

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: William E. Kovacic, Chairman
Pamela Jones Harbour
Jon Leibowitz
J. Thomas Rosch

_____)	
In the Matter of)	
)	
Agrium Inc.,)	Docket No. C-4219
a corporation, and)	
)	
UAP Holding Corporation,)	
a corporation.)	
_____)	

DECISION AND ORDER
(Public Record Version)

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent Agrium Inc. (“Agrium”) of the outstanding voting securities of Respondent UAP Holding Corporation (“UAP”), hereinafter referred to collectively as “Respondents,” and Respondents having been furnished thereafter with a copy of the draft of Complaint that the Bureau of Competition proposed to present 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 thereupon issued its Complaint and its Order to Hold Separate and Maintain Assets and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Agrium is a corporation organized, existing, and doing business under, and by virtue of, the laws of Canada, with its office and principal place of business located at 13131 Lake Fraser Drive S.E., Calgary, Alberta, Canada T2J 7E8. Agrium’s principal subsidiary in the United States is located at 4582 South Ulster Street, Suite 1700, Denver, Colorado 80237.
2. Respondent UAP 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 7251 W. 4th Street, Greeley, Colorado 80634.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents and the proceeding is in the public interest.

ORDER

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

- A. “Agrium” means Agrium Inc., its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Agrium (including, after the Acquisition Date, UAP) and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “UAP” means UAP Holding Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by UAP, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Commission” means the Federal Trade Commission.
- D. “Acquirer” means any Person that receives the prior approval of the Commission to acquire all or any of the Farm Supply Assets pursuant to Paragraphs II or V of this Order.

- E. “Acquisition” means the proposed acquisition described in the Agreement and Plan of Merger, dated December 2, 2007, between Agrium Inc., Utah Acquisition, Inc., and UAP Holding Corporation.
- F. “Acquisition Date” means the date the Acquisition is consummated.
- G. “Confidential Business Information” means competitively sensitive, proprietary and all other business information of any kind owned by or pertaining to the Farm Supply Business, Farm Supply Assets, or Respondents, as the case may be (including, but not limited to, financial statements, financial plans and forecasts, operating plans, price lists, cost information, supplier and vendor contracts, marketing analyses, customer lists, customer contracts, employee lists, salary and benefits information, technologies, processes, and other trade secrets), except for any information that Respondents demonstrate (i) was or becomes generally available to the public other than as a result of a disclosure by Respondents, or (ii) was available, or becomes available, to Respondents on a non-confidential basis, but only if, to the knowledge of Respondents, the source of such information is not in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the information.
- H. “Direct Cost” means the cost of direct material and direct labor used to provide the relevant goods or service.
- I. “Divestiture Agreement” means any agreement that receives the prior approval of the Commission between Respondents (or between a Divestiture Trustee appointed pursuant to Paragraph V of this Order) and an Acquirer to purchase all or any of the Farm Supply Assets, and all amendments, exhibits, attachments, agreements, and schedules thereto that have been approved by the Commission.
- J. “Divestiture Date” means, with regard to any of the Farm Supply Assets, the date on which Respondents (or a Divestiture Trustee) close on the divestiture of those assets completely and as required by Paragraph II (or Paragraph V) of this Order.
- K. “Farm Supply Assets” means all of Respondents’ right, title, and interest in and to all property and assets, tangible or intangible, of every kind and description, wherever located, and any improvements or additions thereto, relating to operation of the Farm Supply Business, including but not limited to:
 - 1. All real property interests (including fee simple interests and real property leasehold interests), including all easements, appurtenances, licenses, and permits, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held;

2. All Tangible Personal Property, including any Tangible Personal Property removed from any location of the Farm Supply Business since the date of the announcement of the Acquisition;
3. All inventories;
4. All accounts receivable;
5. All agreements, contracts, and leases and all rights thereunder and related thereto;
6. All consents, licenses, certificates, registrations or permits issued, granted, given or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement, and all pending applications therefor or renewals thereof;
7. All intangible rights and property, including Intellectual Property, going concern value, goodwill, telephone, telecopy and e-mail addresses and listings;
8. All data and Records, including client and customer lists and Records, referral sources, research and development reports and Records, production reports and Records, service and warranty Records, equipment logs, operating guides and manuals, financial and accounting Records, creative materials, advertising materials, promotional materials, studies, reports, correspondence and other similar documents and Records, subject to legal requirements, and copies of all personnel Records;
9. All insurance benefits, including rights and proceeds; and
10. All rights relating to deposits and prepaid expenses, claims for refunds and rights to offset in respect thereof.

