

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
ROHM and HAAS COMPANY,  
Defendant.

Civil Action No. 86-3091

Filed:

Entered:

**FILED**  
FEB 13 1987

FINAL JUDGMENT

JAMES E. DAVEY, Clerk

WHEREAS, plaintiff, United States of America, having filed its Complaint herein on November 10, 1985, and plaintiff and defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

AND WHEREAS, the defendant has agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, prompt and certain divestiture is the essence of this agreement;

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

ORDERED, ADJUDGED and DECREED as follows:

I.

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against defendant under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II.

As used in this Final Judgment:

A. "Rohm and Haas" means defendant, Rohm and Haas Company; each division, subsidiary or affiliate thereof; and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them.

B. "Diamond Shamrock" means Diamond Shamrock Corporation; and each division, subsidiary or affiliate thereof.

C. "Redwood City plant" means the Ion Exchange Resin plant located at Redwood City, California, that Rohm and Haas purchased from Diamond Shamrock on May 29, 1984.

D. "Ion Exchange Resin" means a solid resinous material comprising a polymeric matrix having fixed, charged sites distributed throughout the matrix and having associated with those sites ionized, exchangeable ions, wherein the electric charges of the sites are opposite to those of the ions.

E. "Specified Resins" means all Ion Exchange Resins that Diamond Shamrock produced at the Redwood City plant at any time during the two (2) year period ending May 29, 1984.

F. "Ion Exchange Technology" means all technology, information, and know-how, whether patented or unpatented, that Diamond Shamrock used at the Redwood City plant to produce any of the Specified Resins and that Rohm and Haas acquired from Diamond Shamrock on May 29, 1984.

G. "Ion Exchange Assets" means all of the following:

(1) the land comprising the Redwood City plant site, consisting of approximately 11 acres;

(2) all buildings, fixtures, machinery, and equipment located on the Redwood City Plant site at the time of its acquisition by Rohm and Haas;

(3) A non-exclusive license to practice the Ion Exchange Technology for the manufacture and sale of ion exchange resins anywhere in the world; and

(4) Ion Exchange Resins inventory existing at the Redwood City plant at the time of the divestiture required by Section IV. of this Final Judgment.

H. "Divestiture" (and "to divest") means:

(1) the sale of the assets identified in Sections II.G.(1), (2) and (4) above, and

(2) the license of the Ion Exchange Technology as described in Section II.G.(3) above.

I. "Person" means any natural person, corporation, association, firm, partnership, or other business or legal entity.

### III.

A. The provisions of this Final Judgment shall apply to Rohm and Haas, its successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Except for Section IV.F. of this Final Judgment, nothing herein contained shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party and nothing herein shall be construed to provide any rights to any third party.

C. Rohm and Haas shall require, as a condition of the sale or other disposition of all or substantially all of its assets or stock, that the purchaser agree to be bound by the provisions of this Final Judgment.

### IV.

A. Rohm and Haas is hereby ordered and directed to:

(1) divest to a purchaser, or pursuant to Section IV.C. more than one purchaser, all of its direct and indirect ownership and control of the Ion Exchange Assets; and

(2) in the event of such divestiture, refrain from using the Duolite trademark in the United States, except to the extent necessary under United States laws to maintain Rohm and Haas' rights to the trademark and as provided in Section IV.H. of this Final Judgment.

B. Divestiture of the Ion Exchange Assets shall be accomplished so as to obtain the highest dollar value then obtainable for the Ion Exchange Assets, but shall not be made to a producer of Ion Exchange Resins without plaintiff's permission.

C. Rohm and Haas may divest less than all of the Ion Exchange Assets, and to more than one purchaser, but only with the written approval of the plaintiff. In the event that the plaintiff approves a sale to a purchaser pursuant to this paragraph, such sale shall fully discharge Rohm and Haas' obligation to divest the Ion Exchange Assets under Section IV.A.(1) of this Final Judgment.

