

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: William E. Kovacic, Chairman  
Pamela Jones Harbour  
Jon Leibowitz  
J. Thomas Rosch

_____	)	
In the Matter of	)	
	)	
Agrium Inc.,	)	Docket No. C-4219
a corporation, and	)	
	)	
UAP Holding Corporation,	)	
a corporation.	)	
_____	)	

**DECISION AND ORDER**  
**(Public Record Version)**

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent Agrium Inc. (“Agrium”) of the outstanding voting securities of Respondent UAP Holding Corporation (“UAP”), hereinafter referred to collectively as “Respondents,” and Respondents having been furnished thereafter with a copy of the draft of Complaint that the Bureau of Competition proposed to present to the Commission for its

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 its Order to Hold Separate and 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 Decision and Order (“Order”):

1. Respondent Agrium is a corporation organized, existing, and doing business under, and by virtue of, the laws of Canada, with its office and principal place of business located at 13131 Lake Fraser Drive S.E., Calgary, Alberta, Canada T2J 7E8. Agrium’s principal subsidiary in the United States is located at 4582 South Ulster Street, Suite 1700, Denver, Colorado 80237.
2. Respondent UAP is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its office and principal place of business located at 7251 W. 4<sup>th</sup> Street, Greeley, Colorado 80634.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents and the proceeding is in the public interest.

### **ORDER**

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

- A. “Agrium” means Agrium Inc., its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Agrium (including, after the Acquisition Date, UAP) and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “UAP” means UAP Holding Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by UAP, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Commission” means the Federal Trade Commission.
- D. “Acquirer” means any Person that receives the prior approval of the Commission to acquire all or any of the Farm Supply Assets pursuant to Paragraphs II or V of this Order.

- E. “Acquisition” means the proposed acquisition described in the Agreement and Plan of Merger, dated December 2, 2007, between Agrium Inc., Utah Acquisition, Inc., and UAP Holding Corporation.
- F. “Acquisition Date” means the date the Acquisition is consummated.
- G. “Confidential Business Information” means competitively sensitive, proprietary and all other business information of any kind owned by or pertaining to the Farm Supply Business, Farm Supply Assets, or Respondents, as the case may be (including, but not limited to, financial statements, financial plans and forecasts, operating plans, price lists, cost information, supplier and vendor contracts, marketing analyses, customer lists,

2. All Tangible Personal Property, including any Tangible Personal Property removed from any location of the Farm Supply Business since the date of the announcement of the Acquisition;
3. All inventories;
4. All accounts receivable;
5. All agreements, contracts, and leases and all rights thereunder and related thereto;
6. All consents, licenses, certificates, registrations or permits issued, granted, given or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement, and all pending applications therefor or renewals thereof;
7. All intangible rights and property, including Intellectual Property, going concern value, goodwill, telephone, telecopy and e-mail addresses and listings;
8. All data and Records, including client and customer lists and Records, referral sources, research and development reports and Records, production reports and Records, service and warranty Records, equipment logs, operating guides and manuals, financial and accounting Records, creative materials, advertising materials, promotional materials, studies, reports, correspondence and other similar documents and Records, subject to legal requirements, and copies of all personnel Records;
9. All insurance benefits, including rights and proceeds; and
10. All rights relating to deposits and prepaid expenses, claims for refunds and rights to offset in respect thereof.

*Pro ided, ho e er,* that the Farm Supply Assets need not include:

(i) assets not located at the facilities identified in Appendix A whose use is shared with or among other facilities unless such assets are primarily related to the operation of the Farm Supply Business;

(ii) commercial names, trade names, “doing business as” (d/b/a) names, registered and unregistered trademarks, service marks and applications using the words “Agrium,” “Crop Production Services,” “CPS,” “Loveland,” “Royster Clark,” “UAP,” “United Agri Products,” or any trade names, trademarks, or registered product names used in any product manufactured, blended, or sold by Respondents; and

(iii) any part of the Farm Supply Assets if not needed by an Acquirer and the Commission approves the divestiture without such assets.

L. “Farm Supply Business” means all business activities conducted by either Agrium or UAP, prior to the Acquisition, at or based out of the locations identified in Appendix A of this Order (or applicable locations if Respondents propose to divest the Farm Supply Assets to more than one Acquirer).

