

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

In the Matter of

ROHM AND HAAS COMPANY,  
a corporation,

and

MORTON INTERNATIONAL, INC.,  
a corporation.

File No. 991-0112

**AGREEMENT CONTAINING CONSENT ORDER**

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Rohm and Haas Company ("Rohm & Haas") of Morton International, Inc. ("Morton"), and it now appearing that Rohm & Haas and Morton, hereinafter sometimes referred to as "Proposed Respondents," are willing to enter into an agreement containing a consent order to divest certain assets and providing for other relief:

**IT IS HEREBY AGREED** by and among Proposed Respondents, by their duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed Respondent Rohm & Haas is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its executive offices located at 100 Independence Mall West, Philadelphia, Pennsylvania 19106-2399.
2. Proposed Respondent Morton is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 100 North Riverside Plaza, Chicago, Illinois 60606-1596.
3. Proposed Respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.
4. Proposed Respondents waive:
  - a. any further procedural steps;

- b. the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;
- c. all rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this Agreement; and
- d. any claim under the Equal Access to Justice Act.

5. This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify the Proposed Respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. Proposed Respondents shall submit within thirty (30) days of the date this agreement is signed by Proposed Respondents, an initial report, pursuant to Commission Rule 2.33, 16 C.F.R. § 2.33, signed by the Proposed Respondents setting forth in detail the manner in which the Proposed Respondents will comply with Paragraphs II and III of the attached proposed order. Such report will not become part of the public record unless and until the accompanying agreement and order are accepted by the Commission for public comment.

7. This Agreement is for settlement purposes only and does not constitute an admission by Proposed Respondents that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

8. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission may, without further notice to the Proposed Respondents, (1) issue its complaint, corresponding in form and substance with the draft of complaint here attached, and its decision containing the following order to divest and to cease and desist in disposition of the proceeding and (2) make information public with respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to Proposed Respondents' addresses as stated in this agreement shall constitute service. Proposed Respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or this Agreement may be used to vary or contradict the terms of the order.

9. Proposed Respondents have read the proposed complaint and order contemplated hereby. Proposed Respondents understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

10. Proposed Respondents agree to comply with the order from the date they sign this Agreement.

**ORDER**

**I**

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

- A. "Commission" means the Federal Trade Commission.
- B. "Rohm & Haas" means Rohm and Haas Company, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Rohm and Haas Company, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. "Morton" means Morton International, Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Morton International, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- D. "Acquisition" means the acquisition by Rohm & Haas of more than fifty (50) percent of the common stock of Morton.
- E. "Respondents" means Morton and Rohm & Haas, individually and collectively.

- F. “GenCorp” means GenCorp, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the state of Ohio, with its office and principal place of business located in Fairlawn, Ohio.
- G. “New Acquirer” means the entity to whom the Divestiture Trustee shall divest the Assets To Be Divested pursuant to Paragraph IV. of this order.
- H. “Acquirer” means GenCorp, the New Acquirer, and the acquirer approved by the Commission pursuant to Paragraph II.B. of this order.
- I. “GenCorp Agreement” means the Asset Purchase Agreement dated April 8, 1999 and the First Amendment To Asset Purchase Agreement dated April 11, 1999, by and between GenCorp and Morton.
- J. “Divestiture Agreement” means, as applicable under the terms of this order, the following:
  - 1. the GenCorp Agreement,
  - 2. the agreement for the sale of the Assets To Be Divested to the New Acquirer pursuant to Paragraph IV. of this order, or
  - 3. the agreement for the sale of the Assets To Be Divested to an acquirer approved by the Commission pursuant to Paragraph II.B. of this order.
- K. “Water-Based Polymers For Floor Care Applications” means water-based polymers used in the formulation of floor care products.
- L. “Water-Based Polymers For Other Applications” means water-based polymers used for applications other than the formulation of floor care products.
- M. “Water-Based Polymer Unit of Morton” means the existing business unit of Morton that is part of Morton’s Adhesives and Polymers Group and that develops, produces, markets, and sells Water-Based Polymers For Floor Care Applications and Water-Based Polymers For Other Applications.
- N. “Morton Floor Care Products” means
  - 1. any Water-Based Polymers For Floor Care Applications,

2. any products that enhance the performance of Water-Based Polymers For Floor Care Applications, and
3. any other products or services that have been sold, or intended to be sold, to customers that purchase Water-Based Polymers For Floor Care Applications, by Morton employees who sell Water-Based Polymers For Floor Care Applications,

that, at any time during the two (2) years immediately preceding the Acquisition, have been manufactured, distributed, or sold by Morton, or have been the subject of research or development by Morton, anywhere in the world.

