

**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 REAL PROPERTY RELATED TO THE
TORRANCE FACILITY TO HAGER PACIFIC**

Pursuant to Section 2.41(f) of the Federal Trade Commission (“Commission”) Rules of Practice and Procedure, 16 C.F.R. § 2.41(f), Paragraph III.A. of the Decision and Order contained in the Agreement Containing Consent Orders accepted for public comment in this matter (“Decision and Order”), and the Commission’s January 20, 2010 letter extending the time to divest the Torrance Facility, The Dow Chemical Company (“Dow”) hereby petitions the Commission to approve (i) the divestiture of the real property described on Exhibit 5 to the Decision and Order that is related to the Torrance Facility¹ to Hager Pacific Acquisitions LLC, a subsidiary of Hager Pacific Properties (“Hager Pacific”), and (ii) the Purchase and Sale Agreement effecting such divestiture.

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

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

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

Among other terms, the Decision and Order required Dow to divest its Acrylic Acid Business and its Latex Polymers Business, including the Torrance Facility, the smallest of the three latex plants that comprise the Latex Polymers Business.²

In order to satisfy its obligation to divest the Acrylic Acid Business and the Latex Polymers Business, Dow negotiated the sale of the businesses to Arkema, Inc. (“Arkema”). Dow believed that Arkema was the purchaser of the Acrylic Acid Business and the Latex Polymers Business that would be most expeditiously approved by the Commission because it was the firm best able to ensure the competitiveness of the business, a view that Dow understood to be shared by Commission Staff. Arkema is an experienced international chemical company that produces acrylic acid and esters and is active downstream of the acrylics business through its Coatex subsidiary, which produces specialty acrylic polymers. Arkema also produces chemicals that are closely related to the Acrylic Acid Business and the Latex Polymers Business, including methyl methacrylate, a key raw material used in the production of certain Latex Polymers Products. No other interested buyer had related experience or expertise comparable to Arkema’s.

During the course of negotiations with Arkema, however, Arkema made it unambiguously clear that Arkema was not interested in purchasing the entire Torrance site, which includes several industrial sites leased to and occupied by third parties. [REDACTED]

² Decision and Order, III.A.

[REDACTED]

[REDACTED]

Under the California Subdivision Map Act ("Subdivision Map Act"), it is illegal to sell (or transfer fee title to) the portion of the overall site that houses the Torrance latex plant without first creating as a separate legal parcel the real estate underlying the Torrance latex plant.

[REDACTED]

[REDACTED] Thus, it was not feasible for Dow to sell Arkema only the latex plant site.

Dow therefore agreed to Arkema's request that it lease the Torrance latex plant site to Arkema while Dow simultaneously pursued creation of a separate legal parcel under the Subdivision Map Act. Dow and Arkema agreed upon the form of a long-term lease for the latex facility (Torrance Building Lease, Exhibit AA to the Asset Purchase Agreement with Arkema, entered into on July 31, 2009), which is incorporated into the Decision and Order.³

On January 20, 2010, the Commission approved the divestiture of the Acrylic Acid Business and the Latex Polymers Business to Arkema. A copy of the Commission's letter approving the divestiture is provided as Exhibit 2 to this petition.

Notwithstanding Arkema's lack of interest in purchasing the site, the Commission required that Dow sell the entire Torrance site. The Commission's January 20, 2010 letter extended the time for Dow to sell the Torrance site until one year from the date Dow closed the transaction divesting the Acrylic Acid Business and the Latex Polymers Businesses to Arkema. Dow and Arkema closed the divestiture on January 25, 2010, so Dow's time to sell the Torrance site was extended until January 25, 2011.

³ A copy of the final Torrance Building Lease, executed on January 25, 2010, is provided as Confidential Exhibit 1.

After closing the divestiture to Arkema, Dow undertook efforts to sell the Torrance site. On February 18, 2010, Dow engaged CB Richard Ellis/Martin (“CBRE”) to market the site on behalf of Dow and its Union Carbide subsidiary. Throughout 2010, CBRE contacted a number of potential buyers likely to be interested in an industrial site of this type. [REDACTED]

[REDACTED] In early 2011, Dow retained CBRE to conduct an auction of the site, which CBRE ran during the spring and summer of 2011. Throughout the spring of 2011, CBRE solicited interest in the auction of the Torrance site, including through advertisements in major publications, direct mailings, and email blasts. Final bids for the site were due on July 20, 2011.

Potential bidders Hager Pacific [REDACTED] [REDACTED] submitted expressions of interest in the property by the July 20 deadline. After receiving and reviewing the bids submitted, Dow selected Hager Pacific as the winning bidder. Dow and Hager Pacific agreed on terms of a Purchase and Sale Agreement (the “Agreement”), and executed the document on August 1, 2011. The Agreement is attached to this petition as Confidential Exhibit 3.