M. “Farm Supply Employee” means, as of the date the Acquisition was announced, (i) any full-time, part-time, or contract employee of the Farm Supply Business (at the applicable locations of the Farm Supply Business if Respondents propose to divest the Farm Supply Assets to more than one Acquirer) and (ii) any other person employed by Respondents whose work primarily relates to the Farm Supply Business.

N. “Farm Supply License” means:

1. A worldwide, royalty-free, paid-up, perpetual, irrevocable, transferable, sublicensable, non-exclusive license under all Intellectual Property relating to operation of the Farm Supply Business (other than Inte.8( 7ual,Pr)per9(ory)301 aoad Ainluarm Supply Essets );annd]TJ-3 -2.36 TD-00485Tc-.00485Tw[(o2)-22540.5(Su)14.85(h t)16 oph-sicl,Pnnde( 7uronc)1( Ecopes ) an omædssaa ar bapronble, ach]TJT\*.00461Tc-.00481Tw[(As Ao the Amanufn9(ocur),Pnnde,ndin ofextnti suchaInte.8( 7ual,Pr)per9(ory)301 aisneeorto tle,n oed-.25sthta13.85 t-.65(d9.45do(i)10.45 \) ]TJT\*0 Tc0 Tw[(oI)23nte.8( 7ual,Pr)per9(ory)301 ai no

unregistered copyrights in both published works and unpublished works; (iv) all knowhow, trade secrets, confidential or proprietary information, protocols, quality control information, customer lists, software, technical information, data, process technology, plans, drawings and blue prints; (v) and all rights in internet web sites and internet domain names presently used by Respondents.

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- B. Respondents shall comply with all provisions of any Divestiture Agreement approved by the Commission, and failure by Respondents to comply with any provision of a Divestiture Agreement shall constitute a failure to comply with this Order.
- C. Respondents shall divest the Farm Supply Assets relating to the Farm Supply Business located at 308 Timmons Street, Snow Hill, Maryland, and 18432 Wachapreague Road, Melfa, Virginia 23410, to no more than one Acquirer.
- D. No later than the date of divestiture of the Farm Supply Assets relating to any location of the Farm Supply Business, Respondents shall:
  - 1. Secure all consents, assignments, and waivers from all Persons that are necessary for the divestiture of such business or assets to an Acquirer.
  - 2. Grant to each Acquirer a Farm Supply License for any use in any business selling agricultural products and related services, and shall take all actions necessary to facilitate the unrestricted use of the license.
- E. At the request of any Acquirer, within sixty (60) days of consummating the divestiture of any of the Farm Supply Assets, for a period not to exceed twelve (12) months from the date Respondents divest the assets, and in a manner (including pursuant to an agreement) that receives the prior approval of the Commission:
  - 1. Respondents shall provide Transitional Assistance to such Acquirer sufficient to enable the Acquirer to operate the divested assets and business in substantially the same manner that Respondents conducted the divested assets and business prior to the divestiture; and
  - 2. Respondents shall provide the Transitional Assistance required by this Paragraph at substantially the same level and quality as such services are provided by Respondents in connection with its operation of the divested assets and business prior to the divestiture.

*Pro ided, ho e er,* that Respondents shall not (i) require the Acquirer to pay compensation for Transitional Assistance that exceeds the Direct Cost of providing such goods and services, or (ii) terminate its obligation to provide Transitional Assistance because of a material breach by the Acquirer of any agreement to provide such assistance, in the absence of a final order of a court of competent jurisdiction, or (iii) seek to limit the damages (such as indirect, special, and consequential damages) which any Acquirer would be entitled to receive in the event of Respondents' breach of any agreement to provide Transitional Assistance.