- O. "Patents" means any patents and patent rights, patent applications, patents of addition, re-examinations, reissues, extensions, granted supplementary protection certificates, substitutions, confirmations, registrations, revalidations, revisions, additions and the like, of or to said patents and patent rights and any and all continuations and continuations-in-part and divisionals.
- P. "Intellectual Property" means any form of intellectual property, including, but not limited to, trademarks, Patents, trade secrets, research materials, technical information, management information systems, software, inventions, test data, technology, know-how, licenses, registrations, submissions, approvals, technology, specifications, designs, drawings, processes, recipes, protocols, formulas, customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, quality control data, books, records, and files.
- Q. "Permits and Approvals" means licenses, permits, registrations or other governmental approvals.
- R. "Non-Technical Documents" means documents that do not contain any technical information concerning Morton Floor Care Products and Water-Based Polymers For Floor Care Applications.
- S. "Assets To Be Divested" means:
1. all rights, titles, and interest in and to Intellectual Property relating in any way to the research, development, manufacture, or sale of Morton Floor Care Products anywhere in the world, regardless of whether such Intellectual Property relates exclusively to such purposes;
  2. all rights, title, and interest in and to inventory of Morton Floor Care Products;
  3. all rights, title, and interest in and to agreements, express or implied, relating in any way to the research, development, manufacture, or sale of Morton Floor Care Products

anywhere in the world, regardless of whether such agreements relate exclusively to such purposes, including, but not limited to, warranties, guarantees, and contracts with joint venture partners, suppliers, personal property lessors, personal property lessees, licensors, licensees, consignors, consignees, and customers;

4. all rights, title and interest in and to Permits and Approvals relating in any way to the research, development, manufacture, or sale of Morton Floor Care Products anywhere in the world, regardless of whether such Permits and Approvals relate exclusively to such purposes, to the extent permitted by law; and
5. all rights, title, and interest in and to businesses and assets, tangible and intangible, of the Water-Based Polymer Unit of Morton relating in any way to the research, development, manufacture, or sale Morton Floor Care Products, regardless of whether such business and assets are used exclusively for such purposes.

Provided that the definition of “Assets To Be Divested” shall not include:

- (i) real property, buildings, and improvements to real property or buildings, whether owned or leased;
- (ii) manufacturing equipment;
- (iii) quality control equipment;
- (iv) accounts receivable;
- (v) office equipment, including telephones, copiers, typewriters, facsimile machines, cellular telephones, and pagers;
- (vi) office furniture, including desks, chairs, tables, and lamps;
- (vii) office supplies;
- (viii) computer hardware, including personal computers, laptop computers, printers, modems, and other computer peripherals;
- (ix) nonproprietary personal computer software, including Microsoft Windows, Microsoft Word, and Microsoft Excel;
- (x) automobiles, whether owned or leased;

- (xi) Non-Technical Documents, and portions of such documents, that do not relate to Morton Floor Care Products or to Water-Based Polymers For Floor Care Applications and that contain proprietary information;
- (xii) the trademarks “Morton,” “Morez,” “Morcryn,” and Morton Globe design;
- (xiii) Intellectual Property (other than the trademark “Conrez”) relating exclusively to the Conrez, Morcryn, and Morez resins;
- (xiv) any substandard/off spec finished goods inventory, and any Conrez inventory not in a container packaged for sale;
- (xv) raw materials used in the production of Morton Floor Care Products;
- (xvi) laboratory equipment, other than (a) James machines, (b) Jablonski III machines, and (c) laboratory equipment relating exclusively to the research, development, manufacture, or sale of Morton Floor Care Products;
- (xvii) agreements with public and private warehouses for the storage of finished products;
- (xviii) agreements with common and contract carriers;
- (xix) raw material supply contracts;
- (xx) contracts or non-contractual arrangements with sales representatives, distributors, or agents; provided, however, that Respondents shall not take any action to prohibit or impede Acquirer from entering into any contract or non-contractual arrangements relating to the sale or distribution of Morton Floor Care Products with any sales representative, distributor or agent currently offering for sale Morton Floor Care Products; and
- (xxi) cash or cash equivalents.

