component material information, to the Commission's staff to enable it to determine, before the welder is placed in the hands of consumers, that any defects have been corrected and that the replacement welder will not create a substantial product hazard.

(c) In the event that respondents do not elect to refund, then replacements shall be given without charge to all persons who either tender the welder or an affidavit and proof of purchase under the provisions of paragraph numbered 4 herein irrespective of the time of possession or the percentage amount of refund which would have been allowed under other provisions of this order.

4. If respondents elect to offer refunds, said refunds shall be made according to the following schedule:

(a) Consumers who possessed the welder for one year or less at the time of notice under paragraph numbered 2 above or at the time of actual notice of the defect, whichever occurred first, shall upon tender of the welder receive a refund of 100% of the purchase price paid, plus shipping costs.

(b) All consumers who tender the welder and its welding rods, either unused or partially used, shall receive a refund of 100% of the purchase price paid, plus shipping costs, regardless of the length of time they possessed the welder.

(c) All consumers who have possessed the welder for more than one year at the time of notice under paragraph numbered 2 above or actual notice of its hazardous nature and who tender the welder, without its welding rods, shall receive a refund of 50% of the purchase price, plus shipping costs.

(d) All consumers who possessed the welder for less than one year at the time of actual notice of its hazardous nature and who tender an affidavit, under oath, properly notarized, stating that they disposed of the welder after learning, through their own inspection or otherwise of its dangerous characteristics and have not sold or transfered the welder to anyone shall receive a refund of 100% of the purchase price if their claim is accompanied by a copy of a sales receipt, shipping receipt or cancelled check or money order.

(e) All consumers who possessed the welder for more than one year at the time of actual notice of its hazardous nature and who submit an affidavit, under oath, properly notarized, stating that they disposed of the welder after learning, through their own inspection, or otherwise of its dangerous characteristics and that they have not sold or transfered the welder to anyone, shall receive a refund of 50% of the pruchase price if their claim is accompanied by a copy of a sales receipt, shipping receipt or cancelled check or money order.

5. Respondents or their attorneys together with enforcement counsel, shall immediately draft a letter designed to advise persons responding to the notice under paragraph numbered 2 herein of the dangers of the welder, the provisions of this Order and the manner and form for tendering the product or components or otherwise submitting a claim. Said letter shall include a provision that the U.S. Consumer Product Safety Commission assumes no responsibility for the refund or replacement of the subject welder. Said letter

shall contain precise illustrated ins tions for dismantling the components for tender under paragraph numbered 6.

6. Respondents shall accept as tender of the welder the delivery of the asbestos sole plate of the welder with its attached resistance elements and welding rods, if the rods are available.

7. Tender of the welder or components hereunder shall be made to the respondent corporation or agents retained by respondents.

8. Respondents shall make expenditures according to the following order of priorities, in the event of limited funds:

(a) Letter notice to all known purchasers; magazine advertisements.

(b) Refunds or replacements to claimants who tender the welder or components specified in paragraph numbered 6 on a first-come, first-serve basis.

(c) Refunds or replacements to claimants who tender affidavits on a first-come, first-serve basis after all group (b) claims have been satisfied.

9. Respondents shall make all payments due to consumers under this order within six (6) months of the request for refund by the consumer.

10. Respondents shall file compliance reports as follows: A preliminary report of compliance must be filed within fifteen (15) days after service of this Order upon respondents, detailing fully and specifically what measures they have taken to comply with this Order. Compliance reports shall be filed every thirty (30) days thereafter, until submission of a final report, summarizing all actions taken by respondents pursuant to this Order.

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

12. Respondents shall notify the Commission at least thirty (30) days prior to any proposed or actual distribution of the assets of the Estate of Thomas H. Doss other than routine maintenance expenses or costs.

BY THE COMMISSSION

Sadye E. Dunn

SADYE E. DUNN
Secretary
Consumer Product Safety Commission

DATED: _____

SERVED: * April 5, 1976

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of RELCO, INC., a corporation doing business in its own name and as the WEL-DEX WELDER MFG. COMPANY and the estate of THOMAS DOSS (deceased) formerly an officer of the corporation	CPSC DOCKET NO. 74-4

AMENDED INITIAL DECISION AND
ORDER ON REOPENED PROCEEDING

The Initial Decision and Orders previously issued in this proceeding are hereby modified and supplemented on the basis of the reopened record as follows:

* Pursuant to Rule 72 of the Commission's Interim Rules of Practice for Adjudicative Proceedings (Part 1025.72) a notice of appeal from this Amended Initial Decision must be filed within 10 days of the service date above. An appeal brief may be filed 30 days after said service date.

