

Complaint

IN THE MATTER OF

**GENICA CORPORATION,
AND
COMPGEEKS.COM
D/B/A COMPUTER GEEKS DISCOUNT OUTLET
AND
GEEKS.COM,**

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

*Docket No. C-4252; File No. 082 3113
Complaint, March 16, 2009 – Decision, March 16, 2009*

This consent order addresses Genica's representations about the security they provided for sensitive information provided to them by consumers. The Commission's complaint alleges that respondents represented that they implemented reasonable and appropriate security measures to protect the privacy and confidentiality of personal information. The complaint further alleges that since at least January 2007 and continuing through at least June 2007, hackers repeatedly exploited vulnerabilities by using SQL injection attacks on the www.geeks.com website and web application and found personal information of hundreds of customers, including credit card numbers, expiration dates, and security codes, stored on respondents' network which they exported over the internet to outside computers. The order prohibits respondents from misrepresenting the extent to which respondents maintain and protect the privacy, confidentiality, or integrity of any personal information collected from or about consumers and requires respondents to establish and maintain a comprehensive information security program that is reasonably designed to protect the security, confidentiality, and integrity of personal information collected from or about consumers.

COMPLAINT

The Federal Trade Commission, having reason to believe that Genica Corporation and Compgeeks.com also doing business as Computer Geeks Discount Outlet and geeks.com ("respondents") have violated the provisions of the Federal Trade Commission Act,

Complaint

and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Genica Corporation (“Genica”) is a Delaware corporation with its principal office or place of business at 1890 Ord Way, Oceanside, California 92056.

2. Respondent Compgeeks.com also doing business as Computer Geeks Discount Outlet and geeks.com (“Compgeeks.com”) is a California corporation with its principal office or place of business at 1890 Ord Way, Oceanside, California 92056. Compgeeks.com is a wholly-owned subsidiary of Genica, and Genica controlled the acts and practices of Compgeeks.com at issue in this complaint.

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

4. Respondents are in the business of selling computer systems, peripherals, and consumer electronics to consumers over the internet, including through a website (www.geeks.com) operated by respondent Compgeeks.com.

5. Respondents operate a computer network that consumers use, in conjunction with the www.geeks.com website and web application, to obtain information and to buy their products.

6. In selling products through the www.geeks.com website, respondents routinely collect sensitive information from consumers to obtain authorization for credit card purchases, including a first and last name, address, e-mail address, telephone number, credit card number, credit card expiration date, and credit card security code (hereinafter “personal information”). Personal information collected at the website is sent to computers on respondents’ computer network, reformatted, and sent to outside computer networks for payment authorization. Until at least December 2007,

Complaint

respondents stored information in clear, readable text on the network on a computer accessible through the www.geeks.com website.

7. Since at least October 2001, respondents have disseminated or caused to be disseminated privacy policies and statements on the www.geeks.com website, including, but not limited to, the following statements regarding the privacy and confidentiality of the consumer information they collect:

The objective of the safeguarding personal information principle is to assure you that we actively protect your privacy using a variety of security and controls. We use secure technology, privacy protection controls and restrictions on employee access in order to safeguard your personal information. We use state of the art technology (e.g., Secure Socket Layer, or SSL) encryption to keep customer personal information as secure as possible. We have also put in place privacy protection control systems designed to ensure that personal Customer data remains safe and private. (Exhibit A, current privacy policy effective 2007, and Exhibit B, former privacy policy effective between 2001 and 2007)

8. Until at least December 2007, respondents engaged in a number of practices that, taken together, failed to provide reasonable and appropriate security for the personal information stored on their network. Among other things, respondents: (1) stored personal information in clear, readable text; (2) did not adequately assess the vulnerability of their web application and network to commonly known or reasonably foreseeable attacks, such as “Structured Query Language” (“SQL”) injection attacks; (3) did not implement simple, free or low-cost, and readily available defenses to such attacks; (4) did not use readily available security measures to monitor and control connections between computers on the network and from the network to the internet; and (5) failed to employ reasonable

Complaint

measures to detect and prevent unauthorized access to personal information, such as by logging or employing an intrusion detection system.

9. Since at least January 2007 and continuing through at least June 2007, hackers repeatedly exploited the failures set forth in Paragraph 8 by using SQL injection attacks on the www.geeks.com website and web application. Through these attacks, the hackers found personal information stored on respondents' network and exported the information of hundreds of customers, including credit card numbers, expiration dates, and security codes, over the internet to outside computers.

10. Respondents became aware of the breach in December 2007, at which time they took steps to prevent further unauthorized access and to notify law enforcement and affected consumers.

11. Through the means described in Paragraph 7, respondents represented, expressly or by implication, that they implemented reasonable and appropriate measures to protect personal information against unauthorized access.

12. In truth and in fact, respondents did not implement reasonable and appropriate measures to protect personal information against unauthorized access. Therefore, the representation set forth in Paragraph 11 was, and is, false or misleading.

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

THEREFORE, the Federal Trade Commission this sixteenth day of March, 2009, has issued this complaint against respondents.

By the Commission.

FEDERAL TRADE COMMISSION DECISIONS
VOLUME 147



Complaint

Exhibit A

Geeks.com#privacy

Page 1 of 5

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COMPUTER GEEKS.COM  

NEW ARRIVALS **TVs** **Notebooks** **MP3 & iPod** **Digital Cameras** **Networking** **Electronics**

PayPal **NO PAYMENTS FOR 90 DAYS** on orders over \$50 [Learn how!](#)

SEARCH **Get Email Discounts and SAVE!**

McAfee SECURE TESTED DAILY 23-SEP

SALES AND RETURNS POLICIES

Systems

- * Desktop Computers
- * Laptops / Notebooks
- * PDAs

Hardware

- * Bags / Cases / Backpacks
- * Cables
- * Cases
- * CD-ROM / CD-RW / CD Burners
- * Cell Phones
- * Clearance
- * Computer Power Supplies
- * Consumer Electronics
- * Controllers / Adapters
- * Cooling Fans
- * CPUs / Processors
- * Digital Cameras
- * DVD Drives / DVD Burners
- * External Drive Cases
- * Flash Memory / Card Readers
- * Computer Gadgets
- * Gaming
- * GPS
- * Hard Drives
- * Joysticks
- * Keyboards
- * Media (CDR, DVD)
- * Mouse - Optical / Trackball
- * Memory / System Memory
- * Modems
- * Monitors / LCDs
- * Motherboards
- * MP3 / MP4 Players / iPod
- * Networking
- * Power Protection
- * Printers
- * Removable Storage
- * Scanners
- * Sound Cards
- * Speakers / Microphones
- * Televisions
- * Toys (For All Ages)
- * USB Flash Drives

Sales and Return Policies:

- * All sales are final. Return of non-defective product within the first 30 days from date of purchase are subject to a 15% Return Fee.
- * Sales Tax will be charged on all orders delivered to an address in California (CA)
- * Damaged items or missing parts / accessories not as advertised must be reported within 7 business days of receipt of product.
- * Shipping fees and/or Return shipping costs are not refundable and are the sole responsibility of the customer.
- * Only defective product returns will be accepted after 30 days for repair or replacement only.
- * Due to the dynamic nature of the Internet, computer and electronics related parts, prices may change at any time without notice. Geeks.com does not offer price protection.
- * Products sold with a Manufacturer or Direct Warranty must be returned directly to the product manufacturer for repair or replacement. For these items, the warranty policy from the product manufacturer explicitly requires that any returns, repairs etc. be requested and processed directly by the consumer (or "end-user") of the item.
- * Due to licensing and copyright laws, we do not accept returns on software once a package has been opened. Defective software will be exchanged for the same title only.
- * To return a product you must obtain a Return Merchandise Authorization (RMA) number. Geeks.com will not accept returns without prior authorization.
- * RMA numbers are valid for 30 days. RMA numbers will not be extended and will be closed upon expiration. You must contact Geeks.com to obtain another RMA number.
- * Once the RMA has been issued you will receive an email explaining what to expect during the return process. It is highly recommended that you use the non-prepaid address label provided on the lower portion of the RMA email sent out upon generation. If the return is a multiple box shipment the RMA number must be marked on all packages returned. All packages returned must have the RMA number displayed in large bold letters on the outside of the box.
- * Unauthorized or Unmarked returns will not be honored and may be refused upon receipt and/or shipped back at the customer's expense.
- * Shipments that are refused without authorization, or that are returned due to an invalid address, are subject to a 15% Return Fee plus applicable handling fees.
- * All product(s) must be return as originally received to include original packaging, manuals, documentation, and all bundled accessories. Returns must be packaged appropriately as to minimize any unnecessary damage during transit. Product(s) damaged during shipment will invalidate both the warranty and RMA and will be returned to the customer at the customer's expense.
- * All Warranty Exchange replacements are subject to product availability. If an exact replacement is not available upon testing Geeks.com will substitute the product(s) with a similar, suitable, or upgraded product(s) of equal or greater value within 7 to 10 business days. If none of these options are available Geeks.com will credit the customer's account based upon current market value of the received product(s).
- * Other than Gift Certificates, credits expire 6 months after the date they are issued.
- * Geeks.com will not be responsible or held liable for any incidental or consequential damages arising from the use or misuse of any product(s) it sells including products with a net total cost of \$0.00.
- * Per product descriptions, compatibility can be reasonably assured in most cases but can never be guaranteed; a product that is incompatible in a specific hardware/software environment is not therefore inherently "defective".
- * Geeks.com reserves the right to refuse service to anyone.
- * Return Policies subject to change without prior notice. Customer should review these policies prior to making purchase.

http://www.geeks.com/policies.asp

9/23/2008

Complaint

<p>* Video Cards * Video Cameras & Web Cams * VoIP / Telephone Devices</p> <p>Software * Software / Books</p> <p>SPECIAL PROGRAMS</p> <ul style="list-style-type: none"> ◊ Reseller Sales ◊ Educational Sales ◊ Government Sales ◊ Affiliate Program <p>Ⓞ GEEK FEEDBACK</p> <p>Can't find that item you're looking for? Please let us know what we should bring in stock.</p> <p>Type Feedback Here</p> <p style="text-align: center;"><input type="button" value="Submit"/></p>	<p>* Geeks.com strives to be as accurate as possible in our content and pricing. In the event a product is listed with an error in pricing or incorrect content, Geeks.com shall have the right to refuse or cancel any order whether or not the order has been confirmed and credit card charged. In the event that a credit card has already been charged and an order subsequently canceled, Geeks.com will issue a refund to the credit card account in the amount of the charge.</p> <p>Customer Pickup ("Will Call") Policies:</p> <p>Please visit: http://www.geeks.com/customerpickup.asp</p> <p>Privacy Policies:</p> <p>Date Last Updated: September 4, 2007</p> <p>INTRODUCTION</p> <p>Geeks.com is committed to protecting the privacy of our Visitors and Customers. Our privacy policy governs our use of private Visitor information and other information about our Visitors and Customers.</p> <p>Purpose</p> <p>Geeks.com believes that our online Visitors and Customers need to be provided clear and prominent notice regarding what personal information is being collected about them, how it will be used, whether or not it will be disclosed, and if so, to whom.</p> <p>Many entities have examined the issue of privacy and developed guidelines for establishing reasonable policies. We believe that by addressing these issues, we will fulfill the goals of fair information use supported by the U.S. government and a variety of industry groups:</p> <p>www.truste.org www.privacyalliance.org www.ftc.gov www.the-dma.org</p> <p>The Glossary of Terms at the end of this Policy defines words with specific meaning as used in these guidelines.</p> <p>Privacy Guidelines:</p> <p>Navigational Data/Tracking.</p> <ul style="list-style-type: none"> * Computer Geeks collects navigational data about where individual site visitors come from, exit to, and go while on our website. We do not disclose this information to third parties, except for those with whom we have contracted to analyze and safeguard the data on our behalf. * We may use web browser "cookies" to track progress through our Web site, but the cookies will not be used to collect or store individually identifiable information nor be linked to other information that allows us to identify any specific individual. However, we may use cookies with individual identifiers to support visitor enhancements such as site personalization or other eCommerce features such as product recommendations and your shopping cart. <p>Information Sharing/Disclosure.</p> <ul style="list-style-type: none"> * We do not share navigational data with outside companies, except with those with whom we have contracted to analyze and safeguard the data on our behalf. * To offer our products and services in the best way possible, Geeks.com contracts with third party service partners. These partners provide us with data collection, storage, analysis and reporting services and are restricted from using your information in any way other than to help us make our site and services more useful to you and our other visitors. If you would like to opt-out of having your personal information collected by the company with whom we have contracted, please click here. * We do not disclose individual names or customer contact information (such as telephone numbers, email address, or various personal identification numbers), to any third party without your prior consent, except as required by law, or as needed to fulfill an order or deliver a product that a customer has ordered. <p>Service partners will abide by Geeks.com's privacy policies.</p> <p>Additionally, we may share information with law enforcement agencies or other companies assisting us in fraud prevention or investigations.</p> <p>In support of maintaining a safe and secure environment for credit card purchases, it is essential to our customers that we use credit card and other billing account numbers only for the fulfillment of purchases or other</p>
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Complaint

Geeks.com#privacy

Page 3 of 5

transactions initiated by our Customers. We do not use credit card or other billing account numbers in other ways without your prior consent.

- We do not release to third parties specific customer account information except to comply with valid legal process or in reasonable efforts to fulfill a transaction initiated by our Customers.
- We provide Customers with the opportunity to update or correct contact and billing information.

We provide to our customers a means to update and ensure the accuracy of their online contact and billing information. For security reasons, we will not disclose the original information directly to the customer, but rather provide a means to reenter changes to the information on record.

Online Purchases.

The objective of the online purchases principle is to protect the information about customer transactions and other online uses from misuse and unauthorized disclosure.

- We may use information about the kinds of products you buy from us to make other marketing offers to you, unless you tell us not to, or to personalize your visits to our Web site. We do not give out this purchase data to others except as specified below.
- We do not give out information about what individual customers purchase, except to complete the transactions or to comply with valid legal process. However, pursuant to specific contracts, we may be required provide third-parties with listings of specific groups of customers who have made purchases. Generally, this data will be aggregated and not individually identifiable, but this may not be true in all cases.
- When we facilitate a transaction which is to be fulfilled by an outside party, we will not use the specific, individually identifiable transaction information collected from a customer for purposes other than fulfilling the transaction without your prior consent.

Choice.

We give you choices about how we use your personal information.

The objective of the choice principle is to allow customers to opt-out of future marketing offers.

- We give you choices about how the information that you provide may be used to make marketing offers to you. We provide you with a means to easily remove your contact information (like your email address) from marketing lists at any point in the future. Should you wish to be removed from our 100% opt-in Email subscribers list, [click here](#).
- We do not sell or rent customer contact information to unaffiliated third parties for marketing purposes without your prior consent.

Safeguarding Personal Information.

The objective of the safeguarding personal information principle is to assure you that we actively protect your privacy using a variety of security and controls. We use secure technology, privacy protection controls and restrictions on employee access in order to safeguard your personal information.

- We use state of the art technology (e.g., Secure Socket Layer, or SSL) encryption to keep customer personal information as secure as possible. We have also put in place privacy protection control systems designed to ensure that personal Customer data remains safe and private. To learn more about SSL data encryption and how it helps to secure you personal information, [click here](#).
- We allow only authorized employees access to personal information and ensure that the access is limited by need.
- We require companies contracted as agents to adhere to confidentiality agreements to ensure that Customer information remains safe and secure.
- We require employees to acknowledge that they understand and will comply with our privacy policy. We subject employees who violate the privacy policy to disciplinary action.
- **Safe Shopping Guarantee:** We guarantee that every online transaction you make will be 100% safe. Under the **Fair Credit Billing Act**, your bank cannot hold you liable for more than \$50.00 of fraudulent charges. In the event of unauthorized use of your credit card, you must notify your credit card provider in accordance with its reporting rules and procedures.

Notice.

We will keep you informed, clearly and prominently on this page, about what we do with your personal information, and we will advise you here if we change our policy. The objective of the notice principle is to ensure that you are aware of and understand how we protect your privacy.

- We explain to visitors and customers how their information is used by providing this written privacy policy for our visitors and customers.
- We notify customers of our privacy policy during registration when they make a purchase.
- We provide written notice of policy changes through prominent and ongoing disclosure.
- We provide a means for Visitors and Customers to ask questions about, voice concerns about, or report violations of the privacy policy.

Complaint

Geeks.com#privacy

Page 4 of 5

If you have questions or concerns about our privacy policy, or to report a suspected violation of our privacy policy, you may contact us by the following means:

Email: privacy@geeks.com

OR

Attn: Privacy
Geeks.com
1890 Ord Way
Oceanside, CA 92056

GLOSSARY OF TERMS

Account Information: Information pertaining to and supporting the management of a customer's account, including but not limited to account numbers and other account identification, promotion information, registration/cancellation information, and preferences and profiles.

Aggregate: Information considered as a whole or in groups. Compiled information that does not disclose individual identity.

Billing Information: Customer generated information specific to a customer's billing and payment methods and history, including but not limited to bills, payment and billing statements, credit card number, credit card expiration date, checking account number, debit card number, and credit card type.

Choice: Providing customers options about how their information can be used, such as opt-outs of email marketing offers.

Collection: Requesting, recording, or generating information. The automatic or manual collection or receipt of customer information from a customer or other party.

Contact Information: Information to support contacting customers, including but not limited to name, mailing address, telephone numbers, email addresses, and fax numbers.

Cookie: A collection of data that gets entered into the memory of Web browsers by some Web sites. This data contains the domain, path, lifetime, and values of variables that are set by the Web site. Cookies may be "permanently" or temporarily stored as small text files on your computer's hard drive.

Customer: Someone who has registered with us for the purpose of making a purchase or who has made a purchase from us in the past. Generally, we store much more information regarding Customers, including but not limited to Contact Information, Account Information, and Individually Identifiable Information. Customers are different from Visitors.

Disclosure: The release of information to unaffiliated third parties. Disclosure does not include release to those agents and vendors who are covered by appropriate non-disclosure and confidentiality agreements or release of information for the purpose of complying with valid legal process, to protect the rights or property of Computer Geeks, or for emergencies. If you initiate contact with a third party with regard to us, we may disclose your communication with us or other relevant information to that same third party.

Individually Identifiable Information: Any information which can be used to identify a specific individual in particular by reference to an identification number or to one or more factors specific to the individual's physical, physiological, mental, economic, cultural status, or social affiliations.

Marketing: Promotions provided by us. May be through direct mail, email, pop-ups, banner and/or other online advertisements.

Navigational Information: Information about what visitors or customers do online and where they go, including but not limited to recency of visit to specific online areas, frequency of visit to specific online areas, and pathing information.

Need to Access: The need to have access to information, including private customer information, for the fulfillment of an official corporate duty.

Notice: Indications to visitors and customers about policies and practices in effect.

Personal Information: Individual information about a customer that is specific to that customer. Personal information includes but is not limited to anything collected about a customer on an individual level and any information volunteered by the customer, such as a personal profile or preferences.

Registration Information: Customer created, personalized information used to customize services and content, and/or to fulfill transactions.

Private Communications: Communications that are intended to be contained among a defined set of participants, such as Email. Message board postings and public room conversations are not considered private communications.

Private Information: Private information includes all information about a customer that the customer has not made publicly available.

Complaint


Public Information: Public information includes all online information about a customer that a customer has made publicly available.

Publicly Available Consumer Data: Information acquired from consumer marketing and reporting organizations and other publicly available sources.

Transactional Information: Purchase information, including but not limited to date of purchase, source of purchase, recency of purchase, frequency of purchase, dollar amount of purchase, type of product or product category purchased, means of purchase, type of credit card used, other uses of online commerce.

Use: Processing, transmitting, transforming, or otherwise handling information. Includes promotional, advertising, and marketing use.

Visitor: A Visitor to our Web site. Visitors are different from Customers.
(All Customers are Visitors, but not all Visitors are Customers.)



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Complaint

Exhibit B

Geeks.com

Page 1 of 7

Subtotal: \$0.00 Items In Cart: 0
 View Cart
Contact Us
My Account

Customer Service
Tech Support
Tech Tips
Volume Discounts
Gift Certificates
About Us

NEW ARRIVALS
 Notebooks
 Digital Cameras
 Networking
 Rebate Center

Get Email Discounts and SAVE! Enter Email Here

SALES AND RETURNS POLICIES

Sales and Return Policies:

- All sales are final. Return of non-defective product within the first 30 days from date of purchase will be subjected to a 15% Return Fee.
- Sales Tax will be charged on all orders delivered to an address in California (CA)
- Customer must inspect all goods upon receipt and notify Geeks.com within 7 business days if any products are missing or damaged.
- Shipping fees and/or Return shipping costs are not refundable and are the sole responsibility of the customer.
- Only defective product returns will be accepted after 30 days for repair or replacement only.
- Products sold with a Manufacturer or Direct Warranty must be returned directly to the product manufacturer for repair or replacement. For these items, the warranty policy from the product manufacturer explicitly requires that any returns, repairs etc. be requested and processed directly by the consumer (or "end-user") of the item.
- Due to licensing and copyright laws, we do not accept returns on software once a package has been opened. Defective software will be exchanged for the same title only.
- To return a product you must obtain a Return Merchandise Authorization (RMA) number. Geeks.com will not accept returns without prior authorization.
- RMA numbers are valid for 30 days. RMA numbers will not be extended and will be closed upon expiration. You must contact Geeks.com to obtain another RMA number.
- Once the RMA has been issued you will receive an email explaining what to expect during the return process. It is highly recommended that you use the non-prepaid address label provided on the lower portion of the RMA email sent out upon generation. If the return is a multiple box shipment the RMA number must be marked on all packages returned. All packages returned must have the RMA number displayed in large bold letters on the outside of the box.
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- Shipments that are refused without authorization, or that are returned due to an invalid address, are subject to a 15% Return Fee plus applicable handling fees.
- All product(s) must be returned as originally received to include original packaging, manuals, documentation, and all bundled accessories. Returns must be packaged appropriately as to minimize any unnecessary damage during transit. Product(s) damaged during shipment will invalidate both the warranty and RMA and will be returned to the customer at the customer's expense.

SEARCH:

HACKER SAFE
TESTED DAILY 14-APR

Systems

- Barcodes / Kits
- Desktop Computers
- Laptops / Notebooks
- PDAs
- Hardware**
- Bags / Cases / Backpacks
- Cables
- Cases
- CD-ROM Drives
- CD-RW / CD Burners
- Cell Phones
- Consumer Electronics
- Controllers / Adapters
- Cooling Fans
- CPUs / Processors
- Digital Cameras
- DVD Drives / DVD Burners
- External Drive Cases
- Flash Memory / Card Readers
- Gadgets / Tools
- Gaming
- GPS
- Hard Drives
- Joysticks
- Keyboards
- Media (CDR, DVD)
- Mice
- Memory / System Memory
- Modems
- Monitors / LCDs

Complaint

Geeks.com

Page 2 of 7

<ul style="list-style-type: none"> Motherboards MP3 / MP4 Players / iPod Networking Power Protection Power Supplies Printers Removable Storage Scanners Sound Cards Speakers / Microphones Televisions Toys (For All Ages) USB Flash Drives Video Cards Video Cameras & Web Cams VoIP / Telephone Devices Software Software / Books 	<ul style="list-style-type: none"> • All Warranty Exchange replacements are subject to product availability. If an exact replacement is not available upon testing Geeks.com will substitute the product(s) with a similar, suitable, or upgraded product(s) of equal or greater value within 7 to 10 business days. If none of these options are available Geeks.com will credit the customer's account based upon current market value of the received product(s). • Other than Gift Certificates, credits expire 6 months after the date they are issued. • Geeks.com will not be responsible or held liable for any incidental or consequential damages arising from the use or misuse of any product(s) it sells. • Per product descriptions, compatibility can be reasonably assured in most cases but can never be guaranteed; a product that is incompatible in a specific hardware/software environment is not therefore automatically "defective". • Geeks.com reserves the right to refuse service to anyone. • Return Policies subject to change without prior notice. Customer should review these return policies prior to making purchase.
<input type="checkbox"/>	<p>Customer Pickup ("Will Call") Policies:</p> <p>Please visit: http://web.archive.org/web/20070418191125/http://www.geeks.com/customerpickup.asp</p>
<input type="checkbox"/>	<p>Privacy Policies: (Last Update: 4 September 2003)</p> <p>INTRODUCTION</p> <p>Geeks.com is committed to protecting the privacy of our Visitors and Customers. Our privacy policy governs our use of private Visitor information and other information about our Visitors and Customers. Geeks.com complies with the America Online (AOL) Certified Merchant privacy policy.</p> <p>Purpose</p> <p>Geeks.com believes that our online Visitors and Customers need to be provided clear and prominent notice regarding what personal information is being collected about them, how it will be used, whether or not it will be disclosed, and if so, to whom.</p> <p>Many entities have examined the issue of privacy and developed guidelines for establishing reasonable policies. We believe that by addressing these issues, we will fulfill the goals of fair information use supported by the U.S. government and a variety of industry groups:</p> <p>http://web.archive.org/web/20070418191125/http://www.truste.org/ http://web.archive.org/web/20070418191125/http://www.privacyalliance.org/ http://web.archive.org/web/20070418191125/http://www.ftc.gov/ http://web.archive.org/web/20070418191125/http://www.the-dma.org/</p> <p>The Glossary of Terms at the end of this Policy defines words with specific meaning as used in these guidelines.</p> <p>Privacy Guidelines:</p> <p>Navigational Data/Tracking.</p> <ul style="list-style-type: none"> •
<p>Can't find that item you're looking for? Please let us know what we should bring in stock.</p> <p>Type Feedback Here</p> <p style="text-align: center;"><input type="button" value="Submit"/></p>	

Complaint

Geeks.com

Page 3 of 7

Computer Geeks collects navigational data about where individual site visitors come from, exit to, and go while on our website. We do not disclose this information to third parties, except for those with whom we have contracted to analyze and safeguard the data on our behalf.

