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 **Novartis AG,** a corporation, **AstraZeneca, PLC,** a corporation, and **Syngenta AG,** a corporation to be formed.	)	Docket No.

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed combination of Novartis AG's ("Novartis") crop protection and seeds businesses and AstraZeneca PLC's ("Zeneca") crop protection business to form Syngenta AG ("Syngenta"), and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition intended to present to the Commission for its consideration and which, if issued by the Commission, would charge 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 said 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 thereupon issued its Complaint and an Order to Maintain Assets, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now, in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Order:

1. Novartis is a corporation organized, existing and doing business under and by virtue of the laws of Switzerland, with its office and principal place of business located at Lichtstrasse 35, CH-4002, Basel, Switzerland.

2. Zeneca is a corporation organized, existing and doing business under and by virtue of the laws of the United Kingdom, with its office and principal place of business located at 15 Stanhope Gate, London W1K 1LN, United Kingdom.

3. Syngenta will be formed as a corporation organized, existing and doing business under and by virtue of the laws of Switzerland with its office and principal place of business located in Basel, Switzerland.

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

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Acetochlor Acquirer" means Dow or, in the event Dow is not approved as the Acetochlor Acquirer or for any other reason does not acquire the Acetochlor Assets, any other Person who acquires the Acetochlor Assets, after approval by the Commission.

B. "Acetochlor Assets" means all assets and rights owned or held by Zeneca and relating to and/or used in the operation of the Acetochlor Business, including, without limitation, the assets listed below and including, without limitation, the assets specified in the Acetochlor Divestiture Agreement (which agreement shall not be construed to vary or contradict the terms of this Order):

1. Zeneca's rights under and title and interest in the Monsanto Contracts;

2. Zeneca's rights, title, and interest in all EPA, state, and foreign registrations and approvals relating to the manufacture or sale of all products of the Acetochlor Business;

3. Zeneca's rights, title, and interest in all Acetochlor Registration Data (except in the case of Safener 29148, which Zeneca shall exclusively license for uses relating to all products of the Acetochlor Business), submissions and supporting data and documents, including, without limitation, all labels, label extensions, or planned or pending label extensions for any application;

4. Zeneca's rights, title, and interest in all trademarks and trade names for all products of the Acetochlor Business;

5. Zeneca's rights, title, and interest in the Acetochlor Intellectual Property;

6. exclusive, perpetual, royalty-free, and transferable licenses under the Zeneca Intellectual Property for uses relating to all products of the Acetochlor Business and copies of all research materials and know-how relating thereto;

7. an exclusive, perpetual, royalty-free, and transferable license for the Glutathione Transferase (GST27) resistance gene to produce plants which are labeled as acetochlor tolerant;

8. Zeneca's rights under and title and interest in all contracts or agreements with customers, suppliers, sales representatives, distributors, agents, licensors, licensees, consignors, and consignees other than multi-product contracts as defined in the Acetochlor Divestiture Agreement;

9. all inventories of all products of the Acetochlor Business;

10.

designs, drawings, processes, and quality control data related to and primarily used in the Acetochlor Business.

C. "Acetochlor Business" means the research, development, registration, manufacture, formulation, licensing, sale, and distribution by Zeneca of all unmixed and mixed acetochlor products, in any market anywhere in the world, except for the following mixtures: (1) Zeneca's mixtures of acetochlor and EPTC, (2) Zeneca's mixtures of acetochlor and fluorochlorodone (including twin/co-packs of acetochlor and fluorochlorodone), and (3) Zeneca's proposed mixtures of acetochlor and mesotrione.

D. "Acetochlor Divestiture Agreement" means the Asset Purchase Agreement between Zeneca and Dow dated as of October 17, 2000, and its related agreements, schedules, exhibits and appendices.

E. "Acetochlor Intellectual Property" means any form of intellectual property predominantly relating to the research, development, manufacture, sale, or use of any product of the Acetochlor Business, owned, licensed or controlled by Zeneca, including, but not limited to, the patents and trademarks listed in or issuing on applications listed in confidential Appendix 1 hereto, trade secrets, research materials, technical information, inventions, test data, technological know-how, product efficacy data, safety data, production and formulation know-how, licenses, registrations, submissions, approvals, technology, specifications, designs, drawings, processes, recipes, protocols, formulas, quality control data, books, records, and files. Acetochlor Intellectual Property does not include Zeneca Intellectual Property.

