

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

**COMMISSIONERS: Robert Pitofsky, Chairman  
Sheila F. Anthony  
Mozelle W. Thompson  
Orson Swindle  
Thomas B. Leary**

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In the Matter of	)	
	)	
<b>FMC CORPORATION,</b>	)	
	)	
a corporation,	)	Docket No. C-3935
	)	
<b>SOLUTIA INC.,</b>	)	
	)	
a corporation, and	)	
	)	
<b>ASTARIS LLC,</b>	)	
	)	
a limited liability company.	)	
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**ORDER TO MAINTAIN ASSETS**

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed joint venture between Respondent FMC Corporation ("FMC") and Respondent Solutia Inc. ("Solutia") to form Respondent Astaris LLC ("Astaris"), and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders ("Consent Agreement"), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having determined to accept the executed Agreement Containing Consent Orders and to place such Consent Agreement on the public record for a period of thirty (30) days, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues this Order to Maintain Assets:

1. FMC is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 200 East Randolph Drive, Chicago, Illinois 60601.
2. Solutia is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 575 Maryville Centre Drive, St. Louis, Missouri 63141.
3. Astaris is a limited liability company organized and existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 575 Maryville Centre Drive, St. Louis, Missouri 63141.
4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

## **ORDER**

### **I.**

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

- A. "FMC" means FMC Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by FMC, its joint ventures, including the Joint Venture, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. "Solutia" means Solutia Inc., its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Solutia, its joint ventures, including the Joint Venture, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
3. "Astaris" means Astaris LLC, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and

affiliates controlled by Astaris, its joint ventures, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

- D. "Commission" means the Federal Trade Commission.
- E. "Respondents" means FMC, Solutia and Astaris, respectively and collectively.
- F. "Joint Venture" means the Proposed Joint Venture Between FMC and Solutia, as described in the April 29, 1999, Joint Venture Agreement Between FMC and Solutia.
- G. "Prayon" means Societe Chimique Prayon-Rupel S.A., its subsidiaries, divisions, groups, and affiliates controlled by Prayon.
- 8. "Peak" means Peak Investments, L.L.C., its subsidiaries, divisions, groups, and affiliates controlled by Peak.
- 9. "Assets To Be Divested" means the Augusta Assets To Be Divested and the P<sub>2</sub>S<sub>5</sub> Assets to Be Divested.
- 10. "Augusta Assets To Be Divested" means the assets, properties and business, tangible and intangible, of the Augusta Plant, including, but not limited to:
  - 1. all machinery, furniture, fixtures, tools and other tangible personal property at the Augusta Plant;
  - 2. a royalty-free, non-exclusive license to all rights, title, and interest in and to Augusta Intellectual Property;
  - 3. all rights, title, and interest in and to inventories of raw materials (to the extent requested by the acquirer), supplies and parts for the Augusta Plant;
  - 4. all rights, title, and interest in and to the service contracts dedicated to the operations of the Augusta Plant and the customer contracts listed in Confidential Appendix A, attached hereto;
  - 5. all rights, title, and interest in and to transferable governmental permits and approvals relating to the operation of the Augusta Plant, to the extent permitted by law;

3. all storage capacity located at the Augusta Plant;
  4. all rights, titles and interests in and to the owned real property on which the Augusta Plant is located;
  5. all rights under any third-party warranties and guarantees, express or implied, for the Augusta Plant; and
  6. all books, records, and files regarding operating procedures and policies at the Augusta Plant; provided, however, that Respondents may retain a copy of such books, records, and files solely for financial, tax reporting, legal, health, safety and environmental purposes.
11. “Augusta Intellectual Property” means any form of intellectual property relating to the manufacture of products at the Augusta Plant, including, but not limited to, trade secrets, technical information, inventions, test data, technological know-how, licenses, specifications, designs, drawings, processes, formulas, customer lists, lists of significant current vendors, and quality control data, books, records, and files; provided, however, that Augusta Intellectual Property does not include proprietary information of other parties which Respondents are prevented from disclosing due to the existence of secrecy agreements.
  12. “Augusta Plant” means the Solutia manufacturing plant in Augusta, Georgia, which manufactures phosphate salts and has manufactured phosphoric acid.
  13. “Augusta Products” means the grades and types of phosphate salts that are and have been produced at the Augusta Plant since January 1, 1999.
  - N. “Lawrence Plant” means FMC’s plant in Lawrence, Kansas, which is used to manufacture phosphoric acid, phosphate salts and phosphorus derivatives, and includes the Lawrence P<sub>2</sub>S<sub>5</sub> Plant.
  15. “Lawrence P<sub>2</sub>S<sub>5</sub>” means the grades and types of P<sub>2</sub>S<sub>5</sub> that are and have been produced at the Lawrence P<sub>2</sub>S<sub>5</sub> Plant since January 1, 1997.
  16. “Lawrence Plant Services” means the plant services and functions supplied by Respondents for operation of the Lawrence P<sub>2</sub>S<sub>5</sub> Plant.
  17. “Lawrence P<sub>2</sub>S<sub>5</sub> Plant” means the P<sub>2</sub>S<sub>5</sub> manufacturing unit located at the Lawrence Plant.
  18. “Lawrence P<sub>2</sub>S<sub>5</sub> Intellectual Property” means any form of intellectual property relating to the research, development, manufacture or sale of products at the Lawrence P<sub>2</sub>S<sub>5</sub> Plant, including, but not limited to, trademarks (except “FMC”),

“Solutia” and “Astaris,” and associated trademarks), patents, trade secrets, research materials, technical information, management information systems, software, inventions, test data, technological 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; provided, however, that Lawrence P<sub>2</sub>S<sub>5</sub> Intellectual Property does not include non-transferable software licenses.