- We may use web browser "cookies" to track progress through our Web site, but the cookies will not be used to collect or store individually identifiable information not be linked to other information that allows us to identify any specific individual. However, we may use cookies with individual identifiers to support visitor enhancements such as site personalization or other eCommerce features such as product recommendations and your shopping cart.

Information Sharing/Disclosure.

- We do not share navigational data with outside companies, except with those with whom we have contracted to analyze and safeguard the data on our behalf.
- To offer our products and services in the best way possible, Computer Geeks contracts with third party service partners. These partners provide us with data collection, storage, analysis and reporting services and are restricted from using your information in any way other than to help us make our site and services more useful to you and our other visitors. If you would like to opt-out of having your personal information collected by the company with whom we have contracted, please [click here](#).
- We do not disclose individual names or customer contact information (such as telephone numbers, email address, or various personal identification numbers), to any third party without your prior consent, except as required by law, or as needed to fulfill an order or deliver a product that a customer has ordered.

Service partners will abide by Computer Geeks' privacy policies.

Additionally, we may share information with law enforcement agencies or other companies assisting us in fraud prevention or investigations.

In support of maintaining a safe and secure environment for credit card purchases, it is essential to our customers that we use credit card and other billing account numbers only for the fulfillment of purchases or other transactions initiated by our Customers. We do not use credit card or other billing account numbers in other ways without your prior consent.

- We do not release to third parties specific customer account information except to comply with valid legal process or in reasonable efforts to fulfill a transaction initiated by our Customers.
- We provide Customers with the opportunity to update or correct contact and billing information.

We provide to our customers a means to update and ensure the accuracy of their online contact and billing information. For security reasons, we will not disclose the original information directly to the customer, but rather provide a means to reenter changes to the information on record.

Online Purchases.

The objective of the online purchases principle is to protect the information about customer transactions and other online uses from misuse and unauthorized disclosure.

- We may use information about the kinds of products you buy from us to make other marketing offers to you, unless you tell us not to, or to personalize your visits to our Web site. We do not give out this purchase data to others except as specified below:
- We do not give out information about what individual customers purchase, except to

Complaint

Geeks.com

Page 4 of 7

complete the transactions or to comply with valid legal process.

However, pursuant to specific contracts, we may be required provide third-parties with listings of specific groups of customers who have made purchases. Generally, this data will be aggregated and not individually identifiable, but this may not be true in all cases.

- When we facilitate a transaction which is to be fulfilled by an outside party, we will not use the specific, individually identifiable transaction information collected from a customer for purposes other than fulfilling the transaction without your prior consent.

Choice.

We give you choices about how we use your personal information.

The objective of the choice principle is to allow customers to opt-out of future marketing offers.

- We give you choices about how the information that you provide may be used to make marketing offers to you. We provide you with a means to easily remove your contact information (like your email address) from marketing lists at any point in the future. Should you wish to be removed from our 100% opt-in Email subscribers list, [click here](#).
- We do not sell or rent customer contact information to unaffiliated third parties for marketing purposes without your prior consent.

Safeguarding Personal Information.

The objective of the safeguarding personal information principle is to assure you that we actively protect your privacy using a variety of security and controls. We use secure technology, privacy protection controls and restrictions on employee access in order to safeguard your personal information.

- We use state of the art technology (i.e., Secure Socket Layer, or SSL) encryption to keep customer personal information as secure as possible. We have also put in place privacy protection control systems designed to ensure that personal Customer data remains safe and private.
To learn more about SSL data encryption and how it helps to secure you personal information, [click here](#).
- We allow only authorized employees access to personal information and ensure that the access is limited by need.
- We require companies contracted as agents to adhere to confidentiality agreements to ensure that Customer information remains safe and secure.
- We require employees to acknowledge that they understand and will comply with our privacy policy. We subject employees who violate the privacy policy to disciplinary action.
- **Safe Shopping Guarantee:** We guarantee that every online transaction you make will be 100% safe. Under the **Fair Credit Billing Act**, your bank cannot hold you liable for more than \$50.00 of fraudulent charges. In the event of unauthorized use of your credit card, you must notify your credit card provider in accordance with its reporting rules and procedures.

Notice.

We will keep you informed, clearly and prominently on this page, about what we do with your personal information, and we will advise you here if we change our policy. The objective of the notice principle is to ensure that you are aware of and understand how we protect your privacy.

- We explain to visitors and customers how their information is used by providing this written privacy policy for our visitors and customers.

Complaint

Geeks.com

Page 5 of 7

- We notify customers of our privacy policy during registration when they make a purchase.
- We provide written notice of policy changes through prominent and ongoing disclosure.
- We provide a means for Visitors and Customers to ask questions about, voice concerns about, or report violations of the privacy policy.

If you have questions or concerns about our privacy policy, or to report a suspected violation of our privacy policy, you may contact us by the following means:

Email: privacy@geeks.com

OR

Attn: Privacy
Geeks.com
1890 Ord Way
Oceanside, CA 92056

GLOSSARY OF TERMS

Account Information: Information pertaining to and supporting the management of a customer's account, including but not limited to account numbers and other account identification, promotion information, registration/cancellation information, and preferences and profiles.

Aggregate: Information considered as a whole or in groups. Compiled information that does not disclose individual identity.

Billing Information: Customer generated information specific to a customer's billing and payment methods and history, including but not limited to bills, payment and billing statements, credit card number, credit card expiration date, checking account number, debit card number, and credit card type.

Choice: Providing customers options about how their information can be used, such as opt-outs of email marketing offers.

Collection: Requesting, recording, or generating information. The automatic or manual collection or receipt of customer information from a customer or other party.

Contact Information: Information to support contacting customers, including but not limited to name, mailing address, telephone numbers, email addresses, and fax numbers.

Cookie: A collection of data that gets entered into the memory of Web browsers by some Web sites. This data contains the domain, path, lifetime, and values of variables that are set by the Web site. Cookies may be "permanently" or temporarily stored as small text files on your computer's hard drive.

Customer: Someone who has registered with us for the purpose of making a purchase or who has made a purchase from us in the past. Generally, we store much more information regarding Customers, including but not limited to Contact Information, Account Information, and Individually Identifiable Information. Customers are different from Visitors.

Disclosure: The release of information to unaffiliated third parties. Disclosure does not include release to those agents and vendors who are covered by appropriate non-disclosure

Complaint

Geeks.com

Page 6 of 7

and confidentiality agreements or release of information for the purpose of complying with valid legal process, to protect the rights or property of Computer Geeks, or for emergencies. If you initiate contact with a third party with regard to us, we may disclose your communication with us or other relevant information to that same third party.

Individually Identifiable Information: Any information which can be used to identify a specific individual in particular by reference to an identification number or to one or more factors specific to the individual's physical, physiological, mental, economic, cultural status, or social affiliations.

Marketing: Promotions provided by us. May be through direct mail, email, pop-ups, banner and/or other online advertisements.

Navigational Information: Information about what visitors or customers do online and where they go, including but not limited to recency of visit to specific online areas, frequency of visit to specific online areas, and pathing information.

Need to Access: The need to have access to information, including private customer information, for the fulfillment of an official corporate duty.

Notice: Indications to visitors and customers about policies and practices in effect.

Personal Information: Individual information about a customer that is specific to that customer. Personal information includes but is not limited to anything collected about a customer on an individual level and any information volunteered by the customer, such as a personal profile or preferences.

Registration Information: Customer created, personalized information used to customize services and content, and/or to fulfill transactions.

Private Communications: Communications that are intended to be contained among a defined set of participants, such as e-mail. Message board postings and public room conversations are not considered private communications.

Private Information: Private information includes all information about a customer that the customer has not made publicly available.

Public Information: Public information includes all online information about a customer that a customer has made publicly available.

Publicly Available Consumer Data: Information acquired from consumer marketing and reporting organizations and other publicly available sources.

Transactional Information: Purchase information, including but not limited to date of purchase, source of purchase, recency of purchase, frequency of purchase, dollar amount of purchase, type of product or product category purchased, means of purchase, type of credit card used, other uses of online commerce.

Use: Processing, transmitting, transforming, or otherwise handling information. Includes promotional, advertising, and marketing use.

Visitor: A Visitor to our Web site. Visitors are different from Customers.
(All Customers are Visitors, but not all Visitors are Customers.)

Update Information:

When we did it: 4 September 2003

What we did: Moved this Privacy Policy information to the policies.asp page

Complaint

Geeks.com

Page 7 of 7

Why we did it: To remove Sales, Return, and Privacy Policy information from the "About Us" page and make it easier to find.

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Concerned about your personal information? [View Privacy Policies](#)

Decision and Order

DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the Respondents have violated the Federal Trade Commission Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, 16 C.F.R. § 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Genica Corporation ("Genica") is a Delaware corporation with its principal office or place of business at 1890 Ord Way, Oceanside, California 92056.
2. Respondent Compgeeks.com also doing business as Computer Geeks Discount Outlet and Geeks.com

Decision and Order

(“Compgeeks.com”) is a California corporation with its principal office or place of business at 1890 Ord Way, Oceanside, California 92056. Compgeeks.com is a wholly-owned subsidiary of Genica.

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

ORDER**DEFINITIONS**

For purposes of this Order, the following definitions shall apply:

1. “Personally identifiable information” or “personal information” shall mean individually identifiable information from or about an individual consumer including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or a screen name; (d) a telephone number; (e) a Social Security number; (f) a driver’s license or other state-issued identification number; (g) credit or debit card information, including card number, expiration date, and security code; (h) a persistent identifier, such as a customer number held in a “cookie” or processor serial number, that is combined with other available data that identifies an individual consumer; or (i) any information that is combined with any of (a) through (h) above.
2. Unless otherwise specified, “respondents” shall mean Genica, Compgeeks.com, and their subsidiaries, divisions, affiliates, successors and assigns .
3. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

Decision and Order

I.

IT IS ORDERED that respondents and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, website, or other device, in connection with the advertising, marketing, promotion, offering for sale, or sale of any product or service, in or affecting commerce, shall not misrepresent in any manner, expressly or by implication, the extent to which respondents maintain and protect the privacy, confidentiality, or integrity of any personal information collected from or about consumers.

II.

IT IS FURTHER ORDERED that respondents and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, website, or other device, shall, no later than the date of service of this order, establish and implement, and thereafter maintain, a comprehensive information security program that is reasonably designed to protect the security, confidentiality, and integrity of personal information collected from or about consumers. Such program, the content and implementation of which must be fully documented in writing, shall contain administrative, technical, and physical safeguards appropriate to respondents' size and complexity, the nature and scope of respondents' activities, and the sensitivity of the personal information collected from or about consumers, including:

- A. the designation of an employee or employees to coordinate and be accountable for the information security program;
- B. the identification of material internal and external risks to the security, confidentiality, and integrity of personal information that could result in the unauthorized disclosure, misuse, loss, alteration, destruction, or other compromise of such information, and assessment of the sufficiency of any safeguards in place to control these risks. At a minimum, this risk assessment should include consideration of risks in each

Decision and Order

area of relevant operation, including, but not limited to, (1) employee training and management, (2) information systems, including network and software design, information processing, storage, transmission, and disposal, and (3) prevention, detection, and response to attacks, intrusions, or other systems failure;

- C. the design and implementation of reasonable safeguards to control the risks identified through risk assessment, and regular testing or monitoring of the effectiveness of the safeguards' key controls, systems, and procedures;
- D. the development and use of reasonable steps to retain service providers capable of appropriately safeguarding personal information they receive from respondents and requiring service providers by contract to implement and maintain appropriate safeguards; and
- E. the evaluation and adjustment of respondents' information security program in light of the results of the testing and monitoring required by subpart C, any material changes to respondents' operations or business arrangements, or any other circumstances that respondents know or have reason to know may have a material impact on the effectiveness of their information security program.

III.

IT IS FURTHER ORDERED that, in connection with the online advertising, marketing, promotion, offering for sale, or sale of any product or service to consumers, in or affecting commerce, respondents, and their officers, agents, representatives, and employees, shall obtain initial and biennial assessments and reports ("Assessments") from a qualified, objective, independent third-party professional, who uses procedures and standards generally accepted in the profession. The reporting period for the Assessments shall cover: (1) the first one hundred eighty (180) days after service of the order for the initial Assessment; and (2) each two (2) year period

Decision and Order

thereafter for ten (10) years after service of the order for the biennial Assessments. Each Assessment shall:

- A. set forth the specific administrative, technical, and physical safeguards that respondents have implemented and maintained during the reporting period to comply with Part II of this order;
- B. explain how such safeguards are appropriate to respondents' size and complexity, the nature and scope of respondents' activities, and the sensitivity of the personal information collected from or about consumers;
- C. explain how the safeguards that have been implemented meet or exceed the protections required by Part II of this order; and
- D. certify that respondents' security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of personal information is protected and has so operated throughout the reporting period.

Each Assessment shall be prepared and completed within sixty (60) days after the end of the reporting period to which the Assessment applies by: a person qualified as a Certified Information System Security Professional (CISSP) or as a Certified Information Systems Auditor (CISA); a person holding Global Information Assurance Certification (GIAC) from the SysAdmin, Audit, Network, Security (SANS) Institute; or a similarly qualified person or organization approved by the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

Respondents shall provide the initial Assessment to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, within ten (10) days after the Assessment has been prepared. All subsequent biennial

Decision and Order

Assessments shall be retained by respondents until the order is terminated and provided to the Associate Director of Enforcement within ten (10) days of request.

IV.

IT IS FURTHER ORDERED that respondents shall maintain and upon request make available to the Federal Trade Commission for inspection and copying, a print or electronic copy of:

- A. for a period of three (3) years after the date of preparation of each Assessment required under Part III of this order, all materials relied upon to prepare the Assessment, whether prepared by or on behalf of the respondents, including but not limited to all plans, reports, studies, reviews, audits, audit trails, policies, training materials, and assessments, and any other materials relating to respondents' compliance with Parts II and III of this order, for the compliance period covered by such Assessment;
- B. unless covered by IV.A, for a period of five (5) years from the date of preparation or dissemination, whichever is later, all other documents relating to compliance with this order, including but not limited to:
 - 1. all advertisements and promotional materials containing any representations covered by this order, with all materials relied upon in disseminating the representation; and
 - 2. any documents, whether prepared by or on behalf of respondents, that call into question respondents' compliance with this order.

V.

IT IS FURTHER ORDERED that respondents shall deliver a copy of this order to all current and future principals, officers,

Decision and Order

directors, and managers, and to all current and future employees, agents, and representatives having responsibilities relating to the subject matter of this order. Respondents shall deliver this order to such current personnel within thirty (30) days after service of this order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities.

VI.

IT IS FURTHER ORDERED that respondents shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including, but not limited to: a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however,* that, with respect to any proposed change in the corporation(s) about which respondents learn fewer than thirty (30) days prior to the date such action is to take place, respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

VII.

IT IS FURTHER ORDERED that respondents shall, within one hundred eighty (180) days after service of this order, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

VIII.

This order will terminate on March 16, 2029, or twenty (20) years from the most recent date that the United States or the

Decision and Order

Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. any Part in this order that terminates in fewer than twenty (20) years;
- B. this order's application to any respondent that is not named as a defendant in such complaint; and
- C. this order if such complaint is filed after the order has terminated pursuant to this Part.

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

By the Commission.

Analysis to Aid Public Comment

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted, subject to final approval, a consent agreement from Genica Corporation (“Genica”) and Compgeeks.com, also doing business as Computer Geeks Discount Outlet and Geeks.com (“Compgeeks.com”).

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement’s proposed order.

Genica and its wholly-owned subsidiary, Compgeeks.com, (collectively “respondents”) sell computer systems, peripherals, and consumer electronics to consumers over the internet, including through a website (www.geeks.com) operated by Compgeeks.com. Respondents operate a computer network that consumers use, in conjunction with the www.geeks.com website and web application, to obtain information and to buy their products. In selling products through the www.geeks.com website, respondents routinely collect sensitive information from consumers to obtain authorization for credit card purchases, including a first and last name, address, e-mail address, telephone number, credit card number, credit card expiration date, and credit card security code (hereinafter “personal information”). This information is particularly sensitive, because it can be used to facilitate payment card fraud and other consumer harm. This matter concerns alleged false or misleading representations respondents made about the security they provided for this information.

The Commission’s complaint alleges that respondents represented that they implemented reasonable and appropriate security measures to protect the privacy and confidentiality of personal information. The complaint alleges that this representation

Analysis to Aid Public Comment

was false because respondents engaged in a number of practices that, taken together, failed to provide reasonable and appropriate security for sensitive personal information stored on their network. Among other things, respondents allegedly: (1) stored personal information in clear, readable text; (2) did not adequately assess the vulnerability of their web application and network to commonly known or reasonably foreseeable attacks, such as “Structured Query Language” (“SQL”) injection attacks; (3) did not implement simple, free or low-cost, and readily available defenses to such attacks; (4) did not use readily available security measures to monitor and control connections between computers on the network and from the network to the internet; and (5) failed to employ reasonable measures to detect and prevent unauthorized access to personal information, such as by logging or employing an intrusion detection system.

The complaint further alleges that since at least January 2007 and continuing through at least June 2007, hackers repeatedly exploited these vulnerabilities by using SQL injection attacks on the www.geeks.com website and web application. Through these attacks, the hackers allegedly found personal information stored on respondents’ network and exported the information of hundreds of customers, including credit card numbers, expiration dates, and security codes, over the internet to outside computers.

The proposed order applies to personal information respondents collect from or about consumers. It contains provisions designed to prevent respondents from engaging in the future in practices similar to those alleged in the complaint.

Part I of the proposed order prohibits respondents, in connection with the advertising, marketing, promotion, offering for sale, or sale of any product or service, from misrepresenting the extent to which respondents maintain and protect the privacy, confidentiality, or integrity of any personal information collected from or about consumers.

Analysis to Aid Public Comment

Part II of the proposed order requires respondents to establish and maintain a comprehensive information security program that is reasonably designed to protect the security, confidentiality, and integrity of personal information collected from or about consumers. The written security program must contain administrative, technical, and physical safeguards appropriate to respondents' size and complexity, the nature and scope of respondents' activities, and the sensitivity of the personal information collected from or about consumers. Specifically the order requires respondents to:

- § Designate an employee or employees to coordinate and be accountable for the information security program;
- § Identify material internal and external risks to the security, confidentiality, and integrity of personal information that could result in the unauthorized disclosure, misuse, loss, alteration, destruction, or other compromise of such information, and assess the sufficiency of any safeguards in place to control these risks;
- § Design and implement reasonable safeguards to control the risks identified through risk assessment, and regularly test or monitor the effectiveness of the safeguards' key controls, systems, and procedures;
- § Develop and use reasonable steps to retain service providers capable of appropriately safeguarding personal information they receive from respondents and requiring service providers by contract to implement and maintain appropriate safeguards; and
- § Evaluate and adjust respondents' information security program in light of the results of the testing and monitoring, any material changes to respondents' operations or business arrangements, or any other circumstances that respondents know or have reason to know may have a material impact on the effectiveness of their information security program.

Analysis to Aid Public Comment

Part III of the proposed order requires that respondents, in connection with the online advertising, marketing, promotion, offering for sale, or sale of any product or service to consumers, obtain within 180 days, and on a biennial bases thereafter for a period of ten (10) years, an assessment and report from a qualified, objective, independent third-party professional, certifying, among other things, that respondents have in place a security program that provides protections that meet or exceed the protections required by Part II of the proposed order; and (2) respondents' security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of consumers' personal information is protected.

Parts IV through VIII of the proposed order are reporting and compliance provisions. Part IV requires respondents to retain documents relating to their compliance with the order. For most records, the order requires that the documents be retained for a five-year period. For the third-party assessments and supporting documents, respondents must retain the documents for a period of three years after the date that each assessment is prepared. Part V requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part VI ensures notification to the FTC of changes in corporate status. Part VII mandates that respondents submit an initial compliance report to the FTC, and make available to the FTC subsequent reports. Part VIII is a provision "sunsetting" the order after twenty (20) years, with certain exceptions.

The purpose of the analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.

Complaint

IN THE MATTER OF

THE DOW CHEMICAL COMPANYCONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS
OF SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL
TRADE COMMISSION ACT*Docket C-4243; File No. 081 0214**Complaint, January 23, 2009 – Decision, March 31, 2009*

This consent order addresses the acquisition of Rohm & Haas Company by respondent Dow Chemical Company. Both companies manufacture, market, and sell acrylic monomers and acrylic polymers. The order requires Dow to divest to a Commission-approved buyer significant portions of its acrylic monomer, acrylic latex polymer, and hollow sphere particle businesses and to license to the acquirer certain intellectual property related to the production of the products in these businesses. The order requires Dow to continue to provide certain input products to the acquirer and to provide transition services for a short period of time to accomplish the transition of the divested assets. The order requires that Dow continue to provide site services to the acquirer in connection with the acrylic polymer production assets located in St. Charles, Louisiana, where the acquirer will operate a business unit that is located on the grounds of a larger Dow facility. In addition, Dow is required to supply hollow sphere particles and acrylic latex polymer for traffic paint to the acquirer at its manufacturing cost, until such time as the acquirer is able to develop its own manufacturing. Dow is also required to institute procedures to ensure that the other businesses it acquired from Rohm & Haas do not have access directly or indirectly to competitively sensitive non-public information regarding the divested assets, and is prohibited from using any such competitively sensitive non-public information it already has in an anticompetitive manner. The order gives the Commission the power to appoint an interim monitor to ensure that Dow expeditiously complies with all of its obligations and performs all of its responsibilities. If Dow fails to sell the divested assets within the specified period of time, the order allows for the appointment of a Divestiture Trustee to divest the assets. To ensure that the Commission remains informed about the status of the proposed divestitures and the transfers of assets, the order requires Dow to file reports with the Commission periodically until the divestitures and transfers are accomplished.

Complaint

Participants

For the *Commission*: Michael Franchak, Sebastian Lorigo, Victoria E. Luxardo, Catharine M. Moscatelli, Robert Tovsky, and Mark Williams.

For the *Respondent*: George Cary and Jeremy J. Calsyn, Cleary Gottlieb Steen & Hamilton LLP.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and of the Clayton Act, and by virtue of the authority vested by said Acts, the Federal Trade Commission (the “Commission”), having reason to believe that respondent Dow Chemical Company (“Dow”), a corporation, and Rohm and Haas Company (“Rohm & Haas”), a corporation, both subject to the jurisdiction of the Commission, have agreed to an acquisition by Dow of Rohm & Haas in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENT

1. Respondent Dow is a corporation organized and existing under the laws of the State of Delaware, with its principle place of business at 2030 Dow Center, Midland, MI 48674. Dow is a global company engaged in a wide variety of chemical businesses, including the research, development, manufacture, and sale of acrylic monomers, acrylic latex polymers, and hollow sphere particles.

II. JURISDICTION

2. Dow is, and at all times relevant herein has been, engaged in commerce as “commerce” is defined in Section 1 of the Clayton Act,

Complaint

as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affects commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

III. THE PROPOSED TRANSACTION

3. Pursuant to an Agreement and Plan of Merger (the “Merger Agreement”) dated July 10, 2008, Dow proposes to purchase all of the outstanding shares of Rohm & Haas in a transaction valued at \$18.8 billion, including \$3.5 billion in debt assumptions. Both Dow and Rohm & Haas manufacture, market, and sell acrylic monomers and acrylic polymers.

IV. THE RELEVANT PRODUCT MARKETS

4. For the purposes of this Complaint, the relevant lines of commerce in which to analyze the effects of the acquisition are: (a) glacial acrylic acid; (b) butyl acrylate; (c) ethyl acrylate; (d) acrylic latex polymers for traffic paint; and (d) hollow sphere particles. There are no practical substitutes for any of the relevant products.

5. Glacial acrylic acid is an acrylic monomer made from purifying crude acrylic acid. Glacial acrylic acid is used primarily in the production of superabsorbent polymers which are used in personal care and hygiene products, such as diapers.

6. Butyl acrylate is an acrylic monomer used primarily to produce polymers for paints and architectural coatings because it provides for a soft and flexible film.

7. Ethyl acrylate is an acrylic monomer used to produce polymers that are used in textile applications where abrasion resistance is required.

8. Acrylic latex polymers for traffic paint is a type of polymer uniquely produced and used in traffic paint. The purpose of acrylic latex polymer in traffic paint is to act as a binder, i.e., to keep the coating ingredients together; to bind the coating to the road surface;

Complaint

and to adhere glass beads that are used in traffic paint to the actual coating.

9. Hollow sphere particles are a type of polymer used by paper companies to impart gloss, brightness, and opacity to paper.

V. THE RELEVANT GEOGRAPHIC MARKET

10. The relevant geographic market within which to analyze the likely effects of the proposed transaction is no broader than North America. Acrylic monomer imports for glacial acrylic acid, butyl acrylic acid, and ethyl acrylic acid have established a small presence in North America, but their competitive impact has been constrained by increases in production costs overseas, by increases in shipping costs, and by growing demand overseas. There are virtually no imports of acrylic polymers, including latex polymers for traffic paint and hollow sphere particles, due to the large amounts of water contained in these latex polymers making long-distance shipping relatively expensive.