1. Pursuant to the Commission's Order of January 17, 1975, Respondents are granted six months from the date of a request by a consumer for corrective action to refund the purchase price in whole or in part or replace the Wel-Dex Electric Arc Welder with a safe product.

2. Since the evidence in the reopened hearing reveals an instance of intermittent use over a 3 1/2 year period, it is found to be in the public interest that deductions from the purchase price representing reasonable allowances for use of welders in the possession of consumers for more than one year at the time of notice of the hazard as mandated by Section 15(d)(3) of the Consumer Product Safety Act, be established as follows:

   a. A consumer who possessed the welder for more than one year at the time of notice of the hazard and tenders it together with unused or partially used rods is entitled a full refund of his purchase price including shipping costs.

   b. A consumer who possessed the welder for more than one year at the time of notice of the hazard and who tenders the welder without rods is presumed to have obtained considerable beneift from the device and is, therefore, entitled to a refund of 50% of his total purchase price, plus shipping costs.

   c. A consumer who disposed of the welder after recognizing its unsafe character and executes an affidavit to that effect is entitled to a refund of 50% of his total purchase price plus shipping costs.

   d. A consumer who ignores the Commission's or manufacturer's notice that the welder is hazardous and continues to use it, or makes it available to others, or disposes of it for other than safety reasons is not entitled to any refund.

3. The priorities for expenditure of Respondents' available funds shall be as follows:

First - Public notice to all purchasers.

Second - Refunds to consumers tendering the welders.

Third - Refunds to consumers tendering affidavits in lieu of welders on a first-come, first-served basis.

4. Shipping costs may be reduced by tendering the welder's asbestos sole plate with attached resistance elements and welding rods, if available, in lieu of the entire welder. Tender may be by U.S. mail or in person to the manufacturer or any Commission office.

I

PRELIMINARY STATEMENT

On April 29, 1975, an Interim Initial Decision and Order was issued in this proceeding finding as follows:

1. That the Wel-Dex Electric Arc Welder is a substantial product hazard within the meaning of Section 15(a)(2) of the Consumer Product Safety Act.

2. That Respondents be ordered to cease manufacture of said welder, give public notice of the substantial hazard involved, and offer to replace the device or refund its purchase price less a reasonable allowance for past use to all welder customers since 1968 pursuant to Section 15 (c) and (d) of said Act.

3. That the proceeding be reopened for further hearing commencing on May 13, 1975, to receive testimony and exhibits concerning the proper amount of refund less a reasonable amount for use, if the welder has been in the possession of a consumer for one year or more (A) at the time of public notice under Section 15(c) or (B) at the time the consumer receives actual notice of the defect or noncompliance, whichever first occurs pursuant to Section 15(d)(3) of the Act.

On August 11, 1975, after further hearing on finding (3) above, an Addendum to the Interim Initial Decision was issued finding as follows:

1. That the usable life of the Wel-Dex Electric Arc Welder under normal operating conditions is approximately one year.

2. That Respondents be required to elect between replacement or refund of full purchase price plus shipping charges for all Wel-Dex Welders purchased by consumers within one year of actual notice of the admitted substantial product hazard; design of replacement welders to be approved by the Commission.

proof of date of purchase & date and means of actual notice to be submitted to manufacturer by tendering consumers.

3. That no replacement or refunds be required as to welders purchased more than one year prior to actual notice of the substantial product hazard.

At the same time, a summary of the confidential record relating to the individual Respondent's health and the corporate Respondent's financial condition was forwarded to the Commission with copies available only to the parties.

The exceptions filed by Respondents did not contest the finding that the Wel-Dex Welder presents a substantial product hazard. In fact, Respondents have ceased manufacturing the welder and have agreed to abide by the provisions of the proposed order to give public notice of the hazard and to replace the welder with a safe product or refund the purchase price to all consumers who possessed it for a year or less at the time they received actual notice of the hazard. On September 30, 1975, the individual Respondent died.

Thereafter, Enforcement Counsel moved to amend the Notice of Enforcement to substitute the Estate of Thomas Doss, deceased, for the individual Respondent serving both counsel of record and counsel for the Estate. Respondent's Counsel, Gilbert Lessenco, Esquire, has interposed an objection in effect disclaiming Estate liability.

The motion is granted pursuant to Section 15(d) of the Act which confers authority upon the Commission to designate

the persons required to carry out its order. The pertinent House Committee Report states that "it is contemplated that the Commission would have the authority to place this obligation (refund) on the person most able to bear the cost where equitable and other considerations appear to warrant such action in the public interest."[1/] The financial condition of the corporate Respondent may not be sufficient to satisfy all claims. Therefore, the Estate of Thomas Doss who was the President and principal operating officer of the Respondent Corporation during his lifetime is properly al designated to respond to any consumer claims arising out of this proceeding.