Provided, however, that the Farm Supply Assets need not include:

(i) assets not located at the facilities identified in Appendix A whose use is shared with or among other facilities unless such assets are primarily related to the operation of the Farm Supply Business;

(ii) commercial names, trade names, “doing business as” (d/b/a) names, registered and unregistered trademarks, service marks and applications using the words “Agrium,” “Crop Production Services,” “CPS,” “Loveland,” “Royster Clark,” “UAP,” “United Agri Products,” or any trade names, trademarks, or registered product names used in any product manufactured, blended, or sold by Respondents; and

(iii) any part of the Farm Supply Assets if not needed by an Acquirer and the Commission approves the divestiture without such assets.

L. “Farm Supply Business” means all business activities conducted by either Agrium or UAP, prior to the Acquisition, at or based out of the locations identified in Appendix A of this Order (or applicable locations if Respondents propose to divest the Farm Supply Assets to more than one Acquirer).

M. “Farm Supply Employee” means, as of the date the Acquisition was announced, (i) any full-time, part-time, or contract employee of the Farm Supply Business (at the applicable locations of the Farm Supply Business if Respondents propose to divest the Farm Supply Assets to more than one Acquirer) and (ii) any other person employed by Respondents whose work primarily relates to the Farm Supply Business.

N. “Farm Supply License” means:

1. A worldwide, royalty-free, paid-up, perpetual, irrevocable, transferable, sublicensable, non-exclusive license under all Intellectual Property relating to operation of the Farm Supply Business (other than Intellectual Property already included in the Farm Supply Assets); and
2. Such tangible embodiments of the licensed rights (including but not limited to physical and electronic copies) as may be necessary or appropriate to enable each Acquirer to use the rights.

Provided, however, that the Farm Supply License need not include rights to (i) commercial names, trade names, “doing business as” (d/b/a) names, registered and unregistered trademarks, service marks and applications using the words “Agrium,” “Crop Production Services,” “CPS,” “Loveland,” “Royster Clark,” “UAP,” “United Agri Products,” or any trade names, trademarks, or registered product names used in any product manufactured, blended, or sold by Respondents, (ii) Intellectual Property relating to the manufacture and blending of any products sold by Respondents, except to the extent such Intellectual Property is necessary for the Acquirer to blend products at any of the locations of the Farm Supply Business in substantially the same manner as Respondents blended products at those locations prior to the divestiture, and (iii) Intellectual Property if not needed by the Acquirer and the Commission approves the divestiture without it.

O. “Intellectual Property” means all intellectual property owned or licensed (as licensor or licensee) by Respondents, in which Respondents have a proprietary interest, including (i) commercial names, trade names, “doing business as” (d/b/a) names, registered and unregistered trademarks, logos, service marks and applications; (ii) all patents, patent applications and inventions and discoveries that may be patentable; (iii) all registered and

unregistered copyrights in both published works and unpublished works; (iv) all knowhow, trade secrets, confidential or proprietary information, protocols, quality control information, customer lists, software, technical information, data, process technology, plans, drawings and blue prints; (v) and all rights in internet web sites and internet domain names presently used by Respondents.

- P. “Key Employee” means any Farm Supply Employee (i) whose job title is location manager or sales representative or any other Farm Supply Employee with responsibilities similar to those of location manager or sales representative or (ii) whose responsibilities include field application services.
- Q. “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other business entity.
- R. “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- S. “Respondents” means Agrium and UAP, individually and collectively.
- T. “Tangible Personal Property” means all machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles, rolling stock, and other items of tangible personal property (other than inventories) of every kind owned or leased by Respondents, together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part thereof and all maintenance records and other documents relating thereto.
- U. “Transitional Assistance” means any (i) administrative services (including, but not limited to, order processing, warehousing, shipping, accounting, and information transitioning services) or (ii) technical assistance with respect to product application services.