VI. CONCENTRATION IN THE RELEVANT MARKETS

11. Each of the acrylic monomer markets is highly concentrated. Post-acquisition, Dow would have an over 40 percent share of the glacial acrylic acid market. Its share of the butyl acrylate market would exceed 75 percent; and its share of ethyl acrylate market would approach 90 percent. After the acquisition, the only other producer that would be similarly situated to Dow would be BASF, which, like Dow, produces large amounts of both acrylic monomers and polymers.

12. Dow and Rohm & Haas are the only two commercial producers of acrylic polymers for traffic paint and hollow sphere particles. As a result, Dow's acquisition of Rohm and Haas would result in a merger to monopoly in those markets.

Complaint

VII. CONDITIONS OF ENTRY

13. Entry into the relevant acrylic monomer markets for glacial acrylic acid, butyl acrylate and ethyl acrylate would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the acquisition. The design, construction, and licensing requirements for an acrylic monomer facility that produces these products would require an investment of hundreds of millions of dollars and would take several years to complete. Expansion by fringe competitors would also be costly and is unlikely to occur.

14. Entry into latex polymers for traffic paint would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the acquisition. Dow and Rohm and Haas have patented formulas for their latex polymers used in traffic paint and state by state approval is required before new suppliers or formulas can be used in traffic paint.

15. Entry into hollow sphere particles would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the acquisition. Product development of hollow sphere particles would be difficult and time consuming due to the patents and trade secrets associated with the product and the great deal of experience in producing and manufacturing hollow sphere particles necessary to provide a quality product.

VIII. EFFECTS OF THE ACQUISITION

16. The effects of the acquisition, if consummated, may be substantially to lessen competition and tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45. Specifically, the acquisition would:

- a. eliminate actual, direct, and substantial competition between Dow and Rohm & Haas in the relevant markets;

Order to Maintain Assets

- b. increase the likelihood that Dow will exercise market power unilaterally in the relevant markets; and
- c. increase the likelihood of coordinated interaction among competitors in the markets for glacial acrylic acid, butyl acrylate and ethyl acrylate.

IX. VIOLATIONS CHARGED

17. The Merger Agreement described in Paragraph 3 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

18. The transaction described in Paragraph 3, if consummated, would constitute a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-third day of January, 2009, issues its Complaint against said Respondent.

By the Commission.

ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent The Dow Chemical Company (hereinafter “Dow,” “Respondent,” or “Respondent Dow”) of Rohm and Haas Company (“R&H”), and Respondent having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 7

Order to Maintain Assets

of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and determined to place such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Order To Hold Separate And Maintain Assets Order (“Hold Separate Order”):

1. Respondent Dow is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal executive offices located at 2030 Dow Center, Midland, Michigan 48674.

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

ORDER**I.**

Order to Maintain Assets

IT IS ORDERED that, as used in the Hold Separate Order, the following definitions shall apply:

- A. “Acquirers” means the Acrylic & Latex Business Acquirer and the Hollow Sphere Particle Business Acquirer.
- B. “Acquisition” means the proposed acquisition of R&H by Dow pursuant to the Agreement and Plan of Merger dated July 10, 2008, as may be amended by Dow and R&H.
- C. “Acquisition Date” means the date the Acquisition is consummated.
- D. “Acrylic Acid Business” means all of Respondent’s right, title, and interest in all tangible and intangible property of any kind primarily relating to or Necessary for the research and development of Acrylic Acid Products in the United States, the production and manufacture of Acrylic Acid Products at the Clear Lake Facility, and the marketing and sale of Acrylic Acid Products in North, South, and Central America, including, but not limited to, the:
 - 1. Clear Lake Facility;
 - 2. South Charleston Assets;
 - 3. Acrylic Acid Business Books and Records;
 - 4. Divested Acrylic Acid Business Intellectual Property;
 - 5. Acrylic Acid Business Intellectual Property License;
 - 6. Acrylic Acid Business Contracts; and
 - 7. Acrylic Acid Business Inventories;

Provided, however, Acrylic Acid Business does not include:

Order to Maintain Assets

1. Any tangible or intangible property acquired by Respondent through the Acquisition or after the Effective Date of Divestiture of the Acrylic Acid Business;
 2. The Retained St. Charles Assets;
 3. Ownership of the Shared St. Charles Facility Assets; or
 4. Ownership of the Licensed Acrylic Acid Product Intellectual Property.
- E. “Acrylic & Latex Business Acquirer” means the Person approved by the Commission to acquire the Acrylic Acid Business and the Latex Polymers Business pursuant to Paragraph III of the Decision and Order.
- F. “Acrylic & Latex Key Employees” means the persons listed on Confidential Appendix A of the Decision and Order.
- G. “Acrylic & Latex Knowledgeable Employees” means any Person (a) employed by or under contract directly with Respondent at the Effective Date of Divestiture, and (b)(i) whose duties at any time between July 10, 2008, and the Effective Date of Divestiture primarily related to the Acrylic Acid Business or the Latex Polymers Business, or (ii) who is Necessary for the Acrylic Acid Business or the Latex Polymers Business;
- Provided, however, Acrylic & Latex Knowledgeable Employees do not include the Persons listed on Confidential Appendix B of the Decision and Order.*
- H. “Acrylic Acid Products” means crude acrylic acid, glacial acrylic acid, ethyl acrylate, and butyl acrylate.
- I. “Commission” means the Federal Trade Commission.

Order to Maintain Assets

- J. “Decision and Order” means:
1. until the issuance and service of a final Decision and Order by the Commission, the proposed Decision and Order contained in the Consent Agreement in this matter; and
 2. following the issuance and service of a final Decision and Order by the Commission, the final Decision and Order issued by the Commission.
- K. “Dow” or “Respondent” means The Dow Chemical Company, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by The Dow Chemical Company, and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.
- L. “Dow Confidential Information” means competitively sensitive or proprietary information of Respondent not related to the Held Separate Business and the Hollow Sphere Particle Business, including, but not limited to, all customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets;
- Provided, however,* that Dow Confidential Information shall not include:
1. Information that is in the public domain when received by the Held Separate Business or the Hollow Sphere Particle Business;
 2. Information that is not in the public domain when received by the Held Separate Business or the Hollow Sphere Particle Business and thereafter becomes public

Order to Maintain Assets

through no act or failure to act by the Held Separate Business or the Hollow Sphere Particle Business;

3. Information that the Held Separate Business or the Hollow Sphere Particle Business develops or obtains independently, without violating any applicable law or this Order; and
 4. Information that becomes known to the Held Separate Business or the Hollow Sphere Particle Business from a third party not in breach of applicable law or a confidentiality obligation with respect to the information.
- M. “Effective Date of Divestiture” means, as the context requires, the date upon which Respondent closes a divestiture of the Acrylic Acid Business, Latex Polymers Business, or Hollow Sphere Particle Business in compliance with the terms of this Order.
- N. “Held Separate Business” means the Acrylic Acid Business and the Latex Polymers Business as defined in this Order and the Decision and Order.
- O. “Hold Separate Period” means the time period beginning on the Acquisition Date and terminating pursuant to Paragraph VII hereof.
- P. “Hold Separate Trustee” means the individual appointed to act as the Hold Separate Trustee pursuant to Paragraph II.C hereof.
- Q. “Hollow Sphere Particle Business” means:
1. All of Respondent’s right, title, and interest in intangible property of any kind primarily relating to the research, development, production, and manufacture in the United States and the marketing and sale in the United States,

Order to Maintain Assets

Puerto Rico, Mexico and Canada of Hollow Sphere Particle Products, including, but not limited to, the:

- a. Divested Hollow Sphere Particle Business Intellectual Property; and
 - b. Hollow Sphere Particle Business Contracts;
2. The following additional assets:
- a. At the option of the Hollow Sphere Particle Business Acquirer, and subject to the prior approval of the Commission, all equipment and machinery that Respondent has used since January 1, 2006, and is Necessary for the research, development, production, and manufacture in the United States and the marketing and sale in the United States, Puerto Rico, Canada, and Mexico of Hollow Sphere Particle Products;
 - b. Hollow Sphere Particle Business Books and Records;
 - c. Hollow Sphere Particle Business Intellectual Property License; and d. Hollow Sphere Particle Business Inventories;

Provided, however, that Hollow Sphere Particle Business does not include:

1. Any tangible or intangible property acquired by Respondent through the Acquisition or after the Effective Date of Divestiture;
2. Any interest in any real property or fixtures, including reactors, storage tanks, cooling towers, pipelines, control rooms, and any other fixed equipment at Dow's Midland, Michigan facility;

Order to Maintain Assets

3. Any interest in any tangible or personal property, except as provided in I.Q.2 above; and
 4. Ownership of the Licensed Hollow Sphere Product Intellectual Property.
- R. “Hollow Sphere Particle Business Acquirer” means the Person approved by the Commission to acquire the Hollow Sphere Particle Business pursuant to Paragraph IV of the Decision and Order.
- S. “Hollow Sphere Particle Key Employees” means the persons listed on Confidential Appendix C of the Decision and Order.
- T. “Hollow Sphere Particle Knowledgeable Employees” means any Person: (a) employed by or under contract directly with Respondent at the Effective Date of Divestiture, and (b)(i) whose duties at any time between July 10, 2008, and the Effective Date of Divestiture primarily related to the Hollow Sphere Particle Business, or (ii) who is Necessary for, the Hollow Sphere Particle Business; provided, however, Hollow Sphere Particle Knowledgeable Employees do not include the Persons listed on Confidential Appendix D of the Decision and Order.
- U. “Latex Polymers Business” means all of Respondent’s right, title, and interest in all tangible and intangible property of any kind primarily relating to or Necessary for the research and development of Latex Polymers Products in the United States, the production and manufacture of Latex Polymers Products at the Alsip Facility, the St. Charles Facility, and the Torrance Facility, and the marketing and sale of Latex Polymers Products in the United States, Puerto Rico, Canada, and Mexico, including, but not limited to, the:
1. The Alsip Facility;

Order to Maintain Assets

2. The Cary Facility;
3. The St. Charles Facility;
4. The Torrance Facility;
5. Latex Polymers Business Books and Records;
6. Divested Latex Polymers Business Intellectual Property;
7. Latex Polymers Business Intellectual Property License;
8. Latex Polymers Business Contracts;
9. Latex Polymers Business Inventories;
10. Latex Polymers Business Trademark Rights;
11. Latex Polymers Retained Products Intellectual Property Rights; and
12. MOD 5 License.

Provided, however, Latex Polymers Business does not include:

1. Any tangible or intangible property acquired by Respondent through the Acquisition or after the Effective Date of Divestiture;
2. Any tangible assets used in the research, development, production, manufacture, marketing, and sale of Latex Polymers Products located in Midland, MI, other than the assets listed on Confidential Appendix E of the Decision and Order;
3. Ownership of the Licensed Latex Polymers Intellectual Property;

Order to Maintain Assets

4. Any interest in any trademarks other than the Latex Polymers Business Trademark Rights; and
 5. Any rights in the Latex Polymers Retained Products Intellectual Property other than the Latex Polymers Retained Products Intellectual Property Rights.
- V. “Material Confidential Information” means any material non-public information relating to the Divested Businesses either prior to or after the Effective Date of Divestiture, including, but not limited to, all customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets, relating to the Divested Businesses and:
1. Obtained by Respondent prior to the Effective Date of Divestiture; or
 2. Obtained by Respondent after the Effective Date of Divestiture, in the course of performing Respondent’s obligations under any Divestiture Agreement;

Provided, however, that Material Confidential Information shall not include:

1. Information that is in the public domain when received by Respondent;
2. Information that is not in the public domain when received by Respondent and thereafter becomes public through no act or failure to act by Respondent;
3. Information that Respondent develops or obtains independently, without violating any applicable law, this Order or the Decision and Order; and
4. Information that becomes known to Respondent from a third party not in breach of applicable law or a

Order to Maintain Assets

confidentiality obligation with respect to the information.

- W. “R&H” means Rohm and Haas Company, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 100 Independence Mall West, Philadelphia, Pennsylvania 19106, and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Rohm and Haas Company.

II.**IT IS FURTHER ORDERED** that:

- A. From the date this Hold Separate Order becomes final, Respondent shall take such actions as are necessary to maintain the full economic viability, marketability, and competitiveness of the Acrylic Acid Business, the Latex Polymers Business, and the Hollow Sphere Particle Business, and shall prevent the destruction, removal, wasting, deterioration, sale, disposition, transfer, or impairment of the Acrylic Acid Business, the Latex Polymers Business, and the Hollow Sphere Particle Business and assets related thereto except for ordinary wear and tear, including, but not limited to, continuing in effect and maintaining intellectual property, contracts, proprietary trademarks, trade names, logos, trade dress, identification signs, and renewing or extending any leases or licenses that expire or terminate prior to the Effective Date of Divestiture.
- B. Respondent shall not close the Acquisition until Respondent delivers to the Secretary of the Commission a notice of Respondent’s intent to close the Acquisition (“Notice of Intent to Close Acquisition”) stating the date upon which Respondent intends to close the Acquisition.

Order to Maintain Assets

- C. From the Acquisition Date, Respondent shall hold the Held Separate Business as one separate and independent business under the terms specified in this Hold Separate Order, except to the extent that Respondent must exercise direction and control over the Held Separate Business to assure compliance with this Hold Separate Order and with the Decision and Order contained in the Consent Agreement, and except as otherwise provided in this Hold Separate Order. Respondent shall vest the Held Separate Businesses and Hold Separate Trustee with all powers and authorities necessary to conduct its business.
- D. From the Acquisition Date, Respondent shall hold the Held Separate Business separate, apart, and independent on the following terms and conditions:
1. Richard M. Klein shall serve as Hold Separate Trustee, pursuant to the agreement executed by the Hold Separate Trustee and Respondent and attached as Confidential Appendix A (“Trustee Agreement”).
 - a. The Trustee Agreement shall require that, no later than three (3) business days after the Acquisition Date, Respondent transfer to the Hold Separate Trustee all rights, powers, and authorities necessary to permit the Hold Separate Trustee to perform his duties and responsibilities, pursuant to this Hold Separate Order and consistent with the purposes of the Decision and Order.
 - b. No later than three (3) business days after the Acquisition Date, Respondent shall, pursuant to the Trustee Agreement, transfer to the Hold Separate Trustee all rights, powers, and authorities necessary to permit the Hold Separate Trustee to perform his duties and responsibilities, pursuant to this Hold Separate Order and consistent with the purposes of the Decision and Order.

Order to Maintain Assets

- c. The Hold Separate Trustee shall have the responsibility, consistent with the terms of this Hold Separate Order and the Decision and Order, for monitoring the organization of the Held Separate Business; for managing the Held Separate Business through the Managers; for maintaining the independence of the Held Separate Business; and for monitoring Respondent's compliance with its obligations pursuant to this Hold Separate Order and the Decision and Order.
- d. Subject to all applicable laws and regulations, the Hold Separate Trustee shall have full and complete access to all personnel, books, records, documents and facilities of the Held Separate Business or to any other relevant information as the Hold Separate Trustee may reasonably request including, but not limited to, all documents and records kept by Respondent in the ordinary course of business that relate to the Held Separate Business. Respondent shall develop such financial or other information as the Hold Separate Trustee may request and shall cooperate with the Hold Separate Trustee. Respondent shall take no action to interfere with or impede the Hold Separate Trustee's ability to monitor Respondent's compliance with this Hold Separate Order and the Decision and Order or otherwise to perform his duties and responsibilities consistent with the terms of this Hold Separate.
- e. The Hold Separate Trustee shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Hold Separate Trustee's duties and responsibilities.

Order to Maintain Assets

- f. The Commission may require the Hold Separate Trustee to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with performance of the Hold Separate Trustee's duties.
- g. Respondent may require the Hold Separate Trustee to sign a confidentiality agreement prohibiting the disclosure of any confidential business information gained as a result of his or her role as Hold Separate Trustee to anyone other than the Commission.
- h. Thirty (30) days after the Acquisition Date, and every thirty (30) days thereafter until the Hold Separate Order terminates, the Hold Separate Trustee shall report in writing to the Commission concerning the efforts to accomplish the purposes of this Hold Separate Order. Included within that report shall be the Hold Separate Trustee's assessment of the extent to which the businesses comprising the Held Separate Business are meeting (or exceeding) their projected goals as are reflected in operating plans, budgets, projections or any other regularly prepared financial statements.
- i. If the Hold Separate Trustee ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate Order, the Commission may appoint a substitute Hold Separate Trustee consistent with the terms of this paragraph, subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of the substitute Hold Separate Trustee within five (5) business days after notice by the staff of the Commission to Respondent of the identity of any substitute Hold Separate Trustee, Respondent shall be deemed to have

Order to Maintain Assets

consented to the selection of the proposed substitute trustee. Respondent and the substitute Hold Separate Trustee shall execute a Trustee Agreement, subject to the approval of the Commission, consistent with this paragraph.

2. No later than five (5) business days after the Acquisition Date, Respondent shall enter into one or more management agreements with Alessandro Trombini and Richard Jenkins. No later than five (5) business days after the Acquisition Date, Respondent shall, pursuant to the management agreements transfer all rights, powers, and authorities necessary to manage and maintain the Held Separate Business, to the Managers,
 - a. In the event that either or both of the Manager(s) cease(s) to act as Managers, then Respondent shall select substitute Manager(s), subject to the approval of the Commission, and transfer to the substitute Manager(s) all rights, powers and authorities necessary to permit the substitute Manager(s) to perform his/her/their duties and responsibilities, pursuant to this Hold Separate Order.
 - b. The Managers shall report directly and exclusively to the Hold Separate Trustee and shall manage the Held Separate Business independently of the management of Respondent. The Managers shall not be involved, in any way, in the operations of the other businesses of Respondent during the term of this Hold Separate Order.
 - c. The Managers shall have no financial interests (other than existing options and interests in securities of Respondent) affected by Respondent's revenues, profits or profit margins, except that the compensation of the Managers for managing the Held Separate Business may include economic

Order to Maintain Assets

incentives dependent on the financial performance of the Held Separate Business if there are also sufficient incentives for the Managers to operate the Held Separate Business at no less than current rates of operation (including, but not limited to, current rates of production and sales) and to achieve the objectives of this Hold Separate Order.

- d. The Managers shall make no material changes in the present operation of the Held Separate Business except with the approval of the Hold Separate Trustee, in consultation with the Commission staff.
- e. The Managers shall have the authority, with the approval of the Hold Separate Trustee, to remove employees (including Acrylic & Latex Key Employees and Acrylic & Latex Knowledgeable Employees) of the Acrylic Acid Business and the Latex Polymers Business and replace them with others of similar experience or skills. If any person ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate Order, the Managers, in consultation with the Hold Separate Trustee, may request Respondent to, and Respondent shall, appoint a substitute person, which person the Managers shall have the right to approve.
- f. In addition to those employees within the Held Separate Business, the Managers may employ such Persons as are reasonably necessary to assist the Managers in managing the Held Separate Business.
- g. The Hold Separate Trustee shall be permitted, in consultation with the Commission staff, to remove the Manager(s) for cause. Within fifteen (15) days after such removal of the Manager(s), Respondent shall appoint replacement Manager(s), subject to the approval of the Commission, on the same terms and

Order to Maintain Assets

conditions as provided in Paragraph II.C.2 of this Hold Separate Order.

3. The Held Separate Business shall be staffed with sufficient employees to maintain the viability and competitiveness of the Held Separate Business. To the extent that any Acrylic & Latex Key Employees leave or have left the Held Separate Business prior to the Effective Date of Divestiture, the Managers, with the approval of the Hold Separate Trustee, may replace departing or departed Acrylic & Latex Key Employees with persons who have similar experience and expertise or determine not to replace such departing or departed Acrylic & Latex Key Employees.
4. In connection with support services or products not included within the Held Separate Business, Respondent shall continue to provide, or offer to provide, the same support services or products to the Held Separate Business as are being provided to such business interest by Respondent as of the date the Consent Agreement is signed by Respondent. For any services or products that Respondent may provide to the Held Separate Business, Respondent may charge no more than the same price they charge other similarly situated businesses for the same services or products. Respondent's personnel providing such services or products must retain and maintain all Material Confidential Information of the Held Separate Business on a confidential basis, and, except as is permitted by this Hold Separate Order or the Decision and Order, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any person whose employment involves any of Respondent's businesses, other than the Held Separate Business, except as needed to provide such services or products to the Held Separate Business. Such personnel shall also

Order to Maintain Assets

execute confidentiality agreements prohibiting the disclosure of any Material Confidential Information of the Held Separate Business except as permitted by this Hold Separate Order or the Decision and Order.

- a. Respondent shall offer to the Held Separate Business any services and products that it has provided directly or through third party contracts to the businesses constituting the Held Separate Business at any time since January 1, 2006. The Held Separate Business may, at the option of the Managers with the approval of the Hold Separate Trustee, obtain such services and products from Respondent. The services and products that Respondent shall offer the Held Separate Business shall include, but shall not be limited to, the following:
 - (1) Human resources administrative services, including but not limited to payroll processing, labor relations support, pension administration, and health benefits;
 - (2) Environmental health and safety services, which are used to develop corporate policies and insure compliance with federal and state regulations and corporate policies;
 - (3) Preparation of tax returns;
 - (4) Audit services;
 - (5) Information systems, which constructs, maintains, and supports all computer systems;
 - (6) Processing of accounts payable;
 - (7) Technical support;

Order to Maintain Assets

- (8) Finance and financial accounting services;
 - (9) Procurement of supplies;
 - (10) Procurement of goods and services utilized in the ordinary course of business by the Held Separate Business; and
 - (11) Legal services;
- b. the Held Separate Business shall have, at the option of the Managers with the approval of the Hold Separate Trustee, the ability to acquire services and products from third parties unaffiliated with Respondent.
5. Respondent shall cause the Hold Separate Trustee, the Managers, and each Acrylic & Latex Knowledgeable Employee and Acrylic & Latex Key Employee having access to Material Confidential Information to submit to the Commission a signed statement that the individual will maintain the confidentiality required by the terms and conditions of this Hold Separate Order. These individuals must retain and maintain all Material Confidential Information relating to the Held Separate Business on a confidential basis and, except as is permitted by this Hold Separate Order or the Decision and Order, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any of Respondent's businesses other than the Held Separate Business. These persons shall not be involved in any way in the management, production, distribution, sale, marketing or financial operations of the competing products of Respondent.

Order to Maintain Assets

6. No later than five (5) business days after the Acquisition Date, Respondent shall establish written procedures, subject to the approval of the Hold Separate Trustee, covering the management, maintenance, and independence of the Held Separate Business consistent with the provisions of this Hold Separate Order.
7. No later than five (5) business days after the date this Hold Separate Order becomes final, Respondent shall circulate to employees of the Held Separate Business and to Respondent's employees who are responsible for the development, manufacture and sale of Acrylic Acid Products and Latex Polymers Products, a notice of this Hold Separate Order and the Decision and Order.
8. The Hold Separate Trustee and the Managers shall serve, without bond or other security, at the cost and expense of Respondent, on reasonable and customary terms commensurate with the person's experience and responsibilities.
9. Respondent shall indemnify the Hold Separate Trustee and Managers and hold each harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Hold Separate Trustee's or the Managers' duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from malfeasance, gross negligence, willful or wanton acts, or bad faith by the Hold Separate Trustee or the Managers.
10. Respondent shall provide the Held Separate Business with sufficient financial resources:

Order to Maintain Assets

- a. as are appropriate in the judgment of the Hold Separate Trustee to operate the Held Separate Business as it is currently operated;
- b. to perform all maintenance to, and replacements of, the assets of the Held Separate Business;
- c. to carry on (i) existing capital projects, (ii) approved capital projects, and (iii) business plans to allow the Held Separate Business to be operated at current levels of production and sales; and
- d. to maintain the viability, competitive vigor, and marketability of the Held Separate Business.

Such financial resources to be provided to the Held Separate Business shall include, but shall not be limited to, (i) general funds, (ii) capital, (iii) working capital, and (iv) reimbursement for any operating losses, capital losses, or other losses; *provided, however*, that, consistent with the purposes of the Decision and Order, the Managers may reduce in scale or pace any capital or research and development project, or substitute any capital or research and development project for another of the same cost.

11. Respondent shall: (i) not directly or indirectly interfere with the Acrylic & Latex Business Acquirer's offer of employment to any one or more of the Acrylic & Latex Key Employees and Acrylic & Latex Knowledgeable Employees, directly or indirectly attempt to persuade any one or more of the Acrylic & Latex Key Employees and Acrylic & Latex Knowledgeable Employees to decline any offer of employment from the Acrylic & Latex Business Acquirer, or offer any incentive to Acrylic & Latex Key Employees and Acrylic & Latex Knowledgeable Employees to decline employment with the Acrylic & Latex Business Acquirer; (ii) irrevocably

Order to Maintain Assets

waive any legal or equitable right to deter Acrylic & Latex Key Employees and Acrylic & Latex Knowledgeable Employees from accepting employment with the Acrylic & Latex Business Acquirer, including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with Respondent that directly or indirectly relate to the Acrylic Acid Business or the Latex Polymers Business; and (iii) continue to extend to Acrylic & Latex Key Employees and Acrylic & Latex Knowledgeable Employees, during their employment by the Acrylic Acid Business or the Latex Polymers Business prior to the Effective Date of Divestiture, all employee benefits offered by Respondent, including regularly scheduled or merit raises and bonuses, and regularly scheduled vesting of all pension benefits.