On December 22, 1975, the Commission reopened this proceeding on Motion of Enforcement Counsel to Remand for Receipt of Further Evidence relating to the first known injury which occurred on September 13, 1975, to a user of the Wel-Dex Electric Arc Welder. On February 18, 1976, the further hearing was held in Seattle, Washington, and opposing briefs were filed by Enforcement Counsel on February 23, 1976, and by Counsel for Respondents on March 18, 1976, on which date the case was submitted for supplemental initial decision.

1/ House Report Document #92-15003, p.43

II

THE EVIDENCE

The evidence adduced at the reopened hearing described the following incident:

Mr. Charles S. Brown, Sr., a former Federal Aviation Administration Air Traffic Controller for 28 years living in Amarillo, Texas, purchased a Wel-Dex Welder in early 1972, paying $26-$27 (including extra cables) for the purpose of welding a 3/16" metal tool box to the front of his trailer. As a home owner, Mr. Brown had handled and repaired electrical equipment such as toasters, radios, television sets, and portable electric tools. He had read advertisements concerning the Wel-Dex Welder in various sporting magazines.

After failing to weld (he was able to strike an arc, but the arc promptly disappeared), he wrote to Wel-Dex on June 16, 1972, returning the welder for repair. Sometime later the same welder was returned by the company without comment. The witness knew that it was the same welder because he had previously dropped some stain on it and the stain was still there when the welder was returned.

After trying again to weld with different methods and using various size rods capable of welding brass, steel, and aluminum, he was still unsuccessful. This time

he did not send the welder back for a refund thinking that the fault was his. Instead, he placed it on a shelf and eventually moved from Amarillo to the Seattle area.

Mr. Brown has a son, Charles S. Brown, Jr., a college graduate in engineering with 15 years experience in the U.S. Army having received many commendations and medals and having been separated with the rank of Major. As a civilian, Mr. Brown, Jr., completed a vocational school course in welding. Thereafter, he became a welding instructor and received a certificate as such from the City of Seattle.

On the evening of September 13, 1975, Mr. Brown, Sr., asked his son to try the welder to see what was wrong because he had several small jobs to perform and he had never been able to successfully operate the tool. They entered the garage, placed the welder on a board across two saw-horses, and connected it with a wall swtich. With power on, Mr. Brown, Jr., attempted to weld a heavy piece of metal and a bar, utilizing two carbon rods which when pressed together were supposed to produce a suitable arc. He was unsuccessful in that, like his father, he could strike an arc; but the arc would not sustain sufficiently to "run a bead."

The son was wearing rubber soled shoes but no gloves. The garage floor was constructed of cement, dry at this time. The bar and the piece of metal appeared to come apart. With the two wooden handles of the rod holders in his hands, Mr. Brown, Jr., moved to push the bar and the metal back together. He may have pushed the metal parts of the rod holders together with his thumb. In any event, at that moment he appeared to "bend clear over" and slump to the floor having apparently received a severe electrical shock. Subsequently, he was revived by heart massage administered by his father and mouth-to-mouth resuscitation given by a neighboring doctor. After several days of hospitalization, Mr. Brown, Jr., recovered, but not fully. However, he accepted a position in Saudi Arabia and thus was unavailable to testify at the hearing.

Mr. Brown, Sr., was not aware of the Commission press release issued in July of 1974 warning the public that the Wel-Dex Welder may be a substantially hazardous product. He testified that he "would have thought" that each purchaser should have received a letter concerning the hazardous nature of the product.

Mr. Brown, Sr., testified that if he had been notified by the manufacturer that the welder was a hazardous device, and if he had been offered transportation charges, he

would have returned it immediately because the welder was in the original box which had the extra equipment in it. However, if no refund had been offered, or if he had to pay the transportation charges, he would have taken the device apart and "seen what he would have been able to get out of it and use." He would not have thrown the device away if he had been notified that it was hazardous (since he characteristically never threw anything away), because he would have preferred to have used the parts and particularly the wiring. The refund was not important to him compared to the danger. However, he believes that if the manufacturer sold something that was no good, in all fairness it should refund the purchase price. "It would have been a lot of trouble to send it back unless there was something to be gained (Tr R. 49-50)."

The only reason he used the welder again was because his son was experienced and he thought that maybe the latter could get some use out of it. Having been in the Civil Aeronautics and Federal Aviation Administrations for 28 years, safety was the basis of his position and he would not, in any manner, have ignored a notification that the device was hazardous.