F. "Acetochlor Non-Public Information" means any information disclosed by the Acetochlor Acquirer to Respondents, or otherwise obtained by Respondents, in connection with any Acetochlor Supply Agreement. Non-Public Information shall not include: (i) information in the public domain, (ii) information that subsequently falls within the public domain through no violation of this Order by Respondents, or (iii) information that subsequently becomes known to Respondents from a third party not in breach of a confidential disclosure agreement.

G. "Acetochlor Registration Data" means all data relating to any product of the Acetochlor Business, and all data relating to safeners used with such products, that has been, or will be, submitted to the United States Environmental Protection Agency or to any state or foreign regulatory agency for purposes of obtaining or maintaining any registration or authorization for any product of the Acetochlor Business.

H. "Acetochlor Supply Agreement" means any agreement describing the terms agreed to by Respondents and an Acetochlor Acquirer and approved by the Commission relating to the supply of any product required by Paragraph II.B. of this Order.

I. "Acetochlor Technical Services" means (1) provision of expert advice, assistance and training in technical and regulatory areas relating to the Acetochlor Business, including, but not limited to, such services in (a) non-microencapsulated formulations, (b) Monsanto ARM arrangements, (c) the process for the manufacture of safeners, (d) micro-encapsulated formulations, (e) the transfer or licensing of product registration and regulatory data, (f) proprietary on-going studies, and (g) bulk sales and logistics in the United States, and (2) reasonable access to Zeneca's manufacturing sites.

J. "Bayer" means Bayer AG, a corporation organized, existing and doing business under and by virtue of the laws of Germany, with its office and principal place of business located at Werk Leverkusen, S1368 Leverkusen, Germany.

K. "Clariant" means Clariant AG, a company organized, existing and doing business under and by virtue of the laws of Switzerland, with its office and principal place of business located at Rothausstrasse 61, CH-4132 Muttenz, Switzerland.

L. "Commission" means the Federal Trade Commission.

M.

T. "Strobilurin Acquirer" means Bayer or, in the event Bayer is not approved as the Strobilurin Acquirer or for any other reason does not acquire the Strobilurin Assets, any other Person who acquires the Strobilurin Assets, after approval by the Commission.

U. "Strobilurin Assets" means all assets and rights owned or held by Novartis and relating to and/or used in the operation of the Strobilurin Business, including, without limitation, the assets listed below and including, without limitation, those assets specified in the Strobilurin Divestiture Agreement (which agreement shall not be construed to vary or contradict the terms of this Order):

1. Novartis' rights, title, and interest in all machinery, furniture, fixtures, equipment, tools, and other tangible personal property at the Muttenz Production Facility used for or necessary for the manufacture of trifloxystrobin, trifloxystrobin intermediates, or compounds containing trifloxystrobin;

2. all rights, licenses, permits, registrations, know-how, technical information, and other permissions or expertise necessary to manufacture trifloxystrobin, trifloxystrobin intermediates, or compounds containing trifloxystrobin at the Muttenz Production Facility;

3. Novartis' lease with Clariant for the land and buildings of the Muttenz Plant, infrastructure and support services;

4. Novartis' rights, title, and interest in all United States Environmental Protection Agency, state, and foreign registrations and approvals relating to the manufacture or sale of strobilurin fungicides or compounds containing strobilurin fungicides;

5. Novartis' rights, title, and interest in all Strobilurin Registration Data, submissions and supporting data and documents, including, without limitation, all labels, label extensions, or planned or pending label extensions for any application;

6. Novartis' rights, title, and interest in all trademarks and trade names for trifloxystrobin, any compound containing trifloxystrobin, or any other strobilurin fungicide;

7. Novartis' rights, title, and interest in the Strobilurin Intellectual Property, provided, however, that Novartis may receive (i) an exclusive (except as to the Strobilurin Acquirer), perpetual, royalty-free, and transferable license back from the Strobilurin Acquirer to use the Strobilurin Intellectual Property identified in confidential Appendix 3 hereto outside of the field of strobilurin fungicides, and (ii) a non-exclusive perpetual, royalty-free and transferable license from the Strobilurin Acquirer to use the Strobilurin Intellectual Property not identified in confidential