12. For a period of one (1) year from the Effective Date of Divestiture, Respondent shall not, directly or indirectly, solicit or induce, or attempt to solicit or induce, any Acrylic & Latex Knowledgeable Employee who has accepted an offer of employment with, or who is employed by, the Acrylic & Latex Business Acquirer to terminate his or her employment relationship with the Acrylic & Latex Business Acquirer; provided, however, a violation of this provision will not occur if: (1) The Acrylic & Latex Knowledgeable Employee's employment has been terminated by the Acrylic & Latex Business Acquirer; (2) Respondent Dow advertises for employees in newspapers, trade publications, or other media not targeted specifically at any one or more of the employees of the Acrylic & Latex Business Acquirer; or (3) Respondent Dow hires an Acrylic & Latex Knowledgeable Employee who has applied for employment with Respondent Dow, provided that such application was not solicited or induced in violation of this Order.

Order to Maintain Assets

13. For a period of two (2) years from the Effective Date of Divestiture, Respondent shall not solicit, negotiate, hire or enter into any arrangement for the services of any Acrylic & Latex Key Employee who has accepted an offer of employment with, or who is employed by, the Acrylic & Latex Business Acquirer.
14. Except for the Managers, Acrylic & Latex Knowledgeable Employees, and Acrylic & Latex Key Employees, and support services employees involved in providing services to the Held Separate Business pursuant to this Held Separate Order, and except to the extent provided in Paragraph II.B., Respondent shall not permit any other of its employees, officers, or directors to be involved in the operations of the Held Separate Business.
15. Respondent's employees (excluding support services employees involved in providing support to the Held Separate Business pursuant to Paragraph II.C.) shall be prohibited from accessing, and shall not receive, use or continue to use any Material Confidential Information of the Held Separate Business not in the public domain except:
 - a. as required by law;
 - b. to the extent that necessary information is exchanged in the course of consummating the Acquisition;
 - c. in negotiating agreements to divest assets pursuant to the Decision and Order and engaging in related due diligence;
 - d. in complying with this Hold Separate Order, the Consent Agreement or the Decision and Order;

Order to Maintain Assets

- e. in overseeing compliance with policies and standards concerning the safety, health and environmental aspects of the operations of the Held Separate Business and the integrity of the Held Separate Business's financial controls;
- f. in defending legal claims, investigations or enforcement actions threatened or brought against or related to the Held Separate Business; or in obtaining legal advice; and
- g. as otherwise permitted by this Hold Separate Order or the Decision and Order.

Respondent may receive aggregate financial and operational information relating to the Held Separate Business only to the extent necessary to allow Respondent to comply with the requirements and obligations of the laws of the United States and other countries, and to prepare consolidated financial reports, tax returns, reports required by securities laws, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph.

16. The Managers, Acrylic & Latex Knowledgeable Employees, and Acrylic & Latex Key Employees shall execute confidentiality agreements prohibiting the access, receipt, use, continued use, or disclosure of any Dow Confidential Information not in the public domain about Respondent and relating to Respondent's businesses, except such information as is necessary to maintain and operate the Held Separate Business.
17. Respondent and the Held Separate Business shall jointly implement and at all times during the Hold Separate Period maintain in operation, policies or systems, as approved by the Hold Separate Trustee, to prevent

Order to Maintain Assets

unauthorized access to or dissemination of Material Confidential Information of the Held Separate Business, including, but not limited to, the opportunity by the Hold Separate Trustee, on terms and conditions agreed to with Respondent, to audit Respondent's networks and systems to verify compliance with this Hold Separate Order.

- E. In addition to Respondent's obligation to maintain the full economic viability, marketability, and competitiveness of the Hollow Sphere Particle Business under Paragraph II.A. of this Hold Separate Order, from the Acquisition Date Respondent's obligations shall include, but not be limited to, the following:
1. Respondent shall provide the Hollow Sphere Particle Business with sufficient employees to maintain the viability and competitiveness of the Hollow Sphere Particle Business. Subject to the confidentiality provisions in this Order requiring Hollow Sphere Particle Business employee resources to retain and maintain all Material Confidential Information of the Hollow Sphere Particle Business on a confidential basis, those employees may also continue to support Dow's other businesses. To the extent that any Hollow Sphere Particle Key Employees leave or have left the Hollow Sphere Particle Business prior to the Effective Date of Divestiture, the Respondent, with the approval of the Hold Separate Trustee, may replace departing or departed Hollow Sphere Particle Key Employees with persons who have similar experience and expertise or determine not to replace such departing or departed Hollow Sphere Particle Key Employees.
 2. In connection with support services or products not included within the Hollow Sphere Particle Business, Respondent shall continue to provide, or offer to provide, the same support services or products to the

Order to Maintain Assets

Hollow Sphere Particle Business as are being provided to such business interest by Respondent as of the date the Consent Agreement is signed by Respondent. For any services or products that Respondent may provide to the Hollow Sphere Particle Business, Respondent may charge no more than the same price they charge other similarly situated businesses for the same services or products. Respondent's personnel providing such services or products must retain and maintain all Material Confidential Information of the Hollow Sphere Particle Business on a confidential basis, and, except as is permitted by this Hold Separate Order or the Decision and Order, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any person whose employment does not involve the Hollow Sphere Particle Business. Such personnel shall also execute confidentiality agreements prohibiting the disclosure of any Material Confidential Information of the Hollow Sphere Particle Business.

- a. Respondent shall offer to the Hollow Sphere Particle Business any services and products that Respondent has provided directly or through third party contracts to the businesses constituting the Hollow Sphere Particle Business at any time since January 1, 2006. The Hollow Sphere Particle Business may obtain such services and products from Respondent. The services and products that Respondent shall offer the Hollow Sphere Particle Business shall include, but shall not be limited to, the following:
 - (1) Human resources administrative services, including but not limited to payroll processing, labor relations support, pension administration, and health benefits;

Order to Maintain Assets

- (2) Environmental health and safety services, which are used to develop corporate policies and insure compliance with federal and state regulations and corporate policies;
 - (3) Preparation of tax returns;
 - (4) Audit services;
 - (5) Information systems, which constructs, maintains, and supports all computer systems;
 - (6) Processing of accounts payable;
 - (7) Technical support;
 - (8) Finance and financial accounting services;
 - (9) Procurement of supplies;
 - (10) Procurement of goods and services utilized in the ordinary course of business by the Hollow Sphere Particle Business; and,
 - (11) Legal services;
- b. the Hollow Sphere Particle Business shall have, with the approval of the Hold Separate Trustee, the ability to acquire services and products from third parties unaffiliated with Respondent.
3. Respondent shall cause the Hold Separate Trustee and each of the Hollow Sphere Particle Knowledgeable Employees and Hollow Sphere Particle Key Employees having access to Material Confidential Information to submit to the Commission a signed statement that the individual will maintain the confidentiality required by the terms and conditions of this Hold Separate Order. These individuals must retain and maintain all Material

Order to Maintain Assets

Confidential Information relating to the Hollow Sphere Particle Business on a confidential basis and, except as is permitted by this Hold Separate Order or the Decision and Order, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment does not involve the Hollow Sphere Particle Business. These persons shall not be involved in any way in the management, production, distribution, sale, marketing or financial operations of the R&H hollow sphere particle business.

4. No later than five (5) business days after the Acquisition Date, Respondent shall establish written procedures, subject to the approval of the Hold Separate Trustee, covering the management and maintenance of the Hollow Sphere Particle Business consistent with the provisions of this Hold Separate Order.
5. No later than five (5) business days after the date this Hold Separate Order becomes final, Respondent shall circulate to the Hollow Sphere Particle Knowledgeable Employees, the Hollow Sphere Particle Key Employees, employee resources identified in II.D.1. and to Respondent's employees who are responsible for the development, manufacture and sale of products (including those acquired in the Acquisition) that compete with products manufactured and sold by the Hollow Sphere Particle Business, a notice of this Hold Separate Order and the Decision and Order.
6. Respondent shall provide the Hollow Sphere Particle Business with sufficient financial resources:
 - a. as are appropriate to operate the Hollow Sphere Particle Business as it is currently operated;

Order to Maintain Assets

- b. to perform all maintenance to, and replacements of, the assets used to produce products for the Hollow Sphere Particle Business;
- c. to carry on (i) existing capital projects, (ii) approved capital projects, (iii) and business plans to allow the Hollow Sphere Particle Business to be operated at current levels of production and sales; and,
- d. to maintain the viability, competitive vigor, and marketability of the Hollow Sphere Particle Business.

Such financial resources to be provided to the Hollow Sphere Particle Business shall include, but shall not be limited to, (i) general funds, (ii) capital, (iii) working capital, and (iv) reimbursement for any operating losses, capital losses, or other losses; *provided, however,* that, consistent with the purposes of the Decision and Order, Respondent, with the approval of the Hold Separate Trustee, may reduce in scale or pace any capital or research and development project, or substitute any capital or research and development project for another of the same cost.

- 7. Respondent shall: (i) not directly or indirectly interfere with the Hollow Sphere Particle Business Acquirer's offer of employment to any one or more of the Hollow Sphere Particle Knowledgeable Employees and Hollow Sphere Particle Key Employees, directly or indirectly attempt to persuade any one or more of the Hollow Sphere Particle Knowledgeable Employees and Hollow Sphere Particle Key Employees to decline any offer of employment from the Hollow Sphere Particle Business Acquirer, or offer any incentive to any Hollow Sphere Particle Knowledgeable Employees and Hollow Sphere Particle Key Employees to decline employment with the Hollow Sphere Particle Business Acquirer; (ii)

Order to Maintain Assets

irrevocably waive any legal or equitable right to deter any Hollow Sphere Particle Knowledgeable Employees and Hollow Sphere Particle Key Employees from accepting employment with the Hollow Sphere Particle Business Acquirer, including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with Respondent that directly or indirectly relate to the Hollow Sphere Particle Business; and (iii) continue to extend to any Hollow Sphere Particle Knowledgeable Employees and Hollow Sphere Particle Key Employees, during their employment by the Hollow Sphere Particle Business prior to the Effective Date of Divestiture, all employee benefits offered by Respondent, including regularly scheduled or merit raises and bonuses, and regularly scheduled vesting of all pension benefits.

8. For a period of one (1) year from the Effective Date of Divestiture, Respondent shall not, directly or indirectly, solicit or induce, or attempt to solicit or induce, any Hollow Sphere Particle Knowledgeable Employee who has accepted an offer of employment with, or who is employed by, the Hollow Sphere Particle Business Acquirer to terminate his or her employment relationship with the Hollow Sphere Particle Business Acquirer; provided, however, a violation of this provision will not occur if: (1) The Hollow Sphere Particle Knowledgeable Employee's employment has been terminated by the Hollow Sphere Particle Business Acquirer; (2) Respondent Dow advertises for employees in newspapers, trade publications, or other media not targeted specifically at any one or more of the employees of the Hollow Sphere Particle Business Acquirer; or (3) Respondent Dow hires a Hollow Sphere Particle Knowledgeable Employee who has applied for employment with Respondent Dow, provided that such

Order to Maintain Assets

application was not solicited or induced in violation of this Order.

9. For a period of two (2) years from the Effective Date of Divestiture, Respondent shall not solicit, negotiate, hire or enter into any arrangement for the services of any Hollow Sphere Particle Key Employee who has accepted an offer of employment with, or who is employed by, the Hollow Sphere Particle Business Acquirer.
10. Except for the Hollow Sphere Particle Knowledgeable Employees, Hollow Sphere Particle Key Employees, employee resources identified in II.D.1. and support services employees involved in providing services to the Hollow Sphere Particle Business pursuant to this Hold Separate Order, and except to the extent provided in Paragraph II.B., Respondent shall not permit any other of its employees, officers, or directors to be involved in the operations of the Hollow Sphere Particle Business.
11. Respondent's employees (excluding Dow employees involved in providing support to the Hollow Sphere Particle Business pursuant to Paragraph II.D.1. and II.D.2.) shall be prohibited from accessing, and shall not receive, or use or continue to use any Material Confidential Information of the Hollow Sphere Particle Business not in the public domain except:
 - a. as required by law;
 - b. to the extent that necessary information is exchanged in the course of consummating the Acquisition;
 - c. in negotiating agreements to divest assets pursuant to the Decision and Order and engaging in related due diligence;

Order to Maintain Assets

- d. in complying with this Hold Separate Order, the Decision and Order and the Consent Agreement;
- e. in overseeing compliance with policies and standards concerning the safety, health and environmental aspects of the operations of the Hollow Sphere Particle Business and the integrity of the Hollow Sphere Particle Business's financial controls;
- f. in defending legal claims, investigations or enforcement actions threatened or brought against or related to the Hollow Sphere Particle Business; or in obtaining legal advice; and
- g. as otherwise permitted by this Hold Separate Order or the Decision and Order

Respondent may receive aggregate financial and operational information relating to the Hollow Sphere Particle Business to the extent necessary to allow Respondent to comply with the requirements and obligations of the laws of the United States and other countries, and to prepare consolidated financial reports, tax returns, reports required by securities laws, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph.

- 12. Hollow Sphere Particle Knowledgeable Employees or Hollow Sphere Particle Key Employees shall be prohibited from accessing, and shall not receive, or use any competitively sensitive or proprietary information not in the public domain about the R&H paper and paperboard hollow sphere particle business.
- 13. Respondent and the Hollow Sphere Particle Business shall jointly implement and at all times during the Hold Separate Period maintain in operation, policies and

Order to Maintain Assets

systems prohibiting unauthorized access to or dissemination of Material Confidential Information of the Hollow Sphere Particle Business, including, but not limited to, the opportunity by the Hold Separate Trustee, on terms and conditions agreed to with Respondent, to audit Respondent's networks and systems to verify compliance with this Hold Separate Order.

- F. The purpose of this Hold Separate Order is to: (i) preserve the Held Separate Business and the Hollow Sphere Particle Business as viable, competitive, and ongoing businesses, and to hold and preserve the Held Separate Business independent of Respondent, until the Effective Date of Divestiture of each of the Held Separate Business and the Hollow Sphere Particle Business; (ii) assure that no Material Confidential Information is exchanged between Respondent and the Held Separate Business and the Hollow Sphere Particle Business, except as otherwise provided in this Hold Separate Order or the Decision and Order; (iii) prevent interim harm to competition pending divestiture of the Held Separate Businesses and the Hollow Sphere Particle Business, and to help remedy any anti-competitive effects of the Acquisition.
- G. Respondent shall comply with all terms of this Hold Separate Order, Hold Separate Trustee Agreement and Management Agreement. Any breach by Respondent of any term of this Hold Separate Order, Hold Separate Trustee Agreement or Management Agreement shall constitute a violation of this Order. If any term of the Hold Separate Trustee Agreement or Management Agreement varies from the terms of this Hold Separate Order ("Hold Separate Order Term"), then to the extent that Respondent cannot fully comply with both terms, the Hold Separate Order Term shall determine Respondent's obligations under this Hold Separate Order.

III.

Order to Maintain Assets

IT IS FURTHER ORDERED that, from the Acquisition Date:

A. Respondent shall:

1. not provide, disclose or otherwise make available any Material Confidential Information to any Person except as expressly permitted by this Hold Separate Order or the Decision and Order; and,
2. not use any Material Confidential Information for any reason or purpose other than as expressly permitted by this Hold Separate Order or the Decision and Order.

B. Respondent shall devise and implement measures to protect against the storage, distribution and use of Material Confidential Information that is not expressly permitted by this Hold Separate Order or the Decision and Order. These measures shall include, but not be limited to, policies restricting access by persons to information available or stored on any of Respondent's computers or computer networks.

C. Respondent shall provide written or electronic instructions to any of its officers, directors, employees, or agents who have custody or control of any Material Confidential Information concerning the limitations placed by this Hold Separate Order on the distribution and use of Material Confidential Information.

D. Except as expressly provided by the Decision and Order and this Hold Separate Order, Respondent may use Material Confidential Information only (i) for the purpose of performing Respondent's obligations under the Decision and Order, the Hold Separate Order, and the Divestiture Agreements; or (ii) to ensure compliance with legal and regulatory requirements; to perform required auditing functions; to provide accounting, information technology and credit-underwriting services; to provide legal services

Order to Maintain Assets

associated with actual or potential litigation and transactions; and to monitor and ensure compliance with financial, tax reporting, governmental environmental, health, and safety requirements; or (iii) for inclusion within the periodic financial reports that the Held Separate Business and Hollow Sphere Particle Business may provide Respondent but only to the extent that any Material Confidential Information is aggregated so that data as to individual customers are not disclosed.

IV.

- A. Until Respondent implements systems that prevent Respondent's employees from accessing Material Confidential Information of the Held Separate Business and the Hollow Sphere Particle Business, except as otherwise permitted by this Hold Separate Order or the Decision and Order, Respondent shall prohibit any R&H employees involved in the R&H acrylic acid business, the R&H latex polymer business, and the R&H paper and paperboard hollow sphere particle business from receiving, having access to, or using any Material Confidential Information relating to the Acrylic Acid Business, the Latex Polymers Business or the Hollow Sphere Particle Business, respectively.

V.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to:

- A. any proposed dissolution of The Dow Chemical Company;
- B. any proposed acquisition, merger or consolidation of The Dow Chemical Company; or
- C. any other change in the Respondent, including, but not limited to, assignment and the creation or dissolution of

Order to Maintain Assets

subsidiaries, if such change might affect compliance obligations arising out of the Order.

VI.

IT IS FURTHER ORDERED that for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) business days notice to Respondent at its principle United States offices, registered office of its United States subsidiary or its headquarters address, Respondent shall permit any duly authorized representative of the Commission:

- A. To access, during office hours of Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondent relating to any matters contained in this Order; and
- B. Upon five (5) business days' notice to Respondent and without restraint or interference from it, to interview officers, directors or employees of Respondent, who may have counsel present, relating to any matter contained in this Order.

VII.

IT IS FURTHER ORDERED that this Hold Separate Order shall terminate at the earlier of:

- A. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. The day after the last of the Effective Dates of Divestiture of the divestitures required by the Decision and Order; provided, however, that Respondent's obligations relating to

Decision and Order

(1) the Held Separate Business shall continue only until the Held Separate Business is divested pursuant to the Decision and Order; and (2) the Hollow Sphere Particle Business shall continue only until the Hollow Sphere Particle Business is divested pursuant to the Decision and Order.

By the Commission.

DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent The Dow Chemical Company of Rohm and Haas Company, and Respondent having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has

Decision and Order

violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Dow is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal executive offices located at 2030 Dow Center, Midland, Michigan 48674.

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

Decision and Order

ORDER**I.**

IT IS ORDERED that, as used in the Order, the following definitions shall apply:

DEFINITIONS OF PERSONS

- A. "Commission" means the Federal Trade Commission.
- B. "Dow" or "Respondent" means The Dow Chemical Company, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates controlled by The Dow Chemical Company, and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.
- C. "Governmental Entity" means any federal, provincial, state, county, local, or other political subdivision of the United States or any other country, or any department or agency thereof.
- D. "Person" means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, joint venture, or other business or Governmental Entity, and any subsidiaries, divisions, groups or affiliates thereof.
- E. "R&H" means, Rohm and Haas Company, a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 100 Independence Mall West, Philadelphia, Pennsylvania 19106, and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Rohm and Haas Company.

Decision and Order

GENERAL DEFINITIONS

- F. “Acquisition” means the proposed acquisition of R&H by Dow pursuant to the Agreement and Plan of Merger dated July 10, 2008, as may be amended by Dow and R&H.
- G. “Acquisition Date” means the date the Acquisition is consummated.
- H. “Competitively Sensitive Information” means Material Confidential Information, to the extent specific to the Divested Businesses, regarding pricing and material financial contract terms of the Divested Products, and customer contacts.
- I. “Divestiture Trustee” means the Divestiture Trustee appointed pursuant to Paragraph VII of this Order.
- J. “Effective Date of Divestiture” means, as the context requires, the date upon which Respondent closes a divestiture of the Acrylic Acid Business, Latex Polymers Business, or Hollow Sphere Particle Business in compliance with the terms of this Order.
- K. “Hold Separate” means the Order to Hold Separate and Maintain Assets incorporated into and made a part of the Agreement Containing Consent Orders.
- L. “Material Confidential Information” means any material non-public information relating to the Divested Businesses either prior to or after the Effective Date of Divestiture, including, but not limited to, all customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets, relating to the Divested Businesses and:
 - 1. Obtained by Respondent prior to the Effective Date of Divestiture; or,

Decision and Order

2. Obtained by Respondent after the Effective Date of Divestiture, in the course of performing Respondent's obligations under any Divestiture Agreement;

Provided, however, that Material Confidential Information shall not include:

1. Information that is in the public domain when received by Respondent;
2. Information that is not in the public domain when received by Respondent and thereafter becomes public through no act or failure to act by Respondent;
3. Information that Respondent develops or obtains independently, without violating any applicable law or this Order; and
4. Information that becomes known to Respondent from a third party not in breach of applicable law or a confidentiality obligation with respect to the information.

M. "Necessary" means a particular tangible or intangible asset but for which a Divested Product cannot be researched, developed, produced, manufactured, or sold by the applicable Acquirer and for which a substitute asset is not commercially available.

DEFINITIONS RELATED TO DIVESTITURE ASSETS

- N. "Acquirers" means the Acrylics & Latex Business Acquirer and the Hollow Sphere Particle Business Acquirer.
- O. "Acrylic Acid Business" means all of Respondent's right, title, and interest in all tangible and intangible property of any kind primarily relating to or Necessary for the research and development of Acrylic Acid Products in the United States, the production and manufacture of Acrylic Acid

Decision and Order

Products at the Clear Lake Facility, and the marketing and sale of Acrylic Acid Products in North, South, and Central America, including, but not limited to, the:

1. Clear Lake Facility;
2. South Charleston Assets;
3. Acrylic Acid Business Books and Records;
4. Divested Acrylic Acid Business Intellectual Property;
5. Acrylic Acid Business Intellectual Property License;
6. Acrylic Acid Business Contracts; and,
7. Acrylic Acid Business Inventories;

Provided, however, Acrylic Acid Business does not include:

1. Any tangible or intangible property acquired by Respondent through the Acquisition or after the Effective Date of Divestiture of the Acrylic Acid Business;
2. The Retained St. Charles Assets;
3. Ownership of the Shared St. Charles Facility Assets; or
4. Ownership of the Licensed Acrylic Acid Product Intellectual Property.

P. “Acrylic & Latex Business Acquirer” means the Person approved by the Commission to acquire the Acrylic Acid Business and the Latex Polymers Business pursuant to Paragraph III of this Order.

Q. “Acrylic & Latex Key Employees” means the persons listed on Confidential Appendix A

Decision and Order

- R. “Acrylic & Latex Knowledgeable Employees” means any Person (a) employed by or under contract directly with Respondent at the Effective Date of Divestiture, and (b)(i) whose duties at any time between July 10, 2008, and the Effective Date of Divestiture primarily related to the Acrylic Acid Business or the Latex Polymers Business, or (ii) who is Necessary for the Acrylic Acid Business or the Latex Polymers Business;

Provided, however, Acrylic & Latex Knowledgeable Employees do not include the Persons listed on Confidential Appendix B.

- S. “Acrylic Acid Business Books and Records” means copies of all Books and Records relating to:
1. The research and development of Acrylic Acid Products in the United States;
 2. The production and manufacture of Acrylic Acid Products at the Clear Lake Facility; and
 3. The marketing and sale of Acrylic Acid Products in North, South, and Central America;

Provided, however, Respondent may redact from such Books and Records information relating solely to products and businesses other than Acrylic Acid Products and the Acrylic Acid Business if it also redacts from Respondent’s copy of such Books and Records any information that Respondent is not required or permitted to retain or use pursuant to this Order.

- T. “Acrylic Acid Business Contracts” means all contracts primarily relating to or Necessary for:
1. The research and development of Acrylic Acid Products in the United States;

Decision and Order

2. The production and manufacture of Acrylic Acid Products at the Clear Lake Facility; and
3. The marketing and sale of Acrylic Acid Products in North, South, and Central America;

Provided, however, that Acrylic Acid Business Contracts does not include (i) any Contracts for the internal supply of Acrylic Acid Products to Respondent (other than any Contracts with the Latex Polymers Business) or to R&H; or (ii) any Contracts for the supply of butanol.

- U. “Acrylic Acid Business Divestiture Agreement” means all licenses, contracts, and agreements of any kind between Respondent and the Acrylic & Latex Business Acquirer (including, as applicable, agreements negotiated by a Divestiture Trustee appointed under this Order) that effectuate the divestiture of the Acrylic Acid Business required by Paragraph III of this Order, and approved by the Commission, including, but not limited to, the Acrylic Acid Business Intellectual Property License, and any Supply Agreement, Technical Assistance Agreement, Transition Services Agreement, or Ethylene/Ethanol Conversion Assistance Agreement.
- V. “Acrylic Acid Business Intellectual Property License” means a non-exclusive Intellectual Property License for the Licensed Acrylic Acid Product Intellectual Property, for use in the research, development, production, manufacture, marketing, and sale of acrylic acid and acrylic esters.
- W. “Acrylic Acid Business Inventories” means all Inventories primarily relating to or Necessary for:
1. The research and development of Acrylic Acid Products in the United States;

Decision and Order

2. The production and manufacture of Acrylic Acid Products at the Clear Lake Facility; or
 3. The marketing and sale of Acrylic Acid Products produced at the Clear Lake Facility in North, South, and Central America.
- X. “Acrylic Acid Products” means crude acrylic acid, glacial acrylic acid, ethyl acrylate, and butyl acrylate.
- Y. “Alsip Facility” means all of Respondent’s right, title, and interest in the Facility Assets:
1. Located at the real property described in Exhibit 1 to this Decision and Order; and
 2. Primarily related to or Necessary for the research, development, production, and manufacture in the United States, and the marketing and sale in the United States, Puerto Rico, Mexico and Canada of Latex Polymers Products.
- Z. “Books and Records” means any books, records, files, research and production records, customer files, customer lists, customer product specifications, customer purchasing histories, distributor files, vendor files, vendor lists, advertising and marketing materials, sales materials, technical information, databases, or documents, information, and files of any kind, regardless of whether the document, information, or files are stored or maintained in traditional paper format, by means of electronic, optical, or magnetic media or devices, photographic or video images, or any other format or media. Books and Records do not include:
1. Employee or personnel files of persons other than those of Acrylic & Latex Key Employees, Acrylic & Latex Knowledgeable Employees, Hollow Sphere Particle Key Employees, or Hollow Sphere Particle Knowledgeable

Decision and Order

Employees hired by an Acquirer, in each case who consent to such a transfer; or

2. Documents covered by the attorney-client privilege.

AA. “Cary Facility” means all of Respondent’s right, title, and interest in the Facility Assets:

1. Located at the real property described in Exhibit 2 to this Decision and Order; and
2. Primarily related to or Necessary for the research, development, production, and manufacture in the United States and the marketing and sale in the United States, Puerto Rico, Mexico and Canada of Latex Polymers Products.