The witness gave his opinion that if a person received notification that the device was hazardous and nevertheless ignored the warning and continued to use the instrument, such a person should not receive a refund because of his carelessness (Tr R53).

III

THE OPPOSING CONTENTIONS

Enforcement Counsel argues that the welder is not only hazardous, which Respondent has conceded, but defective as well; and since it cannot weld successfully, all consumers have received no benefit from the welder and, therefore, are entitled to a refund of the full purchase price plus transportation costs.

Respondents' position is that, as a matter of fundamental fairness and based upon the financial evidence of record in this proceeding, Relco should have six months from the date of each consumer request for corrective action to refund the welder purchase price or to replace the welder with one free of the defects in issue. Secondly, Respondents maintain that the evidence of record clearly establishes that the usable life of the welder approximates one year and therefore, there must be a deduction from the purchase price for prior use if the product has been in possession of a consumer for one year or more at the time actual notice of the hazardous nature of the product was received.

IV

DISCUSSION

The proposed Order attached to the Addendum to the Initial Decision issued August 11, 1975, did not contain a provision which would allow Respondents six months from the date of a consumer request to provide for a refund or replacement of the welder. Nor was there any discussion of this point in the Interim Initial Decision of April 29, 1975. It is correct, as stated by Respondent, that the Order of the Commission dated January 17, 1975, rejecting the proposed consent agreement and setting the case for hearing, did provide for such a six month period for the making of the necessary refunds or replacements. The language in the Commission's Order is as follows:

> "In addition, the proposed agreement and order provides that the Respondent has six (6) months after the date of the Order to make the necessary refund or replacement. The Commission agrees that a manufacturer with limited capital could be subject to a severe economic impact if the demand for replacement or refund has to be satisfied immediately. Therefore, to defray (sic) the immediate costs, the Commission, in this case, would allow the Respondent six (6) months from the date of the request by the Consumer for corrective action to refund the purchase price of the welder or replace the welder with one free of the defects in issue." (Emphasis added)

Enforcement Counsel has not objected to this provision. While the undersigned has some reservations,[2/] the Commission's Order is controlling. Accordingly, the proposed Order will be modified[3/] to include a six month period for arranging refunds or replacements.

With respect to the second issue concerning the usable life of the welder, it will be recalled that the findings in the Addendum to the Initial Decision held that the usable life of the welder approximates one year. This was based upon evidence produced by Respondents which demonstrated that the welder was successfully operated by an engineer from Atlantic Research, Inc., using the electric arc method involving consumable electrodes, for several types of welding, brazing, soldering, and cutting tasks. The expert witness testified that a user, recognizing the inherent construction of the product and employing reasonable care, could expect to use the welder several times a month over the course of one year.[4/]

2/ A six month period after each request for remitting refunds of from $10 to $20 appears unnecessarily lengthy and may serve to discourage consumers from tendering the hazardous products.

3/ Respondents' limited capital position has previously been discussed in the Summary of the Confidential Record which accompanied the Addendum to the Initial Decision of August 11, 1975.

4/ Tr 231-232; 227; Addendum to Initial Decision, p.6.

This testimony was considered more creditable and reliable than that produced by Enforcement Counsel which represented that the welder could be destroyed by 30 minutes continuous use, since the instructions included with the welder described a 50% duty cycle involving only three minutes of continuous use. These two items of conflicting testimony formerly comprised the sole evidence of record concerning the usable life of the welder. Although, it might have been opined that the welder could have been used intermittently over a period in excess of one year, there was no consumer evidence to that effect until the hearing was again reopened to take the testimony of Mr. Charles S. Brown, Sr., concerning the details of the injury to his son.

As summarized hereinabove, the record now contains evidence that a welder purchased by a consumer in early 1972 caused an injury to the consumer's son in September of 1975, approximately 3 1/2 years after purchase. Further, the record reveals that this particular welder never operated satisfactorily during the entire period and was shelved from the latter part of June of 1972 until September 13, 1975. Moreover, the purchaser never

received any actual notice from the Commission or the manufacturer concerning the hazardous nature of the product. It is, therefore, evident that the finding in the Addendum to the Initial Decision of August 11, 1972, that the welder has a usable life of only one year must now be modified to reflect the new evidence of record.