Appendix 3 outside of the field of strobilurin fungicides;

8. exclusive, perpetual, royalty-free, and transferable licenses under the Novartis Intellectual Property for fungicidal uses relating to trifloxystrobin, compounds containing trifloxystrobin, or any other strobilurin fungicide of the Strobilurin Business, and copies of all research materials and know-how relating thereto;

9. non-exclusive, perpetual, royalty-free, and transferable licenses under the Novartis Intellectual Property for non-fungicidal uses relating to trifloxystrobin, compounds containing trifloxystrobin, or any other strobilurin fungicide of the Strobilurin Business, and copies of all research materials and know-how relating thereto;

10. Novartis' rights under and title and interest in all contracts or agreements with customers, suppliers, sales representatives, distributors, agents, licensors, licensees, consignors, and consignees related to and primarily used in the Strobilurin Business;

11. all inventories of trifloxystrobin and compounds containing trifloxystrobin;

12. all research materials and know-how of the Strobilurin Business; and

13. all books, records, and files, customer lists, customer records and files, vendor lists, catalogs, sales promotion literature, advertising materials, technical information, management information systems, software, inventions, specifications, designs, drawings, processes, and quality control data related to and primarily used in the Strobilurin Business.

V. "Strobilurin Business" means the research, development, registration, manufacture, formulation, licensing, sale and distribution of the existing strobilurin fungicide products and product developments of Novartis, in any market anywhere in the world, including all existing straight products or combinations therewith.

W. "Strobilurin Divestiture Agreement" means the Asset Purchase Agreement between Novartis and Bayer dated as of September 7, 2000, and its related agreements, schedules, exhibits and appendices.

X. "Strobilurin Intellectual Property" means any form of intellectual property relating predominantly to the research, development, manufacture, sale, or use of trifloxystrobin, any compound containing trifloxystrobin, or any other compound consisting of or containing a strobilurin fungicide, owned, licensed or controlled by Novartis, including, but not limited to, the patents and trademarks listed in or issuing on applications listed in confidential Appendix 4 hereto, trade secrets, research materials, technical information, inventions, test data, technological know-how, product efficacy data, safety data,

production and formulation know-how, licenses, registrations, submissions, approvals, technology, specifications, designs, drawings, processes, recipes, protocols, formulas, quality control data, books, records, and files. Strobilurin Intellectual Property does not include Novartis Intellectual Property.

Y. "Strobilurin Non-Public Information" means any information disclosed by the Strobilurin Acquirer to Respondents, or otherwise obtained by Respondents, in connection with any Strobilurin Supply Agreement. Non-Public Information shall not include: (i) information in the public domain, (ii) information that subsequently falls within the public domain through no violation of this Order by Respondents, or (iii) information that subsequently becomes known to Respondents from a third party not in breach of a confidential disclosure agreement.

Z. "Strobilurin Registration Data" means all data, owned or controlled by Novartis, relating to any compound consisting of or containing trifloxystrobin or any other strobilurin fungicide that has been, or will be, submitted to the United States Environmental Protection Agency or to any state or foreign regulatory agency for purposes of obtaining or maintaining any registration or authorization for any product consisting or containing trifloxystrobin or any other strobilurin fungicide.

AA. "Strobilurin Supply Agreement" means any agreement describing the terms agreed to by Respondents and a Strobilurin Acquirer and approved by the Commission relating to the supply of any product required by Paragraph III.B. of this Order.

BB. "Strobilurin Technical Services" means (1) provision of expert advice, assistance and training in technical and regulatory areas relating to the Strobilurin Business, including, but not limited to, such services in toxicology, environmental, ecotex, metabolism, residues, general matters, field biology, process development for Muttenz processes, quality control, analytical matters, and formulation technology, and (2) reasonable access to Respondents' manufacturing facilities used to produce the products to be supplied under Paragraph III.B.(1), (2), and (3) of this Order.

CC. "Syngenta" means Syngenta AG, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Syngenta, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

DD. "Syngenta Formation" means the spin-off and merger of Novartis' crop protection and seeds businesses and Zeneca's crop protection business to create a new company, Syngenta AG, as described in the December 2, 1999, Master Agreement between Novartis and AstraZeneca.