Provided further that Respondents may retain from the Assets To Be Divested:

- (xxii) a non-exclusive, perpetual, royalty-free right to the use of Intellectual Property (other than the trademark “Morglo”) used by Morton prior to the Acquisition in research, development, manufacture or sale of products other than Morton Floor Care Products, provided that such right is limited to use in connection with products other than Morton Floor Care Products and other than Water-Based Polymers For Floor Care Applications;

- (xxiii) a non-exclusive, perpetual, royalty-free right to the use of Permits and Approvals used by Morton in the research, development, manufacture or sale of products other than Morton Floor Care Products, provided that such right is limited to products other than Morton Floor Care Products and other than Water-Based Polymers For Floor Care Applications and that Respondents' use of any such Permits and Approvals does not diminish or jeopardize in any way the right of the Acquirer to use such Permits and Approvals; and
- (xxiv) a right to continue contractual and non-contractual relationships currently in effect with Morton's sales representatives, distributors, and agents with respect to products other than Morton Floor Care Products, provided that Respondents' continuation of such relationships does not diminish or jeopardize in any way the ability or willingness of such sales representatives, distributors, and agents to serve the Acquirer in the sale of Morton Floor Care Products and Water-Based Polymers For Floor Care Applications.

T. "Additional Assets To Be Divested" means:

1. the Morton manufacturing facility located in Greenville, South Carolina, including, but not limited to:
  - (a) all real property, buildings, production facilities and storage facilities, whether owned or leased,
  - (b) all fixtures, equipment, vehicles, transportation facilities, furniture, tools and other tangible personal property, excluding equipment used solely and exclusively in the production of the Conrez, Morez, and Morcryl products, provided that the removal of such equipment does not diminish or jeopardize in any way the acquirer's ability to use the Additional Assets To Be Divested,
  - (c) all permits and approvals relating to the production of Morton Floor Care Products, and
  - (d) all inventory and storage capacity; and
2. all raw material supply contracts to the extent permitted by such contracts; provided, however, that Respondents may continue such contractual relationships with respect to the purchase of raw materials for the manufacture of products other than Morton Floor Care Products to the extent that Respondents' continuation of such contractual relationships does not diminish or



jeopardize in any way the ability or willingness of such suppliers to supply the New Acquirer with raw materials for the manufacture of Morton Floor Care Products and Water-Based Polymers for Floor Care Applications.

- U. "Supply Agreements" means the agreements required by Paragraphs II.C.1. and II.C.2. of this order.
- V. "Divestiture Trustee" means the trustee(s) appointed pursuant to Paragraph IV. of this order, as applicable.
- W. "Interim Trustee" means the trustee(s) appointed pursuant to Paragraph III. of this order, as applicable.
- X. "Commercial Capability to Manufacture and Sell" means the manufacture and sale during a six (6) month time period of seventy (70) percent of the quantity (measured in wet pounds) of Morton Floor Care Products manufactured and sold by Morton during the six (6) months immediately preceding the Acquisition.
- Y. "Reimbursable Costs" means the reasonable, direct, out-of-pocket expenses incurred by Respondents in providing referenced assistance.

II

**IT IS FURTHER ORDERED** that:

- A. No later than ten (10) days after the date on which the Acquisition is consummated, Respondents shall divest, absolutely and in good faith, the Assets To Be Divested as a competitively viable, on-going product line to GenCorp. The purpose of the divestiture of the Assets To Be Divested is to ensure the continued research, design, development, manufacture, marketing and sale of Morton Floor Care Products and to remedy the lessening of competition resulting from the Proposed Acquisition as alleged in the Commission's complaint.
- B. If Respondents have divested the Assets To Be Divested to GenCorp pursuant to the GenCorp Agreement prior to the date this order becomes final, and if the Commission notifies Respondents that GenCorp is not an acceptable acquirer or that the GenCorp Agreement is not an acceptable manner of divestiture, then Respondents shall rescind the transaction with GenCorp, and shall divest the Assets To Be Divested, and such of the Additional Assets To Be Divested as appropriate to assure that the purpose of the divestiture, as set forth above, is likely to be achieved, within five (5) months of the date Respondents receive such notice from the Commission, absolutely and in good faith, at no