The statutory language as read in conjunction with its legislative history suggests that the Congress has conferred an unusually wide degree of latitude upon the Commission to exercise its discretion with respect to the persons who pay the refund, what the consumer has to do to obtain a refund, and the amount of the deductable allowance from a refund for use in excess of one year. The pertinent language of Section 15(d)3 is as follows:

> "Sec. 15(d) If the Commission determines (after affording interested parties, including consumers and consumer organizations, an opportunity for a hearing in accordance with subsection (f) that a product distributed in commerce presents a substantial product hazard and that action under this subsection is in the public interest, it may order the manufacturer or any distributor or retailer of such product to take whichever of the following actions the person to whom the order is directed elects:
>
> * * *
>
> (3) To refund the purchase price of such product (less a reasonable allowance for use, if such product has been in the possession of a consumer for one year or more (A) at the time of public notice under subsection (C), or (B) at the time the consumer receives actual notice of the defect or noncompliance, whichever first occurs.)."

It is noteworthy that a finding that a product is a substantial hazard does not ipso facto lead to a finding that the elective remedies must be ordered. A second finding namely "that action under the (substantial product hazard) section is in the public interest" is a necessary predicate to an order concerning elective remedies.

Further light is shed upon this Subsection by the discussion in the House Committee Report which is particularly instructive since the House rather than the Senate version of the Bill was the one ultimately adopted by the Conference Committee and subsequently enacted into law.[5/]

The appropriate discussion in the House Committee Report is as follows:

> "The Commission is also authorized to specify which persons are to receive refunds where that remedy is elected. This would permit the Commission to control not only who will be entitled to refund but also what proof of claim must be made in order for a person to recover the purchase price. Accordingly, the Commission is intended to have authority to specify whether present owners or only first purchasers are entitled to refund and whether the product must be tendered or whether

5/ Report of House Interstate and Foreign Commerce Committee No. 92-1153, June 20, 1972, accompanying HR 15003 page 43. The Senate version which required a tender of the unsafe product did not survive the Conference Committee--see Conference Committee Report No. 92-1593, October 12, 1972, U.S. Code Congressional and Administration News, 92nd Cong. p. 4643-4.

the sales slip or some other proof of purchase or ownership must be made. The Committee has decided against an absolute requirement that consumers must tender products in order to be entitled to the refund in favor of this more flexible approach. The Committee was concerned that, in some instances, to require the tender of the product might unduly expose consumers and persons within the distribution chain to the hazards associated with the product. Also, the offending product may no longer be in a form which would allow its tender.

Consumers who avail themselves of the remedy provided by Commission order shall not be charged and must be reimbursed for any reasonable and foreseeable expenses incurred in availing himself of the remedy. The Commission is given authority to require any manufacturer, distributor, or retailer to reimburse any other person in the distribution chain for his expenses in carrying out the Commission's order. While it is expected that the Commission in the exercise of this authority will most commonly order those at fault to reimburse others for their expenses, it is contemplated that the Commission would have the authority to place this obligation on the person most able to bear the cost where equitable and other considerations appear to warrant such action in the public interest. In this area, general rules are neither appropriate or feasible. The Commission would be expected to exercise this power on an ad hoc basis taking into account the individual circumstances of each case. (Emphasis added.)

Thus, the Commission has plenary power to exercise its expert judgment on an ad hoc basis taking into account the individual circumstances of each case. It must balance the policy to prevent consumer unjust enrichment mandated by the quoted language of Section 15(d)(3) of the Act against the need to ensure public safety by encouraging the return of the hazardous product by consumers.

In the instant case certain facts are clearly established by the evidence of record:

1. The electrical shock hazard from the device is extremely serious, in this case resulting in near death.

2. The hazard was present in each welder the day it was sold.

3. The welder is a tool which is normally used intermittently with varying intervals between use.

4. The hazard does not decline with the age of the welder, but is present each time it is plugged into an electrical outlet.

5. The parts of the welding package which are consumed through use are the welding rods.

6. The previous proceedings have revealed that there is no possibility of repair of any of the welders. Therefore, the elective remedy must be either to replace with a safe device or refund the purchase price less a reasonable allowance for use extending for more than one year.

It is noteworthy that the House Report suggests that the Commission does not have to require the consumer to tender the device in order to obtain a refund. The Report states that in certain instances "to require the tender

of the product might unduly expose consumers and persons within the distribution chain to the hazards associated with the product." However, this problem does not pertain to the welder. The suggestion seems more applicable to a product such as yarn contaminated with anthrax which might expose the consumer and those in the tender chain to disease. As previously stated, the welder is only dangerous if plugged in to an electrical circuit.

The Report also suggests that the "offending product may no longer be in a form which would allow its tender." However, even if the welder were disintegrated by an electrical short circuit, the remains would still be capable of being returned.

Under these circumstances and bearing in mind the serious nature of the hazard, it would seem that there is a public interest in encouraging consumers to tender the product to the manufacturer or the Commission so as to ensure that it is no longer capable of causing injury, not only to the consumer himself, but also to others in his household, neighbors and friends. For this purpose it appears that mere notice of the hazard to a consumer is not sufficient and that in order to remove the hazardous product from consumer use, the public interest requires either replacement or a refund.