D. Rohm and Haas shall continue to operate the Redwood City plant until the divestiture required by Section IV.A. is completed or at least until one hundred and eighty days after the filing of the Complaint in this action, and shall use its best efforts to retain present plant personnel, provided that nothing contained herein shall be construed to deny Rohm and Haas the opportunity to petition the Court to be permitted to discontinue any operation at the Redwood City plant if, in the reasonable opinion of Rohm and Haas, the continuation of such operation would pose an unreasonable risk of harm to plant personnel or the public. After such date, Rohm and Haas shall be free to cease operations at the Redwood City plant and discharge plant personnel, subject only to the right of representatives of the Department of Justice to apply to the Court under Section V.D. of this Final Judgment for an order compelling Rohm and Haas to continue to operate the Redwood City plant. Until this Final Judgment shall be discharged, Rohm

and Haas shall not dismantle or remove any equipment from the Redwood City plant.

E. Any license of the Ion Exchange Technology may contain appropriate provisions (1) requiring the licensee to hold in confidence and not disclose the licensed technology to third parties, other than an assignee of the entire license, (2) restricting the licensee's right to sublicense the licensed technology without the prior written consent of Rohm and Haas, (3) requiring the licensee to indemnify and hold Rohm and Haas harmless against claims by third parties who purchase Specified Resins produced with the licensed technology, and (4) disclaiming any warranties that might be implied in connection with the license of the technology, including any warranty that the licensed technology will produce Ion Exchange Resins of a certain grade or quality, or at certain costs, or will achieve certain production yields, or that any Specified Resin will be merchantable or fit for any particular purpose.

F. Subject to the provisions set out in Section IV.G. of this Final Judgment, which is subject to any orders or directions the Court may issue on motion of Rohm and Haas under Section XIV. of this Final Judgment, Rohm and Haas shall:

(1) furnish to all bona fide prospective purchasers who so request all pertinent information regarding the Ion Exchange Assets, the Specified Resins, the Ion Exchange Technology, and the assistance Rohm and Haas shall provide pursuant to Sections VIII. and IX. of this Final Judgment;

(2) provide such information to the plaintiff at the time it furnishes such information to any other person; and

(3) permit all bona fide prospective purchasers to have access to personnel at Rohm and Haas' Redwood City plant and to Rohm and Haas personnel who have responsibilities for Rohm and Haas' Ion Exchange Resin business at the Redwood City plant, and to make such inspection of the physical facilities at the Redwood City plant, and any and all financial and operation records, documents, and information as may be relevant to the divestiture required under Section IV.

G. Rohm and Haas may decline to furnish or grant any prospective purchaser access to any confidential or proprietary information relating to the Ion Exchange Assets, the Specified Resins, or the Ion Exchange Technology, or to permit such person access to the Redwood City plant unless such person shall have executed an appropriate confidentiality agreement that shall prohibit such person from disclosing or using (except for purposes of evaluating the acquisition of the assets to be divested pursuant to the terms of this Final Judgment, or unless such person purchases the assets to be divested pursuant to the terms

of this Final Judgment) any confidential information of Rohm and Haas for a period of ten (10) years from the date of the confidentiality agreement. In addition, Rohm and Haas may decline to furnish any prospective purchaser with the recipes and operating instructions for the production of the Specified Resins unless and until such person shall have offered to enter into an agreement to purchase the Specified Resins or Ion Exchange Technology covered by the disclosure.

H. Notwithstanding Rohm and Haas' obligation under Section IV.A.(2) of this Final Judgment, and subject to the right of a purchaser of the Ion Exchange Assets to purchase inventories of Ion Exchange Resins as provided in Section II.G.(4) of this Final Judgment, Rohm and Haas may dispose of already packaged stocks bearing the Duolite trademark existing in the United States on the closing date of the required divestiture.

V.