BB. “Clear Lake Facility” means all of Respondent’s right, title, and interest in the Facility Assets:

1. Located at the real property described in Exhibit 3 to this Decision and Order; and
2. Primarily related to or Necessary for the research, development, production, and manufacture in the United States and the marketing and sale in North America of Acrylic Acid Products.

CC. “Contracts” means all leases, guaranties, distribution agreements, product swap agreements, customer contracts, sales contracts, supply agreements, collective bargaining agreements, and contracts or agreements of any kind in effect as of the Effective Date of Divestiture; *provided, however,* that Contracts shall not include (i) employment contracts, confidentiality agreements, non-disclosure agreements, insurance agreements, or (ii) software or Intellectual Property licenses that are not Necessary for the

Decision and Order

operation of equipment or machinery divested pursuant to this Order.

DD. "Cost" means:

1. In connection with the manufacture, labeling and packaging of a product, the sum of the following cost elements:
 - a. The cost of materials, labor, and variable overhead (including utilities and energy) incurred in manufacturing, labeling and packaging, in each case as evidenced by reasonably detailed supporting documentation and prepared consistently from period to period; and
 - b. The fully absorbed allocation of fixed overhead, including depreciation, in each case with respect to the facility at which such product is manufactured, labeled, or packaged, and in each case as evidenced by reasonably detailed supporting documentation and prepared consistently from period to period;
2. In connection with the performance or provision of a service, the sum of the following cost elements:
 - a. The direct and indirect costs incurred by Dow to perform or provide the service, in each case as evidenced by reasonably detailed supporting documentation and prepared consistently from period to period; and
 - b. Pursuant to the Site Services Agreement for the St. Charles Facility and the Transition Services Agreement, a service fee, initially computed as of the Effective Date of Divestiture and computed annually thereafter on the anniversary date of the Effective Date of Divestiture ("Assessment Date"), which fee

Decision and Order

shall be equal to the product of (1) a pro-rata share of the net book value as of the Assessment Date of the assets used to provide services to an Acquirer, such pro-rata share to be based upon the ratio of the value of the services provided to an Acquirer as of the Assessment Date to the value of all of the services provided by the assets, and; (2) a rate of 8%; *provided that* the pro-rata share at any time shall not include any charges or expenses that Acquirer has paid in connection with any facility expansion or modification, as described in Paragraph III.D of this Order; and, *provided further* that any agreement for services shall provide for commercially reasonable verification of the computation of, and resolution of disputes relating to, services as provided by this paragraph.

EE. “Divested Acrylic Acid Business Intellectual Property” means all Intellectual Property that is primarily related to the research, development, production, and manufacture in the United States and the marketing and sale in North, Central, and South America of Acrylic Acid Products (including all rights to obtain and file for Patents and registrations thereto in the United States, Mexico, and Canada); *provided however*, at the option of Respondent, that the Acrylic Acid Business Divestiture Agreement shall grant to Respondent a non-exclusive, irrevocable, royalty-free, assignable and transferable (including sublicenseable), fully-paid-up license to use the Divested Acrylic Acid Business Intellectual Property, including Respondent’s future developments and improvements thereto, to make, have made, use, sell, and/or offer to sell any products anywhere in the world. For the avoidance of doubt, Divested Acrylic Acid Business Intellectual Property does not include Licensed Acrylic Acid Product Intellectual Property.

Decision and Order

FF. “Divested Hollow Sphere Particle Business Intellectual Property” means Intellectual Property that is primarily related to the research, development, production, and manufacture in the United States and the marketing and sale in the United States, Puerto Rico, Mexico and Canada of Hollow Sphere Particle Products manufactured or produced from an encapsulated ester core. Divested Hollow Sphere Particle Business Intellectual Property includes all rights to obtain and file for Patents and registrations thereto in the United States, Mexico, and Canada. For the avoidance of doubt, Divested Hollow Sphere Particle Business Intellectual Property does not include (i) Licensed Hollow Sphere Product Intellectual Property; (ii) Divested Latex Polymers Business Intellectual Property; or (iii) any Intellectual Property used in the manufacture of Respondent’s Seed Latex.

GG. “Divested Latex Polymers Business Intellectual Property” means all Intellectual Property that is primarily related to the research, development, production, and manufacture in the United States and the marketing and sale in the United States, Puerto Rico, Mexico and Canada of Latex Polymers Products, including, but not limited to, Latex Traffic Paint Products (including all rights to obtain and file for Patents and registrations thereto in the United States, Mexico, and Canada);

Provided, however, at the option of Respondent, the Latex Polymers Business Divestiture Agreement shall grant to Respondent a non-exclusive, irrevocable, royalty-free, fully paid-up license to use the Divested Latex Polymers Business Intellectual Property, including Respondent’s future developments and improvements thereto:

1. To make, have made, use, sell, and/or offer to sell any products outside the United States, Puerto Rico, Canada, and Mexico; and

Decision and Order

2. To make, have made, use, sell, and/or offer to sell any products other than the Divested Products anywhere in the world.

Such license shall be assignable and transferable (including sublicenseable) outside the United States, Puerto Rico, Canada, and Mexico. For the avoidance of doubt, Divested Latex Polymers Business Intellectual Property does not include: (i) Licensed Latex Polymers Intellectual Property; (ii) Latex Polymers Retained Products Intellectual Property; (iii) Divested Hollow Sphere Particle Business Intellectual Property; or (iv) any Intellectual Property used in the manufacture of Respondent's Seed Latex.

HH. "Divestiture Agreements" means the Acrylic Acid Business Divestiture Agreement, the Latex Polymers Business Divestiture Agreement, and the Hollow Sphere Particle Business Divestiture Agreement.

II. "Divested Businesses" means the Acrylic Acid Business, the Latex Polymers Business, and the Hollow Sphere Particle Business.

JJ. "Divested Products" means the Acrylic Acid Products, Latex Polymers Products, and Hollow Sphere Particle Products.

KK. "Employee Information" means, for each Acrylic & Latex Key Employee, Acrylic & Latex Knowledgeable Employee, Hollow Sphere Particle Key Employee, or Hollow Sphere Particle Knowledgeable Employee, a profile prepared by Respondent summarizing the employment history of such employee. To the extent permitted by applicable law and with the consent of the employee, Employee Information shall also include such employee's personnel file.

LL. "Facility Assets" means:

Decision and Order

1. All real property interests, including rights, title, and interests in and to owned or leased property, together with all easements, rights of way, buildings, improvements, and appurtenances;
2. All applicable federal, state, and local regulatory agency registrations, permits, and applications, and all documents related thereto, necessary for the operations of, and conduct of business at, such applicable facility, to the extent held by Respondent and with respect to which the transfer thereof is permitted by law, *provided, however*, that Dow shall cooperate with the applicable Acquirer in securing any federal, state, and local regulatory agency registrations, permits, and applications whose transfer is not permitted by law; and
3. All fixtures, equipment, machinery, tools, vehicles, personal property, or tangible property of any kind located at such applicable facility that is owned or leased by Respondent, or that Respondent has the legal right to use, or to have the custody or control of, that is related to:
 - a. The research, development, production, manufacture, marketing, and sale of any one or more of the Divested Products; and
 - b. Compliance by a Divested Business with any statute, ordinance, regulation, rule, or other legal requirement (including, but not limited to, environmental laws) of any Governmental Entity;

Provided, however, that Facility Assets do not include any computer equipment leased or software licensed by Respondent unless such equipment or software is Necessary to the operation of the applicable facility.

Decision and Order

MM. “Historical Inputs” means any raw materials or ingredients used in the research, development, manufacture, or production of any one or more of the Divested Products that Respondent has manufactured and supplied to any of the Divested Businesses at any time since January 1, 2006.

NN. “Hollow Sphere Particle Business” means:

1. All of Respondent’s right, title, and interest in intangible property of any kind primarily relating to the research, development, production, and manufacture in the United States and the marketing and sale in the United States, Puerto Rico, Mexico and Canada of Hollow Sphere Particle Products, including, but not limited to, the:
 - a. Divested Hollow Sphere Particle Business Intellectual Property; and
 - b. Hollow Sphere Particle Business Contracts; and
2. The following additional assets:
 - a. At the option of the Hollow Sphere Particle Business Acquirer, and subject to the prior approval of the Commission, all equipment and machinery that Respondent has used since January 1, 2006, and is Necessary for the research, development, production, and manufacture in the United States and the marketing and sale in the United States, Puerto Rico, Canada, and Mexico of Hollow Sphere Particle Products;
 - b. Hollow Sphere Particle Business Books and Records;
 - c. Hollow Sphere Particle Business Intellectual Property License; and

Decision and Order

d. Hollow Sphere Particle Business Inventories;

Provided, however, that Hollow Sphere Particle Business does not include:

1. Any tangible or intangible property acquired by Respondent through the Acquisition or after the Effective Date of Divestiture;
2. Any interest in any real property or fixtures, including reactors, storage tanks, cooling towers, pipelines, control rooms, and any other fixed equipment at Dow's Midland, Michigan facility;
3. Any interest in any tangible or personal property, except as provided in I.NN.2 above; and
4. Ownership of the Licensed Hollow Sphere Product Intellectual Property.

OO. "Hollow Sphere Particle Business Acquirer" means the Person approved by the Commission to acquire the Hollow Sphere Particle Business pursuant to Paragraph IV of this Order.

PP. "Hollow Sphere Particle Business Books and Records" means copies of all Books and Records relating to the research, development, production, and manufacture in the United States and the marketing and sale in the United States, Puerto Rico, Mexico and Canada of Hollow Sphere Particle Products; *Provided, however,* Respondent may redact from such Books and Records information relating solely to products and businesses other than Hollow Sphere Particle Products and the Hollow Sphere Particle Business if it also redacts from Respondent's copy of such Books and Records any information that Respondent is not required or permitted to retain or use pursuant to this Order.

Decision and Order

QQ. “Hollow Sphere Particle Business Contracts” means:

1. All Contracts for the sale in the United States, Puerto Rico, Mexico and Canada of Hollow Sphere Particle Products; and,
2. Any other Contracts Necessary for the research, development, production, and manufacture in the United States and the marketing and sale in the United States, Puerto Rico, Mexico and Canada of Hollow Sphere Particle Products.

RR. “Hollow Sphere Particle Business Divestiture Agreement” means all licenses, contracts, and agreements of any kind between Respondent and the Hollow Sphere Particle Business Acquirer (including, as applicable, agreements negotiated by a Divestiture Trustee appointed under this Order) that effectuate the divestiture required by Paragraph IV of this Order, and approved by the Commission, including, but not limited to, the Hollow Sphere Particle Business Intellectual Property License, and any Hollow Sphere Particle Business Supply Agreement, Hollow Sphere Particle Business Technical Assistance Agreement, and Hollow Sphere Particle Business Transition Services Agreement.

SS. “Hollow Sphere Particle Business Intellectual Property License” means a non-exclusive Intellectual Property License for the Licensed Hollow Sphere Product Intellectual Property, for use in the research, development, production, manufacture, marketing, and sale of ester core hollow sphere particles.

TT. “Hollow Sphere Particle Business Inventories” means all of Respondent’s Inventories of finished Hollow Sphere Particle Products.

Decision and Order

- UU. “Hollow Sphere Particle Key Employees” means the persons listed on Confidential Appendix C.
- VV. “Hollow Sphere Particle Knowledgeable Employees” means any Person: (a) employed by or under contract directly with Respondent at the Effective Date of Divestiture, and (b)(i) whose duties at any time between July 10, 2008, and the Effective Date of Divestiture primarily related to the Hollow Sphere Particle Business, or (ii) who is Necessary for, the Hollow Sphere Particle Business; *provided, however*, Hollow Sphere Particle Knowledgeable Employees do not include the Persons listed on Confidential Appendix D.
- WW. “Hollow Sphere Particle Products” means hollow sphere particles produced by Dow comprised of synthetic latex polymers encapsulating an expanded ester core.
- XX. “Intellectual Property” means Patents, Know-how, and trade marks in Respondent’s possession or control and relating to the research, development, production, manufacture, marketing, and sale of any one or more of the Divested Products;
- Provided, however*, that Intellectual Property shall not include: (i) batch and recipe management software used by Respondent; (ii) MOD 5 process control software; (iii) high level guidelines, policies, standards, and procedures reflecting Dow’s corporate governance model; or (iv) any trademarks other than UCAR™, NeoCAR, EvoCAR, and POLYPHOBE.
- YY. “Intellectual Property License” means a perpetual, irrevocable, fully paid-up, and royalty-free license from Respondent to an Acquirer to use, exploit, and improve, anywhere in the world, the Intellectual Property that is the subject of the license. Such license shall be assignable to an entity that purchases all or substantially all of the assets of

Decision and Order

the relevant Acquirer related to the Intellectual Property that is the subject of the Intellectual Property License.

ZZ. “Inventories” means:

1. All supplies and inventory of one or more of any of the finished Divested Products or any of the Divested Products in production; and,
2. All supplies and inventory of raw materials and supplies held for use in the research, development, manufacture, or production of any one or more of the Divested Products.

AAA. “Know-how” means Respondent’s know-how, trade secrets, techniques, data, inventions, practices, methods, and other confidential or proprietary technical, business, research, development and other similar information.

BBB. “Latex Polymers Business” means all of Respondent’s right, title, and interest in all tangible and intangible property of any kind primarily relating to or Necessary for the research and development of Latex Polymers Products in the United States, the production and manufacture of Latex Polymers Products at the Alsip Facility, the St. Charles Facility, and the Torrance Facility, and the marketing and sale of Latex Polymers Products in the United States, Puerto Rico, Canada, and Mexico, including, but not limited to, the:

1. The Alsip Facility;
2. The Cary Facility;
3. The St. Charles Facility;
4. The Torrance Facility;
5. Latex Polymers Business Books and Records;

Decision and Order

6. Divested Latex Polymers Business Intellectual Property;
7. Latex Polymers Business Intellectual Property License;
8. Latex Polymers Business Contracts;
9. Latex Polymers Business Inventories;
10. Latex Polymers Business Trademark Rights;
11. Latex Polymers Retained Products Intellectual Property Rights; and,
12. MOD 5 License.

Provided, however, Latex Polymers Business does not include:

1. Any tangible or intangible property acquired by Respondent through the Acquisition or after the Effective Date of Divestiture;
2. Any tangible assets used in the research, development, production, manufacture, marketing, and sale of Latex Polymers Products located in Midland, MI, other than the assets listed on Confidential Appendix E;
3. Ownership of the Licensed Latex Polymers Intellectual Property;
4. Any interest in any trademarks other than the Latex Polymers Business Trademark Rights; or
5. Any rights in the Latex Polymers Retained Products Intellectual Property other than the Latex Polymers Retained Products Intellectual Property Rights.

CCC. “Latex Polymers Business Books and Records” means copies of all Books and Records relating to:

Decision and Order

1. The research, development, production, and manufacture of Latex Polymers Products in the United States; and
2. The marketing and sale of Latex Polymers Products in the United States, Puerto Rico, Canada, and Mexico;

Provided, however, Respondent may redact from such Books and Records information relating solely to products and businesses other than Latex Polymers Products and the Latex Polymers Business if it also redacts from Respondent's copy of such Books and Records any information that Respondent is not required or permitted to retain or use pursuant to this Order.

DDD. "Latex Polymers Business Contracts" means all Contracts primarily relating to or Necessary for:

1. The research and development of Latex Polymers Products in the United States;
2. The production and manufacture of Latex Polymers Products at the Alsip Facility, the St. Charles Facility, and the Torrance Facility; and
3. The marketing and sale of Latex Polymers Products in the United States, Puerto Rico, Canada, and Mexico.

EEE. "Latex Polymers Business Divestiture Agreement" means all licenses, contracts, and agreements of any kind between Respondent and the Acrylic & Latex Business Acquirer (including, as applicable, agreements negotiated by a Divestiture Trustee appointed under this Order) that effectuate the divestiture of the Latex Polymers Business required by Paragraph III of this Order, and approved by the Commission, including, but not limited to, the Latex Polymers Business Intellectual Property License, and any Site Services Agreement, Supply Agreement, Technical Assistance Agreement, or Transition Services Agreement.

Decision and Order

FFF. “Latex Polymers Business Intellectual Property License” means a non-exclusive Intellectual Property License for the Licensed Latex Polymers Product Intellectual Property for use in the research, development, production, manufacture, marketing, and sale of acrylic latexes.

GGG. “Latex Polymers Business Inventories” means all Inventories held for use and relating to:

1. The research and development of Latex Polymers Products in the United States;
2. The production and manufacture of Latex Polymers Products at the Alsip Facility, the St. Charles Facility, and the Torrance Facility; and
3. The marketing and sale of Latex Polymers Products in the United States, Puerto Rico, Canada, and Mexico, including all of Respondent’s inventories of finished Latex Traffic Paint Products.

HHH. “Latex Polymers Business Trademark Rights” means:

1. The assignment of rights to Dow’s NeoCAR, EvoCAR, and POLYPHOBE trademarks within the United States, Puerto Rico, Canada, and Mexico; and
2. An exclusive license to Dow’s UCAR™ trademark for use in connection with Latex Polymers Products inside the United States, Puerto Rico, Canada, and Mexico.

III. “Latex Polymers Products” means UCAR™ Emulsion Systems specialty latex products produced (or produced for) and sold by Respondent, either under the UCAR™, EvoCAR, NeoCAR, or POLYPHOBE trademarks or as UCAR™ Emulsion Systems experimental or custom grade formulations, and consisting of the following: synthetic latex polymer dispersions prepared by emulsion polymerization

Decision and Order

that are either acrylic latex, vinyl acrylic latex, styrene acrylic latex, vinyl versatate latex, or vinyl acetate ethylene latex, wherein the term “acrylic” refers to a polymer prepared from acrylic acid, methacrylic acid, and/or esters thereof, and wherein the term “vinyl”, as used in the term “vinyl acrylic”, refers to vinyl acetate. For the purposes of this Order, Latex Traffic Paint is a Latex Polymers Product. For the avoidance of doubt, Latex Polymers Products does not include (i) Hollow Sphere Particle Products or (ii) Latex Polymers Retained Products.

JJJ. “Latex Polymers Retained Products” means styrene acrylic latex, vinyl acrylic latex, vinyl acetate-ethylene latex, and vinyl versatate latex used in carpetbacking, artificial turf, and paper and paperboard fields; and acrylic associative thickeners used in aviation anti-icing and de-icing and personal care fields, including all precursors for making such thickeners.

KKK. “Latex Polymers Retained Products Intellectual Property” means all Intellectual Property primarily related to the Latex Polymers Retained Products.

LLL. “Latex Polymers Retained Products Intellectual Property Rights” means the assignment by Respondent to the Acrylic & Latex Business Acquirer of the Latex Polymers Retained Products Intellectual Property; *provided, however*, that the Acrylic & Latex Business Acquirer shall in turn grant Respondent and its affiliates an irrevocable, assignable and transferable (including the right to grant sublicenses), royalty-free, fully paid-up, worldwide license to use the Latex Polymers Retained Products Intellectual Property, including Respondent’s future developments and improvements thereto, to make, have made, use, sell, and/or offer to sell the Latex Polymers Retained Products into their associated fields of use. Such license shall be (i) non-exclusive for Latex Polymers Retained Products Intellectual Property for use in paper and paperboard fields and (ii)

Decision and Order

exclusive for Latex Polymers Retained Products Intellectual Property used in fields other than paper and paperboard.

MMM. “Latex Traffic Paint Products” means Latex Polymers Products used for road or other pavement marking applications.

NNN. “Licensed Acrylic Acid Product Intellectual Property” means all Intellectual Property used in or Necessary for the research, development, production, and manufacture of Acrylic Acid Products in the United States, or the marketing and sale of Acrylic Acid Products in North, South, and Central America; *provided, however*, Licensed Acrylic Acid Product Intellectual Property does not include the Divested Acrylic Acid Business Intellectual Property.

OOO. “Licensed Hollow Sphere Product Intellectual Property” means all Intellectual Property used in or Necessary for the research, development, production, and manufacture in the United States and the marketing and sale in the United States, Puerto Rico, Mexico and Canada of Hollow Sphere Particle Products, including, but not limited to, the Intellectual Property involved in producing an encapsulated ester core from Respondent’s Seed Latex and putting a shell on such encapsulated ester core; *provided, however*, that Licensed Hollow Sphere Product Intellectual Property does not include: (i) the Divested Hollow Sphere Particle Business Intellectual Property; or (ii) any Intellectual Property used in the manufacture of Respondent’s Seed Latex, except to the extent that such Intellectual Property is Necessary for the manufacture of Hollow Sphere Particle Products from Respondent’s Seed Latex.

PPP. “Licensed Latex Polymers Intellectual Property” means all Intellectual Property used in or Necessary for the research, development, production, and manufacture in the United States, and the marketing and sale in the United States, Puerto Rico, Canada, and Mexico, of Latex Polymers

Decision and Order

Products; *provided, however*, that Licensed Latex Polymers Intellectual Property does not include: (i) the Divested Latex Polymers Business Intellectual Property; (ii) the Latex Polymers Retained Products Intellectual Property; or (iii) any Intellectual Property used in the manufacture of Respondent's Seed Latex, except to the extent that such Intellectual Property is Necessary for the manufacture of Latex Polymers Products from Respondent's Seed Latex.

QQQ. "MOD 5 License" means a license to Respondent's MOD 5 process control system software for use by the Acrylic & Latex Business Acquirer at the St. Charles Facility, the term of which license shall be for so long as is necessary for the Acrylic & Latex Business Acquirer to convert the St. Charles Facility to a third party process control system, such time period not to extend beyond December 31, 2015.

RRR. "Patent" means Respondent's United States, Canadian, and Mexican patents and/or all related patent applications, and includes all reissues, divisions, continuations, continuations-in-part, substitutions, reexaminations, restorations, and/or patent term extensions thereof, all inventions disclosed therein, and all rights therein provided by international treaties and conventions.

SSS. "Required Historical Inputs" means any Historical Inputs:

1. That are Necessary to the research, development, production, manufacture, and sale of a Divested Product; or,
2. For which substitution of a product from a supplier other than Respondent would require customer requalification, but only where such requalification would require six (6) months or longer;

Provided, however that Required Historical Inputs do not include butanol.

Decision and Order

TTT. “Retained St. Charles Assets” means:

1. All of Respondent’s right, title, and interest in all tangible and intangible property of any kind (other than the St. Charles Facility) relating solely to the research, development, production, manufacture, marketing, and sale of any products, goods, or services other than Latex Polymers Products; and
2. Ownership of all Shared St. Charles Facility Assets, including an interest to use, improve, and maintain all Shared St. Charles Facility Assets:
 - a. In substantially the same manner as Respondent has used, improved, and maintained the Shared St. Charles Facility Assets since January 1, 2006, for the research, development, production, manufacture, marketing, and sale of any products, goods, or services other than the Latex Polymers Products; and,
 - b. In a manner that will not interfere unreasonably (it being understood that reasonable charges for such use shall not be considered unreasonable interference) with the use of the Shared St. Charles Facility Assets by the Acrylic & Latex Business Acquirer as the Shared St. Charles Facility Assets:
 - (1) Have been used in connection with the research, development, production, manufacture, marketing, and sale of Latex Polymers Products since January 1, 2006 and prior to the relevant Effective Date of Divestiture; and,
 - (2) Upon the expansion or other commercially reasonable modification of production within the St. Charles Facility as permitted by and pursuant to Paragraph III.D of this Order and consistent

Decision and Order

with the Order's purposes as specified in Paragraph III.H as it relates to Latex Polymers Products, as is reasonably necessary to support such expansion or modification;

Provided, however, except as provided in Paragraph 2 of this Paragraph I.TTT with respect to Shared St. Charles Facility Assets, Retained St. Charles Assets do not include any tangible or intangible property of any kind used since January 1, 2006, for the research, development, production, manufacture, marketing, and sale of Latex Polymers Products.

UUU. "Seed Latex" means Dow's SL 3000 seed latex and any successor products.

VVV. "Shared St. Charles Facility Assets" means any Facility Assets located in St. Charles, Louisiana (other than the St. Charles Facility and the Retained St. Charles Assets) used by Respondent at any time since January 1, 2006 and prior to the relevant Effective Date of Divestiture, for the research, development, production, and manufacture in the United States, and the marketing and sale in the United States, Puerto Rico, Canada, and Mexico, of Latex Polymers Products; *provided, however*, that Shared St. Charles Facility Assets shall not include assets used in or relating to: (i) the delivery of site emergency services other than limited first response services; or (ii) the delivery of maintenance or industrial hygiene services.

