

ORIGINAL

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION



In the Matter of)
) **The Dow Chemical Company**
) **a corporation,**
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_____)

Docket No. C-4243
File No. 081-0214

**PETITION OF THE DOW CHEMICAL COMPANY FOR APPROVAL OF THE
PROPOSED DIVESTITURE OF THE HOLLOW SPHERE PARTICLE BUSINESS TO
OMNOVA**

Pursuant to Section 2.41(f) of the Federal Trade Commission (“Commission”) Rules of Practice and Procedure, 16 C.F.R. § 2.41(f), and Paragraph IV.A. of the Decision and Order contained in the Agreement Containing Consent Orders accepted for public comment in this matter (“Decision and Order”), The Dow Chemical Company (“Dow”) hereby petitions the Commission to approve (i) the divestiture of the Hollow Sphere Particle Business¹ to OMNOVA Solutions Inc. (“Omnova”) and (ii) the related agreements required by Paragraph IV.C. of the Decision and Order.

Background

On January 9, 2009, Dow and the Commission executed an Agreement Containing Consent Orders that included the Decision and Order and an Order to Hold Separate and Maintain Assets (collectively, the “Consent Agreement”) to settle the Commission’s charges related to Dow’s acquisition of Rohm and Haas Company (“R&H”). On January 23, 2009, the

¹ For capitalized terms not defined herein, please see the definitions in the Decision and Order.

Commission accepted the Consent Agreement for public comment. On April 1, 2009, Dow consummated its acquisition of R&H.² The proposed Consent Agreement received final approval from the Commission on April 9, 2009.

Dow desires to complete the proposed divestiture of the Hollow Sphere Particle Business to Omnova as soon as possible following Commission approval and the satisfaction (or waiver with Commission approval) of the closing conditions set forth in the agreement between Dow and Omnova. Prompt consummation will further the purposes of the Decision and Order and is in the interests of the Commission, the public, Omnova, and Dow because it will allow Omnova to move forward with its business plans for the competitive operation of the Hollow Sphere Particle Business. It will also allow Dow to fulfill its obligations under the Consent Agreement. Dow accordingly requests that the Commission promptly commence the period of public comment pursuant to Section 2.41(f)(2) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(2), limit the public comment period to the customary 30-day period, and grant this petition by approving the divestiture of the Hollow Sphere Particle Business to Omnova pursuant to the proposed agreements as soon as practicable after the close of the public comment period.

Request for Confidential Treatment

Because this petition and its attachments contain confidential and competitively sensitive business information relating to the divestiture of the Hollow Sphere Particle Business, Dow has redacted such confidential information from the public version of this petition and its attachments. The disclosure of this information would prejudice Dow and Omnova, cause harm to the ongoing competitiveness of the Hollow Sphere Particle Business, and impair Dow's ability

² After the merger, Rohm and Haas Company remained as a separate corporate entity that is a wholly-owned subsidiary of and included within The Dow Chemical Company.

to comply with its obligations under the Consent Agreement. Pursuant to Sections 2.41(f)(4) and 4.9(c) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(4) & 4.9(c), Dow requests, on its own behalf and on behalf of Omnova, that the confidential version of this petition and its attachments and the information contained herein be accorded confidential treatment. The confidential version of this petition should be accorded such confidential treatment under 5 U.S.C. § 552 and Section 4.10(a)(2) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 4.10(a)(2). The confidential version of this petition is also exempt from disclosure under Exemptions 4, 7(A), 7(B), and 7(C) of the Freedom of Information Act, 5 U.S.C. §§ 552(b)(4), 552(b)(7)(A), 552(b)(7)(B), & 552(b)(7)(C), and the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a(h).

I. Omnova Will be a Strong and Effective Competitor

The Bureau of Competition's 1999 "Study of the Commission's Divestiture Process" (the "Divestiture Study") and the 2003 "Statement of the Federal Trade Commission's Bureau of Competition on Negotiating Merger Remedies" (the "Merger Remedies Statement") discuss a number of factors that help to identify a promising divestiture buyer. These factors demonstrate that Omnova will be an excellent buyer of the Hollow Sphere Particle Business, well suited for approval by the Commission.

A. Omnova is a well-established international chemical company with extensive experience supplying latex to the paper industry.

The Divestiture Study cited the buyer's experience in the relevant industry and knowledge of the assets to be purchased as key to a successful divestiture. "*The most successful buyers appear to be the ones that know the most about what they are buying.*"³ The Merger

³ Divestiture Study, p. 34.

Remedies Statement requires that the buyer have “*the competitive ability to maintain or restore competition in the market.*”⁴

In October 1999, Omnova was spunoff from GenCorp, Inc., and became a publicly traded company traded under the symbol OMN on the New York Stock Exchange. Omnova is headquartered in Fairlawn, Ohio and operates 16 manufacturing, technical, and other facilities in North America, Europe, and Asia. In 2008, Omnova’s revenues were approximately \$870 million. A copy of Omnova’s 2008 Annual Report is provided as Exhibit 1.

Omnova has two business segments, Performance Chemicals and Decorative Products. Performance Chemicals, which comprises 60% of Omnova’s sales, includes a broad range of emulsion polymers and specialty chemicals based on styrene butadiene (“SB”), styrene butadiene acrylonitrile, styrene butadiene vinyl pyridine, polyvinyl acetate, acrylic, styrene acrylic, vinyl acrylic, glyoxal and fluorochemical chemistries. The Performance Chemicals segment serves customers in numerous specialty applications, including paper, carpet, nonwovens, construction, adhesives, tape, tire cord, floor polish, textiles, graphic arts, and plastic parts. The Decorative Products segment contributes 40% of Omnova’s sales and includes commercial wallcoverings, decorative laminates, vinyl and urethane upholstery for a number of applications, and performance films.

The Merger Remedies Statement requires that the buyer must “*have the experience, commitment, and incentives*” necessary to achieve the purposes of the Commission’s order.⁵ “*These attributed can be shown, for example, by reference to the buyer’s participation in related product markets...*”⁶ Accordingly, particularly relevant for the divestiture of the Hollow

⁴ Merger Remedies Statement, p. 6.

⁵ Merger Remedies Statement, p. 11.

⁶ Merger Remedies Statement, p. 11.

Sphere Particle Business to Omnova is Omnova's experience supplying the paper industry with latexes. Omnova is North America's second largest producer of SB latex, which is primarily sold into paper and carpet applications. Paper coatings are the single largest use of SB latex, constituting 70-75% of demand worldwide.⁷ Omnova operates three SB latex facilities in the U.S., at Calhoun, Georgia, Green Bay, Wisconsin, and Mogadore, Ohio, with respective capacities of 45,000, 64,000, and 115,000 metric tons of dry latex.⁸ The Green Bay and Mogadore plants in particular focus on the supply of SB latex to the paper industry. Omnova operates a research and development facility in Akron, Ohio, that focuses on paper coatings and includes a pilot coater for product testing and also operates technical labs.

Since 2002, Omnova has sold SB latex through the RohmNova joint venture between R&H and Omnova. RohmNova is a sales and marketing joint venture allowing customers to purchase a variety of latexes from a single supplier. Omnova sells SB latex through the joint venture and R&H sells through the joint venture, among other products, acrylic latexes and hollow sphere particles. As a result of its RohmNova experience, Omnova has familiarity with hollow sphere particles for paper applications. Omnova employees seconded to RohmNova sell R&H hollow sphere particle products alongside Omnova's SB latex products and have developed an understanding of customer demands.⁹

Further, through the divestiture due diligence and negotiations, Omnova has become familiar with the Hollow Sphere Particle Business and has the information necessary to assess its business potential and to develop a realistic business plan. Dow and Omnova first discussed a possible sale of the Hollow Sphere Particle Business to Omnova in the fall of 2008.

