

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: Robert Pitofsky, Chairman
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary

In the Matter of)
)
The Dow Chemical Company,)
a corporation, and) DOCKET NO. C-3999
)
Union Carbide Corporation,)
a corporation.)

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent The Dow Chemical Company (“Dow”) of Respondent Union Carbide Corporation (“Union Carbide”), and Respondents having been furnished thereafter with a draft of Complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge the Respondents 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

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of the Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents 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 Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having determined to accept the executed Consent Agreement and to place such Consent Agreement on the public record for a period of thirty (30) days, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues this Order to Maintain Assets:

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

2. Respondent Union Carbide Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal executive offices located at 39 Old Ridgebury Road, Danbury, Connecticut 06817.

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

I.

IT IS ORDERED that, as used in this Order to Maintain Assets, the definitions used in the attached Decision and Order shall apply, and that, for purposes of this Order to Maintain Assets, the following definitions shall also apply:

- A. “Persons with Access to Non-Public Confidential Information” means (1) Respondents’ Support Personnel, (2) employees of Respondents who were employees of the Dow Global Ethyleneamines Business, the Dow Global Ethanolamines Business, or the Dow Gas Spec MDEA Business during any time since January 1, 1998, as well as (3) any other employees of Respondents who had access to Non-Public Confidential Information during any time since January 1, 1998.
- B. “Decision and Order” means the Decision and Order, incorporated into and made a part of the Consent Agreement.

II.

IT IS FURTHER ORDERED that:

- A. From the date Respondents sign the Consent Agreement until the Effective Date of Divestiture, Respondents shall:
 - 1. Maintain the Businesses and Assets to Be Divested in substantially the same condition (except for normal wear and tear) existing at the time Respondents sign the Consent Agreement and take such action that is consistent with the past practices of Respondents in connection with the Businesses and Assets to Be Divested and is taken in the ordinary course of the normal day-to-day operations of Respondents;

2. Keep available the services of the current officers, employees, and agents of the Businesses and Assets to Be Divested; and maintain the relations and good will with suppliers, customers, landlords, creditors, employees, agents, and others having business relationships with the Businesses and Assets to Be Divested; and
 3. Preserve the Businesses and Assets to Be Divested intact as an ongoing business and not take any affirmative action, or fail to take any action within their control, as a result of which the viability, competitiveness, and marketability of the Businesses and Assets to Be Divested would be diminished.
- B. Respondents shall adhere to and abide by the Divestiture Agreements incorporated by reference into this Order to Maintain Assets and made a part hereof.
- C. From the date Respondents sign the Consent Agreement until the date this Order to Maintain Assets terminates pursuant to Paragraph VII:
1. Respondents shall not assign Persons with Access to Non-Public Confidential Information to any employment positions or duties relating to Respondents' Ethyleneamines Business, Respondents' Ethanolamines Business, or Respondents' MDEA Business.
 2. Respondents' Ethyleneamines Business, Respondents' Ethanolamines Business, or Respondents' MDEA Business shall not retain, request, receive, solicit, accept, nor seek to obtain, any Non-Public Confidential Information.

III.

IT IS FURTHER ORDERED that:

- A. At any time after Respondents sign the Consent Agreement, the Commission may appoint one or more Persons to serve as Monitor Trustee to monitor Respondents' compliance with the terms of this Order to Maintain Assets, Decision and Order, and the Divestiture Agreement(s) made a part of this Order.
- B. If one or more Monitor Trustees are appointed pursuant to Paragraph III of this Order to Maintain Assets, Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of each Monitor Trustee:

1. The Commission shall select the Monitor Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed trustee, Respondents shall be deemed to have consented to the selection of the proposed trustee.
2. The Monitor Trustee shall have the power and authority to monitor Respondents' compliance with the terms of the Order to Maintain Assets, Decision and Order and the Divestiture Agreement(s) and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor Trustee in a manner consistent with the purposes of the Order to Maintain Assets and in consultation with the Commission.
3. Within ten (10) days after appointment of the Monitor Trustee, Respondents shall execute an agreement that, subject to the approval of the Commission, confers on the Monitor Trustee all the rights and powers necessary to permit the Monitor Trustee to monitor Respondents' compliance with the terms of the Order to Maintain Assets, Decision and Order and the Divestiture Agreement(s), in a manner consistent with the purposes of such orders and agreements. Respondents may require the Monitor Trustee to sign a confidentiality agreement prohibiting the use, or disclosure to anyone other than the Commission, of any competitively sensitive or proprietary information gained as a result of his or her role as Monitor Trustee.
4. The Monitor Trustee shall serve for such time as is necessary to monitor Respondents' compliance with the provisions of this Order to Maintain Assets.
5. The Monitor Trustee shall have full and complete access to Respondents' books, records, documents, personnel, facilities and technical information relating to compliance with the Order to Maintain Assets, Decision and Order and the Divestiture Agreement(s), or to any other relevant information, as the Monitor Trustee may reasonably request. Respondents shall cooperate with any reasonable request of the Monitor Trustee. Respondents shall take no action to interfere with or impede the Monitor Trustee's ability to monitor Respondents' compliance with this Order to Maintain Assets, Decision and Order and the Divestiture Agreement(s).
6. The Monitor Trustee shall serve, without bond or other security, at the

expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Monitor Trustee shall have authority to employ, at the expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor Trustee's duties and responsibilities. The Monitor Trustee shall account for all expenses incurred, including fees for his or her services, subject to the approval of the Commission.

7. Respondents shall indemnify the Monitor Trustee and hold the Monitor Trustee harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Monitor Trustee's duties (including the duties of the Monitor Trustee's employees), 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 gross negligence, willful or wanton acts, or bad faith by the Monitor Trustee.
 8. If at any time the Commission determines that the Monitor Trustee has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve, the Commission may appoint a substitute to serve as Monitor Trustee in the same manner as provided in this Paragraph III.
 9. The Commission may on its own initiative or at the request of the Monitor Trustee issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order to Maintain Assets, Decision and Order and the Divestiture Agreement(s).
 10. The Monitor Trustee shall report to the Commission in writing concerning compliance by Respondents with the provisions of this Order to Maintain Assets, Decision and Order and Divestiture Agreement(s), within twenty (20) days from the date of appointment and every thirty (30) days thereafter during the remainder of the Monitor Trustee's period of appointment, and at such other time as representatives of the Commission may request.
- C. The Monitor Trustee(s) appointed pursuant to Paragraph III.A. of this Order to Maintain Assets may be the same person(s) appointed as Monitor Trustee(s) pursuant to Paragraph IX.A. of the Decision and Order, and/or as divestiture trustee(s) pursuant to Paragraph X.A. of the Decision and Order in this matter.

IV.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondents such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the Decision and Order or this Order to Maintain Assets.

V.

IT IS FURTHER ORDERED that within thirty (30) days after Respondents sign the Consent Agreement and every thirty (30) days thereafter until thirty (30) days after Respondents have divested the Dow Global Ethyleneamines Business, the Dow Global Ethanolamines Business, the Dow Gas Spec MDEA Business, and the Dow Gas Phase Metallocene PE Assets, as required by the provisions of Paragraphs II, III, IV, VI, and VII of the Decision and Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order to Maintain Assets and the Decision and Order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II, III, IV, VI, and VII of the Decision and Order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondents shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

VI.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order to Maintain Assets, upon written request, Respondents shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondents relating to any matters contained in this Order to Maintain Assets; and

B. Upon five days' notice to Respondents and without restraint or interference from them, to interview in the presence of counsel, officers, directors, employees, agents or independent contractors of Respondents.

VII.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate at the earlier of:

- A. three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. such time as all Businesses and Assets to Be Divested have been divested pursuant to the terms of the Consent Agreement.

By the Commission.

Donald S. Clark
Secretary

SEAL:

ISSUED: February 5, 2001