The question then filters down to two propositions: (1) Is a full refund required to encourage a consumer to turn in the welder? (2) What criterion can be devised to ensure that a consumer who has received substantial use from the device for more than a year will not be unjustly enriched through a full refund?

At the outset it is clear that any consumer who has possessed the device for less than one year before receiving actual notice of its hazardous nature is entitled to a full refund plus shipping costs--the latter under the express wording of Section 15(e)(1) 6/ of the Act. Moreover, since the evidence of record now shows that intermittent use of the device over a period of 3 1/2 years is a distinct possibility, it is necessary to consider what sort of refund will encourage the intermittent user to return the welder on a basis which will not involve his unjust enrichment.

It would be unreasonable to assign percentages of refunds based upon varying lengths of time that the consumer had possession of the welder in excess of one year. Time is not necessarily a true measure of use of a household tool of this nature. Nor is it administratively

6/ Section 15(e)(1) provides that "No charge shall be made to any person (other than a manufacturer, distributor, or retailer) who avails himself of any remedy provided under an order issued under subsection (d), and the person subject to the order shall reimburse each person (other than a manufacturer, distributor, or retailer) who is entitled to such a remedy for any reasonable and foreseeable expenses incurred by such person in availing himself of such remedy." See also quotation from House Committee Report, supra p. 17.

feasible to have each consumer submit an affidavit as to the number of times he used the welder. A more appropriate test would seem to be whether the consumer has used the device sufficiently frequently to constitute the equivalent of one year of use. An appropriate measure of use would seem to be the degree of consumption of the welding rods supplied with the tool.

In the case of Mr. Brown, Sr., he would be clearly able to execute an affidavit setting forth that he received no use from the device whatsoever although he possessed it for 3 1/2 years. In fact, an investigator exhibited the device essentially unused at the reopened hearing.

Thus, any consumer who possessed the device for more than a year and who could tender the welder together with the furnished rods (even if partially used) would thereby establish that he had not had one year's use and, consequently, would receive a full refund plus shipping costs. On the other hand, if the consumer has possessed the welder for more than one year and has expended the rods, it can be presumed that he obtained considerable benefit from the welder, and therefore, it seems reasonable that such a consumer should receive a refund of no more than 50% [7/] of the purchase price plus shipping costs.

7/ Any percentage chosen may be open to a charge of arbitrary judgment. Fifty percent or approximately $10 plus shipping costs seems sufficient to encourage tendering after substantia use without unjust enrichment and appears to represent a fair estimate of the value of the use received by the consumer.

On [illegible] basis proposed, all consumers who [illegible] the welder would receive refunds of 50% or 100% depending upon the degree of their use of the tool. Such an approach would carry out the intention of Section 15(d)3 to prevent unjust enrichment where the consumer received substantial use from a hazardous product and then returns it for a full refund. On the other hand, the requirement for at least a 50% refund for all such consumers would give encouragement to those who need some "gain", as Mr. Brown, Sr., testified, in order to take the trouble to return the product to safety.

Some consumers may have thrown the welder into a trash receptacle after personally observing its unsafe design. It would be patently unreasonable to exclude safety conscious purchasers from the remedial order. It is clearly in the public interest to encourage all consumers to examine potentially hazardous products with a critical eye, and to take action without waiting for adjudication which can, as in this case, extend for a considerable period of time.

If such a consumer executes an affidavit form that he disposed of the welder because he believed it to be unsafe, he should receive a 50% refund without the necessity of producing the welder, providing he presents proof of purchase by a sales slip or other tangible evidence. Under these circumstances the manufacturer, like all public authorities in many instances, must accept the consumer's oath in affidavit form, properly notarized.

Finally, a consumer who ignores the Commission's or manufacturer's notice that the device is hazardous and continues to use the product or makes it available to others, would not be entitled to receive any refund. Not having cooperated with the Commission's program to remove the hazardous product from circulation, such a consumer has not earned any monetary consideration.

Similarly, a consumer who disposed of the welder either in disgust at its failure to operate, or even after successful use, is not entitled to a refund. Since the device is out of circulation and therefore harmless, there is no longer any need for the manufacturer to "pay" for its return to ensure public safety. Any payment that a manufacturer should be responsible for under these circumstances would lie under the terms of the express or implied warranties.[8/] Since failure to operate satisfactorily is not a safety problem but a breach of the implied warranty of fitness for a particular purpose, the consumer's rights can be protected either by the Federal Trade Commission or in the courts.