WWW. "South Charleston Assets" means all of Respondent's right, title and interest in any assets located in South Charleston, West Virginia, primarily relating to or Necessary for the research, development, production, manufacture, marketing and sale of Acrylic Acid Products, including, but not limited to, at the option of the Acrylic & Latex Business Acquirer, and subject to the approval of the Commission, equipment and machinery;

Decision and Order

Provided, however, the South Charleston Assets shall not include:

1. Any interest in any real property or fixtures; or
2. Any interest in the equipment or machinery designed to simulate the facilities or equipment used in the production of Acrylic Acid Products at St. Charles, Louisiana.

XXX. "St. Charles Facility" means all of Respondent's right, title, and interest in:

1. A lease for a term of not less than fifty (50) years to the real property described in Exhibit 4 to this Decision and Order; and
2. The Facility Assets located at the real property described in subparagraph 1 of this Paragraph I.WWW primarily relating to or Necessary for, the research, development, production, and manufacture of Latex Polymers Products in the United States, and the marketing and sale of Latex Polymers Products in the United States, Puerto Rico, Canada, and Mexico;

Provided, however, that the St. Charles Facility does not include:

1. Any ownership interest in any real property or in the Shared St. Charles Facility Assets or the Retained St. Charles Assets; or
2. Any interest in the surfactants storage tank used by the Ethoxylates Park Plant and located within the real property described in Exhibit 4 to this Decision and Order.

Decision and Order

YYY. “Torrance Facility” means all of Respondent’s right, title, and interest in the Facility Assets:

1. Located at the real property described in Exhibit 5 to this Decision and Order; and
2. Primarily related to or Necessary for the research, development, production, and manufacture in the United States, and the marketing and sale in the United States, Puerto Rico, Canada, and Mexico, of Latex Polymers Products.

ZZZ. “Transitional Historical Inputs” means any Historical Inputs whose supply by Respondent is required (i) to transfer the operation of the Divested Businesses to the Acquirer or (ii) to avoid material interruption of the ability of the Divested Businesses to meet their then-existing supply commitments to customers, *provided, however* that Transitional Historical Inputs do not include butanol.

II.

IT IS FURTHER ORDERED that Respondent shall not close the Acquisition until Respondent delivers to the Secretary of the Commission a notice stating the date upon which Respondent intends to close the Acquisition. In addition, as provided by Paragraphs III and IV of this Order, at the option of the applicable Acquirers, and subject to the prior approval of the Commission, Respondent Dow shall negotiate, enter into, and fully comply with contracts and agreements with the applicable Acquirers that shall include, but not be limited to, one or more:

- A. “Site Services Agreement” requiring Respondent to provide at Cost at the St. Charles Facility utility and shared services to the Acrylic & Latex Business Acquirer, including, but not limited to, water, sewer, electricity, access to telephone lines, security, road maintenance, and other support services historically provided by Respondent since January 1, 2006,

Decision and Order

to the Latex Polymers Business at the St. Charles Facility or to other businesses operated by lessees at Respondent's St. Charles, Louisiana, site, to the extent applicable. The Site Services Agreement, at a minimum, shall require Respondent to:

1. Consult and cooperate reasonably with the Acrylic & Latex Business Acquirer regarding any conduct by Respondent (including Persons under contract to Respondent or that Respondent has the right to control) that is reasonably likely to interrupt delivery of utility and shared services to the Acrylic & Latex Business Acquirer, so as to reduce as much as reasonably practicable any interruption of or interference with the research, development, production, manufacture, marketing, and sale of Latex Polymers Products at the St. Charles Facility;
2. Provide as much notice to the Acrylic & Latex Business Acquirer as reasonably practicable of any maintenance or construction that is reasonably likely to interrupt the delivery of utility and shared services to the Acrylic & Latex Business Acquirer at the St. Charles Facility; and,
3. Restore delivery to the Acrylic & Latex Business Acquirer of all utility and shared services, the delivery of which was interrupted for any reason, on a schedule that is fair, equitable, and commercially reasonable, and that does not give or permit a priority to the restoration of utility or shared services to Respondent unless such priority is necessary to avoid a material adverse effect on Respondent's retained businesses that is disproportionate to the effect on the Latex Polymers Business; *provided, however,* that any such schedule shall in all cases conform to Dow's environmental, health, and safety standards and reflect Dow's good manufacturing practices;

Decision and Order

Provided, however, that Respondent shall not be obligated to provide maintenance services to the St. Charles Facility, industrial hygiene services, or emergency services other than first response services.

- B. “Supply Agreement” requiring Respondent to provide or supply an Acquirer, solely for the use by such Acquirer (or its successor) in connection with the research, development, production, manufacturing, marketing, and sale of one or more of the Divested Products, with any one or more of: (1) the Divested Products; (2) Required Historical Inputs; (3) butanol; (4) Seed Latex; or (5) Transitional Historical Inputs. The terms of any Supply Agreement shall include, but need not be limited to, the following terms and conditions:

1. The term of the Supply Agreement shall be as follows:
 - a. For Divested Products, the term shall be for a period from the Effective Date of Divestiture and no longer than that reasonably necessary for an Acquirer to transfer commercial production of the Divested Product from Respondent to the Acquirer or some other Person, with an option for the Acquirer to extend the period for not longer than one (1) year if circumstances outside the Acquirer’s control delay the transfer of production beyond the initial term of the Supply Agreement;
 - b. For Required Historical Inputs and butanol, the term shall be not less than two (2) years from the Effective Date of Divestiture;
 - c. For Transitional Historical Inputs, the term shall be as long as required to accomplish the transition to another input, but in no event longer than one (1) year from the Effective Date of Divestiture; and

Decision and Order

- d. For Seed Latex, the term shall be as agreed upon by Respondent and the applicable Acquirer and with the approval of the Commission.
2. The pricing terms of the Supply Agreement shall be as follows:
 - a. Divested Products and Seed Latex shall be supplied at Respondent's Cost; and
 - b. Required Historical Inputs, butanol, and Transitional Historical Inputs shall be supplied at a market price, as determined by a formula based on an objective measure of raw material, utility, and/or energy costs.
3. Any Supply Agreement with the applicable Acquirer must include at least the following terms and conditions:
 - a. Respondent shall permit the Acquirer to terminate the Supply Agreement, or reduce the quantities that the Acquirer is obligated to purchase under the Supply Agreement, upon commercially reasonable terms (including, but not limited to, meet-or-release terms);
 - b. Respondent shall be required to provide prompt notice to the Acquirer if Respondent acquires knowledge of any facts or circumstances indicating that a force majeure event (or some other cause beyond Respondent's control) will likely prevent Respondent from delivering the full, timely contract quantities of any of the products that are the subject of the Supply Agreement;
 - c. Respondent shall provide the Acquirer with reasonable advance notice of any planned maintenance, shutdown, decrease in output, improvement, expansion, or increase in output of any

Decision and Order

plant or facility that is necessary to provide products pursuant to the Supply Agreement and that is reasonably likely to affect materially and adversely Respondent's obligations to the Acquirer under the Supply Agreement. Such notice shall be provided sufficiently in advance of such event to provide the Acquirer with a commercially reasonable opportunity to avoid any interruption of its business, including, but not limited to, the interruption of the delivery of full, timely contract quantities to the Acquirer's customers (including deliveries to the Acquirer's own divisions and subsidiaries);

- d. If Respondent fails to make full, timely deliveries under the Supply Agreement of any products due to:
 - (a) a force majeure event; or, (b) any act of or conduct by and within the control of Respondent, Respondent shall provide the Acquirer with the right to purchase the products that are the subject of the Supply Agreement, at the Acquirer's sole option and upon notice to Respondent that is reasonable under the circumstances, either from:
 - (1) Respondent, at the price and in the quantities provided by the Supply Agreement, so long as:
 - (a) Respondent has such products available, and Respondent:
 - i) Is not required by contract to deliver them to another Person; or
 - ii) Does not require them to fulfill contractual commitments to produce goods or products for sale to another Person; or

Decision and Order

- (b) Respondent has the operating, non-idled capacity at its other plants or facilities to produce such products and Respondent:
 - i) Does not need to use such capacity to fulfill contractual obligations to deliver the products to another Person; or
 - ii) Does not need to use such capacity to produce products needed to fulfill contractual commitments to produce goods or products for sale to another Person; or
 - (c) Any other Person, until such time as Respondent resumes full, timely deliveries under the Supply Agreement;
 - e. Respondent shall permit the Acquirer to purchase additional quantities above the initial contract maximums in the Supply Agreement for use by the Divested Businesses, if Respondent's facilities used for the production of the products are not operating at capacity and Respondent could increase its production of the products without interfering with Respondent's then existing businesses; and
 - f. In any dispute or litigation between Respondent and the Acquirer, the Supply Agreement must be interpreted in light of achieving the purposes of the Order.
- C. "Ethylene/Ethanol Conversion Assistance Agreement" requiring Respondent Dow to provide at Cost all advice and consultation reasonably necessary for any Acquirer to convert the ethyl acrylate production at the Clear Lake Facility from an ethylene-based Acrylic Acid Product production facility to an ethanol-based Acrylic Acid Product

Decision and Order

production facility. The agreement shall provide against the use of any Material Confidential Information obtained or received by Dow from performing the agreement, other than Respondent's use to comply with this Order and the Ethylene/Ethanol Conversion Assistance Agreement. The term of the Ethylene/Ethanol Conversion Assistance Agreement shall be at the option of the Acquirer, but not longer than three (3) years.

- D. "Technical Assistance Agreement" requiring the Respondent to provide all advice and consultation reasonably necessary for any Acquirer to receive and use, in any manner related to achieving the purposes of this Order, any asset, right, or interest relating to one or more of the Divested Businesses. The term of the Technical Assistance Agreement shall be at the option of the Acquirer, but not longer than twenty-four (24) months. The Technical Assistance Agreement shall be on commercially reasonable terms, and Respondent shall not be required to provide services to the Acquirer if the provision of such services would interfere with Respondent's ability to meet the needs of its then existing businesses other than the Divested Businesses. Confidential Appendix F lists the maximum fee Respondent may charge for such advice and consultation in each month.
- E. "Transition Services Agreement" requiring Respondent Dow to provide at Cost all services reasonably necessary to transfer administrative support services to Acquirers of each of the Divested Businesses, including, but not limited to, such services related to payroll, employee benefits, accounts receivable, accounts payable, utility service, batch and recipe data transfer, and other administrative and logistical support. Prior to the Effective Date of Divestiture, Respondent shall complete the transfer of batch and recipe data in a customary and usable format so that such data may be used by the Acrylic & Latex Business Acquirer in connection with its production of Latex Polymers Products as of the Effective

Decision and Order

Date of Divestiture. At the option of the Acrylic & Latex Business Acquirer, the Transition Services Agreement with the Acrylic & Latex Business Acquirer shall include the provision or arrangement of any carrier, logistics, or transportation services reasonably necessary for the operation of the Acrylic Acid Business or the Latex Polymers Business and for which contracts are not assigned in whole or in part under any Divestiture Agreement. With regard to services other than batch and recipe data transfer, the term of the Transition Services Agreement shall be at the option of the Acquirers, but not longer than six (6) months from the Effective Date of Divestiture, with an option for the Acquirer to extend the period for an additional six (6) months for any services that cannot reasonably be transferred in the initial term of the Transition Services Agreement because of circumstances outside the Acquirer's control. Respondent shall not be required to provide any services that would effect a change in Respondent's status under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), including, without limitation, provision of coverage under any benefits plan sponsored or maintained by Respondent if such coverage will cause any such plan to (i) be treated as a plan maintained by more than one employer within the meaning of Section 413(c) of the Internal Revenue Code of 1986, as amended (the "Code"), (ii) be treated as a multiple employer welfare arrangement within the meaning of Section 3(40) of ERISA, or (iii) cause any plan to violate any provision of the Code or ERISA.

III.

IT IS FURTHER ORDERED that:

- A. Respondent Dow shall divest, absolutely and in good faith and at no minimum price, the Acrylic Acid Business and the Latex Polymers Business to the Acrylic & Latex Business Acquirer pursuant to and in accordance with the Acrylic

Decision and Order

Acid Business Divestiture Agreement and the Latex Polymers Business Divestiture Agreement within the later of: (1) two hundred and forty (240) days after the Commission accepts the Agreement Containing Consent Orders for public comment; and, (2) two hundred and forty (240) days after the Acquisition closes. The Acrylic & Latex Business Acquirer may, but need not, be the same Person as the Hollow Sphere Particle Business Acquirer.

- B. Respondent shall secure at its sole expense all consents from Persons that are necessary to divest and operate in a manner that will achieve the purposes of this Order any tangible or intangible assets (including, but not limited to, any Contract) of the Acrylic Acid Business and the Latex Polymers Business to the Acrylic & Latex Business Acquirer; *provided, however*, Respondent shall not be in violation of this Order if it obtains the consents identified on Confidential Appendix G by the dates set forth in that appendix.
- C. At the option of the Acrylic & Latex Business Acquirer, and subject to the prior approval of the Commission, the Respondent, prior to or as of the Effective Date of Divestiture, shall enter into one or more of:
 - 1. An Ethylene/Ethanol Conversion Assistance Agreement;
 - 2. A Site Services Agreement;
 - 3. A Supply Agreement relating to either one or both of the Acrylic Acid Business and the Latex Polymers Business;
 - 4. A Technical Assistance Agreement relating to either one or both of the Acrylic Acid Business and the Latex Polymers Business; and,

Decision and Order

5. A Transition Services Agreement relating to either one or both of the Acrylic Acid Business and the Latex Polymers Business.
- D. Respondent shall permit, and the Latex Polymers Business Divestiture Agreement shall include terms to allow, the Acrylic & Latex Business Acquirer, in connection with its production of Latex Polymers Products or other acrylic latexes, to improve, expand, change technology or processes used at, change the Latex Polymers Products or other acrylic latexes or mix of Latex Polymers Products or other acrylic latexes produced at, and otherwise modify the St. Charles Facility and how it is operated, *provided, however*, that any such expansion or changes in production at the St. Charles Facility or corresponding use of the Shared St. Charles Facility Assets shall be at the cost of the Acrylic & Latex Business Acquirer, including any costs incurred by Respondent in connection with such expansions or changes, such as Respondent's provision of additional or increased site services under the Site Services Agreement; *provided further that*, in the event the Acrylic & Latex Business Acquirer and Respondent are unable to agree on the terms of service and costs in connection with any increase or change to the use of the Shared St. Charles Facility Assets that are to be borne by the Acrylic & Latex Business Acquirer, Respondent shall provide a grant of rights to the Acrylic & Latex Business Acquirer, at the Acrylic & Latex Business Acquirer's sole cost and expense, to make such increase or change in the use of the Shared St. Charles Facility Assets so long as such increase or change does not harm, or interfere unreasonably with the use, operation, or value of, the Retained St. Charles Assets, the Shared St. Charles Facility Assets, or Respondent's other businesses located in St. Charles, Louisiana. Notwithstanding the foregoing, prior to Respondent granting the rights to the Acrylic & Latex Business Acquirer described in the immediately preceding sentence, Respondent may require the Acrylic & Latex

Decision and Order

Business Acquirer to disclose the proposed terms (including cost) of all arrangements in connection with the applicable expansion or change (which shall be documented, bona fide and commercially reasonable) and should Respondent offer to match such proposed terms the Acrylic & Latex Business Acquirer shall be obligated to contract with Respondent with respect thereto (to the extent the Acrylic & Latex Business Acquirer undertakes the applicable expansion).

- E. Respondent shall reasonably cooperate to assist the Acrylic & Latex Business Acquirer to evaluate independently and retain Acrylic & Latex Key Employees and Acrylic & Latex Knowledgeable Employees, such cooperation to include at least the following:
1. Not later than forty five (45) days before the Effective Date of Divestiture, Respondent shall, to the extent permitted by applicable law: (i) provide to the Acrylic & Latex Business Acquirer a list of all Acrylic & Latex Key Employees and Acrylic & Latex Knowledgeable Employees, and Employee Information for each Person on the list; and (ii) allow the Acrylic & Latex Business Acquirer an opportunity to interview any Acrylic & Latex Key Employees and Acrylic & Latex Knowledgeable Employees;
 2. Not later than thirty (30) days before the Effective Date of Divestiture, Respondent shall provide an opportunity for the Acrylic & Latex Business Acquirer: (i) to meet personally, and outside the presence or hearing of any employee or agent of Respondent, with any one or more of the Acrylic & Latex Key Employees and Acrylic & Latex Knowledgeable Employees; and (ii) to make offers of employment to any one or more of the Acrylic & Latex Key Employees and Acrylic & Latex Knowledgeable Employees;

Decision and Order

3. Respondent shall: (i) not directly or indirectly interfere with the Acrylic & Latex Business Acquirer's offer of employment to any one or more of the Acrylic & Latex Key Employees and Acrylic & Latex Knowledgeable Employees, directly or indirectly attempt to persuade any one or more of the Acrylic & Latex Key Employees and Acrylic & Latex Knowledgeable Employees to decline any offer of employment from the Acrylic & Latex Business Acquirer, or offer any incentive to any Acrylic & Latex Key Employees and Acrylic & Latex Knowledgeable Employees to decline employment with the Acrylic & Latex Business Acquirer; (ii) irrevocably waive any legal or equitable right to deter any Acrylic & Latex Key Employees and Acrylic & Latex Knowledgeable Employees from accepting employment with the Acrylic & Latex Business Acquirer, including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with Respondent that directly or indirectly relate to the Acrylic Acid Business or the Latex Polymers Business; and (iii) continue to extend to any Acrylic & Latex Key Employees and Acrylic & Latex Knowledgeable Employees, during their employment by the Acrylic Acid Business or the Latex Polymers Business prior to the Effective Date of Divestiture, all employee benefits offered by Respondent to similarly situated employees at that date, including regularly scheduled or merit raises and bonuses, and regularly scheduled vesting of all pension benefits;
4. Respondent shall cooperate with the Acrylic & Latex Business Acquirer to provide incentives to encourage Acrylic & Latex Key Employees to accept employment with the Acrylic & Latex Business Acquirer, as described in Confidential Appendix A; and,

Decision and Order

5. For a period of two (2) years from the Effective Date of Divestiture, Respondent shall not solicit, negotiate, hire or enter into any arrangement for the services of any Acrylic & Latex Key Employee who has accepted an offer of employment with, or who is employed by, the Acrylic & Latex Business Acquirer.
- F. For a period of one (1) year from the Effective Date of Divestiture, Respondent shall not, directly or indirectly, solicit or induce, or attempt to solicit or induce, any Acrylic & Latex Knowledgeable Employee who has accepted an offer of employment with, or who is employed by, the Acrylic & Latex Business Acquirer to terminate his or her employment relationship with the Acrylic & Latex Business Acquirer; *provided, however*, a violation of this provision will not occur if:
1. The Acrylic & Latex Knowledgeable Employee's employment has been terminated by the Acrylic & Latex Business Acquirer;
 2. Respondent Dow advertises for employees in newspapers, trade publications, or other media not targeted specifically at any one or more of the employees of the Acrylic & Latex Business Acquirer; or
 3. Respondent Dow hires an Acrylic & Latex Knowledgeable Employee who has applied for employment with Respondent Dow, provided that such application was not solicited or induced in violation of this Order.
- G. Respondent shall comply with all terms of the Acrylic Acid Business Divestiture Agreement and the Latex Polymers Business Divestiture Agreement, and any breach by Respondent of any term of the Acrylic Acid Business Divestiture Agreement or the Latex Polymers Business Divestiture Agreement shall constitute a violation of this

Decision and Order

Order. If any term of the Acrylic Acid Business Divestiture Agreement or the Latex Polymers Business Divestiture Agreement varies from the terms of this Order (“Order Term”), then to the extent that Respondent cannot fully comply with both terms, the Order Term shall determine Respondent’s obligations under this Order. Any material modification of the Acrylic Acid Business Divestiture Agreement or the Latex Polymers Business Divestiture Agreement between the date the Commission approves the Acrylic Acid Business Divestiture Agreement or the Latex Polymers Business Divestiture Agreement and the Effective Date of Divestiture, without the prior approval of the Commission, or any failure to meet any material condition precedent to closing (whether waived or not), shall constitute a failure to comply with this Order. Notwithstanding any paragraph, section, or other provision of the Acrylic Acid Business Divestiture Agreement or the Latex Polymers Business Divestiture Agreement, for a period of five (5) years after the Effective Date of Divestiture, any modification of the Acrylic Acid Business Divestiture Agreement or the Latex Polymers Business Divestiture Agreement, without the approval of the Commission, shall constitute a failure to comply with this Order. Respondent shall provide written notice to the Commission not more than five(5) days after any modification (material or otherwise) of the Acrylic Acid Business Divestiture Agreement or the Latex Polymers Business Divestiture Agreement, or after any failure to meet any condition precedent (material or otherwise) to closing (whether waived or not).

- H. The purpose of the divestiture of the Acrylic Acid Business and Latex Polymers Business to the Acrylic & Latex Business Acquirer is to create an independent, viable and effective competitor in the relevant markets in which the Acrylic Acid Business and Latex Polymers Business were engaged at the time of the announcement of the Acquisition,

Decision and Order

and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

IV.**IT IS FURTHER ORDERED** that:

- A. Respondent Dow shall divest, absolutely and in good faith and at no minimum price, the Hollow Sphere Particle Business to the Hollow Sphere Particle Business Acquirer pursuant to and in accordance with the Hollow Sphere Particle Business Divestiture Agreement within the later of: (1) two hundred and forty (240) days after the Commission accepts the Agreement Containing Consent Orders for public comment; and, (2) two hundred and forty (240) days after the Acquisition closes. The Hollow Sphere Particle Business Acquirer may, but need not be, the same Person as the Acrylic & Latex Business Acquirer.
- B. Prior to the Effective Date of Divestiture, Respondent shall secure at its sole expense all consents from Persons that are necessary to divest and operate in a manner that will achieve the purposes of this Order any tangible or intangible assets (including, but not limited to, any Contract) of the Hollow Sphere Particle Business to the Hollow Sphere Particle Business Acquirer.
- C. At the option of the Hollow Sphere Particle Business Acquirer, and subject to the prior approval of the Commission, the Respondent, prior to or as of the Effective Date of Divestiture, shall enter into one or more of a Supply Agreement, a Technical Assistance Agreement, and a Transition Services Agreement relating to the Hollow Sphere Particle Business.
- D. Respondent shall reasonably cooperate to assist the Hollow Sphere Particle Business Acquirer to evaluate independently and retain Hollow Sphere Particle Knowledgeable

Decision and Order

Employees and Hollow Sphere Particle Key Employees, such cooperation to include at least the following:

1. Not later than forty five (45) days before the Effective Date of Divestiture, Respondent shall, to the extent permitted by applicable law: (i) provide to the Hollow Sphere Particle Business Acquirer a list of all Hollow Sphere Particle Knowledgeable Employees and Hollow Sphere Particle Key Employees, and Employee Information for each Person on the list; and (ii) allow the Hollow Sphere Particle Business Acquirer an opportunity to interview any Hollow Sphere Particle Knowledgeable Employees and Hollow Sphere Particle Key Employees;
2. Not later than thirty (30) days before the Effective Date of Divestiture, Respondent shall provide an opportunity for the Hollow Sphere Particle Business Acquirer: (i) to meet personally, and outside the presence or hearing of any employee or agent of Respondent, with any one or more of the Hollow Sphere Particle Knowledgeable Employees and Hollow Sphere Particle Key Employees; and (ii) to make offers of employment to any one or more of the Hollow Sphere Particle Knowledgeable Employees and Hollow Sphere Particle Key Employees;
3. Respondent shall: (i) not directly or indirectly interfere with the Hollow Sphere Particle Business Acquirer's offer of employment to any one or more of the Hollow Sphere Particle Knowledgeable Employees and Hollow Sphere Particle Key Employees, directly or indirectly attempt to persuade any one or more of the Hollow Sphere Particle Knowledgeable Employees and Hollow Sphere Particle Key Employees to decline any offer of employment from the Hollow Sphere Particle Business Acquirer, or offer any incentive to any Hollow Sphere Particle Knowledgeable Employees and Hollow Sphere Particle Key Employees to decline employment with the

Decision and Order

Hollow Sphere Particle Business Acquirer; (ii) irrevocably waive any legal or equitable right to deter any Hollow Sphere Particle Knowledgeable Employees and Hollow Sphere Particle Key Employees from accepting employment with the Hollow Sphere Particle Business Acquirer, including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with Respondent that directly or indirectly relate to the Hollow Sphere Particle Business; and (iii) continue to extend to any Hollow Sphere Particle Knowledgeable Employees and Hollow Sphere Particle Key Employees, during their employment by the Hollow Sphere Particle Business prior to the Effective Date of Divestiture, all employee benefits offered by Respondent to similarly situated employees at that date, including regularly scheduled or merit raises and bonuses, and regularly scheduled vesting of all pension benefits;

4. Respondent shall cooperate with the Hollow Sphere Particle Business Acquirer to provide incentives to encourage Hollow Sphere Particle Key Employees to accept employment with the Hollow Sphere Particle Business Acquirer, as described in Confidential Appendix C; and
 5. For a period of two (2) years from the Effective Date of Divestiture, Respondent shall not solicit, negotiate, hire or enter into any arrangement for the services of any Hollow Sphere Particle Key Employee who has accepted an offer of employment with, or who is employed by, the Hollow Sphere Particle Business Acquirer.
- E. For a period of one (1) year from the Effective Date of Divestiture, Respondent shall not, directly or indirectly, solicit or induce, or attempt to solicit or induce, any Hollow Sphere Particle Knowledgeable Employee who has accepted an offer of employment with, or who is employed by, the

Decision and Order

Hollow Sphere Particle Business Acquirer to terminate his or her employment relationship with the Hollow Sphere Particle Business Acquirer; *provided, however*, a violation of this provision will not occur if:

1. The Hollow Sphere Particle Knowledgeable Employee's employment has been terminated by the Hollow Sphere Particle Business Acquirer;
 2. Respondent Dow advertises for employees in newspapers, trade publications, or other media not targeted specifically at any one or more of the employees of the Hollow Sphere Particle Business Acquirer; or
 3. Respondent Dow hires a Hollow Sphere Particle Knowledgeable Employee who has applied for employment with Respondent Dow, provided that such application was not solicited or induced in violation of this Order.
- F. Respondent shall comply with all terms of the Hollow Sphere Particle Business Divestiture Agreement, and any breach by Respondent of any term of the Hollow Sphere Particle Business Divestiture Agreement shall constitute a violation of this Order. If any term of the Hollow Sphere Particle Business Divestiture Agreement varies from the terms of this Order ("Order Term"), then to the extent that Respondent cannot fully comply with both terms, the Order Term shall determine Respondent's obligations under this Order. Any material modification of the Hollow Sphere Particle Divestiture Agreement between the date the Commission approves the Hollow Sphere Particle Divestiture Agreement and the Effective Date of Divestiture, without the prior approval of the Commission, or any failure to meet any material condition precedent to closing (whether waived or not), shall constitute a failure to comply with this Order. Notwithstanding any paragraph, section, or other provision of the Hollow Sphere Particle Divestiture

Decision and Order

Agreement, any modification after the Effective Date of Divestiture of the Hollow Sphere Particle Divestiture Agreement, for a period of five (5) years after the Effective Date of Divestiture, without the approval of the Commission, shall constitute a failure to comply with this Order. Respondent shall provide written notice to the Commission not more than five (5) days after any modification (material or otherwise) of the Hollow Sphere Particle Divestiture Agreement, or after any failure to meet any condition precedent (material or otherwise) to closing (whether waived or not).