EE. "Zeneca" means AstraZeneca PLC, its directors, officers, employees, agents,

representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Zeneca, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

FF. "Zeneca Intellectual Property" means any form of intellectual property relating to or used in the research, development, manufacture, sale, or use of any product of the Acetochlor Business (*e.g.*, process technology, safener technology, microencapsulation technology), licensed to, owned, or controlled by Zeneca, listed in confidential Appendix 5 hereto.

II.

IT IS FURTHER ORDERED that:

A. Respondents shall divest the Acetochlor Assets, absolutely and in good faith, at no minimum price to Dow pursuant to the Acetochlor Divestiture Agreement, no later than (i) ten business days after the Syngenta Formation or (ii) ten business days after receipt by Respondents of all necessary governmental approvals from Germany, and in any event, no later than six (6) months from the date the Commission places the Consent Agreement on the record for public comment; provided, however, that in the event Dow does not acquire the Acetochlor Assets because of Dow's breach of the Acetochlor Divestiture Agreement, Respondents shall divest the Acetochlor Assets to another Person that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission, within six (6) months from the date the Commission places the Consent Agreement on the record for public comment; provided, further, that if at the time the Commission determines to make the Order final, the Commission notifies Respondents that Dow is not approved as the Acetochlor Acquirer or that the Acetochlor Divestiture Agreement is not an acceptable manner of divestiture, Respondents shall divest the Acetochlor Assets to another Person that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission, within five (5) months from the date this Order becomes final.

B. Respondents shall supply to the Acetochlor Acquirer, in a timely manner and in quantities reasonably required to operate the Acetochlor Assets, the following products necessary to enable the Acetochlor Acquirer to conduct the Acetochlor Business in substantially the same manner as Respondents: (1) emulsifiable concentrate and granular formulations of acetochlor and acetochlor mixtures; (2) microencapsulated formulations of acetochlor and acetochlor mixtures; (3) Safener 29148, (4) Safener 25788, and (5) mesotrione. Respondents shall supply any product required by this Paragraph II.B. pursuant to an Acetochlor Supply Agreement.

C. Respondents shall make representations and warranties that any products supplied under an Acetochlor Supply Agreement meet the product and quality specifications, and are contained, packaged and labeled in accordance with the specifications required by

applicable governmental laws, rules, and regulations and agreed to between Respondents and the Acetochlor Acquirer.

D.

I. Respondents shall not make employment offers to any individual identified in Paragraph II.F.1. of this Order for a period of one (1) year from the date this Order becomes final if such individual has accepted an employment offer from the Acetochlor Acquirer, unless such individual has been involuntarily separated from employment by such Acetochlor Acquirer.

J. For a period up to twelve (12) months from the date the Acetochlor Assets are divested, at the request of the Acetochlor Acquirer at any time during the twelve (12) month period, Respondents shall provide Acetochlor Technical Services to enable the Acetochlor Acquirer to conduct the Acetochlor Business in substantially the same manner as Respondents.

K. Respondents shall use their reasonable best efforts to transfer to the Acetochlor Acquirer, or assist the Acetochlor Acquirer in obtaining, any approval, consent, ratification, waiver, or other authorization (including governmental) that is or will become necessary to complete the divestitures required by Paragraph II.A. of this Order.

L. The Acetochlor Divestiture Agreement, or any other asset purchase agreement approved by the Commission, shall be incorporated into this Order and made a part hereof. Any failure to comply with the terms of the Acetochlor Divestiture Agreement or such other asset purchase agreement shall constitute a violation of this Order.

M. The purpose of the divestiture required by this Paragraph II is to ensure the continued use of the Acetochlor Assets in the same business in which such assets are engaged at the time of the proposed merger between Respondents and to remedy the lessening of competition alleged in the Commission's complaint.

III.

IT IS FURTHER ORDERED that:

A. Respondents shall divest the Strobilurin Assets, absolutely and in good faith, at no minimum price to Bayer pursuant to the Strobilurin Divestiture Agreement, no later than (i) ten business days after the Syngenta Formation or (ii) ten business days after receipt by Respondents of all necessary governmental approvals from the United Kingdom and Germany, and in any event, no later than six (6) months from the date the Commission places the Consent Agreement on the record for public comment; provided, however, that in the event Bayer does not acquire the Strobilurin Assets because of Bayer's breach of the Strobilurin Divestiture Agreement, Respondents shall divest the Strobilurin Assets to another Person that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission, within six (6) months from the date the Commission places the Consent Agreement on the record for public comment; provided,

further, that if at the time the Commission determines to make the Order final, the Commission notifies Respondents that Bayer is not approved as the Strobilurin Acquirer or that the Strobilurin Divestiture Agreement is not an acceptable manner of divestiture, Respondents shall divest the Strobilurin Assets to another Person that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission, within five (5) months from the date this Order becomes final.