Dow and Hager Pacific will close the acquisition of the Torrance site upon completion of the conditions to closing, including Commission approval of the sale and the Agreement.

Argument

I. Hager Pacific is an Experienced Industrial Property Owner Well-Qualified to Operate the Torrance Site

Hager Pacific is a seasoned land owner with experience owning and managing a wide portfolio of industrial, commercial, and residential property. Hager Pacific owns and manages nearly 100 properties throughout the United States including 2,300 apartment units and 10 million square feet of industrial and commercial property. Hager Pacific's portfolio is valued in excess of \$1 billion. Hager Pacific does not merely own the properties; it oversees daily operations of its sites through its own staff of property management professionals as well as through the personal involvement of three managing partners who direct acquisition, renovation, and asset and property management activities.

Moreover, Hager Pacific specializes in acquiring aging, vacant, environmentally impacted or under-performing assets, which makes it an especially well-suited buyer for the Torrance site. Hager Pacific also has a lengthy track record of acquiring aged manufacturing properties from large corporations.

Hager Pacific is very active in the South Bay section of the greater Los Angeles area, where Torrance is located. Since October of 2009, Hager Pacific has bought several properties that are within a twenty miles radius of 19500 Mariner Avenue in Torrance from corporate sellers including YRC Worldwide, Harsco Corporation, Carlisle Tire and Woods Equipment. Hager Pacific also owns several Class B and Class C industrial properties in Carson, Compton, Gardena and Rancho Dominguez, cities which neighbor Torrance.

II. Hager Pacific Has The Financial Resources To Acquire And Maintain The Torrance Site

Dow and Hager Pacific agreed on a purchase price of [REDACTED] for the Torrance site. A financial statement for David Hager, managing partner of Hager Pacific Properties,

provided as Confidential Exhibit 4 to this Petition, indicates [REDACTED], far more than needed to close the acquisition or for continued operation and maintenance of the Torrance site.

III. The Agreement Is A Standard Purchase And Sale Agreement That Will Transfer The Property To Hager Pacific

Dow and Hager Pacific have agreed upon a standard purchase and sale agreement that will transfer ownership of the Torrance site and related benefits, obligations, and liabilities to Hager Pacific.⁴ Hager Pacific will also assume the existing leases at the Torrance site, including the Arkema lease, and the benefits, obligations, and liabilities therein.⁵

Dow's post-closing involvement with the site will be extremely limited, and will not provide Dow with any mechanism to affect Arkema's competitiveness. Pursuant to Section 15.B. of the Agreement, Dow will provide Hager Pacific with limited indemnification for liabilities, to the extent arising from a condition which arose entirely from Dow's activities on the property prior to closing. Pursuant to Section 24 of the Agreement, Dow will continue certain elements of ongoing environmental remediation work at the Torrance site. Dow has already begun the work at the site and Dow's continued involvement in the environmental remediation efforts will facilitate their efficient and effective completion, minimizing any disruption to Hager Pacific or Arkema.

IV. Arkema Will Continue to Succeed Competitively Under Hager Pacific's Ownership

Arkema, which was active in acrylic acids and esters and other fields adjacent to Latex Polymers Products prior to its acquisition of the Acrylic Acid Business and the Latex Polymers Business, has been a successful operator of the businesses since the acquisition was

⁴ Agreement, Section 1(a)-(b) (conveying to Hager Pacific Dow's interest in the real property, appurtenant rights, and personal property at the Torrance site).

⁵ See Exhibits C-3 and C-4 to the Agreement. Dow is working with Arkema, Praxair, and Honeywell to negotiate the assignment of their leases to Hager Pacific.

completed. Arkema's success and commitment to the Acrylic Acid Business and the Latex Polymers Business is evidenced by its recent and planned expansion in related fields.⁶

Hager Pacific's ownership of the site will only facilitate Arkema's continued competitiveness. As discussed above, Hager Pacific is an experienced landlord that has operated similar complex industrial sites with multiple tenants and environmental remediation issues and has the expertise to own and operate the Torrance site.

Though Hager Pacific's credentials are extremely strong, it also bears mentioning that, as Dow has noted to the Commission previously, the owner of the Torrance site has very limited responsibilities vis-à-vis Arkema. The owner's responsibilities are the basic responsibilities of a site owner, such as ensuring that certain environmental permits are kept up to date and that the various lessees at the site abide by the terms of their respective leases and do not engage in conduct that will limit the others' rights. They do not include, for instance, providing site services – Arkema actually provides site services to both its own facility and to other lessees. Given these limited responsibilities, it would be very difficult for any landlord at the Torrance site to injure Arkema competitively.