- G. The purpose of the divestiture of the Hollow Sphere Particle Business to the Hollow Sphere Particle Business Acquirer is to create an independent, viable and effective competitor in the relevant markets in which the Hollow Sphere Particle Business was engaged at the time of the announcement of the Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

V.

IT IS FURTHER ORDERED that:

- A. After the Effective Date of Divestiture, Respondent shall:
1. not provide, disclose, or otherwise make available any Material Confidential Information to any Person except as required or permitted by this Order; and
 2. not use any Material Confidential Information for any reason or purpose other than as required or permitted by this Order.

Provided, however, that nothing in this Paragraph V shall prevent Respondent from using any intellectual property or Know-how that is conveyed or licensed to Respondent or

Decision and Order

that Respondent retains the right to use pursuant to this Order, *provided, further* that to the extent that the use of such intellectual property or Know-how involves disclosure of Material Confidential Information to another Person, such Person must agree to maintain the confidentiality of such Material Confidential Information under terms no less restrictive than Respondent's obligations under this Order.

- B. Respondent shall devise and implement measures to protect against the storage, distribution, and use of Material Confidential Information that is not permitted by this Order. These measures shall include, but not be limited to, restrictions placed on access by Persons to information available or stored on any of Respondent's computers or computer networks.
- C. Respondent no less than annually shall provide written or electronic instructions to any of its officers, directors, employees, or agents who have custody or control of any Material Confidential Information concerning the limitations placed by this Order on the distribution and use of Material Confidential Information. Respondent shall require such officers to acknowledge in writing or electronically their receipt and understanding of these written or electronic instructions. Respondent shall maintain custody of these written or electronic instructions and acknowledgments for inspection upon request by the Commission.
- D. Notwithstanding Paragraph V.A. of this Order and subject to the Hold Separate Order, Respondent may use Material Confidential Information:
 - 1. For the purpose of performing Respondent's obligations under this Order, the Hold Separate Order, or the Divestiture Agreements;
 - 2. For uses or applications in Respondent's businesses that do not compete with the Divested Businesses, if such use

Decision and Order

or application by Respondent is not competitively significant to the Divested Businesses, *provided, however,* that the applicable Acquirer of a Divested Business must consent to any use of Competitively Sensitive Information regarding such Divested Business;

3. To ensure compliance with legal and regulatory requirements;
4. To perform required auditing functions;
5. To provide accounting, information technology, and credit-underwriting services;
6. To provide legal services associated with actual or potential litigation and transactions;
7. To monitor and ensure compliance with financial, tax reporting, governmental environmental, health, and safety requirements;
8. For inclusion within the periodic financial reports that the Divested Businesses may provide Respondent but only to the extent that any Material Confidential Information is aggregated so that data as to individual customers are not disclosed; or
9. As otherwise provided by this Order.

VI.**IT IS FURTHER ORDERED** that:

- A. At any time after Respondent signs the Consent Agreement in this matter, the Commission may appoint a monitor (“Interim Monitor”) to assure that Respondent expeditiously complies with all of its obligations and performs all of its

Decision and Order

responsibilities as required by this Order and the Divestiture Agreements.

- B. The Commission shall select the Interim Monitor, subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Interim Monitor, Respondent shall be deemed to have consented to the selection of the proposed Interim Monitor.
- C. Not later than ten (10) days after the appointment of the Interim Monitor, Respondent shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondent's compliance with the relevant requirements of the Order in a manner consistent with the purposes of the Order. A violation of the agreement with the Interim Monitor shall be a violation of this Order.
- D. If an Interim Monitor is appointed, Respondent shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Interim Monitor:
 - 1. The Interim Monitor shall have the power and authority to monitor Respondent's compliance with the divestiture and related requirements of the Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of the Order and in consultation with the Commission.
 - 2. The Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission.

Decision and Order

3. The Interim Monitor shall provide periodic written reports to the Commission upon a schedule (but at least annually) that is sufficient to provide the Commission with timely information to determine if Respondent has complied and is complying with its obligations under this Order (including the Divestiture Agreements). In addition, the Interim Monitor shall provide such additional written reports as Commission staff may request that reasonably are related to determining if Respondent has complied and is complying with its obligations under this Order (including the Divestiture Agreements). The Interim Monitor may not provide to Respondent, and Respondent is not entitled to receive, copies of these reports.
4. The Interim Monitor shall serve until the earlier of the expiration or termination of the last to expire of the Divestiture Agreements and this Order;

provided, however, that the Commission may modify this period as may be necessary or appropriate to accomplish the purposes of the Order.
5. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondent's personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondent's compliance with its obligations under the Order, including, but not limited to, its obligations related to the relevant Product assets. Respondent shall cooperate with any reasonable request of the Interim Monitor and shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondent's compliance with the Order.

Decision and Order

6. The Interim Monitor shall serve, without bond or other security, at the expense of Respondent, on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have authority to employ, at the expense of the Respondent, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities. The Interim Monitor shall provide an accounting, at least on a quarterly basis, to Respondent for all expenses incurred, including fees for his or her services, subject to the approval of the Commission.
7. Respondent shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Interim Monitor.
8. Respondent shall provide copies of reports to the Interim Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission.
9. Respondent may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however,* that such agreement shall not restrict the Interim Monitor from providing any information to the Commission.

Decision and Order

- E. The Commission may, among other things, require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Interim Monitor's duties.
- F. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in this Paragraph.
- G. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Order.
- H. The Interim Monitor appointed pursuant to this Order may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order.

Decision and Order

VII.**IT IS FURTHER ORDERED** that:

- A. If Respondent fails to complete any of the divestitures required by Paragraphs III or IV of this Order within the time periods specified therein, then the Commission may appoint one or more Divestiture Trustees to divest one or more of the Acrylic Acid Business, Latex Polymers Business, and Hollow Sphere Particle Business to one or two Acquirers and to execute Divestiture Agreements that satisfy the requirements of Paragraphs II, III, and IV of this Order.
- B. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, for any failure by the Respondent to comply with this Order, Respondent shall consent to the appointment of a Divestiture Trustee in such action to divest the relevant assets and to enter into Divestiture Agreements in accordance with the terms of this Order. Neither the decision of the Commission to appoint a Divestiture Trustee, nor the decision of the Commission not to appoint a Divestiture Trustee, to divest any of the assets or to enter into Divestiture Agreements under this Paragraph VII shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, for any failure by the Respondent to comply with this Order.
- C. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any

Decision and Order

proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Divestiture Trustee, Respondent shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

- D. Within ten (10) days after appointment of the Divestiture Trustee, Respondent shall execute a trust agreement (“Divestiture Trustee Agreement”) that, subject to the prior approval of the Commission transfers to the Divestiture Trustee all rights and powers necessary to effect the relevant divestiture or transfer, and to enter into the relevant agreements, required by this Order.
- E. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph VII of this Order, Respondent shall consent to, and the Divestiture Trustee Agreement shall include, the following terms and conditions regarding the Divestiture Trustee’s powers, duties, authority, and responsibilities:
 - 1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to divest relevant assets or enter into relevant agreements pursuant to the terms of this Order.
 - 2. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the Divestiture Trustee Agreement described in this Paragraph VII of this Order to divest relevant assets or enter into relevant agreements pursuant to the terms of this Order. If, however, at the end of the applicable twelve-month period, the Divestiture Trustee has submitted to the Commission a plan of divestiture for assets, or for entering into relevant agreements pursuant to the terms of this Order, or believes that divestiture can be achieved or agreements can be negotiated within a reasonable time, such period may be extended by the Commission,

Decision and Order

or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend such period only two (2) times.

3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities of Respondent related to the Acrylic Acid Business, Latex Polymers Business, and Hollow Sphere Particle Business, related to any agreements contemplated by this Order, or related to any other relevant information, as the Divestiture Trustee may request. Respondent shall develop such financial or other information as the Divestiture Trustee may reasonably request and shall cooperate with the Divestiture Trustee. Respondent shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of his or her responsibilities. At the option of the Commission, any delays in divestiture or entering into any agreement caused by Respondent shall extend the time for divestiture under this Paragraph VII in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.
4. Respondent may require the Divestiture Trustee, and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement, provided, however, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission. The Divestiture Trustee Agreement shall terminate when the divestiture required by this Order is consummated.
5. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's

Decision and Order

absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made to, and the Divestiture Agreements executed with, an Acquirer in the manner set forth in Paragraphs II, III, and IV of this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one acquiring entity, the Divestiture Trustee shall divest to the acquiring entity or entities selected by Respondent from among those approved by the Commission, *provided further, however*, that Respondent shall select such entity within five (5) days of receiving notification of the Commission's approval.

6. The Divestiture Trustee shall serve, without bond or other security, at the expense of Respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the expense of Respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the Divestiture Trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Respondent. The Divestiture Trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the Divestiture Trustee's accomplishing the divestitures and assuring compliance with this Order. The powers, duties, and responsibilities of the Divestiture Trustee (including, but not limited to, the right to incur fees or other expenses) shall terminate when the divestiture required

Decision and Order

by this Order is consummated, and the Divestiture Trustee has provided an accounting for all monies derived from the divestiture and all expenses occurred.

7. Respondent shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from malfeasance, gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.
 8. The Divestiture Trustee shall have no obligation or authority to operate or maintain the Acrylic Acid Business, Latex Polymers Business, or Hollow Sphere Particle Business.
 9. The Divestiture Trustee shall report in writing to Respondent and to the Commission every two (2) months until the Divestiture Trustee's obligations are completed concerning the Divestiture Trustee's efforts to divest and enter into agreements related to the Acrylic Acid Business, Latex Polymers Business, and Hollow Sphere Particle Business, and Respondent's compliance with the terms of this Order.
- F. If the Commission determines that the Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute trustee in the same manner as provided in this Paragraph VII of this Order.
- G. Respondent shall comply with all terms of the Divestiture Trustee Agreement, and any breach by Respondent of any term of the Divestiture Trustee Agreement shall constitute a

Decision and Order

violation of this Order. Notwithstanding any paragraph, section, or other provision of the Divestiture Trustee Agreement, any modification of the Divestiture Trustee Agreement, without the prior approval of the Commission, shall constitute a failure to comply with this Order.

VIII.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to:

- A. any proposed dissolution of The Dow Chemical Company;
- B. any proposed acquisition, merger or consolidation of The Dow Chemical Company; or
- C. any other change in Respondent, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

IX.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after the date this Order becomes final and every sixty (60) days thereafter until the Respondent has fully complied with the provisions of Paragraphs III and IV of this Order, Respondent shall submit to the Commission (with simultaneous copies to the Interim Monitor and Divestiture Trustee(s), as appropriate) verified written reports setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with Paragraphs III and IV of this Order. Respondent shall include in the reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs III and IV of this Order, including a description of all substantive contacts

Decision and Order

or negotiations for the divestitures and the identity of all parties contacted. Respondent shall include in the reports copies of all material written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning completing the obligations. In addition, Respondent's first report under this paragraph shall include a copy of the written instructions and acknowledgments concerning Material Confidential Information required by Paragraph V of this Order; and,

- B. One (1) year from the date this Order becomes final on the anniversary of the date this Order becomes final, and annually until the earlier of the expiration or termination of Respondent's obligations under the Divestiture Agreements and this Order, Respondent shall file verified written reports with the Commission setting forth in detail the manner and form in which it has complied and is complying with this Order. Respondent shall deliver a copy of each such report to the Interim Monitor.

X.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondent made to its principal United States offices, registered office of its United States subsidiary, or its headquarters address, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. To access, during business office hours of Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondent related to compliance with this Order, which copying services shall be provided by Respondent at the request of the authorized

Decision and Order

representative(s) of the Commission and at the expense of the Respondent; and;

- B. To interview officers, directors, or employees of such Respondent, who may have counsel present, regarding such matters.

XI.

IT IS FURTHER ORDERED that this Order shall terminate on March 31, 2019.

By the Commission.

CONFIDENTIAL APPENDICES A-G

**[Redacted From Public Record
But Incorporated By Reference]**

Decision and Order

Exhibit 1**Exhibit 1****Description of Real Property in Alsip, IL**

PARCEL 1:

THAT PART OF THE EAST 550.00 FEET OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 34, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF A LINE DESCRIBED AS BEGINNING AT A POINT IN THE EAST LINE OF SAID NORTHEAST 1/4 DISTANT 730.00 FEET SOUTH OF THE NORTH EAST CORNER THEREOF; THENCE NORTH 82 DEGREES, 47 MINUTES, 35 SECONDS WEST ON A LINE PARALLEL WITH THE NORTH LINE OF SAID NORTHEAST 1/4 A DISTANCE OF 460.00 FEET; THENCE SOUTH 89 DEGREES, 49 MINUTES 32 SECONDS WEST 90.70 FEET TO A POINT IN THE WEST LINE OF THE EAST 550.00 FEET OF SAID NORTHEAST 1/4 (EXCEPTING FROM THE EAST 550.00 FEET OF SAID NORTHEAST 1/4 THAT PORTION OF THE SOUTH 66.00 FEET LYING WEST OF THE WEST LINE OF THE EAST 50.00 FEET THEREOF) AND (EXCEPT THEREFROM THE EAST 50 FEET THEREOF) AND (EXCEPT THEREFROM THAT PART OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 34, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN BOUNDED AND DESCRIBED AS FOLLOWS::

BEGINNING AT THE INTERSECTION OF THE NORTH LINE OF THE SOUTH 66 FEET OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 AFORESAID WITH THE WEST LINE OF THE EAST 50 FEET OF SAID NORTHEAST 1/4; THENCE NORTH ON SAID WEST LINE, 25 FEET; THENCE SOUTHWESTERLY TO A POINT 84 FEET WEST OF AND 75 FEET NORTH OF THE SOUTH EAST CORNER OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 AFORESAID, (AS MEASURED ON THE SOUTH LINE OF SAID NORTHEAST 1/4 OF THE NORTHEAST 1/4 AND ON A LINE AT RIGHT ANGLES THERETO); THENCE WESTERLY TO A POINT ON THE NORTH LINE OF THE SOUTH 66 FEET AFORESAID, 200 FEET WEST OF THE PLACE OF BEGINNING; THENCE EAST ON SAID NORTH LINE, 200 FEET TO THE PLACE OF BEGINNING) AND (EXCEPT THEREFROM THAT PART OF THE NORTHEAST 1/4 OF SECTION 34 AFORESAID, BOUNDED AND DESCRIBED AS FOLLOWS::

BEGINNING AT THE INTERSECTION OF THE WEST LINE OF THE EAST 50 FEET OF SAID NORTHEAST 1/4 WITH THE SOUTH LINE OF THE NORTH 730 FEET OF SAID NORTHEAST 1/4 (SAID 730 FEET BEING MEASURED ON THE EAST LINE THEREOF; THENCE WEST, ON SAID SOUTH LINE, TO THE WEST LINE OF THE EAST 75 FEET OF SAID NORTHEAST 1/4; THENCE SOUTH ON SAID WEST LINE TO ITS INTERSECTION WITH A LINE DRAWN AT RIGHT ANGLES TO THE EAST LINE OF SAID NORTHEAST 1/4 FROM A POINT IN SAID EAST LINE, 736.76 FEET SOUTH OF THE NORTH EAST CORNER THEREOF; THENCE EAST, AT RIGHT ANGLES TO THE EAST LINE OF SAID

FEDERAL TRADE COMMISSION DECISIONS
VOLUME 147

Decision and Order

NORTHEAST 1/4 TO THE WEST LINE OF THE EAST 50 FEET AFORESAID; THENCE NORTH, ON SAID WEST LINE, TO THE PLACE OF BEGINNING) IN COOK COUNTY, ILLINOIS

PARCEL 2:

THAT PART OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 34, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF THE EAST 550.0 FEET THEREOF, LYING EAST OF THE WEST 250.00 FEET THEREOF, LYING NORTH OF THE SOUTH 66.0 FEET THEREOF AND LYING SOUTH OF A LINE DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE EAST LINE OF THE WEST 250.0 FEET OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 34 AFORESAID, DISTANT 878.00 FEET SOUTH FROM THE NORTH

LINE OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION 34, AS MEASURED ON THE EAST LINE OF THE WEST 250.00 FEET THEREOF; THENCE NORTH 83 DEGREES, 37 MINUTES, 30 SECONDS EAST ON A LINE FORMING AN ANGLE OF 83 DEGREES, 37 MINUTES AND 30 SECONDS WITH THE LAST DESCRIBED LINE, A DISTANCE OF 93.39 FEET TO A POINT; THENCE NORTH 72 DEGREES, 24 MINUTES, 52 SECONDS EAST, A DISTANCE OF 307.20 FEET TO A POINT; THENCE NORTH 70 DEGREES, 32 MINUTES, 45 SECONDS EAST, A DISTANCE OF 63.92 FEET TO A POINT; THENCE NORTH 82 DEGREES, 49 MINUTES 32 SECONDS EAST, A DISTANCE OF 79.91 FEET MORE OR LESS TO THE WEST LINE OF THE EAST 550.0 FEET OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 34 AFORESAID, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

LOT 3 IN BCR SUBDIVISION, BEING A SUBDIVISION OF PART OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 34, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

Decision and Order

Exhibit 2

Exhibit 2

Legal Description of Real Property in Cary, NC

Lying and being in Wake County, North Carolina, and more particularly described as follows:
Being all of Lot No. 30, MacGregor Park according to a map by Runa A. Cooper, Land
Surveyor, dated January 18, 1984, and recorded in Book of Maps 1984, Page 97.

FEDERAL TRADE COMMISSION DECISIONS
VOLUME 147

Decision and Order

Exhibit 3**Exhibit 3****Description of Real Property in Clear Lake, TX****TRACT 1 – TRUCK SHED 2
0.118 ACRE TRACT
GEORGE B. MCKINSTRY, ABSTRACT 47
HARRIS COUNTY, TEXAS**

ALL THAT CERTAIN 0.118 ACRE TRACT of land lying and situated in the George B. McKinstry Survey, Abstract 47, Harris County, Texas, being all that certain called 0.118 acre tract of land, described Memorandum of Ground Lease between Celanese LTD and The Dow Chemical Company per instrument recorded in Clerk's File No. X382270 of the Real Property Records of Harris County, Texas (R.P.R.H.C.T.), and being located in The Dow Chemical Company Celanese plant site, said 0.118 acre tract hereby conveyed being more particularly described by metes and bounds, using survey terminology which refers to the Texas State Plane Coordinate System, South Central Zone (NAD27), in which the directions are Lambert grid bearings and the distances are surface level horizontal lengths, (S.F. = 0.9998759575) as follows:

COMMENCING at a set 5/8" iron rod set with cap marking the Southeasterly corner of the remainder of a called 963.850 acre tract described in deed to Celanese Corporation, as recorded in Clerk's File No. D789836, R.P.R.H.C.T. located at Texas State Plane Coordinate $X=3,221,323.29$ and $Y=13,795,342.55$ from which a set 5/8" iron rod with cap bears North $27^{\circ}32'59''$ West, a distance of 1346.34 feet at $X=3,220,700.64$ and $Y=13,796,536.09$;

THENCE South $82^{\circ}16'25''$ West, a distance of 599.56 feet to an "X" in concrete set for the **POINT OF BEGINNING** of the herein described tract, being at position $X=3,220,729.24$ and $Y=13,795,261.95$;

THENCE South $87^{\circ}31'29''$ West, along the South line of said called 0.118 acre tract, a distance of 50.00 feet to "X" in concrete set for corner;

THENCE North $02^{\circ}28'31''$ West, along the West line of said called 0.118 acre tract, a distance of 103.00 feet to a 5/8" iron rod with cap set for corner;

THENCE North $87^{\circ}31'29''$ East, along the North line of said called 0.118 acre tract, a distance of 50.00 feet to a 5/8" iron rod with cap set for corner;

THENCE South $02^{\circ}28'31''$ East, along the East line of said called 0.118 acre tract, a distance of 103.00 feet to the **POINT OF BEGINNING** and containing 0.118 acres of land more or less.

**TRACT 2 – ACRYLATES TANK FARM
0.052 ACRE TRACT**

Decision and Order

**GEORGE B. MCKINSTRY, ABSTRACT 47
HARRIS COUNTY, TEXAS**

ALL THAT CERTAIN 0.052 ACRE TRACT of land lying and situated in the George B. McKinstry Survey, Abstract 47, Harris County, Texas, being all that certain called 0.052 acre tract of land, described Memorandum of Ground Lease between Celanese LTD and The Dow Chemical Company per instrument recorded in Clerk's File No. X382270 of the Real Property Records of Harris County, Texas (R.P.R.H.C.T.), and being located in The Dow Chemical Company Celanese plant site, said 0.052 acre tract hereby conveyed being more particularly described by metes and bounds, using survey terminology which refers to the Texas State Plane Coordinate System, South Central Zone (NAD27), in which the directions are Lambert grid bearings and the distances are surface level horizontal lengths, (S.F. = 0.9998759575) as follows:

COMMENCING at a set 5/8" iron rod set with cap marking the Southeasterly corner of the remainder of a called 963.850 acre tract described in deed to Celanese Corporation, as recorded in Clerk's File No. D789836, R.P.R.H.C.T. located at Texas State Plane Coordinate X=3,221,323.29 and Y=13,795,342.55 from which a set 5/8" iron rod with cap bears North 27°32'59" West, a distance of 1346.34 feet at X=3,220,700.64 and Y=13,796,536.09;

THENCE North 62°49'44" West, a distance of 525.88 feet to a 5/8" iron rod with cap set for the **POINT OF BEGINNING** of the herein described tract, being at position X=3,220,855.49 and Y=13,795,582.66;

THENCE South 87°31'29" West, along the South line of said called 0.052 acre tract, a distance of 65.00 feet to a 5/8" iron rod with cap set for corner;

THENCE North 02°28'31" West, along the West line of said called 0.052 acre tract, a distance of 35.00 feet to a 5/8" iron rod with cap set for corner;

THENCE North 87°31'29" East, along the North line of said called 0.052 acre tract, a distance of 65.00 feet to a 5/8" iron rod with cap set for corner;

THENCE South 02°28'31" East, along the East line of said called 0.052 acre tract, a distance of 35.00 feet to the **POINT OF BEGINNING** and containing 0.052 acres of land, more or less.

