

**0810130**

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

**COMMISSIONERS:**      **Jon Leibowitz, Chairman**  
                                 **William E. Kovacic**  
                                 **J. Thomas Rosch**  
                                 **Edith Ramirez**  
                                 **Julie Brill**

1. Respondent Nufarm is a corporation organized, existing and doing business under and by virtue of the laws of Australia, with its offices and principal place of business located at 103-105 Pipe Road, Laverton North,

- E. "AHM" means A.H. Marks Holding Limited, a corporation organized, existing, and doing business, prior to March 5, 2008, under and by virtue of the laws of the United Kingdom, with its office and principal place of business located at Wyke, Bradford, West Yorkshire, BD12 9EJ, England, United Kingdom.
- F. "Albaugh" means Albaugh, Inc., a privately held corporation with its offices and principal place of business at 1525 NE 3rd Street, Ankeny, IA, 50021.
- G. "Albaugh Divestiture Agreement" means the Sale and Purchase Agreement between AHM and Albaugh relating to MCPA.
- H. "Closing Date" means the date on which Respondent (or a Divestiture Trustee) divests the Divestiture Assets as required by Paragraph II. and Paragraph III. (or Paragraph VIII.) of this Order.
- I. "Commission" means the Federal Trade Commission.
- J. "Commission-approved Acquirer" means each acquirer that receives the prior approval of the Commission pursuant to Paragraph I. and Paragraph III. (or Paragraph VIII.) of this Order.
- K. "Direct Cost" means a cost not to exceed the cost of direct labor, direct overhead, materials, travel and other expenditures to the extent the costs are directly incurred to provide the product, and shall not include corporate overhead, fines, penalties, or other liabilities.
- L. "Divestiture Agreement" means the agreements, licenses, assignments, and all other agreements entered into by the Commission-approved Acquirers and Respondent and approved by the Commission pursuant to this Order, including the Albaugh Divestiture Agreement, or any other applicable MCPA Divestiture Agreement, the PBI Gordon Divestiture Agreement, or any other applicable MCPP-p Divestiture Agreement.
- M. "Divestiture Assets" means the MCPA Divestiture Assets and the MCPP-p Divestiture Assets.
- N. "Divestiture Trustee" means a trustee appointed by the Commission pursuant to Paragraph VIII. of this Order.
- O. "Dow" means Dow AgroSciences LLC, a Delaware limited liability company and wholly-owned subsidiary of The Dow Chemical Company, with its offices and principal

place of business at 9330 Zionsville Road, Indianapolis, IN 46268, and further expressly includes Sanachem Ltd., Kempton Park, South Africa.

- P. "Dow Contracts" means the following contracts entered into by Dow and Nufarm: (a) 2009 Commercial Agreement, (b) 2009 MCPA Supply Agreement (MCPA Straight Products), and (c) 2009 MCPA Supply Agreement (Mixtures); "Dow Contracts" includes any subsequent contracts modifying, amending, or omitting any term(s) within these contracts.
- Q. "EPA" means the United States Environmental Protection Agency.
- R. "Intellectual Property" means patents; copyrights; trademarks, trade dress, trade secrets, know-how, techniques, data, inventions, processes, methods, and other confidential or proprietary technical, business, research, development and other information; and rights to obtain and file for patents and copyrights and registrations thereof, including but not limited to the confidential statements and formula for the Products.
- S. "LCPA" means the chiral intermediate, L-chloropropionic acid.
- T. "LCib" means L-(2)-Chloropropionic acid isobutyl ester.
- U. "MCPA" means 2-methyl-4-chlorophenoxyacetic acid.
- V. "MCPP-p" means 2-(4-chloro-2-methylphenoxy) propanoic acid.
- W. "2,4DB" means 4-(2,4-dichlorophenoxy) butyric acid.
- X. "2,4DB Task Force" means the current (as of the date this Order becomes final) Task Force relating to 2,4DB and, if applicable, its successors
- Y. "2,4DB Task Force Seat" means membership in the 2,4DB Task Force, with all attendant rights and privileges at least equal to those owned or enjoyed by any and all other members, including but not limited to ownership interests, and access to, all data generated or owned by the 2,4DB Task Force or jointly-owned by its members, and all data otherwise accessible to 2,4DB Task Force members as a function or benefit of their membership in the Task Force for use in obtaining regulatory approvals or any other purpose, and further including all costs of transferring membership to the Commission-approved Acquirer, including contributions to the 2,4DB Task Force or its members for data generated prior to the transfer, which shall be the responsibility of Respondent.



