

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: William E. Kovacic, Chairman
Pamela Jones Harbour
Jon Leibowitz
J. Thomas Rosch

_____)
)
In the Matter of)
)
THE DOW CHEMICAL COMPANY,)
a corporation.)
) Docket No. C-4243
_____)

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 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.

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:*
 - 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.
- 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 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, 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;
 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.
- S. "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.
- T. "Hollow Sphere Particle Key Employees" means the persons listed on Confidential Appendix C of the Decision and Order.
- U. "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.
- V. "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;
 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;
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.

W. “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 confidentiality obligation with respect to the information.

X. “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.
- 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.
- 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.

- 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 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 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 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 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;
- (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.

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:

- 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 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.
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;

- 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 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 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;

- (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 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;
 - 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) 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 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;
 - 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 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.

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 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 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 (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.

Donald S. Clark
Secretary

SEAL:
ISSUED: January 23, 2009