19. “P<sub>2</sub>S<sub>5</sub> Technical Services” means research and development and laboratory analysis relating to Lawrence P<sub>2</sub>S<sub>5</sub>, whether conducted by Respondents at the Lawrence Plant or at other facilities, in the form of personnel time, access to equipment and materials, or otherwise.
20. “Non-Public Information” means any information not in the public domain furnished to Respondents by the acquirers of the Assets To Be Divested, or learned by Respondents as suppliers of products, services or facilities to the acquirer, and (1) if written information, designated in writing by the acquirer as proprietary information by an appropriate legend, marking, stamp, or positive written identification on the face thereof, or (2) if oral, visual or other information, identified as proprietary information in writing by the acquirer prior to the disclosure or within thirty (30) days after such disclosure. Non-Public Information shall not include: (i) information already known to Respondents; (ii) information which subsequently falls within the public domain through no violation of this Order by Respondents; (iii) information which subsequently becomes known to Respondents from a third party not in breach of a confidential disclosure agreement; (iv) information after six (6) years from the date of such disclosure of such Non-Public Information to Respondents, or such other period as agreed to in writing by Respondents and the provider of the information; or (v) information which Respondents develop independently.
21. “Peak Divestiture Agreement” means the December 8, 1999, and December 20, 1999, agreements between FMC and Peak by which FMC has agreed to sell and Peak has agreed to acquire the P<sub>2</sub>S<sub>5</sub> Assets to Be Divested, attached hereto as Confidential Appendix 1.
22. “Prayon Divestiture Agreement” means the December 8, 1999, and January 31, 2000, agreements between Solutia and Prayon by which Solutia has agreed to sell and Prayon has agreed to acquire the Augusta Assets To Be Divested, and Confidential Appendix 2.
23. “P<sub>2</sub>S<sub>5</sub> Assets to Be Divested” means:
  1. the Lawrence P<sub>2</sub>S<sub>5</sub> plant, including all machinery, furniture, fixtures, tools and other tangible personal property dedicated to the manufacture and sale

of P<sub>2</sub>S<sub>5</sub> at the Lawrence Plant;

2. all rights, title, and interest in and to Lawrence P<sub>2</sub>S<sub>5</sub> Intellectual Property dedicated to the research, development, manufacture and sale of Lawrence P<sub>2</sub>S<sub>5</sub>, and a non-exclusive, perpetual, royalty-free transferable license for Lawrence P<sub>2</sub>S<sub>5</sub> Intellectual Property not dedicated to the research, development, manufacture or sale of Lawrence P<sub>2</sub>S<sub>5</sub>; provided that the acquirer has rights to transfer such license only to any person to whom it is transferring its entire interest in the P<sub>2</sub>S<sub>5</sub> Assets to Be Divested, or from whom it has agreed to purchase elemental phosphorus for use in the manufacture of P<sub>2</sub>S<sub>5</sub>;
3. all rights, title, and interest in and to inventories of products that are useable and saleable in the ordinary course of business, raw materials (to the extent requested by the acquirer), supplies and parts, or the part thereof, dedicated to the manufacture or sale of Lawrence P<sub>2</sub>S<sub>5</sub>, including work-in-process and finished goods;
4. all rights, title, and interest in and to agreements, express or implied, necessary for the manufacture or sale of Lawrence P<sub>2</sub>S<sub>5</sub>, including, but not limited to, contracts with joint venture partners, suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors, consignees, and customers;
5. all rights, title, and interest in and to transferable permits and approvals dedicated to the research, design, development, manufacture, distribution, marketing or sale of Lawrence P<sub>2</sub>S<sub>5</sub>, regardless of whether such permits and approvals relate exclusively to such purposes, to the extent permitted by law;
6. all customer and vendor lists relating to Lawrence P<sub>2</sub>S<sub>5</sub>, including, without limitation, correspondence with customers, customer files and account history (including, without limitation, receivable and collection history), sales literature and promotional material used in the manufacture and sale of P<sub>2</sub>S<sub>5</sub>;
7. all equipment, vehicles and transportation facilities, dedicated to the manufacture and sale of Lawrence P<sub>2</sub>S<sub>5</sub>;
8. all storage capacity at the Lawrence P<sub>2</sub>S<sub>5</sub> Plant;
9. all of FMC's rights, title and interest under each of the personal property leases for tangible assets (other than office equipment) and property leased by FMC, which leases are dedicated to the manufacture and sale of

Lawrence P<sub>2</sub>S<sub>5</sub>;

10. all rights under any third-party warranties and guarantees, express or implied, for the manufacture and sale of Lawrence P<sub>2</sub>S<sub>5</sub>; and
11. all books, records, and files regarding operating procedures and policies at the Lawrence P<sub>2</sub>S<sub>5</sub> Plant; provided, however, that Respondents may retain a copy of such books, records, and files as appropriate for operation of the Lawrence Plant, for provision of Lawrence Plant Services or P<sub>2</sub>S<sub>5</sub> Technical Services, and for financial, tax reporting, legal, health, safety and environmental purposes.

## II.

**IT IS FURTHER ORDERED** that:

1. The purpose of this Order is to: (i) preserve the Assets To Be Divested as viable, competitive, and ongoing businesses; and (ii) prevent interim harm to competition.
2. Respondents shall take such actions as are necessary to maintain the viability, competitiveness, and marketability of the Assets To Be Divested; shall not sell, transfer, or encumber the Assets To Be Divested or other assets related to the Assets To Be Divested; and shall not cause or permit the destruction, removal, wasting, or deterioration, or otherwise impair the viability, competitiveness, or marketability of the Assets To Be Divested or other assets related to the Assets To Be Divested, except for ordinary wear and tear.
3. Respondents shall conduct or cause to be conducted the businesses of the Assets To Be Divested in the regular and ordinary course and in accordance with past practice (including regular repair and maintenance efforts) and shall use all commercially reasonable efforts to preserve existing relationships with suppliers, customers, employees, and others having business relations with the Assets To Be Divested.
4. Prior to the transfer of the Assets To Be Divested, Respondents shall ensure that a sufficient inventory at the Augusta Plant and the Lawrence P<sub>2</sub>S<sub>5</sub> Plant is maintained and built up, consistent with past and/or projected demand.
5. Except as required by law, including complying with obligations established by the Decision & Order or this Order to Maintain Assets, Respondents shall not, absent the prior written consent of the acquirers of the Assets To Be Divested, as appropriate, obtain, provide, disclose, or use any Lawrence P<sub>2</sub>S<sub>5</sub> Intellectual Property or Non-Public Information for purposes other than facilitating the divestitures of the Assets To Be Divested to the acquirers, or complying with financial, tax reporting, legal, health, safety and environmental obligations; and Respondents shall establish and enforce procedures to prevent the transmission of any Lawrence P<sub>2</sub>S<sub>5</sub> Intellectual Property or Non-Public

Information to any of Respondents' employees with responsibilities for Respondents' businesses concerning P<sub>2</sub>S<sub>5</sub> and Augusta Products.

### **III.**

**IT IS FURTHER ORDERED** that:

1. Beginning no later than thirty (30) days after the Consent Agreement is accepted by the Commission for public comment, Respondents shall at the Augusta Plant toll convert pure phosphoric acid supplied by Prayon into up to 30 million pounds of Augusta Products for Prayon, in the volumes and of the grades requested by Prayon pursuant to the Prayon Divestiture Agreement. Respondents shall, in conjunction with such toll production, provide Prayon with the product and customer information necessary for Prayon to specify the Augusta Products to be tolled, and shall take steps to ensure that the Augusta Products are tolled for and supplied to Prayon in a commercially reasonable manner.
2. Respondents shall provide Prayon with reasonable access to the Augusta Plant to prepare for Prayon's acquisition of the Augusta Plant pursuant to the Decision & Order.
3. Beginning no later than thirty (30) days after the Consent Agreement is accepted for public comment, and up to the time of the transfer of the Assets To Be Divested pursuant to the Decision & Order, Respondents shall cooperate with Prayon or the Commission-approved acquirer to provide the acquirer with information regarding manufacturing operations and other services required at the Augusta Plant, necessary to ensure that the Augusta Plant, at the time of divestiture, will be capable of continuing in operation in substantially the same manner as it has since January 1, 1999.

Provided, however, that such toll production, access and cooperation shall be terminated in the event that the Commission, at the time that it issues the Decision & Order, notifies Respondents pursuant to Paragraph II.A. of the Decision & Order that Prayon is not an acceptable acquirer.

### **IV.**

**IT IS FURTHER ORDERED** that Respondents shall take all steps necessary to fulfill their obligations pursuant to the Prayon Divestiture Agreement and the Peak Divestiture Agreement.



**V.**

**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, or 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.

**VI.**

**IT IS FURTHER ORDERED** that for the purposes of determining or securing compliance with this Order to Maintain Assets, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents made to their principal United States offices, Respondents shall permit any duly authorized representatives of the Commission:

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

**VII.**

**IT IS FURTHER ORDERED** that this Order to Maintain Assets shall terminate on the earlier of:

1. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
2. When the Assets To Be Divested have been divested.

By the Commission.

Donald S. Clark  
Secretary

SEAL  
ISSUED: April 5, 2000