B. Respondents shall supply to the Strobilurin Acquirer, in a timely manner and in quantities reasonably required to operate the Strobilurin Business, the following products necessary to enable the Strobilurin Acquirer to conduct the Strobilurin Business in substantially the same manner as Respondents: (1) Intermediate step 1, (2) Intermediate step 2, (3) formulations of the products described in confidential Appendix 7 of this Order, and (4) propiconazole for use in mixtures with trifloxystrobin. Respondents shall supply any product required by this Paragraph III.B. pursuant to a Strobilurin Supply Agreement.

C. Respondents shall make representations and warranties that any products supplied under a Strobilurin Supply Agreement meet the product and quality specifications, and are contained, packaged and labeled in accordance with the specifications required by applicable governmental laws, rules, and regulations and agreed to between Respondents and the Strobilurin Acquirer.

D. Except for events of force majeure, Respondents shall be liable for all damages to the Strobilurin Acquirer resulting from Respondents' breach of any obligation or warranty contained in any Strobilurin Supply Agreement, including liability for any indirect, consequential, special, or incidental damages; provided, however, that nothing in this Paragraph shall preclude Respondents from raising any applicable defenses.

E. Respondents shall not terminate any Strobilurin Supply Agreement, during its initial term, for any reason; provided, however, that Respondents may terminate a Strobilurin Supply Agreement during its initial term due to an alleged material breach by the Strobilurin Acquirer, but only after Respondents have (i) provided the Strobilurin Acquirer with 60 days notice to cure the breach, (ii) have submitted their claim to arbitration, and (iii) the arbitrator has fully resolved the claim in Respondents' favor.

F. Respondents shall provide the Strobilurin Acquirer an opportunity to:

1. Enter into employment contracts with any individual identified in confidential Appendix 8 of this Order, or any other individuals subsequently identified by agreement between Respondents and a Strobilurin Acquirer, in the event the Strobilurin Acquirer is a Person other than Bayer; and

2. Inspect the personnel files and other documentation relating to the individuals identified in Paragraph III.F.1. of this Order, to the extent permissible under

applicable laws, no later than twenty (20) days from the date Respondents sign the Consent Agreement, or no later than the date on which a Strobilurin Acquirer other than Bayer signs an agreement to acquire the Strobilurin Assets.

G. From the date Respondents sign the Consent Agreement until the divestiture required by Paragraph III.A. is completed, Respondents shall take steps, including implementation of appropriate incentive plans (such as payment of all current and accrued benefits and pensions, to which the employees are entitled) and appropriate bonuses, to cause the individuals identified in Paragraph III.F.1. of this Order to accept offers of employment from the Strobilurin Acquirer.

H. Respondents shall not interfere with the employment by the Strobilurin Acquirer of the individuals identified in Paragraph III.F.1. of this Order; shall not offer any incentive to such individuals to decline employment with the Strobilurin Acquirer or to accept other employment with Respondents; and shall remove any contractual impediments with Respondents that may deter such individuals from accepting employment with the Strobilurin Acquirer, including, but not limited to, any non-compete provisions of

M. The Strobilurin Divestiture Agreement, or any other asset purchase agreement approved by the Commission, shall be incorporated into this Order and made a part hereof. Any failure to comply with the terms of the Strobilurin Divestiture Agreement or such other asset purchase agreement shall constitute a violation of this Order.

N. The purpose of the divestiture required by this Paragraph III is to ensure the continued use of the Strobilurin Assets in the same business in which such assets are engaged at the time of the proposed merger between Respondents and to remedy the lessening of competition alleged in the Commission's complaint.

IV.

IT IS FURTHER ORDERED that:

A. Absent the prior written consent of the proprietor of any Acetochlor Non-Public Information or any Strobilurin Non-Public Information, Respondents shall hold and safeguard Acetochlor Non-Public Information and Strobilurin Non-Public Information apart from all other information held by Respondents.