minimum price, to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

C. The Divestiture Agreement shall include, and Respondents shall comply with, the following provisions:

1. For a period not to exceed two (2) years from the date of the divestiture, Respondents shall manufacture and deliver to the Acquirer who purchases the Assets To Be Divested or the Additional Assets To Be Divested, in a timely manner, under reasonable terms and conditions, and at prices equal to or below those agreed and set forth in the GenCorp Agreement, a supply of those Morton Floor Care Products that Morton does not purchase for resale. Respondents shall supply no less than Acquirer's full requirement of Morton Floor Care Products except to the extent a lesser amount is requested by the Acquirer. In the event that the Acquirer does not choose to purchase one or more Morton Floor Care Products from Respondents because the Acquirer does not require such supply in order to manufacture or sell the Morton Floor Care Products in a competitive manner, Respondents shall not be required to supply those Morton Floor Care Products that the Acquirer does not require.
2. For a period not to exceed four (4) years from the date of the divestiture, Respondents shall manufacture and deliver to the Acquirer who purchases the Assets To Be Divested or the Additional Assets To Be Divested, in a timely manner, under reasonable terms and conditions, and at prices equal to or below those agreed and set forth in the GenCorp Agreement, a supply of Conrez, Morcryn, and Morez resin. Respondents shall supply no less than Acquirer's full requirement of Conrez, Morcryn, and Morez resin for floor care applications.
3. Commencing at such time as Respondents commence delivery of the Morton Floor Care Products to the Acquirer pursuant to the Divestiture Agreement, Respondents shall produce the Morton Floor Care Products only for sale to the Acquirer.
4. Respondents shall make representations and warranties that the products supplied pursuant to the Supply Agreement (i) were produced in accordance with the applicable recipes, (ii) meet all applicable product specifications, and (iii) are merchantable so as to pass without objection in the trade under the product description and the product trademark. Respondents shall agree to indemnify, defend and hold the Acquirer harmless from any and all suits, claims, actions, demands, liabilities, expenses or losses resulting from the failure of the products supplied by Respondents to the Acquirer to comply with such representations and warranties. Respondents may condition this obligation upon the Acquirer giving Respondents prompt, adequate notice of such claim, cooperating fully in the defense of such claim, and permitting Respondents to assume the sole control of all phases of the defense and/or settlement of such claim, including the

selection of counsel; provided, however, any such defense and/or settlement shall be consistent with the obligations assumed by Respondents under this order. This obligation shall not require Respondents to be liable for any negligent act or omission of the Acquirer or for any representations and warranties, express or implied, made by the Acquirer that exceed the representations and warranties made by Respondents to the Acquirer.

5. Respondents shall make representations and warranties that Respondents will hold harmless and indemnify the Acquirer for any liabilities or loss of profits resulting from the failure by Respondents to deliver products in a timely manner as required by the Supply Agreements unless Respondents can demonstrate that such failure was entirely beyond the control of Respondents and was in no part the result of negligence or willful misconduct on Respondents' part.
6. During the term of the Supply Agreements, upon request by the Acquirer or the Interim Trustee, Respondents shall make available to the Interim Trustee all records that relate to the manufacture and delivery of the Morton Floor Care Products, Conrez, Morcaryl, and Morez resins.
7. Upon reasonable notice and request from the Acquirer to Respondents, Respondents shall provide in a timely manner: (a) assistance to the Acquirer as necessary to enable the Acquirer to obtain the Commercial Capability to Manufacture and Sell the Morton Floor Care Products; and (b) consultation with knowledgeable employees of Respondents and training, at the request of and at the facility of the Acquirer's choosing, until the Acquirer has the Commercial Capability to Manufacture and Sell the Morton Floor Care Products or abandons its efforts to obtain the Commercial Capability to Manufacture and Sell such products, reasonably sufficient to satisfy the management of the Acquirer that its personnel are adequately trained in the manufacture of the Morton Floor Care Products. Such assistance shall, at the Acquirer's request, include on-site inspections of any of Respondents' facilities that relate to the Supply Agreements required by Paragraph II.C.1. of this order, or that otherwise relate to the research, development, manufacture, or sale of Morton Floor Care Products. Respondents may require reimbursement from the Acquirer for all their Reimbursable Costs incurred in providing the services required by this Paragraph II.C.7.
8. The Divestiture Agreement shall require the Acquirer to submit to the Commission and to the Interim Trustee periodic verified written reports, setting forth in detail the efforts of the Acquirer to sell the Morton Floor Care Products obtained pursuant to the Divestiture Agreement and the efforts of the Acquirer to obtain the Commercial Capability to Manufacture and Sell such products. The Divestiture Agreement shall require the first such report to be submitted 60 days from the date the Divestiture Agreement is accepted for public comment by the Commission and every 60 days