- GG. "MCP-p Task Force Seat" means AHM's membership in the MCP-p Task Force, with all attendant rights and privileges at least equivalent to those owned or enjoyed by any and all other members, including but not limited to ownership interest, and access to, all data generated or owned by the MCP-p Task Force or jointly-owned by its members, and all data otherwise accessible to MCP-p Task Force members as a function or benefit of their membership in the Task Force in obtaining regulatory approvals or any other purpose, and further including all costs of transferring membership to the Commission-approved Acquirer, including contributions to the MCP-p Task Force of its members for data generated prior to the transfer, which shall be the responsibility of Respondent. "MCP-p Task Force Seat" means AHM's membership in the MCP-p Task Force as held by AHM prior to its acquisition by Nufarm; *provided, however* that should there be any disparity between the rights or privileges between the MCP-p Task Force Seat held by Nufarm prior to the AHM acquisition and the MCP-p Task Force seat formerly held by AHM, "MCP-p Task Force Seat" shall mean the MCP-p Task Force seat with the greater or more extensive rights or privileges.
- HH. "Nufarm Customer" means any company or person that purchased or purchases MCPA, MCP-p, or 2,4DB from Nufarm or AHM.
- II. "Nufarm Customer Contract" means any agreement entered into by Nufarm or AHM with a Nufarm Customer with respect to the purchase, supply, or sale of MCPA, MCP-p or 2,4DB, with the exception of (1) the DC Contracts, (2) the Aceto Contracts, (3) any Divestiture Agreements, or (4) agreements to the extent such agreements relate solely to the purchase, supply, or sale of finished products in which the Product(s) are not the sole active ingredients. "Nufarm Customer Contract" includes (1) Nufarm Customer Contracts in effect as of the date Respondent executed the Agreement Containing Consent Order, and (2) Nufarm Customer Contracts entered into by Respondent with a Nufarm Customer anytime from the date Respondent executed the Agreement Containing Consent Order until six (6) months after the latest of the Closing Dates.
- JJ. "PBI Gordon" means PBI Gordon Corporation, a corporation organized and existing under the laws of Missouri, U.S.A., with offices at 1217 W. 52<sup>nd</sup> Street, Kansas City, Missouri 64101.
- KK. "PBI Gordon Divestiture Agreement" means the Sale and Purchase Agreement between Respondent and PBI Gordon relating to MCP-p.
- LL. "Products" means MCPA; MCP-p; and/or 2,4DB.

MM. "Registration" means existing registrations and approvals, including those granted or issued by any and all local, state, provincial, and federal entities (including but not limited to the EPA, the California Environmental Protection Agency, and the Canadian Pest Management Regulatory Agency of Health Canada), permitting, necessary or required for, or relating to the manufacture, sale, or use of the Products in the United States or Canada as technical products or as formulations or end-use products in which one of the Products is the sole active ingredient in the formulation or end-use product. "Registration" also includes supplemental registration or repackaging approvals granted to customers, alternative sources, suppliers, or other third parties that have qualified a Product for manufacture, sale, or use in the United States or Canada by the customer, alternative source, supplier, or other third party; "Registration" also includes licensing of or access to data, including but not limited to Respondent's confidential statements of formula, that are required for the completion of any necessary Registrations or approvals required by any governmental entity and for the addition of new sources for the Products.

NN. "Respondent" means Nufarm.

OO. "Task Force" means any group of industry participants formed to generate data, including environmental and toxicology data, for specific active ingredients or for industry-wide issues such as spray drift or worker exposure, and expressly includes, though is not limited to: the MCPA Task Force Three; 2,4DB Task Force; MCPP-p Task Force.

## II.

### **IT IS FURTHER ORDERED** that:

- A. By no later than five (5) days after the date on which this Order is accepted for public comment, Respondent shall divest the MCPA Divestiture Assets to Albaugh pursuant to and in accordance with the Albaugh Divestiture Agreement, absolutely and in good faith; *provided, however*, that if Respondent has divested the MCPA Divestiture Assets to Albaugh prior to the date this Order becomes final and if, at the time the Commission determines to make this Order final:

1. The Commission determines and notifies Respondent that Albaugh is not an acceptable acquirer of the MCPA Divestiture Assets, then Respondent shall immediately rescind the transaction with Albaugh and shall divest the MCPA Divestiture Assets no later than six (6) months from the date the Order becomes final, absolutely and in good faith, at no minimum price, to a Commission-approved Acquirer and only in a manner that receives the prior approval of the Commission; or
  2. The Commission determines and notifies Respondent that the manner in which the divestiture was accomplished is not acceptable, the Commission may direct the Respondent, or appoint a Divestiture Trustee, pursuant to Paragraph IV of this Order, to effect such modifications to the manner of divesting the MCPA Divestiture Assets to Albaugh (including, but not limited to, entering into additional agreements or arrangements) as may be necessary to satisfy the requirements of this Order.
- B. Prior to completing the divestiture required by this Paragraph, Respondent shall obtain all third-party consents and satisfy all other conditions, to the extent necessary, required to facilitate the divestitures, or as otherwise required by Paragraph II., including obtaining any consents or waivers of, or payments to, third parties required to access data or transfer assets.
- C. Respondent shall (and the Divestiture Agreements shall include provisions that, subject to the prior approval of the Commission, satisfy the following):
1. Ensure that the Commission-approved Acquirer is not liable to the MCPA Task Force or to individual members of the MCPA Task Force for any past costs or expenses of the MCPA Task Force (including but not limited to data compensation, initiation fees, and other costs);
  2. Use best efforts to ensure that the Commission-approved Acquirer retains rights equivalent to the rights of the other members of the MCPA Task Force and that the Commission-approved Acquirer's rights cannot be reduced or restricted by future actions of the other members of the MCPA Task Force; and
  3. In order to enable the Commission-approved Acquirer of the MCPA Divestiture Assets to supply customers with MCPA Assets in a similar quantity, in a similar manner, and of similar quality as Respondent was supplying customers with MCPA, provide supply of MCPA to the Commission-approved Acquirer of the MCPA Divestiture Assets, at the option of the Commission-approved Acquirer, pursuant to terms and conditions subject to the prior approval of the Commission;



*provided, however,* that Nufarm shall use best efforts to minimize its costs and to use its manufacturing plants in connecti

expeditiously enter and commence viable and sustainable participation in the markets as alleged in the Commission's complaint.

### III.

**IT IS FURTHER ORDERED** that:

- A. By no later than five (5) days after the date on which this Order is accepted for public comment, Respondent shall divest the MCPP Divestiture Assets to PBI Gordon pursuant to and in accordance with the PBI Gordon Divestiture Agreement, absolutely and in good faith; provided, however, that if Respondent has divested the MCPP Divestiture Assets to PBI Gordon prior to the date this Order becomes final and if, at the time the Commission determines to make this Order final:
1. The Commission determines and notifies Respondent that PBI Gordon is not an acceptable acquirer of the MCPP Divestiture Assets, then Respondent shall immediately rescind the transaction with PBI Gordon and shall divest the MCPP Divestiture Assets no later than (60) months from the date the Order becomes final, absolutely and in good faith, at no minimum price, to a Commission-approved Acquirer and only in a manner that receives the prior approval of the Commission; or
  2. The Commission determines and notifies Respondent that the manner in which the divestiture was accomplished is not acceptable, the Commission may direct the Respondent, or appoint a Divestiture Trustee, pursuant to Paragraph IV of this Order, to effect such modifications to the manner of divesting the MCPP Divestiture Assets to PBI Gordon (including, but not limited to, entering into additional agreements or arrangements) as may be necessary to satisfy the requirements of this Order.
- B. Prior to completing the divestiture required by this Paragraph, Respondent shall obtain all third-party consents and satisfy all other conditions, to the extent necessary, required to facilitate the divestitures, or as otherwise required by Paragraph III. of this Order, including obtaining any consents, waivers of, or payments, third parties required to access data or transfer assets.
- C. Respondent shall (and the Divestiture Agreement shall include provisions that, subject to the prior approval of the Commission, satisfy the following):

1. Ensure that the Commission-approved Agency is not liable to the MCPP-p Task Force or to individual members of the MCPP-p Task Force for any past costs or expenses of the MCPP-p Task Force

b) restrict the ability of the other parties to the contracts or agreements to



- D. Impose or enforce any requirement that Dow, Aceto, Albaugh, and/or PBI Gordon acquire all or a majority of its requirements of the Products from Nufarm, subject to the requirement of V.G., below;
- E. Directly or indirectly result in the dissolution of any Task Force of the Products, or transfer to Respondent any right or interest in any Task Force of the Products or Registration without complying with the notice obligations of Paragraph VII. of this Order;
- F. Limit or restrict Aceto's ability to use its 2,4DB Task Force Seat or 2,4DB Registrations to develop alternative sources of 2,4DB and/or purchase 2,4DB for any purpose from these or other sources of 2,4DB; and
- G. Impose or enforce any requirement that Dow purchase more than 75% of its internal MCPA requirements from Respondent.