4. For a period of two (2) years after the date of each divestiture of the Farm Supply Assets, Respondents shall not, directly or indirectly, solicit, induce or attempt to solicit or induce any Farm Supply Employee who has accepted an offer of employment with the Acquirer, or who is employed by the Acquirer, to terminate his or her employment relationship with the Acquirer; *pro ided, ho e er*, a violation of this provision will not occur if: (1) the individual's employment has been terminated by the Acquirer, (2) Respondents advertise for employees in newspapers, trade publications, or other media not targeted specifically at the employees, or (3) Respondents hire employees who apply for employment with Respondents, so long as such employees were not solicited by Respondents in violation of this paragraph.
- H. The purpose of the divestiture of the Farm Supply Assets is to ensure the continued use of the assets in the same businesses in which such assets were engaged at the time of the announcement of the Acquisition by Respondents and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

### **III.**

**IT IS FURTHER ORDERED** that:

- A. Except in the course of performing obligations under any Divestiture Agreement, this Order, or asD

#### IV.

**IT IS FURTHER ORDERED** that:

- A. For a period of ten (10) years from the date this Order becomes final, Respondents shall not, without providing advance written notification to the Commission, with respect to any of the areas listed in Appendix C of this Order, acquire, directly or indirectly, through subsidiaries or otherwise, any leasehold, ownership interest, or any other interest, in whole or in part, in any concern, corporate or non-corporate, or in any assets engaged in the sale of agricultural products or related services.
  
- B. The prior notification required by this Paragraph IV shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as “the Notification”), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of the Respondents and not of any other party to the transaction. Respondents shall provide the Notification to the Commission at least thirty (30) days prior to consummating the transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, repre-ri9(sr Not6n tsbT8(e)9(

enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to divest the relevant assets in accordance with the terms of this Order. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture 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 Divestiture Trustee, 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. The Commission shall select the Divestiture Trustee, subject to the consent of



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 or willful misconduct by the Divestiture Trustee. For purposes of this Paragraph V.E.6., the term “Divestiture Trustee” shall include all Persons retained by the Divestiture Trustee pursuant to Paragraph V.E.5. of this Order.

7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
  8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every sixty (60) days concerning the Divestiture Trustee’s efforts to accomplish the divestiture.
  9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee’s consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *pro ided, ho e er*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- F. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph V.
- G. The Commission or, in the case of a court-appointed Divestiture 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 divestiture required by this Order.

## VI.

**IT IS FURTHER ORDERED** that:

- A. Within thirty (30) days after the date this Order becomes final and every thirty (30) days thereafter until Respondents have fully complied with the provisions of Paragraphs II and V of this Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order, and the Order to Hold Separate and Maintain Assets. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with this Order and with the Order to Hold Separate and Maintain Assets, including a description of all substantive contacts or negotiations relating to the divestiture and approval, and the identities of all parties contacted. Respondents shall

include in their compliance reports copies, other than of privileged materials, of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestiture and approval, and, as applicable, a statement that the divestiture(s) approved by the Commission have been accomplished, including a description of the manner in which Respondents completed such divestitures and the date the divestiture was accomplished.

- B. One (1) year after the date this Order becomes final, annually thereafter for the next nine (9) years on the anniversary of the date this Order becomes final, and at such other times

**IX.**

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

By the Commission.

Donald S. Clark  
Secretary

SEAL:  
ISSUED:

## Appendix A

### Farm Supply Business As To Which Assets Are To Be Divested

Relevant Market	Business Name & Address
Croswell, MI	UAP 41 Ward St. Croswell, MI 48422
Imlay City, MI	UAP 7245 Imlay City Rd. Imlay City, MI 48444
Richmond, MI	UAP 68790 Oak St. Richmond, MI 48062
Standish, MI	UAP 4250 S. Huron Rd. Standish, MI 48658
Vestaburg, MI	UAP 7460 N. Crystal Rd. Vestaburg, MI 48891
Snow Hill, MD	Agrium 308 Timmons St. Snow Hill, MD 21863  Agrium 18432 Wachapreague Rd. Melfa, VA 23410



## **Appendix B**

**[Redacted From the Public Version But Incorporated By Reference]**

## Appendix C

### Prior Notice

Area	Area Definition
Croswell, MI	Within a 40 mile radius of 41 Ward St., Croswell, MI 48422
Imlay City, MI	Within a 40 mile radius of 7245 Imlay City Rd., Imlay City, MI 48444
Richmond, MI	Within a 40 mile radius of 68790 Oak St., Richmond, MI 48062
Standish, MI	Within a 40 mile radius of 4250 S. Huron Rd., Standish, MI 48658
Vestaburg, MI	Within a 40 mile radius of 7460 N. Crystal Rd., Vestaburg, MI 48891
Snow Hill, MD	Within a 40 mile radius of 308 Timmons St., Snow Hill, MD 21863