⁷ SRI Consulting Report, "Styrene-Butadiene Latexes," December 2008, p. 9.

⁸ SRI Consulting Report, "Styrene-Butadiene Latexes," December 2008, p. 18-19.

⁹ As discussed below, the RohmNova joint venture will terminate upon the completion of the divestiture of the Hollow Sphere Particle Business to Omnova.

During the ensuing months, Omnova obtained and assessed information about the Hollow Sphere Particle Business. Dow has endeavored to provide Omnova with access to all of the necessary information about the Hollow Sphere Particle Business that Omnova requested. Early in the course of negotiations, Dow provided Omnova with an offering memorandum detailing the Hollow Sphere Particle Business and engaged in with follow-up discussions to clarify key equipment requirements for preliminary capital estimates. On June 17, 2009, Dow gave Omnova a management presentation about the Hollow Sphere Particle Business. On July 31, 2009, specified employees and representatives of Omnova were given access to documentary information about the Business through an electronic data room. In addition, during the course of negotiations there were telephonic due diligence discussions involving key marketing and technical experts from Dow and Omnova. On August 6, 2009, a technical due diligence team from Omnova visited limited portions of Dow's Hollow Sphere Particle Products manufacturing facility in Midland, Michigan and engaged in due diligence discussions with Dow manufacturing and technical experts.

B. The acquisition of the Hollow Sphere Particle Business fits into Omnova's strategic plan and Omnova's commitment to supplying the paper industry with latex.

The Merger Remedies Statement requires that the buyer have "*the experience, commitment, and incentives necessary*" to achieve the purposes of the Commission's order.¹⁰ The Divestiture Study also emphasizes the importance of the buyer's commitment, *i.e.*, substantial investment in continuing in the relevant business.¹¹

As a long-time supplier of the paper industry, Omnova has demonstrated a commitment to supply these customers with paper latexes. [REDACTED]

¹⁰ Merger Remedies Statement.
¹¹ Divestiture Study, p. 34-35.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

C. The acquisition of the Hollow Sphere Particle Business will restore competition to the affected market listed in the Commission's Complaint.

- 1. Divesting to Omnova, an established international chemical company and paper latex supplier, maximizes the competitiveness of the Hollow Sphere Particle Business in the North American market.**

As discussed above, Omnova is North America's second largest manufacturer of SB latex for the paper industry. Omnova is an ideal buyer for the Hollow Sphere Particle Business, because Omnova has experience and familiarity with paper latex products (including hollow sphere particle products) and has ongoing relationships with paper latex customers.

- 2. Upon the consummation of Omnova's acquisition of the Hollow Sphere Particle Business, competition will be restored between the legacy Dow hollow sphere particles and the legacy R&H hollow sphere particles, as was the case before Dow acquired R&H.**

Prior to Dow's acquisition of R&H, both Dow and R&H produced hollow sphere particles in North America. This competitive environment will be restored post-divestiture, when Dow (with the legacy R&H product) and Omnova (with the legacy Dow product) will each supply hollow sphere particles.

[REDACTED]

[REDACTED] In connection with the divestiture of the Hollow Sphere Particle Business, Dow and Omnova will, at closing, enter into a JV Termination Agreement, Exhibit G to the Asset Purchase Agreement between Dow and Omnova, terminating the RohmNova joint venture. The parties have agreed upon the form of this agreement and will execute the agreement at the closing of the divestiture of the Hollow Sphere Particle Business.

[REDACTED]

D. Omnova has the financial capability to successfully complete the transaction and invest in the Hollow Sphere Particle Business going forward.

The Merger Remedies Statement requires that the proposed buyer have “*the financial capability and incentives to acquire and operate the package of assets...*”¹²

Omnova is a publicly traded company with its common shares listed on the New York Stock Exchange under the symbol OMN. For the fiscal year ended November 30, 2008, Omnova had revenues of approximately \$870 million.¹³ Of this, approximately \$522 million resulted from Performance Chemicals and approximately \$348 million from Decorative Products.¹⁴

Omnova has recently taken steps to improve its costs and capital structure. As a result of these efforts, in 2008, Omnova’s operating costs were its lowest ever.¹⁵ Omnova has

¹² Merger Remedies Statement, p. 6.

¹³ Omnova Solutions Inc., Annual Report, p. 6, attached as Exhibit 1.

¹⁴ Omnova Solutions Inc., Annual Report, p. 6, attached as Exhibit 1.

¹⁵ Omnova Solutions Inc., Annual Report, p. 1, attached as Exhibit 1.

also made changes to its credit facilities, including a 2007 refinancing.¹⁶ At the end of Omnova's most recent fiscal year, its weighed average cost of borrowing was just 4.8%.¹⁷

II. The Transaction Agreements Satisfy the Requirements of the Decision and Order to Divest the Hollow Sphere Particle Business

Paragraph IV. of the Decision and Order requires Dow to divest the Hollow Sphere Particle Business. Pursuant to this requirement, Dow has diligently sought a buyer that would be acceptable to the Commission and has entered into an appropriate transaction agreement well in advance of the deadline for completing the required divestitures.

On September 9, 2009, Dow entered into an Asset Purchase Agreement ("APA") with OMNOVA Solutions Inc., which requires Dow to sell the Hollow Sphere Particle Business to Omnova.¹⁸ Exhibit 3 provides a complete list of the ancillary agreements attached as Exhibits to the APA, which will be entered into upon the consummation of the sale.

1. Divestiture of the Hollow Sphere Particle Business. Paragraph IV.A. of the Decision and Order requires that Dow divest the Hollow Sphere Particle Business absolutely and in good faith to an acquirer 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.

Section 2.01 of the APA provides for the transfer to Omnova of the assets comprising the Hollow Sphere Particle Business. In particular, Section 2.01 defines the assets to be purchased in the transaction (the "Purchased Assets") to include the following:

- Contracts. Section 2.01(a) includes in the Purchased Assets all contracts in effect as of the Effective Date of Divestiture primarily relating to or Necessary for the

¹⁶ Omnova Solutions Inc., Annual Report, p. 2, attached as Exhibit 1.

¹⁷ Omnova Solutions Inc., Annual Report, p. 3, attached as Exhibit 1.

¹⁸ The APA is attached as Confidential Exhibit 2.

Hollow Sphere Particle Business and/or listed on Section 2.01(a) of the Seller Disclosure Schedule.

- Intellectual property rights. Section 2.01(c) includes in the Purchased Assets all intellectual property (including patents, know-how, and trademarks) primarily related to the Hollow Sphere Particle Business.
- Books and Records. Section 2.01(d) includes in the Purchased Assets copies of Books and Records relating to the Hollow Sphere Particle Business.
- Inventories. Section 2.01(f) includes in the Purchased Assets all product samples including “all manufacturing retains and developmental products.” [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2. Exclusions from the Purchased Assets. [REDACTED]

3. Intellectual property license. Section 2.1 of the Intellectual Property License Agreement, Exhibit D to the APA, licenses to Omnova all patents and know-how that are not primarily related to but are used in or have been held for use in research, development, production, and/or manufacture of Products in the United States, or the marketing and sale of Products in the United States, Puerto Rico, Mexico or Canada, including but not limited to information that is or has been used in producing an encapsulated ester core from Dow's Seed Latex and encapsulating such ester core.