8/ The record is in some conflict. There is evidence of a 10 day unconditional money back guarantee contained in the instruction manual accompanying the welder. There is also evidence of magazine advertising of a "lifetime guarantee, parts and service," see p.6 Addendum to Initial Decision; Enforcement Counsel Exhibit EC-12 and 13.

Based upon the confidential record, the fact of Mr. Doss's demise and the resulting legal questions as to the liability of his estate, it is probable that there will be limited funds available to finance the recall of the welders. In this event, it is desirable to determine priorities.

The first priority should be notice to all purchasers of the device concerning the hazardous nature of the product. The remaining funds would then be available for purchase price refunds. However, since Respondents are also liable for transportation costs, it is reasonable to make some provision to reduce such expense. This could be accomplished most effectively by requiring only a small vital part of the welder to be shipped, such as the asbestos sole plate with its attached resistance elements. Those could be flattened and mailed with the welding rods in one large envelope, thus reducing costs. Alternatively, the welder could be delivered in person to the manufacturer or to a Commission field office. Those either tendering the welders or mailing the sole plate would be entitled to first claim on remaining funds. If this group does not exhaust the available funds, the group submitting

affidavits only would be entitled to recover from the balance on a first-come, first-served basis.

An appropriate order implementing the findings and conclusions above set forth is attached.

Paul N. Pfeiffer

PAUL N. PFEIFFER
Administrative Law Judge

DATE: April 2, 1976

Attachment

SERVED: April 5, 1976

CONSUMER PRODUCT SAFETY COMMISSION
Washington, D.C.

In the Matter of: RELCO, INC., a corporation doing business in its own name and as WEL-DEX WELDER MFG. CO. and the estate of THOMAS H. DOSS, deceased, formerly an officer of the corporation.	CPSC DOCKET NO. 74-4

ORDER

This proceeding was initiated by a Notice of Enforcement issued July 17, 1974, which announced that a hearing would be held pursuant to Section 15(f) of the Consumer Product Safety Act (15 U.S.C. 2064[f]) (the Act) to consider whether Wel-Dex Electric Arc Welders manufactured by Relco, Inc., and Thomas Doss, individually and an officer thereof, present a substantial product hazard as the term is used in Section 15(a)(2), and whether Respondents should be ordered to cease manufacturing the welder, give public notice of the substantial hazard involved, and elect to replace, repair or refund to their customers pursuant to Sections 15(c) and (d) of the said Act.

Respondents filed an answer generally denying the allegations in the Notice of Enforcement. Thereafter, a stipulation of proposed settlement was submitted and subsequently rejected by the Commission on January 17, 1975. Public hearings were held on February 14, May 13, and June 10, 1975. The Commission reopened the record for further hearing, concerning an injury, which was held on February 18, 1976. By stipulation between counsel accepted for the record at the hearing, but not as an admission that the law had been violated, it was agreed that the Wel-Dex Electric Arc Welders present a substantial product hazard as the term is used in Section 15(a)(2) of the Act. Respondents have ceased manufacturing the welders and have waived their right to elect to repair those outstanding. No election has as yet been made between replacement and refund to consumers. Respondent Thomas Doss died on September 30, 1975, and the Notice of Enforcement has been amended to substitute the Estate of Thomas Doss, deceased, for the individual Respondent.

An Interim Initial Decision was issued April 29, 1975, and an Addendum thereto was released August 11, 1975. An Amended Initial Decision based on the reopened hearing of February 18, 1976, is being issued concurrently herewith.

On the basis of the stipulation and all the evidence of record, it is hereby found:

1. That the electrical output circuit in the welders is not isolated from the electrical input circuit by a transformer or other device;

2. That the electrical terminals were exposed on the outside of the welders manufactured before February 22, 1974, but are covered on those manufactured thereafter;

3. That the welder cases were made of metal;

4. That the amperage flowing through the welders substantially exceeded the amount allowable for the wiring installed therein according to the standards set forth in the National Electrical Code;

5. That the welders lack thermal insulation on the top and sides, but the bottom consists of asbestos;

6. That the Commission has a report of one injury but no deaths from the use of either design of the welder;

7. That it is impractical to repair the welder;

8. That the welder is inexpensive relative to other welders on the market; is cheaply constructed; and, under normal use two or three times monthly and in accordance with the accompanying instruction manual could be expected to last approximately one year;

9. That the welder performs minor welding, brazing, soldering and thin steel-cutting in a manner reasonably related to its design and cost;

10. That the welder may be used intermittently over a period of several years, thereby precluding time of possession as an adequate measure of the use received by the consumer;

11. That a more reasonable test of the amount of use received by the consumer is the degree of consumption of the welding rods supplied with the device.