thereafter until the Acquirer has obtained the Commercial Capability to Manufacture and Sell such products. The Divestiture Agreement shall also require the Acquirer to report the following events to the Commission and to the Interim Trustee within ten (10) days of their occurrence: the Acquirer ceasing the sale in the United States of Morton Floor Care Products for any time period exceeding sixty (60) days, the Acquirer abandoning its efforts to sell the Morton Floor Care Products, or the Acquirer abandoning its efforts to obtain the Commercial Capability to Manufacture and Sell Morton Floor Care Products. The Acquirer shall provide the Interim Trustee access to all records and all facilities that relate to its efforts, pursuant to the Divestiture Agreement, to sell or manufacture the Morton Floor Care Products.

9. The Divestiture Agreement shall provide that if it is terminated, the Assets To Be Divested shall revert back to Respondents and that the Assets To Be Divested and the Additional Assets To Be Divested shall be divested to an acquirer pursuant to the provisions of Paragraph II.B. of this order.
- D. During the pendency of any Patent dispute that: (1) challenges or seeks to render invalid any of the Patents divested pursuant to Paragraphs II.A., II.B. or IV of this order; and (2) could affect the manufacture or sale of the Morton Floor Care Products, Respondents shall cooperate, at their own expense, in the defense of rights they have transferred to the Acquirer.
- E. On or before the date the Divestiture Agreement is signed, Respondents shall provide the Acquirer with a complete list of all employees engaged at any time on or after April 8, 1999, in the research, development or sale of Morton Floor Care Products, and shall supplement that list on the date this order is accepted for public comment with the names of any additional employees who at such time fall within the above description. If the Additional Assets To Be Divested are required to be divested, the list(s) to be provided shall include all employees engaged in the manufacture of Morton Floor Care Products at Morton's Greenville, South Carolina manufacturing facility. Such list(s) shall state each such individual's name, position, address, business telephone number, or if no business telephone number exists, a home telephone number, if available and with the consent of the employee, and a description of the duties and work performed by the individual in connection with the Assets To Be Divested and, if applicable, the Additional Assets To Be Divested. Respondents shall provide the Acquirer the opportunity to enter into employment contracts with such individuals provided that such contracts are contingent upon the Commission's approval of the Divestiture Agreement. With respect to individuals who accept employment with the Acquirer, Respondents shall not enforce any confidentiality or non-compete restrictions relating to Water-Based Polymers for Floor Care Applications or to Morton Floor Care Products.

