

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

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

In the Matter of)
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 The Dow Chemical Company,) Docket No. C-4243
 a corporation.)
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DECISION AND ORDER

[Public Record Version]

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 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.

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.

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,
 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 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

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;
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;
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 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 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 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.
- 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
 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:
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.

- 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
 - 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.MM.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.

- 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.
- 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 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;
 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.

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

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.

CCC. “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.

DDD. “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.

- EEE. “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.
- FFF. “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.
- GGG. “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.
- HHH. “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 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.
- III. “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.

- JJJ. “Latex Polymers Retained Products Intellectual Property” means all Intellectual Property primarily related to the Latex Polymers Retained Products.
- KKK. “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) exclusive for Latex Polymers Retained Products Intellectual Property used in fields other than paper and paperboard.
- LLL. “Latex Traffic Paint Products” means Latex Polymers Products used for road or other pavement marking applications.
- MMM. “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.
- NNN. “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.
- OOO. “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 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.

PPP. "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.

QQQ. "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.

RRR. "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.

SSS. "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 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.SSS 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.

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

UUU. "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.

VVV. "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;

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.

- WWW. “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.
- XXX. “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.
- YYY. “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, 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;

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
- 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 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
 - (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 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 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 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,
 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 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;
 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,
 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 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, 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 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 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 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 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 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 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 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.
 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.

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.
- 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.

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 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, 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 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 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 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 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 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.

Donald S. Clark
Secretary

SEAL:
ISSUED: March 31, 2009

CONFIDENTIAL APPENDICES A-G

[Redacted From Public Record Version But Incorporated By Reference]