In view of the foregoing, IT IS HEREBY CONCLUDED that the Wel-Dex Electric Arc Welder presents a substantial product hazard pursuant to Section 15(a)(c) and (d) of the Act, that further manufacture of this product or its distribution in commerce should be prohibited; that public notification is required to adequately protect consumer safety; and that an action by Respondents electing to replace the welder or refund its purchase price plus shipping charges, less a reasonable allowance for use as provided herein, is in the public interest.

IT IS THEREFORE ORDERED that Respondent, Relco, Inc., a corporation doing business in its own name or under any other name, its successors and assigns, and its officers, and the Estate of Thomas H. Doss, formerly an officer of the corporation:

1. Refrain from manufacturing and distributing in commerce or any manner affecting commerce, as defined in Section 3 of the Act, the Wel-Dex Electric Arc Welder, or any other electric welder of similar design or construction, containing any of the defects alleged to create a substantial product hazard in the Notice of Enforcement.

2. Give public notice immediately upon receipt of this order in the name of Wel-Dex Welder Mfg. Co., which notice shall state that Respondents and Commission Enforcement Counsel have agreed and an Administrative Law Judge has determined, on the basis of the stipulation

and the evidence of record, that Wel-Dex Electric Arc Welder presents a substantial product hazard which could cause electric shock, burns or fire; that Respondents hereby offer to replace those Wel-Dex Electric Arc Welders with substitutes whose design has been approved by the Commission or refund the purchase price in percentages as provided herewith, plus shipping charges to all consumers who possessed such welders.

Such notice shall be given immediately in the following manner:

(a) by issuing a joint press release with the Commission upon this Order being issued;

(b) by inserting an advertisement of at least the same size and prominence in the same publications as the advertisements in which Respondents offered the defective welder for sale, including: Columbia, Farmer Stockman, Complete Mens Group, Eagle Magazine, Field and Stream, Fur, Fish, Game, Mechanix World, Popular Mechanics, Popular Science, Official Detective Group, Outdoor Life, Sports Afield, Western Publications, Woodmen of the World, Workbench, Progressive Farmer, Rustan's Men's Group, Adventure for Men, Real Detective, Police Detective, Men in Adventure, Science & Mechanics, and Spare Time; and

(c) by mailing a letter to all known purchasers, including dealers, of the defective welder, warning them of the alleged hazards and informing them of Respondents' election under this Order;

3. Offer refunds to consumers according to the following schedule:

(a) Consumers who possessed the welder for one year or less shall receive a refund of 100% of their purchase price, plus shipping costs upon tender of the welder.

All consumers who tender the welder and its welding rods, either unused or partially used, shall receive a refund of 100% of the purchase price plus shipping costs regardless of the length of time they possessed the welder.

(c) All consumers who have possessed the welder for more than one year at the time of actual notice of its hazardous nature and who tender the welder, without its welding rods shall receive a refund of 50% of the purchase price, plus shipping costs.

(d) All consumers who have possessed the welder for more than one year at the time of actual notice of its hazardous nature and who tender an affidavit, under oath, properly notarized, that they disposed of the welder after learning, through their own inspection, or otherwise, of its dangerous characteristics, shall receive a refund of 50% of the purchase price.

4. Accept as tender of the welder the delivery of the asbestos sole plate of the welder with its attached resistance elements and welding rods, if available, to the Respondent corporation or any Commission office.

5. Make expenditures according to the following priorities, in the event of limited funds:

(a) Letter notice to all known purchasers; magazine advertisements.

(b) Refunds to consumers who tender the welder.

(c) Refunds to consumers who tender affidavits. Within this group refunds shall be made on a first-come, first-served basis after all group (b) refunds are made.

6. All payments due to consumers shall be made within six (6) months of the request for refund by the consumer.

File compliance reports, as follows: A preliminary report of compliance must be filed within fifteen (15) days after service of this Order upon Respondents, detailing fully and specifically what measures they have taken to comply with this Order. Compliance reports shall be filed every thirty (30) days thereafter, until submission of a final report, summarizing all actions taken by Respondents pursuant to this Order.

8. Notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this Order.

IT IS FURTHER ORDERED that if Respondents elect to replace the welder, the replacement welder unit shall be submitted with all supporting technical data, electrical drawings and component material information, to the Commission's Staff to enable it to determine, before the welder is placed in the hands of consumers, that any defects will be corrected and that the replacement welder will not create a substantial product hazard.

Paul N. Pfeiffer

PAUL N. PFEIFFER
Administrative Law Judge

DATE: April 2, 1976