## VI.

**IT IS FURTHER ORDERED** that Respondent shall:

- A. Fully and irrevocably terminate the Aceto/Nufarm Joint Venture no later than ten (10) days after Respondent executes the Consent Orders; and
- B. Provide to Aceto, at the option of Aceto, 2,4DB at quantities and prices similar to that provided to Aceto under the Aceto/Nufarm Joint Venture, supply of 2,4DB at a similar quantity, in a similar manner, and of similar quality as Aceto was supplying customers with 2,4DB during the effective period of the Aceto/Nufarm Joint Venture, pursuant to terms and conditions subject to the approval of the Commission.

## VII.

**IT IS FURTHER ORDERED** that, for a period of five (5) years from the date this Order becomes final, Respondent shall not, without providing advance written notification to the Commission in the manner described in this Paragraph:

- A. Acquire, directly or indirectly, any right or interest in any Registration or any Product's Task Force; or



## VIII.

**IT IS FURTHER ORDERED** that:

- A. If Respondent has not fully complied with the obligations to divest the MCPA Divestiture Assets or the MCP-p Divestiture Assets as required by this Order, the Commission may appoint a trustee ("Divestiture Trustee") to divest the MCPA Divestiture Assets (if the MCPA Divestiture Assets have not been divested) or the MCP-p Divestiture Assets (if the MCP-p Divestiture Assets have not been divested) pursuant to Paragraph II. or Paragraph III. of this Order, as applicable, and effectuate the other obligations of Paragraph II. or Paragraph III. of this Order, as applicable, in a manner that satisfies the requirements of this Order. 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, Respondent shall consent to the appointment of a Divestiture Trustee in such action to divest the required assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Pa





have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestitures and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondent, and the Divestiture Trustee

orders or directions as may be necessary or appropriate to accomplish the divestitures required by this Order.

## IX.

**IT IS FURTHER ORDERED** that:

- A. Within thirty (30) days after the date this Order becomes final, and every ninety (90) days thereafter until the last Closing Date for the MCPA Divestiture Assets and the MCPP-p Divestiture Assets, Respondent 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. Respondent shall include in its reports, among other things that are required from time to time:
1. A full description of the efforts being made to divest the assets required to be divested; and
  2. A description of all substantive contacts or negotiations related to the divestitures and the identity of all parties contacted and copies of all written communications to and from such parties, and reports and recommendations concerning completing its obligations pursuant to Paragraph II. and Paragraph III. of this Order.
- B. Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with:
1. Paragraph II.C.3. and Paragraph III.C.3. of the Order, no later than three (3) months after the h this

**X.**

**IT IS FURTHER ORDERED** that Respondent shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of the Respondent;
- B. Any acquisition, merger or consolidation of Respondent; or
- C. Any other change in the Respondent, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change may affect compliance obligations arising out of this Order.

**XI.**

**IT IS FURTHER ORDERED** that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondent, Respondent shall, without interference, permit any duly authorized representative(s) of the Commission:

- A. Access, during business office hours of Respondent and in the presence of counsel, to all facilities and access to inspect and copy all non-privileged books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at their expense; and
- B. To interview officers, directors, or empl

## Appendix A

### NOTICE

To settle concerns arising from Nufarm's acquisition of A. H. Marks, on [insert date of consent agreement] Nufarm agreed with the staff of the Federal Trade Commission to allow those of its customers that purchase MCPA, MCPP-p or 2,4DB ("the Products") from Nufarm to terminate its contracts with respect to any or all of the Products, at the option of the customer, without penalty or charge, immediately upon request of the customer at any time from the [insert date Respondent executes the Agreement Containing Consent Orders] until [insert date eighteen (18) months after the latest of the Closing Dates]. The Commission issued its Order incorporating that settlement on [insert date of final order].

You are being sent this notice because you are a current Nufarm customer that purchases Products from Nufarm. You may read and download a copy of the Order from the FTC at its web site at [web link to Order] as well as other documents relating to the settlement. Nufarm's obligations with respect to contract termination are set out in Paragraph IV. of the Order. Capitalized terms used in the Order are defined in Paragraphs of the Order, listed in alphabetical order.

If you wish to terminate your contract with respect to any or all of the Products you purchase from Nufarm, please contact Brett Sutherland, Global Phenoxy Product Manager, Nufarm Ltd., 103-105 Pipe Road, Laverton North, Victoria 3026, Australia, Tel: +61-3-9282-1000, Email: brett.sutherland@au.nufarm.com. If you have any questions or concerns about these obligations, you may contact the staff of the Compliance Division, Bureau of Competition, Federal Trade Commission, Washington, D.C., Tel: 202 326 2152.