B. Absent the prior written consent of the proprietor of any Acetochlor Non-Public Information, Respondents shall:

1. Subject to Paragraph IV.B.2., not provide, disclose or otherwise make available any Acetochlor Non-Public Information to any of Respondents' businesses relating to the research, development, registration, manufacture, formulation, licensing, distribution, use or sale of any herbicide products; and

2. Use any Acetochlor Non-Public Information solely in activities necessary for Respondents to perform their obligations pursuant to any Acetochlor Supply Agreement.

C. Absent the prior written consent of the proprietor of any Strobilurin Non-Public Information, Respondents shall:

1. Subject to Paragraph IV.C.2., not provide, disclose or otherwise make available any Strobilurin Non-Public Information to any of Respondents' businesses relating to the research, development, registration, manufacture, formulation, licensing, distribution, use or sale of any fungicide products; and

2. Use any Strobilurin Non-Public Information solely in activities necessary for Respondents to perform their obligations pursuant to any Strobilurin Supply Agreement.

D. Respondents shall make available Acetochlor Non-Public Information and Strobilurin Non-Public Information only to those persons employed by Respondent having a need to know and who agree in writing to be bound by the terms of this Paragraph IV.

E. Upon the written request of any proprietor of Acetochlor Non-Public Information or Strobilurin Non-Public Information, Respondents shall return to such proprietor, within fifteen (15) days from the date the request is received, all copies, in any form whatsoever, of such information provided to Respondents.

F. Respondents shall, within thirty (30) days from the date this Order becomes final:

1. Develop and/or maintain policies and procedures necessary to implement the requirements of this Paragraph IV and incorporate such policies and procedures into Respondents' policy and operations manuals;

2. Conduct training for all persons employed by Respondents relating to the requirements of this Paragraph IV; and

3. Develop and/or maintain disciplinary policies in the event any person employed by Respondents fails to comply with any of the policies relating to this Paragraph IV.

V.

IT IS FURTHER ORDERED that Respondents shall provide a copy of this Order to each of Respondents' officers, employees, or agents having managerial responsibility for any activity related to Respondents' obligations under Paragraphs II through IV of this Order.

VI.

IT IS FURTHER ORDERED that:

A. If Respondents have not divested, absolutely and in good faith the Acetochlor Assets or the Strobilurin Assets within the time and manner required by Paragraphs II and III of this Order, the Commission may at any time appoint a Divestiture Trustee to divest such assets. Such trustee may be the same person appointed by the Commission to serve as Monitor Trustee under Paragraph IV of the Order to Maintain Assets.

B.

pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.

C. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph VI, Respondents shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the Divestiture Trustee, subject to the consent of the Respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) business days after receipt of written 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. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to effect the divestiture for which he or she has been appointed.

3. Within ten (10) business days after appointment of the Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the Divestiture Trustee all rights and powers necessary to permit the trustee to effect the divestiture for which he or she has been appointed.

4. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph VI.C. to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period the Divestiture Trustee has submitted a plan of divestiture or believes that divestiture can be

court-appointed trustee, by the court.

6. The Divestiture Trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, but shall divest expeditiously at no minimum price. The divestiture shall be made only to an acquirer that receives the prior approval of the Commission, and the divestiture shall be accomplished only in a manner that receives the prior approval of the Commission; provided, however, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by Respondents from among those approved by the Commission; provided, further, that Respondents shall select such entity within five (5) business days of receiving written notification of the Commission's approval.

7. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the Respondent, and the trustee's power shall be terminated. The Divestiture Trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the assets.

8. Respondents shall indemnify the Divestiture Trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the Divestiture Trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in this Paragraph VI.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the

divestitures required by this Order.

11. The Divestiture Trustee shall have no obligation or authority to operate or maintain the assets to be divested.

12. The Divestiture Trustee shall report in writing to Respondents and the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestiture.

VII.

IT IS FURTHER ORDERED that within sixty (60) days after the date this Order becomes final and annually thereafter, on the anniversary of the date this Order becomes final,

X.

IT IS FURTHER ORDERED that this Order shall terminate ten (10) years from the date it becomes final.

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED: