

ORDER

I.

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

A. The following terms shall mean the following entities:

1. “Dow” means The Dow Chemical Company, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by The Dow Chemical Company, and the respective directors, officers, employees, agents and representatives, successors, and assigns of each. Dow does not include Union Carbide Corporation or Univation.

2. “Union Carbide” means Union Carbide Corporation, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Union Carbide Corporation, and the respective directors, officers, employees, agents and representatives, successors, and assigns of each. Union Carbide does not include Dow. Union Carbide does not include Univation.

3. “Univation” means Univation Technologies, LLC, a limited liability company organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 555 San Felipe Road, Suite 1950, Houston, Texas 77056.

4. “Respondents” means Dow and Union Carbide individually and collectively.

5. “Commission” means the Federal Trade Commission.

6. “Asahi” means Asahi Chemical Industry Co., Ltd., a foreign corporation, existing and doing business under and by virtue of the laws of Japan, with its offices and principal place of business located at 1-2, Yuraku-cho, 1-chome, Chiyoda-ku, Tokyo 100, Japan, its subsidiaries, divisions, groups and affiliates.

7. “BP” means BP Amoco p.l.c., a foreign corporation, existing and doing business under and by virtue of the laws of England and Wales, with its offices and principal executive offices located at Britannic House, 1 Finsbury Circus, London EC2M, England, its subsidiaries, divisions, groups and affiliates. BP’s principal U.S. office is located at 200 East Randolph Drive, Chicago, Illinois 60601-7125.

8. “Exxon” or “Exxon Mobil” means Exxon Mobil Corporation, a corporation

organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its offices and principal place of business located at 5959 Las Colinas Boulevard, Irving, Texas 75039-2298, its subsidiaries, divisions, groups and affiliates. Exxon does not include Univation.

9. “Huntsman” means Huntsman International LLC, a limited liability company, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 500 Huntsman Way, Salt Lake City, Utah 84108, and its subsidiaries, divisions, groups, and affiliates.

10. “Ineos” means Ineos Group plc and its subsidiaries, divisions, groups and affiliates, including Ineos L.L.C., a limited liability company organized, existing and doing business under and by virtue of the laws of the State of Louisiana, with its offices and principal place of business located at 701 Poydras Street, Suite 5000, New Orleans, Louisiana 70139.

11. “Mitsui” means Mitsui Chemicals, Inc., a foreign corporation, existing and doing business under and by virtue of the laws of Japan, with offices and principal place of business located at 2-5 Kasumigaseki, 3-chome, Chiyoda-ku, Tokyo, Japan, its subsidiaries, divisions, groups and affiliates. Mitsui’s principal U.S. office is located at Mitsui Petrochemicals (America), First Interstate Bank Plaza, 1000 Louisiana, Suite 5696, Houston, Texas 77002.

12. “Albemarle” means Albemarle Corporation, a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its offices and principal place of business located at 330 South Fourth St., Richmond, Virginia 23210.

13. “Boulder Scientific” means Boulder Scientific Company, a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its offices and principal place of business located at 598 Third St., Mead, Colorado 80542.

B. “Acquirer” means any person or business that purchases the Dow Global Ethylenamines Business, the Dow Global Ethanolamines Business, the Dow Gas Spec MDEA Business, or the Dow Gas Phase Metallocene PE Assets pursuant to this Order. Acquirer includes BP, Huntsman and/or Ineos.

C. “Acquisition” means the acquisition by Dow of assets or voting shares of Union

E. “AEEA Plant” means Dow’s AEEA production facility located at the Freeport Site.

F. “Asahi Agreement Patent Rights” means all rights conveyed to Dow, pursuant to the Joint Development Agreement, dated July 21, 1995, as amended, and the Technology Commercial Agreement, dated February 26, 1998, as amended, both between Asahi Chemical Industry Co., Ltd. and Dow, to make, use, and sell, and to sublicense any person to make, use and sell, Ethylene Polymers in a Gas Phase PE Process.

J. “BP-Dow-Chevron Agreement” means the Single Site Metallocene Catalyst Co-Operation and Exploitation Agreement dated September 8, 1998, by and between BP, Dow and Chevron Chemical Company LLC, as amended.

K. “BP-Dow JDA” means the Joint Development Agreement dated January 30, 1995, by and between BP and Dow, as amended.

L. “BP-Dow Joint Development Program” means all research and development activity taken by Dow or BP, individually or jointly, pursuant to, in furtherance of, or in performance of the BP-Dow JDA.

M. “Businesses and Assets To Be Divested” means

1. the Dow Global Ethyleneamines Business;
2. the Dow Global Ethanolamines Business;
3. the Dow Gas Phase Metallocene PE Assets; and
4. the Dow Gas Spec MDEA Business.

N. “Castmate” means CASTMATE and MORMATE ceramic processing additives produced by blending ethyleneamines, latex, and water, and any other products comprising ethyleneamines and, optionally, latex and water, sold for use in the manufacture of ceramic articles as a processing additive and managed by the same persons in Freeport, Texas who manage the Dow Global Ethyleneamines Business.

O. “Catalyst Technology” means technology relating to PE Catalyst or to the production, preparation and use of PE Catalysts, PE Catalyst Support or PE Catalyst Systems.

P. “Combined Technology” means technology (including without limitation Patents and Know-How) developed in the course of the BP-Dow Joint Development Program, whether or not patentable, including all technical data and information generated individually or jointly by Dow or BP in the course of the BP-Dow Joint Development Program; all Ethylene Polymers produced in the course of the BP-Dow Joint Development Program; any individual or joint invention, improvement or discovery, whether or not patentable, which was made or conceived in the course of the BP-Dow Joint Development Program and technology developed in the course of the BP-Dow Joint Development Program for use and/or manufacture of any Combined Technology Catalyst; and all laboratory records, reports, technical data and information generated in the course of the BP-Dow Joint Development Program; excluding, however, ownership of technology developed by Dow prior to, or not in the course of, the BP-Dow Joint Development Program.

Q. “Combined Technology Catalyst” means any Metallocene Catalyst System (including activators, supports or scavenging agents) made or conceived in the course of the BP-Dow Joint Development Program, including any improvements upon Introduced Dow Metallocene Catalyst Systems, which improvements were made or conceived in the course of the BP-Dow Joint Development Program, but excluding the Introduced Dow Metallocene Catalyst Systems.

R. “Combined Technology Patents” means all Patents claiming inventions that are Combined Technology that are owned by Dow or BP, including the patents listed in Confidential Appendix B hereto.

S. “Cyclic Moiety” means a cyclopentadienyl (C₅H₅) moiety and/or any other type of cyclic compound including, for example, but not limited to, a cyclohexadienyl moiety, a pyrolyl moiety, a phospholyl moiety, a boratabenzene moiety, etc.; wherein each of these moieties and/or compounds may be unsubstituted or substituted with anything and in any manner (including, but not limited to, ring or multi-ring structures such as indenyl, fluorenyl, or other ring structures).

since January 1, 1995, devoted 50 work days to Combined Technology or to the BP-Dow Joint Development Program or to any combination thereof.

X. “Dow Gas Phase Metallocene PE Assets” means:

1. all Dow’s rights, title and interest in the BP-Dow JDA, and all Dow’s rights, title and interest in all Combined Technology, and Combined Technology Patents;
2. the Dedicated Gas Phase Metallocene PE Assets;
3. the Dow Gas Phase PE Patents;
4. all research materials, technical information, management information systems, software, inventions, specifications, designs, drawings, processes and quality control data of Dow related solely to Metallocene Technology for use in a Gas-Phase PE Process or to Dow Gas Phase PE Technology that are recorded in written or electronic form as of the date the Commission accepts this Order for public comment;
5. all interest in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, licensors, licensees, consignors and consignees, and rights under warranties and guarantees, express or implied of Dow related solely to Metallocene Technology for use in a Gas-Phase PE Process or to Dow Gas Phase PE Technology, except the Univation Settlement Agreement; and
6. all documents, books, records, and files, written or electronic, of Dow related solely to Metallocene Technology for use in a Gas-Phase PE Process or Dow Gas Phase PE Technology, except the Univation Settlement Agreement and information provided to Dow by or on behalf of Univation, Union Carbide, and Exxon Mobil either prior to or after the effective date of such Univation Settlement Agreement.

Y. “Dow Gas Phase PE Patents” means all Patents owned by Dow having a priority date or filing date on or before the date on which the Commission accepts this Order for public comment, all claims of which are limited to (i) Metallocene Technology that can only be used in a Gas Phase PE Process for Ethylene Polymers; (ii) Metallocene Catalyst Systems or components of Metallocene Catalyst Systems that can only be used in Gas Phase PE Processes for Ethylene Polymers; (iii) a process for using such Metallocene Catalyst Systems or components in a Gas Phase PE Process to make Ethylene Polymers; or (iv) Ethylene Polymers made only by such a Gas Phase PE Process, including the patents listed in Confidential Appendix D hereto.

Z. “Dow Gas Phase PE Technology” means all Know-How owned by Dow and developed before the date on which the Commission accepts this Order for public comment, that

5. a lease, license, or other rights in real property at the Plaquemine Site sufficient for the operation of the Dow Global Ethanolamines Business in the manner in which such business has been operated in the past and as such business may be operated in the future in a manner consistent with the purposes of this Order;

6. all customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, technical information, dedicated management information systems, information contained in management information systems, rights to software, technology, know-how, ongoing research and development, specifications, designs, drawings, processes and quality control data;

7. all intellectual property rights, including but not limited to Patents, Patent rights, licenses, formulas, mixes, inventions, copyrights, trade secrets, know-how, trademarks, and trade names;

8. all raw material and finished product inventories and goods in process;

9. all right, title, and interest in and to the contracts (together with associated bid and performance bonds) entered into in the ordinary course of business with customers, suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;

10. all rights under warranties and guarantees, express or implied;

11. all separately maintained, and all relevant portions of not separately maintained, books, records and files;

12. rights to operate under all applicable federal, state, and local regulatory agency registrations, permits, and applications, and all documents related thereto, to the extent permitted by law; and

13. all items of prepaid expense arising on or after August 1, 2000.

Provided, however, that the Dow Global Ethanolamines Business does not include the following:

14. assets or businesses solely for the production or sale of products other than Ethanolamines including any downstream products into which Ethanolamines are an input;

15. production facilities used to manufacture EO;

16. a fee simple interest in any real property, including the real property underlying the Ethanolamines manufacturing facility at the Plaquemine Site; and

17. the assets listed in Confidential Appendix E of this Order.

Provided, however, that if Dow divests the Dow Global Ethanolamines Business to Ineos pursuant to Paragraph III of this Order, the definition of the Dow Global Ethanolamines Business includes, but shall not be limited by, the assets conveyed by the Ineos Agreement.

AC.

17. production facilities used to manufacture ethylene dichloride, ethylene, chlorine, or caustic;
18. the Terneuzen Plant;
19. production facilities used to manufacture Castmate;
20. a fee simple interest in any real property, including the real property underlying the Ethyleneamines, the AEEA, and the Castmate manufacturing facilities at the Freeport Site; and
21. the assets listed in Confidential Appendix F of this Order.

Provided, however, that if Dow divests the Dow Global Ethyleneamines Business to Huntsman pursuant to Paragraph II of this Order, the definition of the Dow Global Ethyleneamines Business includes, but shall not be limited by, the assets conveyed by the Huntsman Agreement.

AD. “Dow Metallocene Background Patents” means any claims in Patents owned by Dow having a priority date or filing date on or before two years after the date on which the Order becomes final which claims are directed to inventions conceived prior to the date of the Acquisition, which cover: (i) Metallocene Technology for use in a Gas Phase PE Process to make Ethylene Polymers; (ii) Metallocene Catalyst Systems or components of Metallocene Catalyst Systems for use in a Gas Phase PE Process to make Ethylene Polymers, including without limitation Introduced Dow Metallocene Catalyst Systems; (iii) a process for using Metallocene Catalyst Systems or components thereof in a Gas Phase PE Process to make Ethylene Polymers; (iv) Ethylene Polymers made by a Gas Phase PE Process; or (v) the application of Ethylene Polymers made by a Gas Phase PE Process, including without limitation the patents listed in Confidential Appendix G hereto, *provided, however,* that Dow Metallocene Background Patents do not include patent claims to chemical modifications of Ethylene Polymers, and *further provided* that Dow Metallocene Background Patents do not include Dow Metallocene Background Patents Requiring Third Party Consent or Patents acquired by Dow on or after the date of the Acquisition.

AE. “Dow Metallocene Background Patents Requiring Third Party Consent” means any claims in Patents owned by Dow that Dow cannot license to BP without securing the consent of or paying compensation to a third party (other than Univation, Exxon Mobil, or Union Carbide), having a priority date or filing date on or before two years after the date on which the Order becomes final which claims are directed to inventions conceived prior to the date of the Acquisition, which cover: (i) Metallocene Technology for use in a Gas Phase PE Process to make Ethylene Polymers; (ii) Metallocene Catalyst Systems or components of Metallocene Catalyst Systems for use in a Gas Phase PE Process to make Ethylene Polymers, including without limitation Introduced Dow Metallocene Catalyst Systems; (iii) a process for using Metallocene Catalyst Systems or components thereof in a Gas Phase PE Process to make Ethylene Polymers;

(iv) Ethylene Polymers made by a Gas Phase PE Process; or (v) the application of Ethylene Polymers made by a Gas Phase PE Process, including without limitation the patents listed in Confidential Appendix H hereto, *provided, however*, that Dow Metallocene Background Patents Requiring Third Party Consent do not include patent claims to chemical modifications of Ethylene Polymers or Patents acquired by Dow on or after the date of the Acquisition.

AF. “Effective Date of Divestiture” means the date upon which Respondents close a transaction to divest or transfer relevant assets pursuant to this Order.

AG. “Enhanced Gas Phase Metallocene Licenses & Immunities” means

1. the Gas Phase Metallocene Licenses & Immunities;
2. AG.

AK. “Ethylene Polymers” or PE mean homopolymers of ethylene and copolymers and interpolymers composed of at least thirty mol percent (30 mol %) ethylene, with the remaining monomers consisting of one or more monounsaturated, acyclic, alpha-olefin hydrocarbon comonomers, but including no more than twenty-five mol percent (25 mol %) propylene.

AL. “Foreign Counterpart Patents” means (i) a patent or patent application that has a common claim of priority with or claims priority from another specific patent, and (ii) commonly owned applications and patents filed in other countries claiming substantially the same subject matter as the specific patent but without a claim of priority to any prior application in another country.

AM. “Freeport Site” means Dow’s manufacturing facilities in Freeport, Texas.

AN. “Gas Phase PE Process” means a low-pressure polymerization process using any Catalyst Technology which results in Ethylene Polymer formation in the form of solid polymer particles suspended in a medium that is substantially gaseous under the conditions of the polymerization.

AO. “Gas Phase Metallocene Licenses & Immunities” means a paid up, world-wide, irrevocable, non-exclusive patent license, providing immunity from suit, for use with the Dow Gas Phase Metallocene PE Assets or other BP-owned Metallocene Technology,

1. to develop, make or have made, use, license and sell Metallocene Technology and Metallocene Catalyst Systems, or any component thereof, for use in a Gas Phase PE Process under the Dow Metallocene Background Patents;

2. to make, use, sell, offer for sale and import Ethylene Polymers made by polymerization in a Gas Phase PE Process under the Dow Metallocene Background Patents, *provided, however*, that Dow Metallocene Background Patents do not include Patent claims to chemical modifications of Ethylene Polymers;

3. to sublicense the foregoing rights to any person, without notice to or approval by Respondents; and

4. to develop or have developed, by practice of the Dow Metallocene Background Patents, technology for making Ethylene Polymers made by polymerization in a Gas Phase PE Process, including but not limited to the right to develop or have developed Combined Technology and Dow Gas Phase PE Patents.

AP. “Gas Spec MDEA” means methyldiethanolamine sold for use in treating gas streams to remove impurities, whether sold alone or blended with other chemicals.

AQ. "Huntsman Agreement" means the Amended and Restated Asset Purchase Agreement between Huntsman and Dow entered into as of August 1, 2000, calling for the sale of the Dow Global Ethyleneamines Business to Huntsman, including:

1. the Payment and Performance Guaranty Agreement;
2. the Amended and Restated Site Service Agreement;
3. the Amended and Restated Computerized Process Control Software Agreement;
4. the Amended and Restated Environmental Systems Separation and Services Agreement;
5. the Labor Services Agreement;
6. the Amended and Restated Freeport Ground Lease and License Agreement;
7. the Contract Manufacturing Agreement;
8. the Know-How License Agreement;
9. the Supply Agreement;
10. the Raw Material Supply Agreement;
11. the Exchange Agreement;
12. the Reductive Amination Technology License Agreement; and
13. the Novation Agreement.

AR. "Ineos Agreement" means the Asset Purchase Agreement between Ineos and Dow

the Payment and e Guaranty Agreement;

4. the Operating Services Agreement;
5. the EO Supply Agreement;
6. the Computerized Process Control Software Agreement;
7. the GAS/SPEC Supply Agreement; and
8. the Consent Agreement, Dow and Dow Diamond.

AS. "Introduced Dow Metallocene Catalyst Systems" means Dow Metallocene Catalyst Systems provided by Dow to BP for evaluation in the BP-Dow Joint Development Program or

technology) including, but not limited to, feed specifications; operating conditions; control procedures; start-up, shutdown, and transitioning procedures; and any equipment requirements applicable where a Metallocene Catalyst is used.

AZ. “Metallocene Product Technology” means all Patents and Know-How pertaining to Ethylene Polymers, including, but not limited to, structure-property relationships, use of product additives, processing (such as extrusion, molding and film fabrication techniques) to convert Ethylene Polymers into end use form, and end-use applications.

BA. “Metallocene Technology” means Metallocene Catalyst Technology, Metallocene Process Technology and Metallocene Product Technology.

BB. “Mitsui License Agreement Patent Rights” means all rights under all Patent claims and Patents of Mitsui conveyed to Dow, or any rights that would have been available to a Licensing Entity to be established by Dow and BP, for sublicensing of Ethylene Polymers made with Metallocene Catalyst Systems in a Gas Phase PE Process pursuant to the Patent License Agreement between Dow and Mitsui Chemicals, Inc., signed July 29, 1999, including any amendments or supplemental agreements.

BC. “MonoCP Metallocene Catalyst” means Metallocene Catalyst containing in its preactivated state one, but not more than one, Cyclic Moiety wherein three or more adjacent atoms comprising a portion of a ring of the Cyclic Moiety are δ -bonded to the metal atom and the three or more adjacent atoms are within normal bonding distance of the metal atom and wherein the Cyclic Moiety can be either unbridged or bridged to the metal atom through at least one substituent; provided however, that a MonoCP Metallocene Catalyst may contain in its preactivated state other Cyclic Moieties which do not meet the requirement of having three or more adjacent atoms comprising a portion of a ring of the other Cyclic Moiety δ -bonded to the same metal atom (i.e., the same specific atom in the complex, as opposed to a second metal atom, for example, in a dimer structure) as the first Cyclic Moiety and the three or more adjacent atoms are within normal bonding distance of the metal atom.

BD. “MPE Resin” means homopolymers of ethylene and copolymers of at least seventy-five percent (75%) by weight ethylene with a remaining amount of monomer consisting of one or more monounsaturated, acyclic, alpha-olefin hydrocarbon comonomers, said polymers having a Density of 0.910 g/cc or more or such lower Density as in the future may be brought within the scope of the field of the Univation venture, as expanded from time to time, and are manufactured with one or more Metallocene Catalyst Systems.

BE. “New Ethanolamines Divestiture Agreement” means all agreements for the sale of the Dow Global Ethanolamines Business other than the Ineos Agreement and includes any divestiture agreement entered into by a trustee pursuant to Paragraph X of this Order.

BF. “New Ethyleneamines Divestiture Agreement” means all agreements for the sale of the Dow Global Ethyleneamines Business other than the Huntsman Agreement and includes any divestiture agreement entered into by a trustee pursuant to Paragraph X of this Order.

BG. “New Gas Spec MDEA Divestiture Agreement” means all agreements for the sale of the Dow Gas Spec MDEA Business other than the Ineos Agreement and includes any divestiture agreement entered into by a trustee pursuant to Paragraph X of this Order.

BH. “Non-Public Confidential Information” means any non-public information either relating to the Dow Global Ethyleneamines Business, the Dow Global Ethanolamines Business, or the Dow Gas Spec MDEA Business prior to their divestiture pursuant to Paragraphs II, III, IV, or X of this Order and/or relating to the operation of the Dow Global Ethyleneamines Business, the Dow Global Ethanolamines Business, or the Dow Gas Spec MDEA Business by any Acquirer after such business is divested pursuant to Paragraphs II, III, IV, or X of this Order. Non-Public Confidential Information shall not include:

or activator component designed, developed, used, or suitable for use for the production of Ethylene Polymers.

BM. “PE Technology” means technology relating to Ethylene Polymers, to the production and use thereof, and to the preparation and use of Catalyst Systems.

BN. “Plaquemine Site” means Dow’s manufacturing facilities in Plaquemine, Louisiana.

BO. “Respondents’ Ethanolamines Business” means the worldwide ethanolamines business conducted by Respondents after the Dow Global Ethanolamines Business is divested pursuant to Paragraph III or Paragraph X of this Order, including all employees, officers, directors, and agents of Respondents whose duties relate to Respondents’ Ethanolamines Business.

BP. “Respondents’ Ethyleneamines Business” means the worldwide ethyleneamines business conducted by Respondents after the Dow Global Ethyleneamines Business is divested pursuant to Paragraph II or Paragraph X of this Order, including all employees, officers, directors, and agents of Respondents whose duties relate to Respondents’ Ethyleneamines Business.

BQ. “Respondents’ MDEA Business” means the worldwide MDEA business conducted by Respondents after the Dow Gas Spec MDEA Business is divested pursuant to Paragraph IV or Paragraph X of this Order, including all employees, officers, directors, and agents of Respondents whose duties relate to Respondents’ MDEA Business.

BR. “Respondents’ Support Contact” means Respondents’ designee under Paragraph V of this Order.

BS. “Respondents’ Support Personnel” means Respondents’ employees who are: (i) responsible for providing services and inputs to the Dow Global Ethyleneamines Business, the Dow Global Ethanolamines Business, or the Dow Gas Spec MDEA Business after such businesses are divested pursuant to paragraphs II, III, IV, or X of this Order, and (ii) exposed to competitively sensitive information relating to the Dow Global Ethyleneamines Business, the Dow Global Ethanolamines Business, or the Dow Gas Spec MDEA Business, including, but not limited to information about cost, price, quantity, customers, product specifications, terms of sale, production planning/forecasting and communications with the Acquirers of such businesses.

BT. “Supplemental Univation Patent Rights” means the following rights:

1. a royalty free, nonexclusive, irrevocable, worldwide (except for Korea and Japan, which restricts rights to information about cost, demand, and sales history):

Patents to make, have made, offer for sale, sell, import, or use MonoCP Metallocene Catalysts; *provided, however*, that no rights are granted under U.S. Patent Nos. 5,405,922 and 5,462,999 and European Patent No. 89691 and their Foreign Counterpart patents to make, have made, offer for sale, sell, import or use BisCP Metallocene Catalysts and no rights are granted for any mixed PE Catalyst Systems that contain BisCP Metallocene Catalysts;

2. a royalty free, nonexclusive, irrevocable, worldwide license within the Univation Field to practice under any claim in any Exxon or Univation Patent that would be licensed to Dow or Dow Affiliates under the Univation Settlement Agreement but for the inclusion in the claim of “Catalyst Support Technology,” as “Dow Affiliates” and “Catalyst Support Technology” are used in the Univation Settlement Agreement;

3. a royalty free, nonexclusive, irrevocable, worldwide license within the Univation Field, with a right to sublicense to resin producers of MPE Resins made with MonoCP Metallocene Catalysts licensed by BP to use MonoCP Metallocene Catalysts (i) under every patent claim that Univation was, is or will be empowered to grant at any time from December 4, 2000 until the date of the Acquisition, and (ii) under every patent claim that Univation would have been empowered to grant if such patent claim existed as of the date of the Acquisition but only for any patent claim that is

or application satisfies at least one limitation in the patent claim directed to a polymer composition or article or a material element of the patent claims to an end use or application. Nothing in this subsection shall be construed to grant rights or a license to a composition, end use, article or application where MPE Resins are present merely to present a defense to patent infringement. The rights to be granted in accordance with this subsection are limited to

Exxon Mobil in the Univation Reorganization Agreement, “Unipol Gas Phase PE Process Technology Business” does not include the right to receive lump sum, running royalties, fees, or other licensing income under license and technology purchase agreements signed before August 8, 1996, and (ii) the Union Carbide business for the sale to third parties of PE Catalyst Systems for Ethylene Polymers within the field of the Univation venture (as provided in the Univation Reorganization Agreement) by Union Carbide that is not part of Univation as of the date on which the Commission accepts for public comment the Agreement Containing Consent Order, including the exclusive right to sell and sub-license such PE Catalyst Systems to third parties, and all administrative, management, and research and development responsibilities for such PE Catalyst Systems; *provided, however*, that to the extent agreed by Respondents and Exxon Mobil in the Univation Reorganization Agreement, the “Unipol Gas Phase PE Technology Business” does not include (a) the manufacturing assets owned by Union Carbide that produce PE Catalysts and PE Catalyst Systems; or (b) the right to receive lump sum, running royalty, fees, purchase price, lease price, or other income for the sale of conventional PE Catalyst Systems to Univation pursuant to the Univation Reorganization Agreement or to licensees who will continue to pay lump sum, running royalty fees, or other licensing income to Union Carbide rather than Univation under license and technology purchase agreements signed before August 8, 1996.

BZ. “Univation Field” means, for purposes of this Order, (1) development, manufacture, marketing and sale of Metallocene Catalyst Systems to make MPE Resins in a Gas Phase PE Process, and (2) development of Metallocene Technology and technology pertaining to Metallocene Catalyst Systems and licensing thereof to any person for manufacture of MPE Resins

branches (“LCB”) greater than or equal to 0.01 per 1000 carbon atoms (but does not include LCBs formed by a free radical polymerization process). Notwithstanding the foregoing, where there is a dependent claim that is expressly or inherently limited to require LCB polymers as specified above in this definition, but the claim(s) antecedent to such dependent claim are not so limited, the defined term “Univation LCB Patents” shall include such dependent claim(s) if the antecedent claims are determined to be invalid or not patentable or unenforceable upon a final, non-appealable, non-reviewable order. Subject to the next sentence, the defined term “Univation LCB Patents” includes the rights under any patents and patent applications meeting the other criteria of this definition owned or controlled by Univation as of June 15, 1999 or within two years of June 15, 1999, regardless as to whether Univation subsequently assigns or transfers such patents or patent applications to any third party. The defined term “Univation LCB Patents” does not include patents which Univation did not have the right to grant to BP without the agreement of or accounting to a third party (not including Exxon Mobil or Union Carbide) as of June 15, 1999, and does not obtain the right to grant to BP within two years of June 15, 1999. To the extent Univation must obtain the agreement of or account to a third party, Univation shall use good faith efforts (Univation need not offer value to the third party unless BP reaches agreement with Univation on reimbursement) to obtain the relevant rights for BP from the third party.

CB. “Univation Reorganization Agreement” means the Univation Reorganization Agreement dated December 4, 2000, by and among Exxon Mobil, Dow, Union Carbide, and Univation, as amended.

CC. “Univation Settlement Agreement” means the Settlement Agreement between Dow and Univation dated June 15, 1999, as amended.

CD. “Univation Settlement Patent Rights” means all rights under all patent claims of Univation conveyed to Dow to make MPE Resins in a Gas-Phase PE Process, and to use, and sell such MPE Resins, and right to sub-license, pursuant to the Univation Settlement Agreement, as amended by the Univation Reorganization Agreement to provide sub-licensing rights to BP.

II.

IT IS FURTHER ORDERED that:

A. Dow shall divest, absolutely and in good faith, at no minimum price, the Dow Global

notifies Respondents that Huntsman is not an acceptable acquirer, or the Huntsman Agreement is not an acceptable manner of divestiture, then Dow shall immediately rescind the transaction with Huntsman and shall divest the Dow Global Ethyleneamines Business, within six (6) months after the date on which the Order becomes final, to an Acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission.

C. The purpose of the divestiture of the Dow Global Ethyleneamines Business is to ensure the continued operation of the Dow Global Ethyleneamines Business in the same businesses in which the assets and businesses of the Dow Global Ethyleneamines Business are engaged at the time of the Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

D. Pending divestiture of the Dow Global Ethyleneamines Business, Dow shall take such actions as are necessary to maintain the viability and marketability of the Dow Global

Ethyleneamines Business and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Dow Global Ethyleneamines Business, except for ordinary wear and tear.

E. Dow shall comply with all terms of the Order to Maintain Assets, attached to this Order and made a part hereof as Appendix A. The Order to Maintain Assets shall continue in effect until such time as Dow has divested each of the Businesses and Assets to be Divested as required by this Order.

F. Respondents shall use Non-Public Confidential Information relating to the Dow Global Ethyleneamines Business only (i) in the performance of Respondents' obligations under this Order or the Huntsman Agreement or any New Ethyleneamines Divestiture Agreement; or (ii) for the purpose of complying with Respondents' financial, tax reporting, legal, health, safety, and environmental obligations.

G. Respondents shall not, absent the prior written consent of an Acquirer of the Dow Global Ethyleneamines Business, provide, disclose or otherwise make available any Non-Public Confidential Information relating to the Dow Global Ethyleneamines Business to persons who are not Respondents' Support Personnel for the Dow Global Ethyleneamines Business, except for the purpose of complying with Respondents' financial, tax reporting, legal, health, safety and environmental obligations.

H. Respondents shall comply with the terms of the Huntsman Agreement (if Respondents divest pursuant to the Huntsman Agreement) or the New Ethyleneamines Divestiture Agreement (if Respondents, or a trustee, divest pursuant to Paragraph II or Paragraph X of this Order to an Acquirer other than Huntsman), which terms are incorporated by reference into this Order, and made a part hereof. Any failure by Respondents to comply with the Huntsman Agreement or the

New Ethyleneamines Divestiture Agreement shall constitute a failure to comply with this Order.

III.

IT IS FURTHER ORDERED that:

A. Dow shall divest, absolutely and in good faith, at no minimum price, the Dow Global Ethanolamines Business as an ongoing business.

B. The divestiture shall be made to Ineos no later than ten (10) days after the date on which this Order becomes final, in accordance with the Ineos Agreement (which agreement shall not vary or contradict the terms of this Order or the Order to Maintain Assets). *Provided, however,* that if, at the time the Commission determines to make the Order final, the Commission notifies Respondents that Ineos is not an acceptable acquirer, or the Ineos Agreement is not an acceptable manner of divestiture, then Dow shall immediately rescind the transaction with Ineos and shall divest the Dow Global Ethanolamines Business, within six (6) months after the date on which the Order becomes final, to an acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission.

C. The purpose of the divestiture of the Dow Global Ethanolamines Business is to ensure the continued operation of the Dow Global Ethanolamines Business in the same businesses in which the assets and businesses of the Dow Global Ethanolamines Business are engaged at the time of the Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

D. Pending divestiture of the Dow Global Ethanolamines Business, Dow shall take such actions as are necessary to maintain the viability and marketability of the Dow Global Ethanolamines Business and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Dow Global Ethanolamines Business, except for ordinary wear and tear.

E. Dow shall comply with all terms of the Order to Maintain Assets, attached to this Order and made a part hereof as Appendix A. The Order to Maintain Assets shall continue in effect until such time as Dow has divested each of the Businesses and Assets to be Divested as required by this Order.

F. Respondents shall use Non-Public Confidential Information relating to the Dow Global Ethanolamines Business only (i) in the performance of Respondents' obligations under this Order or the Ineos Agreement or any New Ethanolamines Divestiture Agreement; or (ii) for the purpose of complying with Respondents' financial, tax reporting, legal, health, safety, and environmental obligations.

G. Respondents shall not, absent the prior written consent of an Acquirer of the Dow Global Ethanolamines Business provide, disclose or otherwise make available any Non-Public Confidential Information relating to the Dow Global Ethanolamines Business to persons who are not Respondents' Support Personnel for the Dow Global Ethanolamines Business, except for the purpose of complying with Respondents' financial, tax reporting, legal, health, safety and environmental obligations.

the Dow Gas Spec MDEA Business except for ordinary wear and tear.

E.

identification, custody, use, and disposal of any Non-Public Confidential Information;

3. dissemination of such procedures, policies, and practices;
4. periodic in-person training of initial and future Respondents' Support Personnel;
5. periodic in-person training of agents and employees of Respondents' Ethyleneamines Business, Respondents' Ethanolamines Business, and Respondents' MDEA Business;
6. development of new procedures, or incorporation of procedures into existing measures, to be used in the event Respondents' Support Personnel fail to comply with Respondents' obligations under this Order, such procedures sufficient to create reasonable incentives for such personnel to perform Respondents' obligations in good faith and to deter such personnel from failing to perform Respondents' obligations; and
7. development of new procedures, or incorporation of procedures into existing measures, to deter agents and employees of Respondents' Ethyleneamines Business, Respondents' Ethanolamines Business, and Respondents' MDEA Business from receiving, retaining, or using any Non-Public Confidential Information.

B. Respondents shall designate a person, whose duties both at the time of such person's initial designation and for the duration of this Order, do not include responsibility for or participation in Respondents' Ethyleneamines Business, Respondents' Ethanolamines Business, and Respondents' MDEA Business, to serve as Respondents' Support Contact. The duties of Respondents' Support Contact shall include:

1. monitoring Respondents' performance of the Huntsman Agreement, the Ineos Agreement, any New Ethyleneamines Divestiture Agreement, any New Ethanolamines Divestiture Agreement, or any New Gas Spec MDEA Divestiture Agreement;
2. maintaining a complete and accurate master list of the names of all of Respondents' Support Personnel;
3. providing such assistance as requested by the Monitor Trustee to obtain information and documents, or arrange interviews with Respondents' Support Personnel, relating to Respondents' performance of its obligations under this Order or the Huntsman Agreement, Ineos Agreement, any New Ethyleneamines Divestiture Agreement, any New Ethanolamines Divestiture Agreement, or any New Gas Spec MDEA Divestiture Agreement; and
4. preparing or supervising the preparation of such reports or data compilations

in accordance with the BP Divestiture and License Agreement and the Univation Reorganization Agreement, including without limitation licenses with sublicensing rights under Dow's Metallocene Background Patents and Dow's Gas Phase PE Patents.

H. Dow shall provide BP with the opportunity to hire or enter into employment contracts with Dow Appendix C Employees; Dow shall not interfere with the hiring or employing by BP of Dow Appendix C Employees; Dow shall not offer any incentive to such employees to decline employment with BP or to accept other employment with Respondents; Dow shall not make any counteroffer to any such employee who receives a written offer of employment from BP; and Dow shall remove any impediments that may deter such employees from accepting employment with BP, including, but not limited to, waiver of any non-compete or confidentiality provisions of employment contracts that would affect the ability or incentive of any such individual to be employed by BP; *provided, however*, that Dow may limit any waiver with respect to disclosure of confidential information to information relevant to Metallocene Technology for production of MPE Resin through a Gas-Phase PE Process and to information that does not waive obligations of Dow to third parties other than Exxon Mobil and Univation.

I. Dow shall provide all Dow Appendix C Employees with reasonable financial incentives to continue in their positions until completion of the divestiture of the Dow Gas Phase Metallocene

or direct any research or other activity by Dow, Union Carbide or Univation for the purpose of development, improvement or discovery of MPE Resins in a Unipol Gas Phase PE Process for one year from the date on which the Commission accepts this Order for public comment; and

2. Any Dow employee listed in Category 2 of Confidential Appendix I to participate or direct any research or other activity by Dow, Union Carbide or Univation for the purpose of development, improvement or discovery of MPE Resins (i) in a Unipol Gas Phase PE Process for two years from the date on which the Commission accepts this Order for public comment; or (ii) in a slurry loop process for one year from the date on which the Commission accepts this Order for public comment.

N. Dow shall, upon the divestiture of the Dow Gas Phase Metallocene PE Assets, (i) identify to BP every supplier to Dow of Introduced Dow Metallocene Catalyst Systems, Combined Technology Catalyst, and components thereof, (ii) expressly authorize each such supplier (including without limitation Albemarle and Boulder Scientific) notwithstanding any confidentiality, non-compete, or exclusivity agreement with Dow, to develop, manufacture, and supply Metallocene Catalyst Systems and components thereof to BP for use in a Gas Phase PE Process, as requested by BP, and to enter into confidentiality agreements with BP regarding such development, manufacture, or supply; and (iii) as required by BP, assist and facilitate BP in securing supplies of Metallocene Catalyst Systems for BP and its licensees for use in a Gas Phase PE Process.

O. The purpose of the divestiture of the Dow Gas Phase Metallocene PE Assets, and of the further remedies provided for in this Paragraph VI, is to ensure the continued operation of the

Process for two years from the date on which the Commission accepts this Order for pcepttor pcc Boulder SciArte Cos

provide that upon termination or dissolution of Univation, at any time and for any reason or no reason, or transfer of control or any equity interest in Univation from Exxon Mobil to Respondents, Exxon (or Exxon's successor in interest other than Respondents) shall retain nonexclusive rights to the Unipol Process Technology for Ethylene Polymers and to all technology owned or controlled by Univation, including the right to sublicense to others, and to develop, use or license Unipol Process Technology for Ethylene Polymers with any PE Catalyst Systems, any agreement between Respondents and Exxon to the contrary notwithstanding.

C. Respondents shall not require Exxon to make royalty payments to Univation for Metallocene Catalyst Technology in an amount exceeding Respondents' royalty payments to Univation for Metallocene Catalyst Technology, calculated on a calendar year basis.

D. Dow, when it becomes part owner of Univation, shall support and use its best efforts (including without limitation by vote of its management, directors or shares) (i) to assure that Univation takes no action inconsistent with Respondents' obligations under this Order, and (ii) in support of any proposal by Exxon Mobil to expand the Univation Field to include Density down to 0.900 grams per cubic centimeter.

VIII.

IT IS FURTHER ORDERED that Respondents shall comply with all terms of the Order to Maintain Assets, attached to this Order and made a part hereof as Appendix A, which Order shall continue in effect until such time as Respondents have divested each of the Businesses and Assets To Be Divested as required by this Order.

IX.

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 and the Divestiture Agreement(s) made a part of this Order.

B. If one or more Monitor Trustees are appointed pursuant to Paragraph IX.A. of this Order, 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) business 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 this 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 this Order 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 this Order and the relevant Divestiture Agreement(s) in a manner consistent with the purposes of this Order. 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 until the earlier of: (i) the expiration of this Order pursuant to Paragraph XIV; or (ii) the expiration of all the terms that comprise the Divestiture Agreement(s).

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 IX.

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 and the Divestiture Agreement(s).

10. The Monitor Trustee shall report in writing to the Commission concerning Respondents' compliance with this Order and the Divestiture Agreement(s) every ninety days for a period of two years from the date Respondents sign the Consent Agreement and annually thereafter on the anniversary of the date this Order becomes final during the remainder of the Monitor Trustee's period of appointment, and at such other times as representatives of the Commission may request.

X.

IT IS FURTHER ORDERED that:

A. If Respondents have not divested, absolutely and in good faith and with the Commission's prior approval, each of the Businesses and Assets to Be Divested within the time periods required by this Order, the Commission may appoint a trustee to divest any of the Businesses and Assets to Be Divested that have not been divested ("the Remaining Businesses and Assets to Be Divested"). In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a trustee in such action to divest the Remaining Businesses and Assets to Be Divested. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph X.A of

this Order, Respondents shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

C. The Commission shall select the trustee, subject to the consent of 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) 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.

D. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Remaining Businesses and Assets to Be Divested.

E. Within ten (10) days after appointment of the 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 trustee all rights and powers necessary to permit the trustee to effect the divestitures required by this Order.

F. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph X.E to accomplish the divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; *provided, however*, the Commission may extend this period only two (2) times.

G. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Remaining Businesses and Assets to Be Divested or to any other relevant information, as the trustee may request. Respondents shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

H. The 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, subject to Respondents' absolute and unconditional obligation to divest expeditiously at no minimum price. The divestiture shall be made in the manner and to the acquirer or acquirers as set out in Paragraphs II, III, IV, and VI of this Order; *provided, however*, if the 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, however*, that Respondents shall select such entity within five (5) days after receiving notification of the Commission's approval.

I. The 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 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 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 Respondents, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Remaining Businesses and Assets to Be Divested.

J. Respondents shall indemnify the 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

XI.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after Respondents sign the Consent Agreement and every

XII.

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 Order.

XIII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, 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; 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.

XIV.

IT IS FURTHER ORDERED that this Order shall terminate on March 15, 2011.

APPENDIX A: ORDER TO MAINTAIN ASSETS

CONFIDENTIAL APPENDICES B-D
[Redacted from Public Record Version]

CONFIDENTIAL APPENDICES G-I
[Redacted from Public Record Version]