A. First San Francisco Corporation shall act as an independent broker with full power and authority to carry out the divestiture ordered in Section IV. of this Final Judgment at such price and on such terms as are then obtainable upon a reasonable effort by the independent broker, subject to the provisions of Section VI. of this Final Judgment, and shall have such other powers as the Court deems appropriate. The independent broker shall serve at the cost and expense of Rohm and Haas. The compensation of such broker shall be based on a fee arrangement providing the independent broker with an incentive based on the

price and terms of the divestiture and the speed with which it is accomplished. Only the independent broker, and not Rohm and Haas, shall have the right to effect divestiture under Section IV. of this Final Judgment, but Rohm and Haas shall use all reasonable efforts to assist the independent broker in accomplishing the required divestiture. Rohm and Haas may object to a proposed divestiture pursuant to this Final Judgment only if (1) the circumstances of such divestiture indicate malfeasance on the part of the independent broker, or (2) the proposed divestiture does not satisfy the requirements set forth in Section IV.B. of this Final Judgment. Any such objection by Rohm and Haas must be conveyed in writing to the plaintiff and the independent broker within fifteen (15) days after the independent broker has notified Rohm and Haas of the proposed sale.

B. The independent broker shall commence efforts to find a purchaser and to effect the required divestiture immediately upon the date of the filing of the Complaint in this civil action. The independent broker shall at all times use its best efforts to effect divestiture of the Ion Exchange Assets. Rohm and Haas shall promptly notify the independent broker of any contact it has had with any person that has made an offer or expressed an interest or desire to acquire any of the Ion Exchange Assets together with full details of the same.

C. The independent broker shall have full and complete access to the personnel, books, records, and facilities of Rohm and Haas related to the Ion Exchange Assets, and Rohm and Haas shall develop such financial or other information relevant to the Ion Exchange Assets as the independent broker may request. Rohm and Haas shall take no action to interfere with or impede the independent broker's accomplishment of the required divestiture.

D. Thirty (30) days from the date of the filing of the Complaint in this civil action and every thirty (30) days thereafter until the divestiture required by Section IV. of this Final Judgment has been completed, the independent broker shall submit a report to the parties and the Court setting forth the independent broker's efforts to accomplish the required divestiture. If the independent broker has not accomplished such divestiture within one hundred and eighty (180) days after filing of the Complaint in this civil action, the independent broker shall thereupon promptly file with the Court a report setting forth (1) the independent broker's efforts to accomplish the required divestiture, (2) the reasons, in the independent broker's judgment, why the required divestiture has not been accomplished, and (3) the independent broker's recommendations. The independent broker shall at the same time furnish such report to the parties, which shall each have the right to be heard and to make additional recommendations consistent with this Final Judgment. The Court shall thereafter enter such orders as it shall deem appropriate,

which shall, if necessary, include extending the term of the independent broker's appointment if the independent broker is in active negotiations with a prospective purchaser or if the Court finds that Rohm and Haas has failed to comply with its obligations under this Final Judgment, and which may also include an order deeming the purposes of this Final Judgment to have been fully complied with by the efforts made by the independent broker through such date and relieving Rohm and Haas of further obligations under this Final Judgment.

#### VI.

At least thirty (30) days prior to the scheduled closing date of the proposed divestiture pursuant to Section IV. of this Final Judgment, the independent broker shall notify the plaintiff and Rohm and Haas of the proposed divestiture. The notice shall set forth the details of the proposed transaction and, for each person not previously identified who offered or expressed an interest or desire to acquire any ownership interest in the Ion Exchange Assets, the name, address, and telephone number of that person together with full details of that person's interest or desire to acquire such ownership interest, and certify that the proposed divestiture is to the highest bidder. Within fifteen (15) days after receipt of notice of the proposed divestiture, the plaintiff may request from Rohm and Haas and the proposed purchaser additional information concerning the proposed divestiture. Rohm

and Haas shall furnish the additional information requested from it within twenty (20) days of the receipt of the request, unless plaintiff shall agree to extend the time. Until plaintiff certifies in writing that it is satisfied that the proposed purchaser has provided the additional information requested from it, the divestiture shall not be consummated. Within thirty (30) days after receipt of the notice or within fifteen (15) days after receipt of the additional information from Rohm and Haas and the proposed purchaser, whichever is later, unless Rohm and Haas shall agree to extend the time, plaintiff shall notify in writing Rohm and Haas and the independent broker if it objects to the proposed divestiture. If plaintiff fails to object within the period specified, or if plaintiff notifies in writing Rohm and Haas and the independent broker that it does not object, the divestiture may be consummated, subject only to Rohm and Haas' right to object to the sale under the proviso in Section V.A. Upon objection by the plaintiff, the proposed divestiture shall not be consummated unless approved by the Court. Upon objection by Rohm and Haas under Section V.A. of this Final Judgment, the proposed divestiture shall not be consummated unless approved by the Court. The one hundred and eighty (180) day time period set forth in Section V.D. of this Final Judgment shall be tolled from the time either the plaintiff or Rohm and Haas files with the Court such an objection to the proposed divestiture, until the conclusion of any Court proceeding relating to such objection. In any such proceeding involving any objection by Rohm and Haas, Rohm and Haas shall have the burden of proof.

VII.

Rohm and Haas shall not finance without the plaintiff's permission all or any part of the purchase of the Ion Exchange Assets pursuant to the divestiture required by Section IV. of this Final Judgment.

VIII.

A. Upon request of the purchaser, Rohm and Haas shall use its best efforts to make available, at a reasonable time and place and for a period not to exceed one hundred and eighty (180) days from the closing date of the required divestiture, qualified technical personnel to assist the purchaser to design a laboratory for research and development with respect to Specified Resins.

B. Upon request of the purchaser, Rohm and Haas shall use its best efforts to make available, at a reasonable time and place and for a period not to exceed one hundred and eighty (180) days from the closing date of the required divestiture, qualified technical personnel to advise the purchaser on the production of Specified Resins.

C. Upon request of the purchaser, Rohm and Haas shall use its best efforts to make available, at a reasonable time and place and for a period not to exceed one hundred and eighty (180) days from the closing date of the required divestiture, qualified personnel to assist the purchaser to hire and train a sales and technical support staff for marketing Specified Resins.

D. If, within ninety (90) days from the closing date of the required divestiture, the purchaser states that it intends to relocate the Ion Exchange Resin production equipment currently located at the Redwood City plant to some other location, upon request of the purchaser, Rohm and Haas shall use its best efforts to make available, at a reasonable time and place and until one hundred and eighty (180) days following the closing date of the required divestiture, qualified technical personnel to advise the purchaser on transferring and reassembling the production equipment. In the event that the purchaser chooses to transfer the Ion Exchange Resin production equipment currently located at the Redwood City plant to some other location pursuant to this paragraph, and at the request of the purchaser, the time periods provided for in Section VIII.A.-D. of this Final Judgment shall be tolled until such time as the relocated facility is operational, but not to exceed three hundred and sixty (360) days.

E. All assistance and advice made available pursuant to this Section VIII. shall be made available at cost (salary, benefits, and out-of-pocket expenses), determined in accordance with generally accepted accounting principles. Any controversy concerning the cost of the assistance and advice shall be settled by arbitration.

F. With respect to Rohm and Haas' obligations under this Section VIII. to provide advice and/or assistance in the start-up of anion resin production, if, in the reasonable opinion of Rohm and Haas, Rohm and Haas employees engaged in furnishing on-site assistance during the start-up of anion resin production would be exposed to undue risk of bodily harm as a result of the purchaser's failure to install adequate systems and equipment to protect the health and safety of persons involved in the production of anion resins, then Rohm and Haas may refuse to furnish such on-site assistance, provided that Rohm and Haas shall promptly notify in writing representatives of the Department of Justice, and the purchaser, of such refusal. Such notice shall state why, in the opinion of Rohm and Haas, such operation is unsafe, and describe the systems or equipment Rohm and Haas believes is required to render such operation safe and estimate the current cost of the systems or equipment. The Department shall have fifteen (15) days from the receipt of such notice in which to notify Rohm and Haas that it either disagrees with Rohm and Haas' conclusion or lacks sufficient information upon which to form a belief as to the safety of the anion operation. If the Department shall fail to so notify Rohm and Haas, then Rohm and Haas shall not be required to furnish on-site assistance to the purchaser in the start-up of anion resin production, unless and until the purchaser shall have installed the systems or equipment Rohm and Haas believes is required to render the operation safe.

If the Department shall so notify Rohm and Haas, then Rohm and Haas shall have fifteen (15) days from the receipt of such notice in which to petition the Court for an order relieving it of its responsibility to furnish the purchaser with on-site assistance in the start-up of anion resin production. If Rohm and Haas shall file its petition within the aforesaid period, then Rohm and Haas shall not be required to furnish the purchaser with on-site assistance in the start-up of anion resin production until the Court has ruled on Rohm and Haas' petition. If, under this Section VIII.F., Rohm and Haas refuses to provide on-site assistance in the start-up of anion resin production, the time period provided in Section VIII.B. of this Final Judgment (as applicable to Rohm and Haas' obligation to provide advice on the production of anion resins) shall be tolled from the time of such refusal until the Court has ruled on Rohm and Haas' petition.

#### IX.

At the closing of the required divestiture, Rohm and Haas shall furnish to the purchaser at no charge a list of (1) the names and addresses of all persons in the United States that purchased one or more Specified Resins at any time during the period beginning May 29, 1982 and ending on the tenth day preceding the closing date of the required divestiture, and (2) for each such person, the Specified Resins the person purchased and the amounts (by calendar year) of such purchases.

X.

Rohm and Haas shall provide current Rohm and Haas employees who were formerly employees of Diamond Shamrock in the United States at the time Rohm and Haas acquired the Redwood City plant and who leave Rohm and Haas to work for the purchaser within sixty (60) days of the closing date of the required divestiture with a severance package equal to the severance package Diamond Shamrock offered to its employees at the time Rohm and Haas acquired the Redwood City plant. Rohm and Haas will make the same severance payment to other employees of Rohm and Haas who are engaged in the production, sales, or marketing of Ion Exchange Resins in the United States and who leave Rohm and Haas to work for the purchaser within sixty (60) days of the date of the closing of the required divestiture on the first anniversary date of such person's employment with the purchaser, provided that such employee has worked for the purchaser for one (1) year.

XI.

At the time of the required divestiture, Rohm and Haas shall enter into a reasonable arbitration agreement with the purchaser concerning controversies to be settled by arbitration pursuant to this Final Judgment. When any controversy is submitted to arbitration, Rohm and Haas shall promptly notify plaintiff in writing of the controversy being arbitrated and shall promptly serve a copy of the final award on plaintiff.

XII.

Rohm and Haas shall require, as a condition of its sale or other disposition of all, or substantially all, of the assets used by it in the production, distribution, and sale of Ion Exchange Resins other than the Ion Exchange Assets, that the acquiring party agree to be bound by the provisions of this Final Judgment, and that such agreement be filed with this Court.

XIII.

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Rohm and Haas made to its principal office, be permitted:

(1) access during office hours of Rohm and Haas to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Rohm and Haas, who may have counsel present relating to any matters contained in this Final Judgment; and

(2) subject to the reasonable convenience of Rohm and Haas and without restraint or interference from it, to interview officers, employees and agents of Rohm and Haas, who may have counsel present, regarding any such matter.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to Rohm and Haas' principal office, Rohm and Haas shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section XIII. shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Rohm and Haas to plaintiff, Rohm and Haas represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Rohm and Haas marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to Rohm and Haas prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XIV.

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

XV.

This Final Judgment will expire on the tenth anniversary of its date of entry.

XVI.

Entry of this Final Judgment is in the public interest.



UNITED STATES DISTRICT JUDGE

Dated: 