- F. Within no more than five (5) business days after the Respondents and the Acquirer have signed the Divestiture Agreement and subject to the consent of the employees, Respondents shall provide the Acquirer with an opportunity to inspect the personnel files and other documentation relating to the individuals identified pursuant to Paragraph II.E. of this order to the extent possible under applicable laws. For a period of two (2) months following the divestiture, Respondents shall provide the Acquirer with a further opportunity to interview such individuals and to negotiate employment contracts with them.
- G. Respondents shall provide each employee identified in Schedule A of this order, and to other similarly experienced Morton employees reasonably acceptable to the Acquirer, with reasonable financial incentives to continue in his or her employment position prior to the divestiture, and to accept employment with the Acquirer at the time of the divestiture. Such incentives shall include, but not be limited to:
1. vesting of all pension benefits under the Morton pension plan and Morton's 401(k) Employees Savings and Investment Plan;
  2. continuation of all employee benefits offered by Morton until the Divestiture is completed;
  3. a bonus equal to one hundred (100) percent of the targeted FY 1999 bonus from Morton, payable upon the beginning of employment by Acquirer;
  4. a bonus equal to thirty (30) percent of the employee's annual base salary at the time of divestiture, provided that the employee remains in the employ of the Acquirer for a one (1) year period, payable upon the completion of one-year's employment with the Acquirer;
  5. for Michael Virostek only, an additional bonus equal to thirty (30) percent of Mr. Virostek's annual base salary at the time of divestiture, provided that Mr. Virostek remains in the employ of the Acquirer for a two (2) year period, payable upon the completion of two-year's employment with the Acquirer; and
  6. a severance payment if, less than 12 months after the date on which such employee commences employment with the Acquirer, the Acquirer terminates the employment of such employee for reasons other than cause. The amount of such severance payment shall be equal to the payment that such employee would have received had he or she remained in the employ of Morton and been terminated at such time, less any severance payment actually paid by the Acquirer.
- H. For a period of one (1) year commencing on the date of an individual's employment by the Acquirer, Respondents shall not solicit for employment any of the individuals identified

pursuant to Paragraph II.E. of this order who accept employment with the Acquirer, unless such individual has been separated from employment by the Acquirer against that individual's wishes.

- I. Prior to divestiture, Respondents shall not transfer, without consent of the Acquirer, any of the individuals identified pursuant to Paragraph II.E. of this order to any other position.
- J. Until Respondents have satisfied the obligations imposed by Paragraphs II.A., II.B., or IV. of this order and while Respondents are in possession of any of the Assets To Be Divested and any of the Additional Assets To Be Divested, Respondents shall take such actions as are necessary to maintain the viability and marketability of those Assets To Be Divested and Additional Assets To Be Divested, and to prevent the destruction, removal, wasting, deterioration or impairment of those Assets To Be Divested and Additional Assets To Be Divested, except for ordinary wear and tear.
- K. Respondents may use information relating to Morton Floor Care Products, to the Assets To Be Divested, or to the Additional Assets To Be Divested, only to fulfill their obligations under this order and under the Divestiture Agreement, shall not otherwise use such information, and shall not disclose such information to anyone inside or outside Respondents' businesses, except as necessary to fulfill Respondents' obligations under this order and under the Divestiture Agreement; provided, however, that Respondents may use and disclose such information relating to rights, titles, interests and licenses for such assets as this order permits Respondents to retain.

### III

**IT IS FURTHER ORDERED** that at any time after Respondents sign the Agreement Containing Consent Order in this matter, the Commission may appoint an Interim Trustee to ensure that Respondents and the Acquirer expeditiously perform their respective responsibilities as required by this order and the Divestiture Agreement approved by the Commission. Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Interim Trustee appointed pursuant to this Paragraph III.:

- A. The Commission shall select the Interim Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed trustee, Respondents shall be deemed to have consented to the selection of the proposed trustee.

- B. The Interim Trustee shall have the power and authority to monitor Respondents' compliance with the terms of this order and with the terms of the Divestiture Agreement.
- C. Within ten (10) days after appointment of the Interim Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, confers on the Interim Trustee all the rights and powers necessary to permit the Interim Trustee to monitor Respondents' compliance with the terms of this order and with the Divestiture Agreement and to monitor the compliance of the Acquirer under the Divestiture Agreement. The Interim Trustee shall sign a confidentiality agreement prohibiting the use, or disclosure to anyone other than the Commission, of any competitively sensitive or proprietary information gained as a result of his or her role as Interim Trustee.
- D. The Interim Trustee shall serve for two (2) years from the date the Respondents and GenCorp have signed the Divestiture Agreement, or in the event that there is a New Acquirer pursuant to the provisions of Paragraph IV. of this order, the Interim Trustee shall serve for two (2) years from date the Respondents and the New Acquirer have signed the Divestiture Agreement; provided however, that the term shall end earlier if the Interim Trustee has reported that the Acquirer has obtained the Commercial Capability to Manufacture and Sell the Morton Floor Care Products, and the Commission has accepted that report.
- E. The Interim Trustee shall have full and complete access to Respondents' personnel, books, records, documents, facilities and technical information relating to the research, design, development, manufacture, importation, marketing, distribution and sale of the Morton Floor Care Products, or to any other relevant information, as the Interim Trustee may reasonably request, including, but not limited to, all documents and records kept in the normal course of business that relate to the manufacture of the Morton Floor Care Products. Respondents shall cooperate with any reasonable request of the Interim Trustee. Respondents shall take no action to interfere with or impede the Interim Trustee's ability to monitor Respondents' compliance with Paragraphs II., III. and IV. of this order and with the Divestiture Agreement.
- F. The Interim Trustee shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Interim Trustee shall have authority to employ, at the expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Trustee's duties and responsibilities. The Interim Trustee shall account for all expenses incurred, including fees for his or her services, subject to the approval of the Commission.
- G. Respondents shall indemnify the Interim Trustee and hold the Interim Trustee harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Interim Trustee's duties, including all reasonable fees of counsel

and other expenses incurred in connection with the preparations for, or defense of, any claim whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Interim Trustee.

- H. If the Commission determines that the Interim Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute trustee in the same manner as provided in Paragraph III.A. of this order.
- I. The Commission may on its own initiative or at the request of the Interim Trustee issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this order and with the Divestiture Agreement.
- J. The Interim Trustee shall evaluate reports submitted to it by the Acquirer with respect to the efforts of the Acquirer to obtain the Commercial Capability to Manufacture and Sell the Morton Floor Care Products. The Interim Trustee shall report to the Commission in writing, concerning compliance by Respondents and the Acquirer with the provisions of Paragraphs II. and III. of this order at least once every sixty (60) days until the Acquirer obtains, or abandons efforts to obtain, the Commercial Capability to Manufacture and Sell Morton Floor Care Products. Such reports shall include at least the following:
  - 1. whether Respondents have supplied Morton Floor Care Products in conformity with the requirements of Paragraph II.C. of this order;
  - 2. whether Respondents have given the Interim Trustee access to records in conformity with Paragraph III.E. of this order;
  - 3. whether the Acquirer has given the Interim Trustee reports and access pursuant to Paragraph III.J. of this order;
  - 4. whether the Acquirer is making good faith efforts to sell the Morton Floor Care Products and to obtain the Commercial Capability to Manufacture and Sell such products; and
  - 5. whether Respondents have maintained the Assets To Be Divested and Additional Assets To Be Divested as required in Paragraph II.J. of this order.



## IV

**IT IS FURTHER ORDERED** that:

- A. If Respondents fail to complete the divestitures required by Paragraphs II.A. and II.B. of this order within the time periods specified therein, then the Commission may terminate any executed Divestiture Agreement and may appoint a Divestiture Trustee to divest the Assets To Be Divested and the Additional Assets To Be Divested to a buyer other than GenCorp and to execute a new Divestiture Agreement that satisfies the requirements of Paragraph II. of this order. The Divestiture Trustee may be the same person as the Interim Trustee and will have the authority and responsibility to divest the Assets To Be Divested and the Additional Assets To Be Divested absolutely and in good faith, and with the Commission's prior approval. Neither the decision of the Commission to appoint a Divestiture Trustee, nor the decision of the Commission not to appoint a Divestiture Trustee, to divest any of the assets under this Paragraph IV.A. shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this order.
- B. If a Divestiture Trustee is appointed by the Commission or a court pursuant to Paragraph IV.A. of this order to divest the Assets To Be Divested and the Additional Assets To Be Divested to a New Acquirer, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
1. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
  2. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to divest the Assets To Be Divested and the Additional Assets To Be Divested to a New Acquirer pursuant to the terms of this order and to enter into a Divestiture Agreement with the New Acquirer pursuant to the terms of this order, which Divestiture Agreement shall be subject to the prior approval of the Commission.
  3. Within ten (10) days after appointment of the Divestiture Trustee, Respondents shall execute a (or amend the existing) trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to

the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to divest the Assets To Be Divested and the Additional Assets To Be Divested to a New Acquirer and to enter into a Divestiture Agreement with the New Acquirer.

4. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph IV.B.3. of this order to divest the Assets To Be Divested and the Additional Assets To Be Divested and to enter into a Divestiture Agreement with the New Acquirer that satisfies the requirements of Paragraph II. of this order. If, however, at the end of the applicable twelve-month period, the Divestiture Trustee has submitted to the Commission a plan of divestiture or believes that divestiture can be achieved within a reasonable time, such divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend such divestiture period only two (2) times.
5. The Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities of Respondents related to the manufacture, distribution, or sale of the Assets To Be Divested and the Additional Assets To Be Divested, or to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of his or her responsibilities.
6. The Divestiture Trustee shall use reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest at no minimum price and the Divestiture Trustee's obligation to expeditiously accomplish the remedial purpose of this order; to assure that Respondents enter into a Divestiture Agreement that complies with the provisions of Paragraph II.B. of this order; to assure that Respondents comply with the remaining provisions of Paragraphs II, III and IV. of this order; and to assure that the New Acquirer obtains the Commercial Capability to Manufacture and Sell all of the Morton Floor Care Products. The divestiture shall be made to, and the Divestiture Agreement executed with, the New Acquirer in the manner set forth in Paragraph II. of this order; provided, however, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one (1) such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission.
7. The Divestiture Trustee shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the expense of Respondents, 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 divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Respondents. The Divestiture Trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the Divestiture Trustee's locating a New Acquirer and assuring compliance with this order.

8. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.
9. If the Commission determines that the Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute trustee in the same manner as provided in Paragraph IV. of this order.
10. The Commission or, in the case of a court-appointed 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 comply with the terms of this order.
11. The Divestiture Trustee shall have no obligation or authority to operate or maintain the Assets To Be Divested or the Additional Assets To Be Divested.
12. The Divestiture Trustee shall report in writing to Respondents and to the Commission every two (2) months concerning his or her efforts to divest the relevant assets and Respondents' compliance with the terms of this order.

V

**IT IS FURTHER ORDERED** that within sixty (60) days of the date this order becomes final and every ninety (90) days thereafter until Respondents have fully complied with the provisions of Paragraphs II. through IV. 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 these Paragraphs of this order. 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 these Paragraphs of this order, including a description of all substantive contacts or negotiations for accomplishing the divestitures and entering into the Divestiture Agreements required by this order, including the identity of all parties contacted. Respondents shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the Divestiture Agreements required by Paragraph II. of this order, subject to any legally recognized privilege.

VI

**IT IS FURTHER ORDERED** that, for the purpose of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Respondents, Respondents shall permit any duly authorized representatives of the Commission:

- A. Access, during office hours and in the presence of counsel, to any facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondents, relating to any matters contained in this order; and
- B. Upon five (5) days' notice to Respondents, and without restraint or interference from Respondents, to interview officers or employees of Respondents, who may have counsel present, regarding such matters.

VII

**IT IS FURTHER ORDERED** that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in Respondents, such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation, that may affect compliance obligations arising out of this order.

VIII

**IT IS FURTHER ORDERED** that this order shall terminate ten (10) years from the date of its issuance.

Signed this 11th day of April, 1999

**ROHM AND HAAS COMPANY, a corporation**

By: \_\_\_\_\_

\_\_\_\_\_

**MORTON INTERNATIONAL, INC., a corporation**

By: \_\_\_\_\_

\_\_\_\_\_

**FEDERAL TRADE COMMISSION**

By: \_\_\_\_\_

Timothy J. Feighery  
Attorney  
Bureau of Competition

\_\_\_\_\_  
Wallace W. Easterling  
Attorney  
Bureau of Competition

APPROVED:

\_\_\_\_\_  
Michael E. Antalics  
Assistant Director  
Bureau of Competition

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Richard G. Parker  
Senior Deputy Director  
Bureau of Competition

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William J. Baer  
Director  
Bureau of Competition

## Agreement Containing Consent Order

### Schedule A

Greg Watterson  
Mike Denice  
Kathy McVicker  
Mike Virostek  
Nelson Donahoo  
John Lindsay  
Ernie Hamp