4. Securing of necessary consents. Paragraph IV.B. of the Decision and Order requires that Dow secure all consents from persons that are necessary to divest the Hollow Sphere Particle Business and operate it in a manner that will achieve the purposes of the Decision and Order. Section 2.08(b) of the APA requires Dow to use all reasonable efforts to promptly obtain all necessary consents [REDACTED]

[REDACTED]

5. Supply Agreements. Paragraph IV.C. of the Decision and Order provides that, at the option of the Hollow Sphere Particle Business Acquirer, Dow shall enter into a Supply Agreement, as defined in Paragraph II.B. Dow and Omnova have agreed upon the form of a Supply Agreement for Hollow Sphere Particle Products and a Supply Agreement for Seed Latex, which will be effective once the Hollow Sphere Particle Products Supply Agreement is terminated.

a. Hollow Sphere Particle Products. Dow will supply Omnova with hollow sphere particles pursuant to the Manufacturing and License Agreement attached as Exhibit E to the APA. Paragraph II.B.1.a. of the Decision and Order provides that the term of the Supply Agreement for Divested Products shall be a period from the Effective Date of Divestiture no longer than reasonably necessary for an acquirer to transfer commercial production from Dow's facility, with the option for a one-year extension if circumstances beyond the acquirer's control delay the transfer of production. Section 15.1 of the Manufacturing and License Agreement provides that the agreement has a initial two year term and will extend automatically for one additional year unless Omnova elects otherwise.

Paragraph II.B.2.a of the Decision and Order states that Divested Products shall be supplied at Dow's Cost. Schedule 6.1 to the Manufacturing and License Agreement explains the pricing for Hollow Sphere Particle Products, which is the cost of raw materials consumed in production plus the conversion cost of production.

b. Seed Latex. Seed Latex will be supplied pursuant to the Seed Latex/Solid Plastic Pigment Supply Agreement attached as Exhibit H to the APA. Paragraph II.B.1.d. of the Decision and Order provides that the term of the Supply Agreement for Seed Latex shall be as agreed upon by Dow and the Hollow Sphere Particle Business Acquirer, subject to the approval of the Commission. Paragraph 8 of the Seed Latex/Solid Plastic Pigment Supply Agreement provides that the initial term of the Seed Latex/Solid Plastic Pigment Supply Agreement shall be five years, beginning on the date that Omnova requests that Dow supply Seed Latex to enable Omnova to scale up its own production of Hollow Sphere Particle Products. The Seed Latex supply under the Seed Latex/Solid Plastic Pigment Supply Agreement shall continue thereafter for successive 12-month terms unless terminated.

Paragraph II.B.2.a. of the Decision and Order states that Seed Latex shall be supplied at Dow's Cost. Paragraph 2.A of the Seed Latex/Solid Plastic Pigment Supply Agreement provides that the pricing for Seed Latex shall be Dow's fully allocated plant operating cost of production, packaging and freight per dry pound at the time the Seed Latex is shipped to Omnova.

In addition to Seed Latex, the Seed Latex/Solid Plastic Pigment Supply Agreement provides for the supply of PP 722, a solid plastic pigment manufactured by Dow and used in the manufacture of Hollow Sphere Particle Products.

c. Other Supply Agreement Terms. In addition to the required pricing and term provisions, Paragraph II.B.3. of the Decision and Order states that any Supply Agreement with the acquirer must contain certain other terms. As described below, Dow has included these provisions across its Supply Agreements.

i. Meet-or-release terms. Paragraph II.B.3.a. requires Dow to include in any Supply Agreement a provision allowing the acquirer to reduce or terminate the quantities it purchases on commercially reasonable terms, including meet-or-release terms. Section 6.3 of the Manufacturing and License Agreement, Exhibit E to the APA, provides that Omnova may terminate the Agreement with respect to a supplied product if Omnova presents Dow with an equivalent offer that Dow does not elect to match.¹⁹

ii. Notice provisions. Paragraph II.B.3.b. of the Decision and Order provides that any Supply Agreement must require Dow to provide prompt notice if a force majeure event will likely prevent Dow from fulfilling its supply obligations. Section 17.1(a) of the Manufacturing and License Agreement requires Dow to notify Omnova of any force majeure

¹⁹ The Seed Latex/Solid Plastic Pigment Supply Agreement states that Section 6.3 of the Manufacturing and License Agreement shall also apply to the purchase and sale of products under the Seed Latex/Solid Plastic Pigment Supply Agreement.

event that is likely to prevent Dow from fulfilling its obligations under the Manufacturing and License Agreement.²⁰ Paragraph II.B.3.c. of the Decision and Order provides that any Supply Agreement must require Dow to provide reasonable advance notice of any planned maintenance, shutdown, improvement, or expansion that is reasonably likely to affect materially and adversely Dow's obligations under the Supply Agreement. Section 2.7 of the Manufacturing and License Agreement provides that Dow will provide reasonable advance notice of any such event.²¹

iii. Alternate supply. Paragraph II.B.3.d. of the Decision and Order provides that any Supply Agreement must contain a provision giving the acquirer the right, if Dow fails to make full and timely deliveries of product due to a force majeure event or an act within Dow's control, to purchase product from another supplier, or from Dow if Dow has available product (or production capacity) and can supply the acquirer without harming Dow's own ability to meet contractual commitments. Section 17.2 of the Manufacturing and License Agreement provides that Dow will allow Omnova to purchase from other suppliers if Dow fails to make full and timely deliveries.²²

iv. Additional quantities. Paragraph II.B.3.e. of the Decision and Order provides that any Supply Agreement must allow the acquirer to purchase additional quantities of product above the initial contract maximum, if Dow's facilities producing the product are not operating at capacity and Dow can increase production without interfering with Dow's existing business. Section 5.4 of the Manufacturing and License Agreement provides that Omnova may increase its purchases beyond the contract maximums if Dow's relevant facility is

²⁰ The Seed Latex/Solid Plastic Pigment Supply Agreement states that Section 17.1 of the Manufacturing and License Agreement shall also apply to the purchase and sale of products under the Seed Latex/Solid Plastic Pigment Supply Agreement.

²¹ The Seed Latex/Solid Plastic Pigment Supply Agreement states that Section 2.7 of the Manufacturing and License Agreement shall also apply to the purchase and sale of products under the Seed Latex/Solid Plastic Pigment Supply Agreement.

²² The Seed Latex/Solid Plastic Pigment Supply Agreement states that Section 17.2 of the Manufacturing and License Agreement shall also apply to the purchase and sale of products under the Seed Latex/Solid Plastic Pigment Supply Agreement.

not operating at maximum capacity and Dow could increase production without interfering with its existing business. Omnova has specified that the maximum quantity of Seed Latex they will require during the course of the agreement will not exceed [REDACTED], and Dow has agreed to Omnova's request to provide up to this fixed quantity under the Seed Latex/Solid Plastic Pigment Supply Agreement.

v. Dispute resolution. Paragraph II.B.3.f. of the Decision and Order provides that any Supply Agreement must state that, in any dispute or litigation between Dow and the acquirer, the Supply Agreement will be interpreted in light of achieving the purposes of the Decision and Order. Section 18.2(c) of the Manufacturing and License Agreement states that, in the case of any dispute or litigation between Dow and Omnova, the Agreement will be interpreted in light of achieving the purposes of the Decision and Order.²³

6. Technical Assistance Agreement. Paragraph IV.C. of the Decision and Order provides that at the option of the Hollow Sphere Particle Business Acquirer Dow shall enter into a Technical Assistance Agreement, as defined in Paragraph II.D. Paragraph II.D. provides that any Technical Assistance Agreement will require Dow to provide all advice and consultation reasonably necessary for an acquirer to receive and use any of the divested assets. The term of the Technical Assistance Agreement is to be at the option of the Acquirer, but not longer than 24 months. The assistance would be provided on commercially reasonable terms and the fees would be as provided in Confidential Appendix F to the Decision and Order. Dow and Omnova have agreed upon a form of a Technical Assistance and Transition Services Agreement (Exhibit C to the APA). Paragraph 2 of the Technical Assistance and Transition Services Agreement provides that Dow will provide, at Omnova's request, services, assistance, and cooperation to

²³ The Seed Latex/Solid Plastic Pigment Supply Agreement states that Article XVIII of the Manufacturing and License Agreement, which includes Section 18.2, shall also apply to the purchase and sale of products under the Seed Latex/Solid Plastic Pigment Supply Agreement.

facilitate a timely, orderly, effective and complete transition of the Hollow Sphere Particle Business to Omnova. [REDACTED]

[REDACTED]

7. Transition Services Agreement. Paragraph IV.C. of the Decision and Order provides that at the option of the Hollow Sphere Particle Business Acquirer Dow shall enter into a Transition Services Agreement, as defined in Paragraph II.E. of the Decision and Order, under which Dow would provide the acquirer with all services reasonably necessary to transfer administrative support services to the acquirer. As mentioned above, Dow and Omnova have agreed upon a form of a Technical Assistance and Transition Services Agreement (Exhibit C to the APA). The transition services to be provided pursuant to the Technical Assistance and Transition Services Agreement include assistance notifying customers of the transaction and the providing Omnova with data relating to the business. Paragraph III.C.5. of the Decision and Order provides that the term of the Transition Services Agreement shall be not longer than six months from the Effective Date of Divestiture, with an option for the acquirer to extend the period for an additional six months. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Paragraph II.E. of the Decision and Order requires that the transition services be provided at Cost [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8. Employee provisions. Paragraph IV.D. of the Decision and Order requires Dow to reasonably cooperate to assist the Hollow Sphere Particle Business Acquirer in evaluating and retaining Hollow Sphere Particle Key Employees²⁴ and Hollow Sphere Particle Knowledgeable Employees. As described below, Dow has included the obligations of Paragraph IV.D. in the APA.

Paragraph IV.D.1. provides that, no later than 45 days before the Effective Date of Divestiture, Dow shall provide the Hollow Sphere Particle Business Acquirer with lists of the Hollow Sphere Particle Key Employees and Hollow Sphere Particle Knowledgeable Employees and accompanying Employee Information and shall provide the Hollow Sphere Particle Business Acquirer with an opportunity to interview any of these employees. Paragraph IV.D.2. requires that, not later than 30 days before the Effective Date of Divestiture, Dow shall provide the Hollow Sphere Particle Business Acquirer with an opportunity to meet with any one or more of the Hollow Sphere Particle Key Employees and Hollow Sphere Particle Knowledgeable Employees outside of Dow's presence and to make offers of employment to any one or more of these employees. Section 7.07(a) of the APA states that Dow will provide Omnova with

[REDACTED]

Employee Information about the employees of the Hollow Sphere Particle Business promptly after the execution of the APA and also provides that Dow will give Omnova the opportunity to meet confidentially with each Business Employee and make an offer of employment to each such employee, if Omnova so desires.

Paragraph IV.D.4. requires Dow to cooperate with the Hollow Sphere Particle Business Acquirer to provide incentives for Hollow Sphere Particle Key Employees to accept employment with the Hollow Sphere Particle Business Acquirer. The details of such incentives are provided on Confidential Appendix C to the Decision and Order.²⁵

9. Purpose of the Decision and Order. Paragraph IV.G. of the Decision and Order provides that 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. As discussed in greater detail above, Omnova is a well-established chemical company with experience selling latexes (including hollow sphere particle products) to paper customers. Accordingly, the proposed divestiture of the Hollow Sphere Particle Business to Omnova will accomplish the Commission's goals.

* * *

Dow and Omnova have entered into an Asset Purchase Agreement and agreed upon forms of other agreements relating to the divestiture of the Hollow Sphere Particle Business

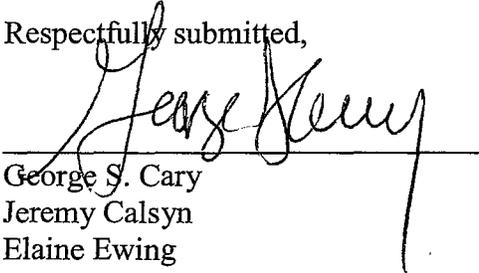
[REDACTED]

that fully comply with the Commission's Decision and Order. Further, there is every reason to believe that Omnova will be a viable and competitive owner of the Hollow Sphere Particle Business. Accordingly, Dow hereby seeks expeditious Commission approval of the proposed divestiture – along with the related agreements – pursuant to Paragraph IV.A. of the Decision and Order.

Conclusion

For the foregoing reasons, Dow respectfully requests that the Commission expeditiously approve the proposed divestiture of the Hollow Sphere Particle Business to Omnova, in the manner provided in the APA and ancillary agreements, as soon as practicable after expiration of the public comment period.

Respectfully submitted,



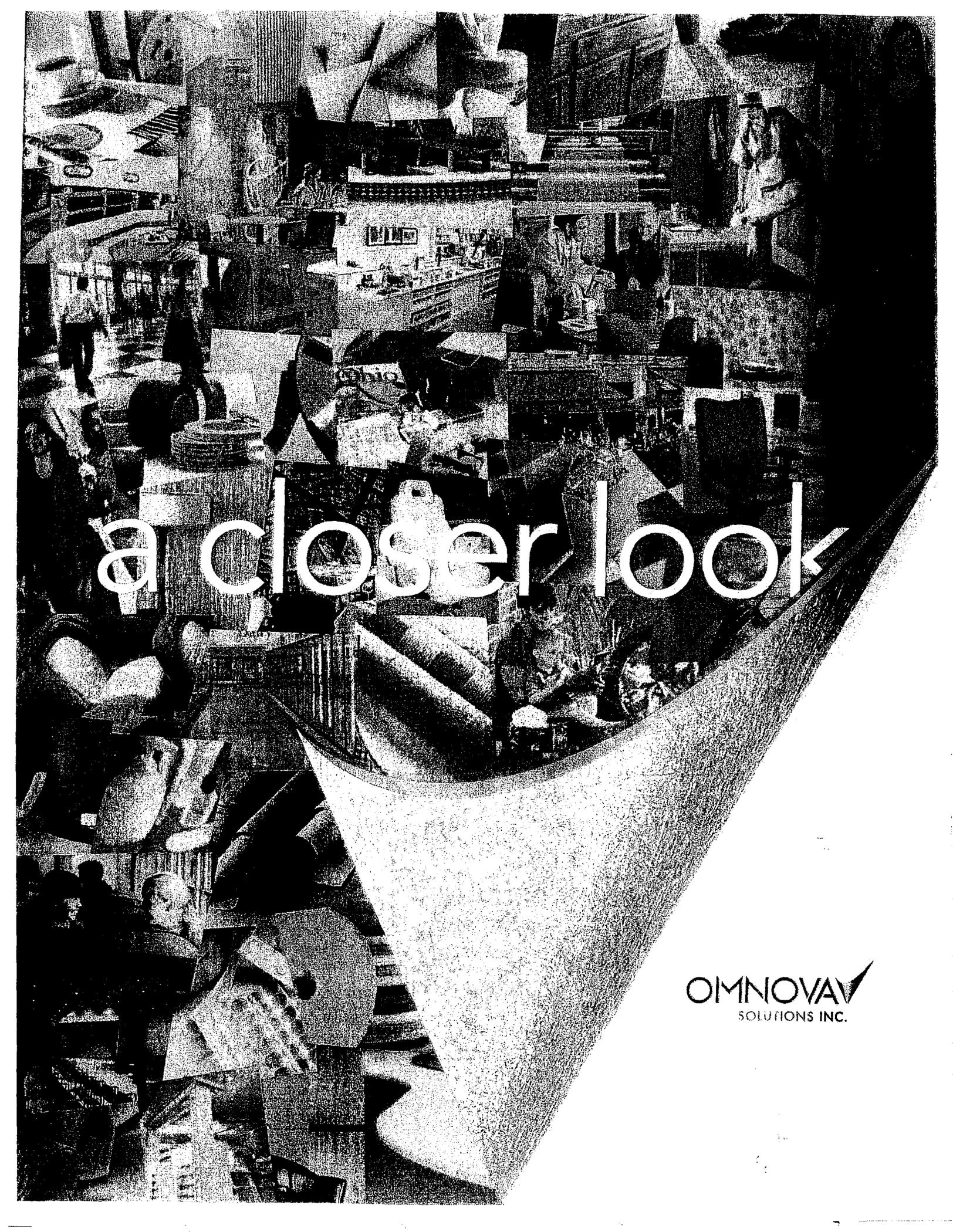
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Dated: September 22, 2009

EXHIBIT 1

OMNOVA Solutions, Inc.'s 2008 Annual Report



a closer look

OMNOVA
SOLUTIONS INC.

OMNOVA designs, develops, produces and markets emulsion polymers, specialty chemicals, and decorative and functional surfaces. Working within a core framework of technical and manufacturing competencies, our products find their way into myriad applications. Our solutions provide distinctive performance and aesthetic attributes to products that touch people's lives every day.

In 2008, OMNOVA entered or expanded our share in several markets. Here are a few examples:

the year at a glance

GenCryl Pt® latex for coated paper...

In a league of its own when it comes to strength, printability and customer satisfaction.

Oil/gas drilling chemicals... Resistance to salt and high temperatures under the sea.

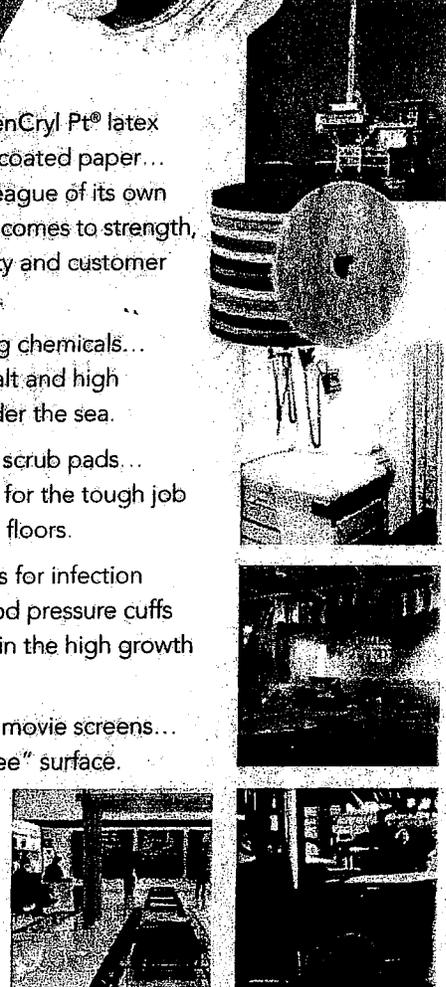
Polymer binders for scrub pads... Durable performance for the tough job of stripping and buffing floors.

Disposable medical fabrics for infection control... Single-patient blood pressure cuffs highlight many opportunities in the high growth health care industry.

Films for large-format commercial movie screens... For a highly uniform and "wrinkle-free" surface.

ASIAN ACQUISITION:

OMNOVA began the year by acquiring the remaining 49% share of our former joint ventures in China and Thailand, a key enabler for growth in the Decorative Products business



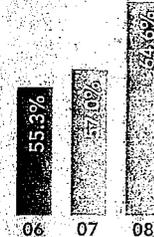
Net Sales
Dollars in millions



International Sales*
Percent of net sales



Raw Materials
Percent of net sales



* Includes U.S. sales by the Company's foreign subsidiaries

ON THE COVER

Take a closer look and see some of the many markets served by OMNOVA Solutions: coated paper, wipes, furniture laminates and upholstery, carpet backing, wallcoverings, folding wall surfaces, marine upholstery and trim, digital murals, swimming pool liners, nonwoven medical garments, oil/gas drilling, floor care products, vehicle soft-tops, store fixture laminates, tapes and labels, awnings, filters, tire cord, textiles, personal hygiene products, liquid body soaps, transit upholstery, floor scrub pads, movie screens and molded residential doors. The folded page reveals a look at OMNOVA's new RECORE™ wallcovering technology. The backing is woven from ground, recycled plastic bottles.



Kevin M. McMullen, Chairman and CEO, stands within an office setting enhanced by viewnique® digital murals.

to our shareholders

Robert F. Kennedy once said, "Like it or not, we live in interesting times." Never was that truer than in 2008, and I would certainly add "challenging times." But positive outcomes can be achieved in unanticipated circumstances. And while we still face challenges, a closer look at OMNOVA Solutions reveals a company that is making significant progress. We are excited about how we are positioned to build on that progress. What gives us this confidence? Winning products and technology, a growing global presence, leading market positions in a more rationalized industry structure, and significantly lower costs.

After a decade of unrelenting raw material inflation, we are finally seeing relief, which should contribute to much needed margin expansion. Through October 2008, raw material costs have increased nearly 100% since 1999 – repeatedly setting new record highs – and have gone from approximately 43% of OMNOVA's sales to 65%. Raw material costs surged and remained high throughout 2008. We finally began to see them moderate, but only as we entered the final month of the year. We anticipate a continued decline in raw material costs in the first part of 2009.

We made progress on another cost front as OMNOVA's operating costs in 2008 were the lowest ever – the result of a multiyear, disciplined commitment to a lean operating approach and aggressive reduction across all cost categories. Actions we took in the latter part of 2008 and early 2009 have reduced our cost base for 2009 by \$19 million. Furthermore, our operational excellence strategy to leverage LEAN SixSigma and our recently implemented SAP enterprise-wide business system, along with a refocused purchasing and supply chain organization, gives us confidence that we will continue to find opportunities to streamline, standardize and simplify our operations, thereby eliminating waste and lowering cost.

We continue to grow at above-market rates by pursuing a three-pronged strategy of (1) leveraging our leadership positions with innovative products in our existing markets, (2) penetrating new adjacent markets where we have the capability to win, and (3) globalizing our company. Yes, there is uncertainty around near-term market demand, but we outperformed our underlying markets in 2007 and 2008 and have every reason to believe we can continue to do so.

OMNOVA also stands to benefit from important structural changes taking place in our industries. In Performance Chemicals, opportunities have been created with the exit of Dow-Reichhold and Lubrizol as competitors in our key markets and, additionally, the announced closure or idling of three competitor plants. This should result in improved capacity utilization as demand recovers in 2009 and beyond. Consolidation that has occurred over the last few years in the Decorative Products markets is likely to continue as smaller, fragmented competitors exit the marketplace.

And, having completed a refinancing in 2007, OMNOVA has favorable long-term credit in place – a clear asset in this environment of uncertain credit availability.

Our multifaceted efforts are led by a seasoned and battle-tested team that has demonstrated the ability to overcome many headwinds over the past decade. We have stayed focused and tightened our belts in tough times, while continuing to invest in the critical areas that will allow us to win over the long term. The dedication and commitment of our employees, along with their distinctive talents and ability to work effectively as a team to serve our customers, represent our ultimate competitive weapon.

GROWTH STRATEGY

Sales in 2008 were up nearly 17% overall, driven by pricing actions that were necessary to offset raw material inflation, as well as the acquisition of the remaining 49% interest in our Asian Decorative Products joint ventures early in the year. (Sales from the joint ventures previously had not been consolidated.) Excluding the effect of the acquisition, sales increased 5% versus 2007.

As I mentioned, globalization is a key element of OMNOVA's growth strategy. The Asian acquisition is an important component of that strategy, providing access to faster-growing markets – especially China – as well as a global manufacturing capability our competitors can't match. Additionally, our strong product offering in Performance Chemicals is enabling growth in Europe and Asia through manufacturing alliances and exports. With our products being sold into more than 60 countries, OMNOVA's total international sales have grown 140% since 2002 and now represent nearly a quarter of the Company's annual revenues.

Above-market performance was achieved in several of OMNOVA's key existing markets, another critical piece of our growth strategy. Our ability to gain market share, even in tough times, reflects the tremendous value customers place on OMNOVA's innovative products and services. (Many new products are featured later in this report.) OMNOVA also gained share by capitalizing on the industry consolidation that is occurring in many of our markets, successfully demonstrating that we are a reliable partner with an attractive scope of products and services, and a focused commitment to our customers.

A third element of our profitable growth strategy is penetration into new, related markets. Here, too, OMNOVA made progress in 2008. Our core technical and manufacturing capabilities translate well across diverse end uses, and we are consistently winning business in attractive new product categories such as chemicals used in oil and gas drilling, construction and industrial coatings, and performance films for markets as wide ranging as medical applications to commercial movie screens.

Unfortunately, with a weak first half, OMNOVA experienced a modest net loss of \$2.2 million for the year compared to a \$6.7 million loss in 2007. Certainly, we aim to deliver higher levels of profitability in the future, but given the economic volatility and record high raw material costs, 2008 was a year of clear progress. This progress

was driven by a much improved second half turned in by Performance Chemicals, which recovered from historically high and rapidly escalating raw material costs to post operating profit that exceeded the prior year second half by \$6.3 million. This performance by our chemicals unit led an improving trend line in operating profit and earnings per share for the Company overall in the third and fourth quarters. Company-wide, 71% of our operating profit for the year was earned in the second half. Unfortunately, extremely weak market conditions in Decorative Products and first-year integration costs in Asia negatively impacted profitability.

2008 ECONOMIC CLIMATE

The year was marked by skyrocketing costs of oil-based raw materials, which rose \$75.1 million as oil continued an upward march that began to accelerate in late 2007 and peaked in mid-2008 at nearly \$150 per barrel. Record-high raw material costs remained in effect until late in our fourth quarter, impacting both business units domestically and in Asia.

The rapid ascent – with raw material costs making significant jumps each month, and sometimes from week to week – initially made it impossible to implement pricing actions fast enough. However, tactical and structural pricing actions began to offset these dramatic increases as the year progressed, and OMNOVA ended 2008 with \$86.3 million in pricing improvements. It is important to note that this does not fully recoup the margin compression we have experienced as a result of more than a decade of raw material inflation. Margin improvement remains our priority.

At the same time, market weakness, which had been primarily confined to the residential construction sector, spread to nearly every corner of the world economy in the latter part of the year. Demand for carpet chemicals and laminates used in kitchen and bath cabinetry remained weak, and commercial construction and refurbishment projects began to go on hold as building owners became increasingly uneasy about the possibility of a recession. Magazines – big users of coated paper – also reported a drop in ad spending, a key indicator of coated paper demand.

Against this backdrop, OMNOVA took further action to reduce our cost structure, renewed our emphasis on innovative products and expanded our global presence as we worked aggressively to face the challenges of a slowing economy.

COST AND CAPITAL STRUCTURE

The Company maintained a stable debt position despite the rough economic climate. Excluding the acquisition of the former Asian joint ventures, debt rose only slightly in 2008 – a tribute to strong cash management. Total debt at the end of the year was \$188.3 million. Operating leverage of net debt to EBITDA improved as the year went along, finishing at a ratio of 3.7. (Definitions of EBITDA and net debt, plus reconciliations of EBITDA to income or loss from continuing operations and net debt to total debt, are provided on page 7 of this report.)

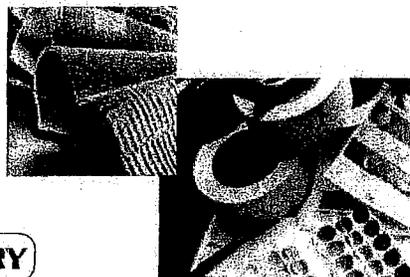
The ability to reduce our borrowing costs and continue to operate our business without distraction – even as many competitors struggled – is the result of work completed in 2007 to improve our capital structure. OMNOVA has favorable, long-term financing in place, with a \$144 million term loan credit agreement maturing in 2014 and a \$90 million revolving asset-based credit facility maturing in 2012. At the end of the year, OMNOVA's weighted average cost of borrowing was 4.8%. Given the significant uncertainty in the credit markets, this favorable credit position has been especially meaningful.

Our cost focus further intensified in 2008, reflecting our disciplined operating approach. Fixed and variable cost reduction actions already completed will yield year-over-year savings of \$19 million in 2009. Additionally, in an effort to focus our Decorative Products business, OMNOVA announced the sale in early 2009 of assets at our leased site in Dupo, Illinois.

OMNOVA is committed to reducing the environmental impact of our operations and increasing our offering of products with sustainable features, recognizing how these efforts can profitably support business objectives. As part of our Vision 2014 initiative, operational metrics have been established with continuous improvement goals to reduce energy consumption and greenhouse gas emissions, water usage and landfill waste, and to build upon OMNOVA's solid safety record.

Vision 2014 Sustainability Commitment

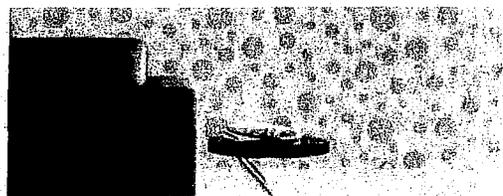
Our customers look for this symbol when choosing environmentally preferred solutions.



Sustainable products under development or recently introduced include polymer emulsions for tape and label, carpet and construction applications:



Wallcoverings made from RECORE™ technology contain 30% recycled content, including 20% post-consumer material. The innovative backing is woven from ground, recycled plastic bottles.



ECORE™ is a 100% recyclable, high performance textile wallcovering offering the perfect choice for designers seeking alternative materials.

Sales, general and administrative costs, excluding Asia, were flat with the prior year at \$99 million, and in total (including Asia) were 12% of sales in 2008. This was down from the prior year, and from our high point in 2003 when they were 21% of sales.

LEAN SixSigma efforts during the year focused on eliminating waste, reducing energy usage and costs, and driving productivity. The LEAN SixSigma operating approach has been a part of OMNOVA for five years and continues to be more ingrained in our culture. We continue to invest in developing trained LEAN SixSigma resources in the United States and Europe, and began implementation in Asia in the fourth quarter of 2008.

Efforts on energy conservation at our plants, as well as recycling and other actions, support OMNOVA's sustainability commitment. We worked to codify this commitment in 2008 by setting goals as part of our Vision 2014 initiative. This includes operational metrics and sustainable product objectives that we will work to achieve over the next five years. Our vision is to incorporate behaviors across our Company that establish a clear connection between corporate citizenship, environmental responsibility and profitable business growth.

After completing installation of our SAP business system in Performance Chemicals in 2007, we turned to Decorative Products in 2008. Implementation has been done largely in-house and on-budget and is now 85%

complete at our domestic operations. SAP, which replaces more than a dozen disparate legacy systems, is providing more timely and accurate information to OMNOVA's decision-makers and has delivered millions of dollars in cost savings since implementation began. In 2009, we will increase our focus on optimizing our business model and key processes to drive further improvements in effectiveness and productivity enabled by this enterprise-wide capability.

With raw materials accounting for a major portion of our product costs, buying well is critical to our success. We took action in 2008 to strengthen our global strategic sourcing organization by bringing in a seasoned global purchasing vice president with more than 25 years in chemicals procurement. We have reorganized to establish strategic commodity purchasing leaders and continue to enhance our global sourcing capability, particularly in China and the Asean region.

PERFORMANCE CHEMICALS

Our Performance Chemicals business segment experienced two very different half-years in 2008. The first and second quarters were marked by hyper-acceleration in raw material costs, which were difficult to recover from quickly. However, outstanding work by our chemicals team in driving productivity to offset some of the effects of inflation, achieving necessary pricing increases and gaining market share through highly differentiated products produced a much stronger second half and momentum for the start of 2009.

Industry prices for styrene and butadiene, our highest-volume raw materials, skyrocketed to new record highs during 2008, fueled by the quantum leap in oil prices. The situation was further exacerbated by restricted supply of butadiene for most of the year, an additional outcome of the high price of oil.

In response to this hostile raw material environment, the Company negotiated index pricing formulas with major chemical customers to achieve more timely and transparent recovery of increases in key input costs. Performance Chemicals maintained excellent and cost effective customer service levels despite the constrained raw material environment, even with butadiene being on allocation. Additionally, as we worked in more seamless fashion with our customers than ever before, segment inventory turns were the best ever.

Volumes were down across most product categories due to weak end-use markets. Still, Performance Chemicals achieved above-market growth.

The coated paper market is one of OMNOVA's largest, and we continued to win business with our best-in-class GenCryl Pt® latex, which offers greater strength and improved printability. Development work is ongoing on several new products based on this highly successful chemical platform.

Our specialty chemicals product line achieved significant operating profit improvement with technologies that are finding exciting new applications in nonwovens, construction, floor care, tape and adhesives, oil/gas drilling and industrial coatings.

Performance Chemicals had another strong year of international growth with sales up 14.3% in Europe and Asia and operating profit up more than 73%. Primary global markets served include nonwovens, tire cord adhesives and tape. Our international operating model has worked well, with sales offices and technical service laboratories in-region, and products supplied through export and regional manufacturing alliances.

Entering 2009, demand across our Performance Chemicals markets, like the economy, is uncertain. However, we have a long list of business development initiatives under way to target key new accounts and introduce differentiated new products. More favorable operating conditions should also result from the lower raw material costs and significant industry manufacturing rationalization that I mentioned earlier.

DECORATIVE PRODUCTS

High raw material costs, industry over-capacity, integration costs in Asia and weak markets, especially in the third and fourth quarters, combined to make for a difficult year for our Decorative Products segment.

We were able to implement price increases to offset some of the raw material inflation in the United States and Asia, but not to the extent needed to counteract all of it. OMNOVA has captured new business in films, laminates and coated fabrics with the exit of several competitors over the past few years. Further industry consolidation is needed and anticipated.

Unfortunately, 2008 financial performance masked some of the truly exciting changes we have made. Although many positive actions during the year did not bear fruit immediately, they shape the Decorative Products business of the future.

Global players have a competitive edge, as many of our Decorative Products customers have moved their production off-shore and seek regional supply partners that can deliver quality products and services. So the first-quarter acquisition of our former Decorative Products joint ventures in Asia was critical in demonstrating our commitment to these customers and markets. Not only does this give us capability unmatched by our competitors to meet our international customers' needs around the globe, but it also allows OMNOVA to participate more fully in this rapidly growing part of the world. While the global economic downturn has curtailed some export growth from China, economists predict that China will focus on internal spending in the near term. We are well-positioned to serve China's construction and refurbishment needs. Unfortunately, these businesses were hampered by one-time integration costs as OMNOVA took on full operational ownership.

We put new management teams in place in China and Thailand to better align the business focus with OMNOVA's priorities, drive global best-practice sharing, and take marketing, technical and operational capabilities to new levels. We believe this will improve the profitability of these businesses and, in concert with our U.S. and European facilities, provide consistent levels of quality and service around the world.

FINANCIAL HIGHLIGHTS

| (Dollars in millions, except per share data) | Years Ended November 30, | | |
|---|--------------------------|-----------------|-----------------|
| | 2008 | 2007 | 2006 |
| Net Sales | | | |
| Performance Chemicals | \$ 521.6 | \$ 475.3 | \$ 441.6 |
| Decorative Products | 347.8 | 270.2 | 257.5 |
| | \$ 869.4 | \$ 745.5 | \$ 699.1 |
| Segment Operating Profit (Loss)⁽¹⁾ | | | |
| Performance Chemicals | \$ 25.2 | \$ 23.8 | \$ 29.7 |
| Decorative Products | (6.5) | 8.6 | 9.0 |
| Interest expense | (13.0) | (16.5) | (21.3) |
| Corporate expenses | (7.7) | (10.4) | (14.1) |
| Debt redemption expense | - | (12.4) | - |
| Income tax expense | (.2) | (.1) | (.1) |
| Income (Loss) From Continuing Operations | \$ (2.2) | (7.0) | 3.2 |
| Discontinued operations ⁽²⁾ | - | .3 | 18.1 |
| Net Income (Loss) | \$ (2.2) | \$ (6.7) | \$ 21.3 |
| Basic Income (Loss) Per Share | | | |
| Income (Loss) per share from continuing operations | \$ (.05) | \$ (.17) | \$.08 |
| Discontinued operations | - | .01 | .44 |
| Net income (loss) per share | \$ (.05) | \$ (.16) | \$.52 |
| Diluted Income (Loss) Per Share | | | |
| Income (loss) per share from continuing operations | \$ (.05) | \$ (.17) | \$.08 |
| Discontinued operations | - | .01 | .43 |
| Net income (loss) per share | \$ (.05) | \$ (.16) | \$.51 |
| Other Data | | | |
| Capital expenditures | \$ 14.8 | \$ 16.2 | \$ 13.0 |
| Depreciation and amortization | \$ 23.9 | \$ 20.9 | \$ 21.2 |
| Number of employees at year-end | 2,630 | 1,640 | 1,700 |
| Number of outstanding shares for diluted EPS (millions) | 42.3 | 41.8 | 41.6 |

⁽¹⁾ Segment operating profit for the years of 2008, 2007 and 2006 was impacted by a number of items which are discussed in this annual report. These items include for 2008, restructuring and severance charges of \$0.6 million; for 2007, restructuring and severance charges of \$0.8 million and a gain on the sale of a building of \$0.7 million; for 2006, trademark and asset impairment charges of \$1.1 million and restructuring and severance charges of \$1.1 million. Management excludes these items when evaluating the results of the Company's business segments.

⁽²⁾ Discontinued operations for 2006 included the gain on the sale of the Company's Building Products business of approximately \$18.2 million.

Our U.K.-based wallcovering and coated fabrics business continued its turnaround in 2008. Both sales and operating profit increased despite weak markets in Europe. This business has done a good job of expanding its presence in Eastern Europe and the Middle East, achieving productivity gains and introducing an attractive array of new products.

New product vitality – measured as the percentage of sales from products introduced in the prior two years – continues to be quite strong across Decorative Products, reaching a healthy 27.7% in 2008. New products are key to expanding market share and continuing our entry into new, adjacent markets. Here are a few examples:

- OMNOVA is redefining the commercial wallcovering category with the broadest offering of eco-friendly products in the industry. Late in the year, we introduced RECORE™ recycled wall technology, which features 30% recycled content, including 20% post-consumer material. It has the same durability, long life cycle and ease of installation as vinyl wallcovering, the long-time industry standard. As of November 2008, all newly introduced OMNOVA vinyl wallcoverings will be made with RECORE technology. In addition, OMNOVA now offers ECORE™, a 100% recyclable, high-performance textile wallcovering for designers who want a broader selection of materials. Importantly, both RECORE and ECORE can be used to earn points in building projects seeking LEED (Leadership in Energy and Environmental Design) certification as part of the U.S. Green Building Council's sustainable building initiative.

RECONCILIATION OF INCOME (LOSS) FROM CONTINUING OPERATIONS TO EBITDA AND TOTAL DEBT TO NET DEBT

This Annual Report includes EBITDA and Net Debt which are non-GAAP financial measures as defined by the Securities and Exchange Commission. EBITDA is calculated in accordance with the definition of Net Leverage Ratio as set forth in the Company's \$150,000,000 Term Loan Credit Agreement dated May 22, 2007 and excludes charges for interest, taxes, depreciation and amortization, amortization of deferred financing costs, net earnings of joint ventures less cash dividends, net earnings of foreign subsidiaries less cash dividends, loss on debt transactions, gains or losses on sale or disposal of capital assets, loss from write-down of non-current assets, non-cash income or expense for the Company's pension plans, gains or losses from changes in the LIFO reserve, and non-cash charges for the 401(k) company match and up to \$2.0 million annually for restructuring, severance and non-recurring charges. Net Debt is calculated as total debt, outstanding letters of credit and the fair value of the interest rate swap if in a loss position less cash, cash equivalents and restricted cash. EBITDA and Net Debt are not measures of financial performance under GAAP. EBITDA and Net Debt are not calculated in the same manner by all companies and accordingly are not necessarily comparable to similarly titled measures of other companies and may not be an appropriate measure for comparing performance relative to other companies. EBITDA and Net Debt should not be construed as indicators of the Company's operating performance or liquidity and should not be considered in isolation from or as a substitute for net income (loss), cash flows from operations or cash flow data which are all prepared in accordance with GAAP. EBITDA and Net Debt are not intended to represent and should not be considered more meaningful than, or as an alternative to, measures of operating performance as determined in accordance with GAAP. Management believes that presenting this information is useful to investors because these measures are commonly used as analytical indicators to evaluate performance, measure leverage capacity and debt service ability and by management to allocate resources. Set forth below are the reconciliations of these non-GAAP financial measures to their most directly comparable GAAP financial measures.

Reconciliation of income (loss) from continuing operations to EBITDA

| (Dollars in millions) | Years Ended November 30, | | |
|--|--------------------------|----------------|----------------|
| | 2008 | 2007 | 2006 |
| Income (loss) from continuing operations | \$ (2.2) | \$ (7.0) | \$ 3.2 |
| Interest | 12.3 | 15.7 | 20.3 |
| Taxes | .2 | .1 | .1 |
| Depreciation and amortization | 23.9 | 20.1 | 20.2 |
| Amortization of deferred financing costs | .7 | .8 | 1.0 |
| Net earnings of joint ventures less cash dividends | - | (1.2) | (1.8) |
| Net earnings of foreign subsidiaries less cash dividends | - | - | (1.5) |
| Loss on debt transactions | - | 12.4 | - |
| (Gains) or losses on sale or disposal of capital assets | .1 | (.4) | .2 |
| Non-cash (income) or expense for pension plans | 5.0 | 6.2 | 5.4 |
| (Gain) or loss on change in LIFO reserve | 6.5 | (.9) | (2.2) |
| Non-cash charge for 401(k) company match | 1.2 | 2.1 | 2.1 |
| Restructuring, severance and non-recurring charges | .1 | 1.0 | 2.0 |
| EBITDA | \$ 47.8 | \$ 48.9 | \$ 49.0 |

Reconciliation of total debt to Net Debt

| (Dollars in millions) | Years Ended November 30, | | |
|---|--------------------------|-----------------|-----------------|
| | 2008 | 2007 | 2006 |
| Total debt | \$188.3 | \$ 149.9 | \$ 165.0 |
| Outstanding letters of credit and interest rate swaps | 7.0 | 5.9 | 3.5 |
| Cash and cash equivalents | (17.4) | (12.6) | (26.4) |
| Restricted cash | - | - | (12.3) |
| Net Debt | \$177.9 | \$ 143.2 | \$ 129.8 |

Certain information included in this annual report is forward-looking and, accordingly, involves estimates, assumptions, judgments and uncertainties. Forward-looking statements may generally be identified by the use of forward-looking terms such as "may," "should," "projects," "forecasts," "seeks," "believes," "expects," "anticipates," "estimates," "intends," "plans," "targets," "likely," "optimistic," "will," "would," "could" or similar terms. All forward-looking statements involve risk and uncertainties. For information regarding the risk factors, see Item 1A Risk Factors in the Business Section of the 10-K.

- Our viewnique® digital murals have posted solid growth since we introduced this capability a couple of years ago. Sales were up 11% in 2008 as customers appreciated our turnkey installation service and ability to print on a growing number of substrates, including the environmentally preferred RECORE and ECORE materials. Digital murals provide strong visual branding in a variety of settings, such as hotels and restaurants, retail spaces, offices, health care facilities and educational institutions.

- OMNOVA expanded its position in health care in 2008 with performance fabrics for medical devices such as single-patient blood pressure cuffs. These disposable medical fabrics are intended for infection control. Even in the current economy, health care is a high growth industry. Our broad capabilities deliver a turnkey solution, thus reducing inventory requirements while improving service and providing a higher level of quality to the customer.

- Our performance films are now being used on large-format commercial movie screens at theaters around the world. Our films provide high surface uniformity for optimal viewing enjoyment, and "wrinkle-free" properties to ensure screens make it to their destination smooth and ready to install.

- Through the introduction of durable, high performance products with attractive designs, we expanded our position in the swimming pool liner and marine upholstery markets as these markets undergo further consolidation.

- Recent process improvements have broadened our capabilities for upholstery used in vacuform seating applications. These include truck and automotive interiors as well as seating for a myriad of agricultural, sports and leisure products, such as lawn tractors and golf carts.

LOOKING AHEAD

In 2009, OMNOVA Solutions will celebrate 10 years as an independent public company. We know it will be a year of continuing challenges as global economic issues persist, at least through the first half. We have made progress, but there is clearly more work to do to increase profitability and thereby enhance the value we deliver to shareholders.

As you can see, we have worked hard to improve our ability to drive margin expansion, grow profitably and generate greater returns for our shareholders, even in these uncertain times. We enter 2009 with a strong portfolio of new products, an expanding list of served markets, a strengthened global presence, our lowest cost base ever, a solid balance sheet and a favorable credit position, along with the strong corporate governance provided by our independent Board of Directors.

Progress in achieving our profitable growth strategy, along with recognition that there is still much left to do, has helped us excite and mobilize our talented workforce around a vision of what we can become. Their tireless dedication and efforts have created a company rich with opportunities. We are focused on converting those opportunities into profitable business results, making the most of the tools we have put in place and the innovative spirit that drives our culture.

We appreciate your patience and support as we work to demonstrate our commitment to maximize shareholder value.



Kevin M. McMullen
Chairman and CEO

CONFIDENTIAL EXHIBIT 2

**Asset Purchase Agreement
(Redacted)**

EXHIBIT 3– List of Ancillary Agreements

| Agreement | Exhibit |
|--|----------------|
| Assignment and Assumption Agreement | Exhibit A |
| Technical Assistance and Transition Services Agreement | Exhibit C |
| Intellectual Property License Agreement | Exhibit D |
| Manufacturing and License Agreement | Exhibit E |
| Intellectual Property Assignment Agreement | Exhibit F |
| Joint Venture Termination Agreement | Exhibit G |
| Seed Latex and Solid Plastic Pigment Supply Agreement | Exhibit H |
| Grant Back Agreement | Exhibit I |
| Side Agreement | Exhibit J |