II.

IT IS FURTHER ORDERED that:

- A. Respondents shall divest the Farm Supply Assets at no minimum price, absolutely and in good faith, as on-going businesses, no later than 180 days from the Acquisition Date, to an Acquirer or Acquirers that receive the prior approval of the Commission and in a manner (including execution of a Divestiture Agreement with each Acquirer) that receives the prior approval of the Commission.

- B. Respondents shall comply with all provisions of any Divestiture Agreement approved by the Commission, and failure by Respondents to comply with any provision of a Divestiture Agreement shall constitute a failure to comply with this Order.
- C. Respondents shall divest the Farm Supply Assets relating to the Farm Supply Business located at 308 Timmons Street, Snow Hill, Maryland, and 18432 Wachapreague Road, Melfa, Virginia 23410, to no more than one Acquirer.
- D. No later than the date of divestiture of the Farm Supply Assets relating to any location of the Farm Supply Business, Respondents shall:
 - 1. Secure all consents, assignments, and waivers from all Persons that are necessary for the divestiture of such business or assets to an Acquirer.
 - 2. Grant to each Acquirer a Farm Supply License for any use in any business selling agricultural products and related services, and shall take all actions necessary to facilitate the unrestricted use of the license.
- E. At the request of any Acquirer, within sixty (60) days of consummating the divestiture of any of the Farm Supply Assets, for a period not to exceed twelve (12) months from the date Respondents divest the assets, and in a manner (including pursuant to an agreement) that receives the prior approval of the Commission:
 - 1. Respondents shall provide Transitional Assistance to such Acquirer sufficient to enable the Acquirer to operate the divested assets and business in substantially the same manner that Respondents conducted the divested assets and business prior to the divestiture; and
 - 2. Respondents shall provide the Transitional Assistance required by this Paragraph at substantially the same level and quality as such services are provided by Respondents in connection with its operation of the divested assets and business prior to the divestiture.

Provided, however, that Respondents shall not (i) require the Acquirer to pay compensation for Transitional Assistance that exceeds the Direct Cost of providing such goods and services, or (ii) terminate its obligation to provide Transitional Assistance because of a material breach by the Acquirer of any agreement to provide such assistance, in the absence of a final order of a court of competent jurisdiction, or (iii) seek to limit the damages (such as indirect, special, and consequential damages) which any Acquirer would be entitled to receive in the event of Respondents' breach of any agreement to provide Transitional Assistance.

- F. At the request of any Acquirer prior to the divestiture of any of the Farm Supply Assets, for a period not to exceed twelve (12) months from the date Respondents divest the assets, and in a manner (including pursuant to an agreement) that receives the prior approval of the Commission, Respondents shall provide a supply of any product manufactured or blended by Respondents sufficient to enable the Acquirer to operate the divested assets and business in substantially the same manner as Respondents prior to the divestiture; *provided, however*, that Respondents shall not (i) require the Acquirer to pay compensation for the products that exceeds the price paid by any other purchaser, including any Agrium purchaser, for like volumes on like terms, or (ii) terminate its obligation to provide products because of a material breach by the Acquirer of any agreement to provide such assistance, in the absence of a final order of a court of competent jurisdiction, or (iii) seek to limit the damages (such as indirect, special, and consequential damages) which any Acquirer would be entitled to receive in the event of Respondents' breach of any agreement to provide products.
- G. Respondents shall allow each Acquirer an opportunity to recruit and employ any Farm Supply Employee under the following terms and conditions:
1. Prior to the execution of a Divestiture Agreement, Respondents shall (i) identify each Farm Supply Employee, (ii) allow the Acquirer an opportunity to interview any such employee, and (iii) allow the Acquirer to inspect the personnel files and other documentation relating to any such employee, to the extent permissible under applicable laws.
 2. Respondents shall (i) not offer any incentive to any Farm Supply Employee to decline employment with the Acquirer, (ii) remove any contractual impediments with Respondents that may deter any Farm Supply Employee from accepting employment with the Acquirer, including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with Respondents that would affect the ability of such employee to be employed by the Acquirer, and (iii) not otherwise interfere with the recruitment of any Farm Supply Employee by the Acquirer.
 3. Respondents shall (i) vest all current and accrued pension benefits as of the date of transition of employment with the Acquirer for any Farm Supply Employee who accepts an offer of employment from the Acquirer no later than thirty (30) days from the date Respondents divest the relevant assets and (ii) provide any Farm Supply Employee to whom an Acquirer has made a written offer of employment with reasonable financial incentives to accept a position with the Acquirer at the time of divestiture of the relevant assets and business, pursuant to the terms set forth in Confidential Appendix B attached to this Order.