**DOW LEASE TRACT 3 – ACRYLATES TANK FARM
2.411 ACRE TRACT**

FEDERAL TRADE COMMISSION DECISIONS
VOLUME 147

Decision and Order

**GEORGE B. MCKINSTRY, ABSTRACT 47
HARRIS COUNTY, TEXAS
PAGE 1 OF 2**

ALL THAT CERTAIN 2.411 ACRE TRACT of land lying and situated in the George B. McKinstry Survey, Abstract 47, Harris County, Texas, being all that certain called 2.411 acre tract of land, described Memorandum of Ground Lease between Celanese LTD and The Dow Chemical Company per instrument recorded in Clerk's File No. X382270 of the Real Property Records of Harris County, Texas (R.P.R.H.C.T.), and being located in The Dow Chemical Company Celanese plant site, said 2.411 acre tract hereby conveyed being more particularly described by metes and bounds, using survey terminology which refers to the Texas State Plane Coordinate System, South Central Zone (NAD27), in which the directions are Lambert grid bearings and the distances are surface level horizontal lengths, (S.F. = 0.9998759575) as follows:

COMMENCING at a set 5/8" iron rod set with cap marking the Southeasterly corner of the remainder of a called 963.850 acre tract described in deed to Celanese Corporation, as recorded in Clerk's File No. D789836, R.P.R.H.C.T. located at Texas State Plane Coordinate X=3,221,323.29 and Y=13,795,342.55 from which a set 5/8" iron rod with cap bears North 27°32'59" West, a distance of 1346.34 feet at X=3,220,700.64 and Y=13,796,536.09;

THENCE North 84°31'26" West, a distance of 557.40 feet to a 5/8" iron rod with cap set for the **POINT OF BEGINNING** of the herein described tract, being at position X=3,220,768.49 and Y=13,795,395.73;

THENCE South 87°31'29" West, along the South line of said called 2.411 acre tract, distance of 110.00 feet to a "X" in concrete set for corner;

THENCE South 02°28'31" East, along the East line of said called 2.411 acre tract, a distance of 37.00 feet to a "X" in concrete set for corner;

THENCE South 87°31'29" West, along the South line of said called 2.411 acre tract, a distance of 269.00 feet to a P.K. nail set for corner;

THENCE North 02°28'31" West, along the West line of said called 2.411 acre tract, a distance of 192.00 feet to a P.K. nail set for corner;

THENCE North 87°31'29" East, along the North line of said called 2.411 acre tract, a distance of 59.00 feet to a P.K. nail set for corner;

THENCE North 02°28'31" West, along the West line of said called 2.411 acre tract, a distance of 68.00 feet to a point for corner;

THENCE South 87°31'29" West, along the North line of said called 2.411 acre tract, a distance of 59.00 feet to a bridge spike set for corner;

Decision and Order

**DOW LEASE TRACT 3 – ACRYLATES TANK FARM
2.411 ACRE TRACT
GEORGE B. MCKINSTRY, ABSTRACT 47
HARRIS COUNTY, TEXAS
PAGE 2 OF 2**

THENCE North 02°28'31" West, along the West line of said called 2.411 acre tract, a distance of 90.00 feet to a 5/8" iron rod with cap set for corner;

THENCE North 87°31'29" East, along the North line of said called 2.411 acre tract, a distance of 232.00 feet to a 5/8" iron rod with cap set for corner;

THENCE South 02°28'31" East, along the East line of said called 2.411 acre tract, a distance of 133.00 feet to a bridge spike set for corner;

THENCE North 87°31'29" East, along the North line of said called 2.411 acre tract, a distance of 147.00 feet to an "X" in concrete set for corner;

THENCE South 02°28'31" East, along the East line of said called 2.411 acre tract, a distance of 180.00 feet to the **POINT OF BEGINNING** and containing 2.411 acres or land, more or less.

**TRACT 4 – ACRYLATES TANK FARM
1.581 ACRE TRACT**

FEDERAL TRADE COMMISSION DECISIONS
VOLUME 147

Decision and Order

**GEORGE B. MCKINSTRY, ABSTRACT 47
HARRIS COUNTY, TEXAS
PAGE 1 OF 1**

ALL THAT CERTAIN 1.581 ACRE TRACT of land lying and situated in the George B. McKinstry Survey, Abstract 47, Harris County, Texas, being all that certain called 1.581 acre tract of land, described Memorandum of Ground Lease between Celanese LTD and The Dow Chemical Company per instrument recorded in Clerk's File No. X382270 of the Real Property Records of Harris County, Texas (R.P.R.H.C.T.), and being located in The Dow Chemical Company Celanese plant site, said 1.581 acre tract hereby conveyed being more particularly described by metes and bounds, using survey terminology which refers to the Texas State Plane Coordinate System, South Central Zone (NAD27), in which the directions are Lambert grid bearings and the distances are surface level horizontal lengths, (S.F. = 0.9998759575) as follows:

COMMENCING at a set 5/8" iron rod set with cap marking the Southeasterly corner of the remainder of a called 963.850 acre tract described in deed to Celanese Corporation, as recorded in Clerk's File No. D789836, R.P.R.H.C.T. located at Texas State Plane Coordinate $X=3,221,323.29$ and $Y=13,795,342.55$ from which a set 5/8" iron rod with cap bears North $27^{\circ}32'59''$ West, a distance of 1346.34 feet at $X=3,220,700.64$ and $Y=13,796,536.09$;

THENCE North $61^{\circ}43'48''$ West, a distance of 840.13 feet to a 5/8" iron rod with cap set for the **POINT OF BEGINNING** of the herein described tract, being at position $X=3,220,583.45$ and $Y=13,795,740.41$;

THENCE South $87^{\circ}31'29''$ West, along the South line of said called 1.581 acre tract, a distance of 194.00 feet to 5/8" iron rod with cap set for corner;

THENCE North $02^{\circ}28'31''$ West, along the West line of said called 1.581 acre tract, a distance of 355.00 feet to a bridge spike set for corner;

THENCE North $87^{\circ}31'29''$ East, along the North line of said called 1.581 acre tract, a distance of 194.00 feet to a bridge spike set for corner;

THENCE South $02^{\circ}28'31''$ East, along the East line of said called 1.581 acre tract, a distance of 355.00 feet to the **POINT OF BEGINNING** and containing 1.581 acres of land, more or less.

**TRACT 5 – ACRYLATES TANK FARM
0.239 ACRE TRACT
GEORGE B. MCKINSTRY, ABSTRACT 47**

Decision and Order

**HARRIS COUNTY, TEXAS
PAGE 1 OF 1**

ALL THAT CERTAIN 0.239 ACRE TRACT of land lying and situated in the George B. McKinstry Survey, Abstract 47, Harris County, Texas, being all that certain called 0.239 acre tract of land, described Memorandum of Ground Lease between Celanese LTD and The Dow Chemical Company per instrument recorded in Clerk's File No. X382270 of the Real Property Records of Harris County, Texas (R.P.R.H.C.T.), and being located in The Dow Chemical Company Celanese plant site, said 0.239 acre tract hereby conveyed being more particularly described by metes and bounds, using survey terminology which refers to the Texas State Plane Coordinate System, South Central Zone (NAD27), in which the directions are Lambert grid bearings and the distances are surface level horizontal lengths, (S.F. = 0.9998759575) as follows:

COMMENCING at a set 5/8" iron rod set with cap marking the Southeasterly corner of the remainder of a called 963.850 acre tract described in deed to Celanese Corporation, as recorded in Clerk's File No. D789836, R.P.R.H.C.T. located at Texas State Plane Coordinate X=3,221,323.29 and Y=13,795,342.55 from which a set 5/8" iron rod with cap bears North 27°32'59" West, a distance of 1346.34 feet at X=3,220,700.64 and Y=13,796,536.09;

THENCE North 89°40'52" West, a distance of 1233.47 feet to a 5/8" iron rod with cap set for the **POINT OF BEGINNING** of the herein described tract, being at position X=3,220,089.98 and Y=13,795,349.41;

THENCE South 87°31'29" West, along the South line of said called 0.239 acre tract, a distance of 65.00 feet to "X" in concrete set for corner;

THENCE North 02°28'31" West, along the West line of said called 0.239 acre tract, a distance of 160.00 feet to an "X" in concrete set for corner;

THENCE North 87°31'29" East, along the North line of said called 0.239 acre tract, a distance of 65.00 feet to a 5/8" iron rod with cap set for corner;

THENCE South 02°28'31" East, along the East line of said called 0.239 acre tract, a distance of 160.00 feet to the **POINT OF BEGINNING** and containing 0.239 acres of land more or less.

**TRACT 6 – ACRYLATES ACID COMPLEX
16.908 ACRE TRACT**

Decision and Order

**GEORGE B. MCKINSTRY, ABSTRACT 47
HARRIS COUNTY, TEXAS
PAGE 1 OF 2**

ALL THAT CERTAIN 16.908 ACRE TRACT of land lying and situated in the George B. McKinstry Survey, Abstract 47, Harris County, Texas, being all that certain called 16.908 acre tract of land, described Memorandum of Ground Lease between Celanese LTD and The Dow Chemical Company per instrument recorded in Clerk's File No. X382270 of the Real Property Records of Harris County, Texas (R.P.R.H.C.T.), and being located in The Dow Chemical Company Celanese plant site, said 16.908 acre tract hereby conveyed being more particularly described by metes and bounds, using survey terminology which refers to the Texas State Plane Coordinate System, South Central Zone (NAD27), in which the directions are Lambert grid bearings and the distances are surface level horizontal lengths, (S.F. = 0.9998759575) as follows:

COMMENCING at a set 5/8" iron rod set with cap marking the Southeasterly corner of the remainder of a called 963.850 acre tract described in deed to Celanese Corporation, as recorded in Clerk's File No. D789836, R.P.R.H.C.T. located at Texas State Plane Coordinate X=3,221,323.29 and Y=13,795,342.55 from which a set 5/8" iron rod with cap bears North 27°32'59" West, a distance of 1346.34 feet at X=3,220,700.64 and Y=13,796,536.09;

THENCE South 79°31'30" West, a distance of 1436.10 feet to a "X" in concrete set for the **POINT OF BEGINNING** of the herein described tract, being at position X=3,219,911.29 and Y=13,795,081.49;

THENCE South 87°31'29" West, along the South line of said called 16.908 acre tract, a distance of 919.93 feet to a P.K. nail set for corner;

THENCE North 02°28'31" West, along the West line of said called 16.908 acre tract, a distance of 1100.00 feet to a bridge spike set for corner;

THENCE North 87°31'29" East, along the North line of said called 16.908 acre tract, a distance of 140.00 feet to a bridge spike set for corner;

THENCE North 02°28'31" West, along the West line of said called 16.908 acre tract, a distance of 110.00 feet to "X" in concrete set for corner;

THENCE North 87°31'29" East, along the North line of said called 16.908 acre tract, a distance of 290.00 feet to Celanese Plant Monument No. 5 for corner;;

THENCE South 02°28'31" East, along the East line of said called 16.908 acre tract, a distance of 600.00 feet to a P.K. nail set for corner;

THENCE North 87°31'29" East, along the North line of said called 16.908 acre tract, a distance of 307.88 feet to 5/8" iron rod set for corner;'

Decision and Order

FEDERAL TRADE COMMISSION DECISIONS
VOLUME 147

Decision and Order

**TRACT 6 – ACRYLATES ACID COMPLEX
16.908 ACRE TRACT
GEORGE B. MCKINSTRY, ABSTRACT 47
HARRIS COUNTY, TEXAS
PAGE 2 OF 2**

THENCE South 02°28'31" East, along the East line of said called 16.908 acre tract, a distance of 369.30 feet to a P.K. nail set for corner;

THENCE North 87°31'29" East, along the North line of said called 16.908 acre tract, a distance of 182.05 feet to a P.K. nail set for corner

THENCE South 02°28'31" East, along the East line of said called 16.908 acre tract, a distance of 240.70 feet to the **POINT OF BEGINNING** and containing 16.908 acres or land, more or less.

Decision and Order

**TRACT 7 –PROPYLENE VAPORIZER
0.801 ACRE TRACT
GEORGE B. MCKINSTRY, ABSTRACT 47
HARRIS COUNTY, TEXAS**

ALL THAT CERTAIN 0.801 ACRE TRACT of land lying and situated in the George B. McKinstry Survey, Abstract 47, Harris County, Texas, being out of and portion of a called 963.850 acre tract described in deed to Celanese Corporation, as recorded in Clerk's File No. D789836, of the Real Property Records of Harris County, Texas (R.P.R.H.C.T.), and being located in the Dow Chemical Company Celanese Plant Site, said 0.801 acre tract hereby conveyed being more particularly described by metes and bounds, using survey terminology which refers to the Texas State Plane Coordinate System, South Central Zone (NAD27), in which the directions are Lambert grid bearings and the distances are surface level horizontal lengths, (S.F. = 0.9998759575) as follows:

COMMENCING at a set 5/8" iron rod set with cap marking the southeasterly corner said called 963.850 acre tract located at Texas State Plane Coordinate X=3,221,323.29 and Y=13,795,342.55 from which a set 5/8" iron rod with cap bears North 27°32'59" West, a distance of 1346.34 feet at X=3,220,700.64 and Y=13,796,536.09;

THENCE North 66°01'56" West, a distance of 2470.51 feet to column found for the **POINT OF BEGINNING** of the herein described tract, being at X=3,219,066.06 and Y=13,796,346.00;

THENCE South 87°31'28" West, a distance of 59.97 feet to a column found for corner;

THENCE North 02°28'35" West, a distance of 271.29 feet to bridge spike set for corner;

THENCE North 87°31'21" East, a distance of 28.69 feet to a bridge spike set for corner;

THENCE North 02°28'32" West, a distance of 100.03 feet to a bridge spike set for corner;

THENCE North 87°31'17" East, a distance of 101.29 feet to a bridge spike set for corner;

THENCE South 02°28'34" East, a distance of 221.31 feet to a bridge spike set for corner;

FEDERAL TRADE COMMISSION DECISIONS
VOLUME 147

Decision and Order

THENCE South 87°31'08" West, a distance of 70.00 feet to a bridge spike set for corner;

THENCE South 02°28'35" East, a distance of 150.00 feet to the **POINT OF BEGINNING** and containing 0.801 acres or land, more or less.

Decision and Order

Exhibit 4**Exhibit 4****Description of Real Property in St. Charles, LA****LEGAL DESCRIPTION**

The two (2) certain tracts or parcels of land, together with all the buildings and improvements thereon, located in Sections 15, 16 and 17, TT2S, R20E, St. Charles Parish, Louisiana, being designated as **Lease Sites "Q" and "R"** on a Survey entitled, "Map Showing ALTA/ACSM Property, located in Sections 15, 16 & 17, T-12-S, R-20-E, S.E.D., West of the Mississippi River, St. Charles Parish, Louisiana for Union Carbide Corporation, Rohm & Haas (ALPEN A 2) Project", made by David L. Patterson, R.L.P.S., dated November 5, 2008, the said Lease Sites "Q" and "R" being more particularly described thereon as follows:

LEASE SITE "Q"

A certain tract or parcel of ground, designated as "LEASE SITE "Q", containing 14.07 acres or 612,643 square feet, being situated on the property of Union Carbide Corporation, located in Sections 16 & 17, Township 12 South, Range 20 East, Southeast Land District, West of the Mississippi River, St. Charles Parish, Louisiana, limits of said Lease Site being more particularly described as follows:

Commence from Union Carbide Corporation Plant Monument "SCW BM 1991", having a State Plane Coordinate of X = 3,560,294.77, Y = 533,776.00, Louisiana South Zone, NAD 83; thence N 72°57'17" W a distance of 471.55 feet to a point and turn; thence N 17°02'43" E a distance of 7194.76 feet to a point and turn; thence N 72°57'17" W a distance of 329.17 feet to the POINT OF BEGINNING; thence N 72°57'17" W a distance of 143.00 feet to a point and turn; thence N 17°02'43" E a distance of 90.00 feet to a point and turn; thence N 72°57'17" W a distance of 567.00 feet to a point and turn; thence S 17°02'43" W a distance of 635.00 feet to a point and turn; thence N 72°57'17" W a distance of 200.00 feet to a point and turn; thence N 17°02'43" E a distance of 154.00 feet to a point and turn; thence N 10°53'18" E a distance of 345.00 feet to a point and turn; thence N 17°02'43" E a distance of 400.00 feet to a point and turn; thence S 72°57'17" E a distance of 357.00 feet to a point and turn; thence N 17°02'43" E a distance of 363.00 feet to a point and turn; thence S 72°57'17" E a distance of 590.00 feet to a point and turn; thence S 17°02'43" W a distance of 715.00 feet to the POINT OF BEGINNING, containing 14.09 acres or 613,605 square feet.

A Tergitol tank located on the following portion of Lease site "Q", with rights of access to the tank being retained by Union Carbide Corporation:

A certain tract or parcel of ground, being a portion of the above described tract or parcel, said tract being circular, having a centerline, State Plane Coordinate of X = 3,560,914.67, Y = 541,079.60, Louisiana South Zone, NAD 83, and a radius of 17.50 feet, containing 0.02 acres or 962 square feet.

Decision and Order

LEASE SITE "R"

A certain tract or parcel of ground, designated as "LEASE SITE "R", being situated on the property of Union Carbide Corporation, located in Section 15, Township 12 south, Range 20 East, Southeast Land District, West of the Mississippi River, St. Charles Parish, Louisiana, limits of said Lease Site being more particularly described as follows:

Commence from Union Carbide Corporation Plant Monument "SCW BM 1991", having a State Plane Coordinate of X = 3,560,294.77, Y = 533,776.00, Louisiana South Zone, NAD 83; thence N 72°57'17" W a distance of 471.55 feet to a point and turn; thence N 17°02'43" E a distance of 7909.77 feet to a point and turn; thence S 72°57'17" E a distance of 1135.57 feet to a point and turn; thence N 17°02'43" E a distance of 1134.34 feet to the POINT OF BEGINNING; thence N 17°02'43" E a distance of 150.00 feet to a point and turn; thence S 72°57'17" E a distance of 200.00 feet to a point and turn; thence S 17°02'43" W a distance of 150.00 feet to a point and turn; thence N 72°57'17" W a distance of 200.00 feet to the POINT OF BEGINNING, containing 0.69 acres or 30,000 square feet.

Decision and Order

Exhibit 5

Confidential Exhibit 5

Description of Real Property in Torrance, CA

PARCEL 1 OF PARCEL MAP NO. 19096, IN THE CITY OF TORRANCE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 248 PAGE 50 OF THE LOS ANGELES COUNTY RECORDER'S OFFICE

EXCEPT ALL PETROLEUM, OIL, ASPHALTUM, GAS AND OTHER HYDROCARBON SUBSTANCES, INCLUDING HELIUM, WITHIN OR UNDERLYING THE SAID LAND, TOGETHER WITH THE EXCLUSIVE RIGHT AT ALL TIME TO REMOVE THE SAME THEREFROM AND THEREUNDER BY FACILITIES LOCATED ON ADJOINING OR ADJACENT PROPERTY AND INCLUDING THE RIGHT TO REMOVE SAID SUBSTANCES THEREFROM THE THEREUNDER BY DRILLING INTO THAT PORTION OF SAID LAND LYING BELOW THE UPPER 500 FEET THEREOF, BUT WITHOUT ANY RIGHT WHATSOEVER TO ENTER UPON OR TO USE THE SURFACE OF SAID LAND OR TO DRILL WELLS OR TO ERECT ANY STRUCTURES THEREON FOR THE PURPOSE OF REMOVING SAID SUBSTANCES, OR ANY OF THEM, AS RESERVED BY GENERAL PETROLEUM CORPORATION, A CORPORATION, IN DEED RECORDED SEPTEMBER 8, 1952 AS DOCUMENT NO. 863, OFFICIAL RECORDS.

Analysis to Aid Public Comment

**ANALYSIS OF CONSENT ORDERS TO AID PUBLIC
COMMENT****I. Introduction**

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from Dow Chemical Company (“Dow” or “Respondent”) to remedy the anticompetitive effects stemming from Dow’s proposed acquisition of Rohm & Haas Company (“Rohm & Haas”). Under the terms of the Consent Agreement, Dow is required to divest to a Commission-approved buyer significant portions of its acrylic monomer, acrylic latex polymer, and hollow sphere particle businesses and to license certain intellectual property related to the production of the products in these businesses. Dow is also required to institute procedures to ensure that the other businesses it acquired from Rohm & Haas do not have access directly or indirectly to competitively sensitive non-public information regarding the divested assets.

The proposed Consent Agreement has been placed on the public record for thirty (30) days to receive comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will review the Consent Agreement and comments received and decide whether to withdraw from the proposed Consent Agreement, modify it, or make final the Consent Agreement’s proposed Order.

On July 10, 2008, Dow announced a definitive agreement to purchase all of the outstanding shares of Rohm and Haas in a transaction valued at \$18.8 billion, including \$3.5 billion in debt assumption. The Commission’s complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by lessening competition in the North American markets for the research, development, manufacture and sale of glacial acrylic acid, butyl acrylate, ethyl acrylate, acrylic latex polymers for traffic paint, and

Analysis to Aid Public Comment

hollow sphere particles. The Consent Agreement will remedy the alleged violation by divesting significant acrylic monomer and acrylic polymer research, development, production and manufacturing assets and related intellectual property to a third party thereby replacing the lost competition that would result from the acquisition in these markets.

II. The Proposed Complaint

According to the Commission's proposed Complaint, the relevant lines of commerce in which to analyze the effects of the proposed acquisition are the markets for the research, development, manufacture, and sale of certain acrylic monomers, including glacial acrylic acid, butyl acrylate and ethyl acrylate, as well as acrylic latex polymer for traffic paint and hollow sphere particles.

All of the acrylic monomer relevant products are made from crude acrylic acid. Glacial acrylic acid is purified crude acrylic acid and is used to make super absorbent polymers for personal care and hygiene products. Butyl acrylate and ethyl acrylate are acrylate esters formed from reacting crude acrylic acid with butanol and ethanol, respectively. These acrylate esters are then used to produce acrylic latex polymers used in paints, architectural coatings, and pressure sensitive adhesives.

Acrylic latex polymer for traffic paint and hollow sphere particles are unique types of polymers. Acrylic latex polymer for traffic paint is a quick drying polymer used to mark traffic lines on highways. Hollow sphere particles are a type of specialty polymer that is used in the manufacture of coated paper to provide gloss, brightness, and opacity.

The Complaint alleges that the relevant geographic market in which to analyze the anticompetitive effects of the proposed acquisition for all of the relevant markets is no larger than North America. Most monomers are difficult to ship because of their volatility. While there are some minor imports of acrylic monomers, they are not a meaningful constraint on the prices of these products

Analysis to Aid Public Comment

in North America. Acrylic polymers, such as those used for traffic paint and hollow sphere particles, are also difficult and expensive to ship long distances. Shipping these polymers, which must be immersed in water for transport, is cost-prohibitive because of the substantial added water weight relative to the value of the polymer itself.

The Complaint further alleges that all of the relevant markets are highly concentrated. For the acrylic monomer relevant markets, the proposed transaction would reduce the number of significant players in those markets from four to three with the combined company having significant market shares in each of the markets. The combined entity would have a market share exceeding 40% in glacial acrylic acid, a market share approaching 90% in the market for butyl acrylate, and a market share approaching 80% in ethyl acrylate. The markets for acrylic polymer for traffic paint and hollow sphere particles are even more highly concentrated with Dow and Rohm & Haas as the only two suppliers. As a result, the proposed acquisition would result in a merger to monopoly in those markets.

Finally, the Complaint alleges that the proposed acquisition would reduce competition in the relevant markets by eliminating direct and substantial competition between Dow and Rohm & Haas, by increasing Dow's ability to exercise market power unilaterally in the relevant markets, and/or by increasing the likelihood of coordinated interaction in the markets for glacial acrylic acid, butyl acrylate, and ethyl acrylate. The Complaint further alleges that potential new entry or fringe expansion would not prevent the anticompetitive effects described in the Complaint.

III. Terms of the Proposed Order

Under the proposed Consent Agreement, Dow will divest to a single Commission-approved Acquirer a significant part of its acrylic monomer and polymer research and development and production assets including: its acrylic monomer production facility in Clear Lake, Texas; its acrylic polymer production assets located

Analysis to Aid Public Comment

in St. Charles, Louisiana; its acrylic polymer production facility located in Alsip, Illinois; its acrylic polymer production facility located in Torrance, California; its acrylic monomer research and development group located in South Charleston, West Virginia; its acrylic latex polymer research and development group located in Cary, North Carolina, and other assets related to such businesses. The divestiture would also include the technology that is primarily related to these businesses, and further provides that Dow license to the Acquirer any intellectual property not primarily related to the divested business that Dow nonetheless uses in those businesses, and requires Dow to divest the business contracts of the divested businesses, and obtain the consents that are necessary to assign those contracts to the Acquirer. The divestiture to a single acquirer of both acrylic monomer and acrylic polymer research, development, manufacture and production assets best replicates the pre-acquisition market structure in which each of the significant acrylic monomer firms was forward-integrated into the supply of acrylic polymers.

In order to ensure the transition of the divested assets and the viability of the Acquirer, the Consent Agreement requires Dow to provide certain services. First, Dow is required to continue to provide certain input products to the Acquirer that Dow provided previously to the divested assets. Second, the Consent Agreement requires Dow to provide transition services for a short period of time to accomplish the transition of the divested assets to the Acquirer. Finally, the Consent Agreement requires that Dow continue to provide site services to the Acquirer in connection with the acrylic polymer production assets located in St. Charles, Louisiana, where the Acquirer will operate a business unit that, although largely separate, is located on the grounds of a larger Dow facility.

The Consent Agreement remedies the competitive concerns in the markets for hollow sphere particles and acrylic latex polymer for traffic paint by requiring Dow to divest the intellectual property that is primarily related to these products and to license certain other intellectual property used for these products. In addition, Dow is required to supply hollow sphere particles and acrylic latex polymer

Analysis to Aid Public Comment

for traffic paint to the Acquirer at its manufacturing cost, until such time as the Acquirer is able to develop its own manufacturing.

The Consent Agreement also requires Dow to institute procedures to ensure that it does not have access directly, or indirectly, to competitively sensitive non-public information obtained from the Divested Businesses and Facilities or to use any such competitively sensitive non-public information it already has in an anticompetitive manner.

The proposed Order gives the Commission the power to appoint an interim monitor to assure that Dow expeditiously complies with all of its obligations and performs all of its responsibilities as required by the Order. If Dow fails to sell the divested assets within the later of (1) 240 days after the Consent Agreement is accepted by the Commission for Public Comment and (2) 240 days after the Acquisition closes, the Order allows for the appointment of a Divestiture Trustee to divest the assets that are the subject of the proposed Order. In order to ensure that the Commission remains informed about the status of the proposed divestitures and the transfers of assets, the proposed Consent Agreement requires Dow to file reports with the Commission periodically until the divestitures and transfers are accomplished.

The purpose of this analysis is to facilitate public comment on the proposed Decision and Order. This analysis is not intended to constitute an official interpretation of the Consent Agreement and the proposed Decision and Order.