Finally, Arkema will benefit from certainty about the ownership of the site. Since entering into the original divestiture agreements, Arkema has understood that the site would likely be sold to an unknown buyer. Identifying Hager Pacific as that buyer erases this uncertainty and gives Arkema security that it will have a competent and experienced landlord.

⁶ See, e.g., http://www.arkema.com/sites/group/en/press/pr_detail.page?p_filepath=/templatedata/Content/Press_Release/data/en/2011/110330_arkema_a_major_supplier_in_the_paint_and_coating_industry_in_2011.xml (explaining Arkema's desire to become "a leading supplier serving paint and coating producers around the world," including through its acquisition of Total's coatings resins and photocure resins business, which was completed in July 2011.)

V. Approving This Transaction Quickly Will Facilitate A Smooth Transition For All Parties and Ensure Arkema's Competitiveness

The sale of the Torrance site may not be completed without Commission approval. Once Commission approval is granted, Dow and Hager Pacific are committed to a speedy close that will minimize disruption and ensure Arkema's continued competitiveness. Quick closing is common for Hager Pacific, which prides itself on signing and closing acquisitions quickly and is committed to a tightly knit management structure that permits it to do so.

Request for Confidential Treatment

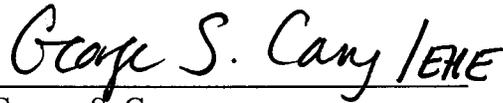
Because this petition and its attachments contain confidential and competitively sensitive business information relating to the Torrance site and the Acrylic Acid Business and the Latex Polymers Business, Dow has redacted such confidential information from the public version of this petition and its attachments. The disclosure of this information would prejudice Dow, Arkema, and Hager Pacific, cause harm to the ongoing competitiveness of the Acrylic Acid Business and the Latex Polymers Business, and impair Dow's ability 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 Hager Pacific and Arkema, 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).

Conclusion

For the foregoing reasons, Dow respectfully requests that the Commission expeditiously approve the proposed divestiture of the Torrance site to Hager Pacific, in the manner provided in the Agreement, as soon as practicable after expiration of the public comment period.

Respectfully submitted,

Handwritten signature of George S. Cary in black ink, with the initials 'EHE' at the end.

George S. Cary
Elaine Ewing
Cleary, Gottlieb, Steen & Hamilton LLP
2000 Pennsylvania Ave., N.W.
Washington, D.C. 20006
(202) 974-1500

Counsel for Dow

Dated: August 19, 2011

CONFIDENTIAL EXHIBIT 1

Torrance Building Lease, Exhibit AA to the Asset Purchase Agreement with Arkema, Inc.

(Redacted)

EXHIBIT 2

January 20, 2010 Letter from Donald S. Clark to George S. Cary, Esq.



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

January 20, 2010

George S. Cary, Esq.
Cleary Gottlieb Steen & Hamilton LLP
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-1801

Re: The Dow Chemical Company/Rohm & Haas
Docket No. C-4243

Dear Mr. Cary:

This letter responds to the Petition of The Dow Chemical Company for Approval of Proposed Divestiture of the Acrylics Acid and Latex Polymers Businesses to Arkema Inc. ("Petition") filed by The Dow Chemical Company ("Dow"), on August 14, 2009, seeking prior approval by the Federal Trade Commission of the acquirer and the manner of the divestiture of those businesses as required by the order issued by the Commission on March 31, 2009, in Docket No. C-4243 (hereinafter the "Order"). The Commission has determined to approve Dow's Petition.

In according its approval to Dow's Petition, the Commission has relied upon the information submitted by Dow and Arkema and the representations made by Dow and Arkema in the course of the Commission staff's review of Dow's Petition, and the Commission has assumed them to be accurate and complete. The manner of divestiture considered by the Commission is that set forth in the agreements submitted to the Commission through the course of the staff's review.

This letter also responds to Dow's request to extend the time to divest its ownership of the real property described on Exhibit 5 to the Order that is related to the Torrance Facility (as that term is defined in Paragraph I.XXX. of the Order). The Commission has determined that Dow has shown cause under section 4.3(b) of the Commission's Rules of Practice for the Commission to grant Dow's request to extend the time to divest its interest in this real property until a date that is one (1) year from the date Dow closes the transaction divesting the Acrylics Acid and Latex Polymers Businesses to Arkema Inc.

By direction of the Commission.

Donald S. Clark
Secretary

CONFIDENTIAL EXHIBIT 3

Real Estate Purchase and Sale Agreement between Union Carbide Corporation and Hager
Pacific Acquisitions LLC

(Redacted)

CONFIDENTIAL EXHIBIT 4

Financial Statement of David Hager

(Redacted)