4. For a period of two (2) years after the date of each divestiture of the Farm Supply Assets, Respondents shall not, directly or indirectly, solicit, induce or attempt to solicit or induce any Farm Supply Employee who has accepted an offer of employment with the Acquirer, or who is employed by the Acquirer, to terminate his or her employment relationship with the Acquirer; *provided, however*, a violation of this provision will not occur if: (1) the individual's employment has been terminated by the Acquirer, (2) Respondents advertise for employees in newspapers, trade publications, or other media not targeted specifically at the employees, or (3) Respondents hire employees who apply for employment with Respondents, so long as such employees were not solicited by Respondents in violation of this paragraph.
- H. The purpose of the divestiture of the Farm Supply Assets is to ensure the continued use of the assets in the same businesses in which such assets were engaged at the time of the announcement of the Acquisition by Respondents and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

- A. Except in the course of performing obligations under any Divestiture Agreement, this Order, or as permitted by the Order to Hold Separate and Maintain Assets, Respondents shall not (i) provide, disclose or otherwise make available Confidential Business Information relating to any Farm Supply Assets or Farm Supply Business to any Person or (ii) use Confidential Business Information relating to any Farm Supply Assets or Farm Supply Business for any reason or purpose.
- B. Respondents shall disclose Confidential Business Information relating to any Farm Supply Assets or Farm Supply Business (i) only to those Persons who require such information for the purposes permitted under Paragraph III.A., (ii) only to the extent such Confidential Business Information is required, and (iii) only to those Persons who agree in writing to maintain the confidentiality of such information.
- C. Respondents shall enforce the terms of this Paragraph III as to any Person other than the Acquirers of the Farm Supply Assets and take such action as is necessary to cause each such Person to comply with the terms of this Paragraph III, including training of Respondents' employees and all other actions that Respondents would take to protect their own trade secrets and proprietary information.

IV.

IT IS FURTHER ORDERED that:

- A. For a period of ten (10) years from the date this Order becomes final, Respondents shall not, without providing advance written notification to the Commission, with respect to any of the areas listed in Appendix C of this Order, acquire, directly or indirectly, through subsidiaries or otherwise, any leasehold, ownership interest, or any other interest, in whole or in part, in any concern, corporate or non-corporate, or in any assets engaged in the sale of agricultural products or related services.
- B. The prior notification required by this Paragraph IV shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as “the Notification”), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of the Respondents and not of any other party to the transaction. Respondents shall provide the Notification to the Commission at least thirty (30) days prior to consummating the transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), the acquiring party shall not consummate the transaction until thirty (30) days after submitting such additional information or documentary material. Early termination of the waiting periods in this Paragraph IV may be requested and, where appropriate, granted by letter from the Bureau of Competition. Provided, however, that prior notification shall not be required by this Paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a.

V.

IT IS FURTHER ORDERED that:

- A. If Respondents have not divested all of the Farm Supply Assets as required by Paragraph II.A. of this Order, the Commission may appoint one or more Persons as Divestiture Trustee to divest the Farm Supply Assets in a manner that satisfies the requirements of this Order. The Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Interim Monitor pursuant to the relevant provisions of the Order to Hold Separate and Maintain Assets.
- B. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute

enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to divest the relevant assets in accordance with the terms of this Order. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture 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.

