

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

STATE OF IOWA,

STATE OF MISSISSIPPI,

and

STATE OF MONTANA,

Plaintiffs,

v.

THE DOW CHEMICAL COMPANY

and

E.I. DU PONT DE NEMOURS AND
COMPANY,

Defendants.

ASSET PRESERVATION STIPULATION AND ORDER

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I. DEFINITIONS

As used in this Asset Preservation Stipulation and Order:

A. “Acquirer” or “Acquirers” means the entity or entities to which defendants divest the Divestiture Assets.

B. “Acquirer of the Crop Protection Divestiture Assets” means the entity to which defendants divest the Crop Protection Divestiture Assets.

C. “Acquirer of the Material Science Divestiture Assets” means the entity to which defendants divest the Material Science Divestiture Assets.

D. “DuPont” means defendant E.I. du Pont de Nemours and Company, a Delaware corporation with its headquarters in Wilmington, Delaware, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

E. “Dow Chemical” means defendant The Dow Chemical Company, a Delaware corporation with its headquarters in Midland, Michigan, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

F. “Calgary Facility” means DuPont’s interest in the facility located at 4444 72nd Avenue SE, Calgary, Alberta, Canada T2C 2C1.

G. “Freeport Facility” means Dow Chemical’s dedicated acid copolymer production facility located within the B-7700 Block and B-7800 Block of Dow Chemical’s integrated chemical site at 2301 Brazosport Blvd., APB Building, Freeport, Texas 77541, including a ground lease to the real property underlying the Freeport Facility, but not including ownership of any underlying real property.

H. “Manati Manufacturing Unit” means the manufacturing unit within DuPont’s industrial complex at Km 2/3 Rr 686, Tierras Nuevas Salientes Ward, Manati, Puerto Rico 00674.

I. “Mobile Facility” means DuPont’s facility located at 12650 Highway 43 N, Axis, Alabama 36505.

J. “DuPont’s Finesse-formulated products” means all products (including Finesse) packaged at the Calgary Facility and containing the active ingredients Metsulfuron Methyl and Chlorsulfuron Methyl produced at the Manati Manufacturing Unit.

K. “DuPont’s Rynaxypyr-formulated products” means all products manufactured at the Mobile Facility that contain the active ingredient Chlorantraniliprole (including Altacor, Coragen, and Prevathon), except seed treatment applications.

L. The “Finesse Business” means:

1. the Manati Manufacturing Unit;
2. the lease to the Calgary Facility;
3. all tangible assets primarily relating to DuPont’s Finesse-formulated products, including, but not limited to, manufacturing equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property and all assets at the Manati Manufacturing Unit and at the Calgary Facility used in connection with DuPont’s Finesse-formulated products; all licenses, permits and authorizations issued by any governmental organization primarily relating to DuPont’s Finesse-formulated products (to the extent such licenses, permits, and authorizations are capable of assignment or transfer); all contracts (or portions thereof), teaming arrangements, agreements (or portions thereof), leases, commitments, certifications, and understandings, primarily relating to DuPont’s Finesse-formulated products, including supply agreements; all customer lists, contracts, accounts, and credit records primarily relating to DuPont’s Finesse-formulated products; all repair and performance records and all other records primarily relating to DuPont’s Finesse-formulated products; except that defendants may retain copies of or access to any tangible assets primarily relating to DuPont’s Finesse-formulated products that are necessary in order to perform any

services pursuant to their agreements with the Acquirer of the Crop Protection Divestiture Assets, provided, however, that defendants may not otherwise use any such tangible assets in connection with the development, manufacture, and/or sale of broadleaf herbicides for winter wheat; and

4. all intangible assets owned, licensed, controlled, or used by DuPont, wherever located, primarily relating to DuPont's Finesse-formulated products, including, but not limited to, all patents, licenses and sublicenses, intellectual property, copyrights, trademarks (including Finesse), trade names, service marks, service names, technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, all manuals and technical information DuPont provides to its own employees, customers, suppliers, agents or licensees, and all research data concerning historic and current research and development efforts primarily relating to DuPont's Finesse-formulated products, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments; except that defendants may retain copies of or access to any intangible assets primarily relating to DuPont's Finesse-formulated products that are necessary in order to perform any services pursuant to their agreements with the Acquirer of the Crop Protection Divestiture Assets, provided, however, that defendants may not otherwise use any such intangible assets in connection with the development, manufacture, and/or sale of broadleaf herbicides for winter wheat.

M. The “Rynaxypyr Business” means:

1. the Mobile Facility;

2. all tangible assets primarily relating to DuPont’s Rynaxypyr-formulated products, including, but not limited to, manufacturing equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property and all assets at the Mobile Facility used in connection with DuPont’s Rynaxypyr-formulated products; all licenses, permits, and authorizations issued by any governmental organization primarily relating to DuPont’s Rynaxypyr-formulated products (to the extent such licenses, permits, and authorizations are capable of assignment or transfer); all contracts (or portions thereof), teaming arrangements, agreements (or portions thereof), leases, commitments, certifications, and understandings, primarily relating to DuPont’s Rynaxypyr-formulated products, including supply agreements; all customer lists, contracts, accounts, and credit records primarily relating to DuPont’s Rynaxypyr-formulated products; all repair and performance records and all other records primarily relating to DuPont’s Rynaxypyr-formulated products; except that defendants (i) may retain copies of or access to any tangible assets used by DuPont primarily relating to the Rynaxypyr-formulated products that are necessary in order to perform any services pursuant to their agreements with the Acquirer of the Crop Protection Divestiture Assets and (ii) may retain seed treatment assets, provided, however, that defendants may not otherwise use any such tangible assets in connection with the development, manufacture, and/or sale of insecticides for chewing pests; and

3. all intangible assets owned, licensed, controlled, or used by DuPont, wherever located, primarily relating to DuPont’s Rynaxypyr-formulated products, including, but not limited to, all patents, licenses and sublicenses, intellectual property, copyrights, trademarks

(including Altacor, Coragen, and Prevathon), trade names, service marks, service names, technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, all manuals and technical information DuPont provides to its own employees, customers, suppliers, agents or licensees; and all research data concerning historic and current research and development efforts primarily relating to DuPont's Rynaxypyr-formulated products, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments; except that defendants (i) may retain copies of or access to any intangible assets used by DuPont relating to DuPont's Rynaxypyr-formulated products that are necessary in order to perform any services pursuant to their agreements with the Acquirer of the Crop Protection Divestiture Assets and (ii) may retain seed treatment assets, provided, however, that defendants may not otherwise use any such intangible assets in connection with the development, manufacture, and/or sale of insecticides for chewing pests.

N. "Crop Protection Divestiture Assets" means:

1. the Finesse Business; and
2. the Rynaxypyr Business.

O. "Material Science Divestiture Assets" means:

1. the Freeport Facility;
2. all tangible assets located at the Freeport Facility and primarily used by

Dow Chemical's acid copolymer and ionomers business in the United States, including, but not limited to, research and development assets, manufacturing equipment, tooling and fixed assets,

personal property, inventory, office furniture, materials, supplies, and other tangible property, except that the Material Science Divestiture Assets do not include (i) information technology, equipment, and tools (*e.g.*, servers, network equipment, and enterprise workstations) connected to Dow Chemical's network or (ii) tangible assets that will be used by defendants to perform any services pursuant to their agreements with the Acquirer of the Material Science Divestiture Assets, provided, however, that defendants may not use any such tangible assets to develop, manufacture, and/or sell acid copolymers and ionomers; all licenses, permits, and authorizations issued by any governmental organization primarily for the benefit of the acid copolymer and ionomers business in the United States (to the extent such licenses, permits, and authorizations are capable of assignment or transfer); all contracts, teaming arrangements, agreements, including supply agreements, leases, commitments, certifications, and understandings primarily relating to Dow Chemical's acid copolymer and ionomers business in the United States (collectively "Contracts"), in each case to the extent relating to the acid copolymer and ionomers business, provided that to the extent transfer of any Contract requires the consent of another party, Dow Chemical shall satisfy its obligation by using reasonable best efforts to obtain such consent; all customer lists, accounts, and credit records, in each case to the extent relating to the acid copolymer and ionomers business; all records primarily relating to the acid copolymer and ionomers business in the United States, including repair and performance records, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, manuals and technical information Dow Chemical provides to its own employees, customers, suppliers, agents or licensees of such acid copolymer and ionomers business, and research data concerning historic and current

research and development efforts, including but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments, in each case to the extent relating to the acid copolymer and ionomers business, except that defendants may retain copies of or access to (i) any such records used by defendants' retained businesses other than Dow Chemical's acid copolymer and ionomers business and (ii) any such records used in connection with an OSA or to perform any services pursuant to their agreements with the Acquirer of the Material Science Divestiture Assets, provided, however, that defendants may not use any such records to develop, manufacture, and/or sell acid copolymers and ionomers; and

3. all intangible assets primarily used by Dow Chemical in connection with the development, manufacture, and/or sale of acid copolymers and ionomers in the United States, including, but not limited to, patents, licenses and sublicenses, intellectual property, copyrights, trademarks (including Primacor), trade names, service marks, service names, technical information, know-how, and trade secrets, except that, to the extent any intangible assets primarily used by Dow Chemical's acid copolymer and ionomers business in the United States are also used by other Dow Chemical businesses or are necessary to perform any services pursuant to defendants' agreements with the Acquirer of the Material Science Divestiture Assets, defendants will receive a license to use such intangible assets from the Acquirer of the Material Science Divestiture Assets, provided, however, that defendants may not use any such intangible assets to develop, manufacture, and/or sell acid copolymers and ionomers.

P. "Divestiture Assets" means the Crop Protection Divestiture Assets and the Material Science Divestiture Assets.

II. OBJECTIVES

The Final Judgment filed in this case is meant to ensure defendants' prompt divestiture of the Divestiture Assets for the purpose of establishing one or more viable competitors in the businesses of broadleaf herbicides for winter wheat, insecticides for chewing pests, and acid copolymers and ionomers, in order to remedy the effects that plaintiffs allege would otherwise result from the merger of Dow Chemical and DuPont. This Asset Preservation Stipulation and Order ensures that, until such divestitures required by the proposed Final Judgment have been accomplished, the Divestiture Assets will remain as economically viable, competitive, and saleable assets, and that defendants will preserve and maintain the Divestiture Assets.

III. JURISDICTION AND VENUE

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia. Defendants waive service of summons of the Complaint.

IV. COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT

A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16, and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court. Defendants agree to arrange, at their expense, publication as quickly as possible of the newspaper notice required by the APPA, which shall be drafted by the United States in its sole discretion. The publication shall be arranged no

later than three (3) business days after defendants' receipt from the United States of the text of the notice and the identity of the newspaper within which the publication shall be made.

Defendants shall promptly send to the United States (1) confirmation that publication of the newspaper notice has been arranged, and (2) the certification of the publication prepared by the newspaper within which the notice was published.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment and shall, from the date of the signing of this Asset Preservation Stipulation and Order by the parties, comply with all the terms and provisions of the proposed Final Judgment. The United States shall have the full rights and enforcement powers in the proposed Final Judgment, including Section XI, as though the same were in full force and effect as the final order of the Court.

C. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Asset Preservation Stipulation and Order.

D. This Asset Preservation Stipulation and Order shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event (1) the United States has withdrawn its consent, as provided in Paragraph IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Asset Preservation Stipulation and Order, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Asset Preservation Stipulation and

Order, and the making of this Asset Preservation Stipulation and Order shall be without prejudice to any party in this or any other proceeding.

F. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

V. ASSET PRESERVATION PROVISIONS

Until the divestitures required by the proposed Final Judgment have been accomplished:

A. Defendants shall preserve, maintain, and continue to operate the Divestiture Assets as ongoing, economically viable competitive product lines. Within twenty (20) days after the entry of the Asset Preservation Stipulation and Order, defendants will inform the United States of the steps they have taken to comply with this Asset Preservation Stipulation and Order.

B. Defendants shall use all reasonable efforts to maintain and increase the sales and revenues of the products and services produced by or sold under the Divestiture Assets, and shall maintain at 2017 or previously approved levels for 2018, whichever are higher, all promotional, advertising, sales, technical assistance, marketing and merchandising support for the Divestiture Assets.

C. Defendants shall provide sufficient working capital and lines and sources of credit to continue to maintain the Divestiture Assets as economically viable and competitive, ongoing product lines, consistent with the requirements of Paragraph V(A).

D. Defendants shall take all steps necessary to ensure that the Divestiture Assets are fully maintained in operable condition at no less than their current capacity and sales, and shall maintain and adhere to normal repair and maintenance schedules for the Divestiture Assets.

E. Defendants shall not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any of the Divestiture Assets.

F. Defendants shall maintain, in accordance with sound accounting principles, accurate and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of the Divestiture Assets.

G. Defendants shall take no action that would jeopardize, delay, or impede the sale of the Divestiture Assets.

H. Defendants' employees with primary responsibility for the development, manufacture, and sale of products relating to the Divestiture Assets shall not be transferred or reassigned to other areas within the company except for transfer bids initiated by employees pursuant to defendants' regular, established job posting policy. Defendants shall provide the United States with ten (10) calendar days notice of such transfer.

I. Subject to the approval of the United States, defendants shall appoint a person or persons to oversee the Divestiture Assets, and who will be responsible for defendants' compliance with this section. This person or persons shall have complete managerial responsibility for the Divestiture Assets, subject to the provisions of the proposed Final Judgment, and shall make all business decisions relating to the operations of the Divestiture Assets, including all production, sale, pricing, and discounting decisions, independent of defendants. In the event any such person is unable to perform his or her duties, defendants shall appoint, subject to the approval of the United States, a replacement within ten (10) working days. Should defendants fail to appoint a

replacement acceptable to the United States within this time period, the United States shall appoint a replacement.

J. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the proposed Final Judgment to complete the divestitures pursuant to the proposed Final Judgment to an Acquirer or Acquirers acceptable to the United States.

VI. DURATION OF ASSET PRESERVATION OBLIGATIONS

Defendants' obligations under Section V of this Asset Preservation Stipulation and Order shall remain in effect (1) with respect to the Crop Protection Divestiture Assets, until the consummation of the divestiture of the Crop Protection Divestiture Assets required by the proposed Final Judgment; (2) with respect to the Material Science Divestiture Assets, until the consummation of the divestiture of the Material Science Divestiture Assets required by the proposed Final Judgment; or (3) until further order of the Court. If the United States voluntarily dismisses the Complaint in this matter, defendants are released from all further obligations under this Asset Preservation Stipulation and Order.

Dated: June 15, 2017

FOR PLAINTIFF UNITED STATES OF AMERICA



LOWELL R. STERN (D.C. Bar #440487)

United States Department of Justice
Antitrust Division, Litigation II Section
450 Fifth Street, N.W., Suite 8700
Washington, D.C. 20530
Phone: 202-514-3676
Fax: 202-514-9033
lowell.stern@usdoj.gov

FOR PLAINTIFF STATE OF IOWA

THOMAS J. MILLER
Attorney General



LAYNE M. LINDEBAK
Assistant Attorney General
Iowa Department of Justice
Hoover Office Building – Second Floor
1305 East Walnut Street
Des Moines, IA 50319
Phone: 515-281-7054
Fax: 515-281-4902
Layne.Lindebak@iowa.gov

FOR PLAINTIFF STATE OF MISSISSIPPI

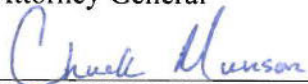
JIM HOOD
Attorney General

A handwritten signature in black ink, appearing to read "Crystal Utley Secoy", is written over a horizontal line.

CRYSTAL UTLEY SECOY
Special Assistant Attorney General
Consumer Protection Division
Mississippi Attorney General's Office
Post Office Box 22947
Jackson, Mississippi 39225
Phone: 601-359-4213
Fax: 601-359-4231
cutle@ago.state.ms.us

FOR PLAINTIFF STATE OF MONTANA

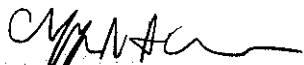
TIMOTHY C. FOX
Attorney General



CHUCK MUNSON

Assistant Attorney General
Montana Department of Justice
Office of Consumer Protection
555 Fuller Avenue
Helena, Montana
Phone: 406-444-9637
Fax: 406-442-1874
cmunson@mt.gov

FOR DEFENDANT E.I. DU PONT DE NEMOURS AND COMPANY



CLIFFORD A. ARONSON
Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, NY 10036-6522
Phone: 212-735-3000
Clifford.aronson@skadden.com

FOR DEFENDANT THE DOW CHEMICAL COMPANY



GEORGE S. CARY
Cleary Gottlieb Steen & Hamilton LLP
2000 Pennsylvania Avenue, NW
Washington, DC 20006-1801
Phone: 202-974-1500
gcary@cgsh.com

ORDER

IT IS SO ORDERED by the Court, this ____ day of _____, 2017.

United States District Judge