- C. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. 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.
- D. Within ten (10) days after appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the relevant divestiture or transfer required by the Order.
- E. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
 - 1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver or otherwise convey the relevant assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed.
 - 2. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission.
 - 3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities

related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered or otherwise conveyed by this Order and 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 the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph V in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.

4. The Divestiture Trustee shall use commercially reasonable best 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 expeditiously and at no minimum price. The divestiture shall be made in the manner and to an Acquirer as required by 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 such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission; *provided further, however,* that Respondents shall select such entity within five (5) days of receiving notification of the Commission's approval.
5. The Divestiture Trustee shall serve, without bond or other security, at the cost and 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 cost and 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 Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of the Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.
6. 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 losses, claims, damages, liabilities, or expenses result from gross negligence or willful misconduct by the Divestiture Trustee. For purposes of this Paragraph V.E.6., the term “Divestiture Trustee” shall include all Persons retained by the Divestiture Trustee pursuant to Paragraph V.E.5. of this Order.

7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
 8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every sixty (60) days concerning the Divestiture Trustee’s efforts to accomplish the divestiture.
 9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee’s consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- F. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph V.
- G. The Commission or, in the case of a court-appointed Divestiture 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 accomplish the divestiture required by this Order.

VI.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after the date this Order becomes final and every thirty (30) days thereafter until Respondents have fully complied with the provisions of Paragraphs II and V 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 this Order, and the Order to Hold Separate and Maintain Assets. 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 this Order and with the Order to Hold Separate and Maintain Assets, including a description of all substantive contacts or negotiations relating to the divestiture and approval, and the identities of all parties contacted. Respondents shall

include in their compliance reports copies, other than of privileged materials, of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestiture and approval, and, as applicable, a statement that the divestiture(s) approved by the Commission have been accomplished, including a description of the manner in which Respondents completed such divestitures and the date the divestiture was accomplished.

- B. One (1) year after the date this Order becomes final, annually thereafter for the next nine (9) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may request, Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which they have complied and are complying with the Order and any Divestiture Agreement.

VII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed (1) dissolution of the Respondents, (2) acquisition, merger or consolidation of Respondents, or (3) any other change in the Respondents that may affect compliance obligations arising out of this Order, including but not limited to assignment, the creation or dissolution of subsidiaries, or any other change in Respondents.

VIII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents, with respect to any matter contained in this Order, Respondents shall permit any duly authorized representative of the Commission:

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

IX.

IT IS FURTHER ORDERED that this Order shall terminate on June 10, 2018.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: June 10, 2008

Appendix A

Farm Supply Business As To Which Assets Are To Be Divested

Relevant Market	Business Name & Address
Croswell, MI	UAP 41 Ward St. Croswell, MI 48422
Imlay City, MI	UAP 7245 Imlay City Rd. Imlay City, MI 48444
Richmond, MI	UAP 68790 Oak St. Richmond, MI 48062
Standish, MI	UAP 4250 S. Huron Rd. Standish, MI 48658
Vestaburg, MI	UAP 7460 N. Crystal Rd. Vestaburg, MI 48891
Snow Hill, MD	Agrium 308 Timmons St. Snow Hill, MD 21863 Agrium 18432 Wachapreague Rd. Melfa, VA 23410

Appendix B

[Redacted From the Public Version But Incorporated By Reference]

Appendix C

Prior Notice

Area	Area Definition
Croswell, MI	Within a 40 mile radius of 41 Ward St., Croswell, MI 48422
Imlay City, MI	Within a 40 mile radius of 7245 Imlay City Rd., Imlay City, MI 48444
Richmond, MI	Within a 40 mile radius of 68790 Oak St., Richmond, MI 48062
Standish, MI	Within a 40 mile radius of 4250 S. Huron Rd., Standish, MI 48658
Vestaburg, MI	Within a 40 mile radius of 7460 N. Crystal Rd., Vestaburg, MI 48891
Snow Hill, MD	Within a 40 mile radius of 308 Timmons St., Snow Hill, MD 21863