

Complaint

IN THE MATTER OF

GENCORP INC.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE
COMMISSION ACT*Docket C-4099; File No. 0310152**Complaint, October 14, 2003--Decision, December 19, 2003*

This consent order addresses the acquisition by Respondent GenCorp Inc. -- a technology-based manufacturing company with businesses concentrated in aerospace and defense, fine chemicals and automotive products -- of the propulsion business of Atlantic Research Corporation, a subsidiary of Sequa Corporation. The order, among other things, requires the respondent to divest the in-space liquid propulsion business of Atlantic Research Corporation -- including its Niagara and Westcott production facilities, specialized manufacturing and testing equipment, customer lists, intellectual property and other assets -- to a Commission-approved acquirer, within six months and at no minimum price. An accompanying Order to Hold Separate and Maintain Assets requires the respondent to preserve the Atlantic Research Corporation in-space liquid propulsion business as a viable, competitive, and ongoing operation until the divestiture is achieved., and includes provisions designed to ensure that no material confidential information is exchanged between GenCorp and the ARC in-space liquid propulsion business.

Participants

For the Commission: *Jonathan S. Klarfeld, James E. Southworth, Sean G. Dillon, Michael R. Barnett, Sylvia M. Brooks, Robert R. Pickett, Steven K. Bernstein, Michael R. Moiseyev, Naomi Licker, Daniel P. Ducore, Abraham L. Wickelgren, Charissa P. Wellford and Mary T. Coleman.*

For the Respondent: *Tom D. Smith, Mia F. Cohen, and Courtney M. Schaberg, Jones Day.*

COMPLAINT

Pursuant to the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission ("Commission"), having reason to

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believe that Respondent GenCorp Inc. (“GenCorp”), a corporation subject to the jurisdiction of the Commission, has entered into an agreement whereby GenCorp would acquire certain assets of Atlantic Research Corporation (“ARC”), a subsidiary of Sequa Corporation (“Sequa”), in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act (“FTC Act”), as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENT

1. Respondent GenCorp Inc. is 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 at Highway 50 and Aerojet Road, Rancho Cordova, California 95670.
2. Respondent GenCorp is engaged in, among other things, the research, development, manufacture and sale of in-space liquid propulsion thrusters, including monopropellant, bipropellant apogee, dual mode apogee, and bipropellant attitude control thrusters.
3. Respondent is, and at all times herein has been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affects commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

II. THE PROPOSED ACQUISITION

4. On or about May 2, 2003, GenCorp’s Aerojet-General Corporation (“Aerojet”) subsidiary entered into a Purchase Agreement, as subsequently amended August 29, 2003 (“Agreement”), to acquire substantially all of the assets of Sequa’s

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ARC subsidiary as well as the shares of ARC UK Limited (“Acquisition”). The ARC airbag inflator business is not included in the sale to Aerojet. Under the terms of the Agreement, the Acquisition is valued at approximately \$133 million.

III. THE RELEVANT MARKETS

5. For the purposes of this Complaint, the relevant lines of commerce in which to analyze the effects of the Acquisition are:

a. the research, development, manufacture and sale of monopropellant thrusters, a type of in-space propulsion thruster that utilizes a single liquid fuel source, typically hydrazine, and is used primarily to perform attitude control and station-keeping maneuvers on spacecraft;

b. the research, development, manufacture and sale of bipropellant apogee thrusters, a type of in-space propulsion thruster that utilizes a liquid fuel, typically monomethylhydrazine, in combination with an oxidizer and is used primarily to perform apogee maneuvers on spacecraft;

c. the research, development, manufacture and sale of dual mode apogee thrusters, a type of in-space propulsion thruster that utilizes hydrazine in combination with an oxidizer and is used primarily to perform apogee maneuvers on spacecraft; and

d. the research, development, manufacture and sale of bipropellant attitude control thrusters, a type of in-space propulsion thruster that utilizes a liquid fuel, typically monomethylhydrazine, in combination with an oxidizer and is used primarily to perform attitude control and station-keeping maneuvers on spacecraft.

6. For the purposes of this Complaint, the United States is the relevant geographic market in which to analyze the effects of the Acquisition in the relevant line of commerce. Foreign suppliers of

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in-space propulsion thrusters are not effective competitors to supply the relevant products to most U.S. in-space propulsion customers for a number of reasons, most notably U.S. export regulations, and, for many Department of Defense programs, national security issues.

IV. THE STRUCTURE OF THE MARKETS

7. The U.S. markets for the research, development, manufacture and sale of monopropellant, bipropellant apogee and dual mode apogee thrusters are extremely highly concentrated, as measured by the Herfindahl-Hirschman Index (“HHI”). Aerojet and ARC are the only two significant suppliers of monopropellant, bipropellant apogee and dual mode apogee thrusters in the U.S. market and each other’s closest competitor. The proposed acquisition, if consummated, would result in a near monopoly in each of these relevant markets.

8. The market for the research, development, manufacture and sale of bipropellant attitude control thrusters is highly concentrated as measured by the HHI. ARC is the leading supplier of bipropellant attitude control thrusters in the United States. For many customers, including the vast majority of U.S. governmental customers, ARC essentially has a monopoly position in this market. Although Aerojet does not currently produce bipropellant attitude control thrusters, it has substantial existing expertise in this area, has produced these thrusters in the recent past and is a likely potential entrant into this market. The proposed acquisition, if consummated, would eliminate the most likely and effective potential competitor in this market.

V. ENTRY CONDITIONS

9. Entry into each of the relevant markets is a difficult process because of, among other things, the time and cost associated with researching and developing in-space propulsion thrusters, acquiring the necessary production assets, developing the expertise needed to successfully design, produce, and test these

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products, as well as developing heritage (i.e., actual flight time in space) for these products.

10. New entry into any of the relevant markets, other than Aerojet's potential entry into the research, development, manufacture and sale of bipropellant attitude control thrusters, is not likely to occur to deter or counteract the adverse competitive effects described in Paragraph 12 because the costs of entry are extremely high relative to the potential sales opportunities available to an entrant.

11. New entry into any of the relevant markets, other than Aerojet's potential entry into the research, development, manufacture and sale of bipropellant attitude control thrusters, would not occur in a timely manner to deter or counteract the adverse competitive effects described in Paragraph 12 because it would take over two years for an entrant to accomplish the steps required for entry and to achieve a significant market impact.

VI. EFFECTS OF THE ACQUISITION

12. The effects of the Acquisition, if consummated, may be substantially to lessen competition and to tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, in the following ways, among others:

- a. by eliminating actual, direct, and substantial competition between Aerojet and ARC in the relevant markets for the research, development, manufacture and sale of monopropellant, bipropellant apogee and dual mode apogee thrusters, thereby:
 - (i) creating a virtual monopoly in each of these relevant markets;

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(ii) substantially increasing the likelihood that Aerojet will unilaterally exercise market power in each of these relevant markets;

(iii) reducing current incentives to improve service or product quality, or pursue further innovation in each of these relevant markets; and

(iv) increasing the likelihood that U.S. commercial, civil and defense customers would be forced to pay higher prices for monopropellant, bipropellant apogee and dual mode apogee thrusters; and

b. by eliminating actual potential competition between Aerojet and ARC in the market for the research, development, manufacture and sale of bipropellant attitude control thrusters, thereby:

(i) increasing the likelihood that U.S. commercial, civil and defense customers would be forced to pay higher prices in the future for bipropellant attitude control thrusters than they otherwise would have; and

(ii) reducing future incentives to improve service or product quality, or pursue further innovation in this market.

VII. VIOLATIONS CHARGED

13. The Agreement described in Paragraph 4 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

14. The Acquisition described in Paragraph 4, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

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WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this fourteenth day of October, 2003, issues its Complaint against said Respondent.

By the Commission.

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DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent GenCorp Inc. (“GenCorp”) of certain assets of Atlantic Research Corporation (“ARC”), a subsidiary of Sequa Corporation, and Respondent having been furnished thereafter with a 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 Respondent 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

Respondent, its attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondent 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 Respondent 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 Respondent has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Hold Separate and Maintain Assets (“Hold Separate”) 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, and having duly considered the comment received from an interested person pursuant to Section 2.34 of its Rules, 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”):

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1. Respondent GenCorp Inc. is 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 at Highway 50 and Aerojet Road, Rancho Cordova, CA 95670.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent, 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. "GenCorp" or "Respondent" means GenCorp Inc., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by GenCorp, including but not limited to Aerojet-General Corporation, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. "Acquirer" means the Person who acquires the ARC In-Space Liquid Propulsion Assets pursuant to Paragraph II or III of this Order.
- C. "Acquisition" means the proposed acquisition of certain assets of ARC by GenCorp, as described in the Purchase Agreement by and between Atlantic Research Corporation and Aerojet-General Corporation dated May 2, 2003, and as amended August 29, 2003.
- D. "ARC" means Atlantic Research Corporation, a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal

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place of business located at 5945 Wellington Road, Gainesville, VA 20155, and its subsidiaries, divisions, groups and affiliates controlled by ARC, including, but not limited to, ARC UK Limited (“ARC-UK”).

E. “ARC In-Space Liquid Propulsion Assets” means all assets of ARC, whether tangible or intangible, acquired by Respondent from ARC in the Acquisition and relating to the ARC In-Space Liquid Propulsion Business including, but not limited to:

1. the Niagara Falls Facility;
2. the Westcott Facility;
3. all accounts and notes receivable and other claims for money due to Respondent, relating to the Business, as the same exist on the Effective Date of Divestiture;
4. all raw materials, works in process, supplies, spare parts and finished goods inventories relating to the Business, as the same exist on the Effective Date of Divestiture;
5. all contracts, agreements, commitments (including pending bids and proposals) and instruments to which Respondent is a party relating to the Business as of the Effective Date of Divestiture, all unfulfilled orders outstanding as of the Effective Date of Divestiture for the purchase of raw materials, goods or services by Respondent relating to the Business, and all unfulfilled orders outstanding as of the Effective Date of Divestiture for the sale of goods or services provided by the Business;
6. all machinery, equipment, tools, dies, test equipment, furniture, fixtures, vehicles and other personal property owned or leased by Respondent relating to the Business as of the Effective Date of Divestiture, and, to the extent of Respondent’s interest therein, all machinery and equipment

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relating to the Business, which is owned and/or furnished by any domestic or foreign governmental entity;

7. all patents, patent applications, licenses, trademarks, trade names, domain names, computer software, data, copyrights, documentation, know-how, goodwill, trade secrets, confidential business information (including formulas, compositions, inventions and manufacturing and production processes and techniques, drawings, designs, technical data, customer and supplier data, pricing and cost information), all results and other information related to any research and development project, in each of the foregoing cases owned or licensed by Respondent and relating to the Business, and all other intellectual property rights (in whatever form or medium), to the extent of Respondent's interest therein, relating to the Business as of the Effective Date of Divestiture; *provided, however*, that nothing in this paragraph shall require any Person to relinquish the exclusive right to use the name "Atlantic Research Corporation" or "ARC"; *provided further*, however, that any Acquirer shall have the exclusive right to represent itself as carrying on any business relating to the ARC In-Space Liquid Propulsion Assets in continuation thereof as a going concern and all of the goodwill associated therewith;
8. to the extent legally transferrable, all customer and government approvals, consents, licenses, permits, waivers, or other authorizations, held by Respondent and relating to the Business as of the Effective Date of Divestiture;
9. all books, records, ledgers, files, documents, correspondence, lists, plats, specifications, surveys, invoices, customer and supplier lists, drawings, creative materials, advertising and promotional materials, studies, reports and other materials (in whatever form or medium) owned by Respondent as of the Effective Date of Divestiture, in each case to the extent that they relate to the

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Business;

10. all real property owned or leased by Respondent relating to the Business as of the Effective Date of Divestiture, together with all buildings, structures, improvements, fixtures and fittings located on or attached to such real property, and all rights, privileges, easements and other appurtenances belonging thereto; and
 11. all warranties and guarantees, express or implied, relating to the Business as of the Effective Date of Divestiture; provided, however, that ARC In-Space Liquid Propulsion Assets does not include: Hydrazine Actuation Systems; solid/gel side thrust and attitude control propulsion systems, spin motors, high precision motors and gas generators; solid upper stage ejection rocket motors; and all assets, tangible or intangible, primarily related thereto; information systems equipment and applications, including but not limited to computer hardware and software programs, not physically located at the facilities of the ARC In-Space Liquid Propulsion Business but shared with the Business through local and/or wide area networking systems; and telecommunications systems equipment and applications, not physically located at the facilities of the ARC In-Space Liquid Propulsion Business but shared with the Business through local and/or wide area telecommunications systems.
- F. “ARC In-Space Liquid Propulsion Business” or “Business” means the ARC and ARC-UK business engaged in the research, design, development, manufacture, fabrication, assembly, marketing, distribution, sale or service of In-Space Liquid Propulsion Products.
- G. “ARC In-Space Liquid Propulsion Business Employees” means all full-time, part-time, or contract employees whose duties primarily relate to the Business or have primarily

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related to the Business at any time during the period commencing twelve months prior to the Effective Date of Divestiture.

- H. “ARC In-Space Liquid Propulsion Business Key Employees” means those ARC In-Space Liquid Propulsion Business Employees identified in Confidential Appendix A attached to this Order.
- I. “ARC In-Space Liquid Propulsion Hold Separate Employees” means all full-time, part-time, or contract employees whose duties primarily relate to the Business during the Hold Separate Period.
- J. “Commission” means the Federal Trade Commission.
- K. “Effective Date of Divestiture” means the date on which the applicable divestiture of the ARC In-Space Liquid Propulsion Assets occurs.
- L. “Hold Separate Period” means the time period during which the Hold Separate is in effect, which shall begin as of the date the Acquisition occurs and terminate pursuant to Paragraph V of the Hold Separate.
- M. “In-Space Liquid Propulsion Products” means monopropellant, bipropellant and dual mode thrusters, systems thereof, and propellant tanks, for use on satellites and spacecraft.
- N. “Niagara Falls Facility” means the facility that relates to the ARC In-Space Liquid Propulsion Business and that is located at 6686 Walmore Road, Niagara Falls, NY 14303, and all of Respondent’s interests in all assets, whether tangible or intangible, relating to the facility.

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- O. “Person” means any individual, partnership, firm, trust, association, corporation, joint venture, unincorporated organization, or other business or governmental entity.
- P. “Westcott Facility” means the facility that relates to the ARC In-Space Liquid Propulsion Business and that is located at Westcott Metro Park, Westcott Aylesbury Buckinghamshire HP180NZ, England, and all of Respondent’s interests in all assets, whether tangible or intangible, relating to the facility.

II.

IT IS FURTHER ORDERED that:

- A. Respondent shall divest, within six (6) months after the Acquisition occurs, the ARC In-Space Liquid Propulsion Assets to a single Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission, absolutely and in good faith and at no minimum price.
- B. Respondent shall:
1. not later than forty-five (45) days before the Effective Date of Divestiture, (a) provide to the Acquirer a list of all ARC In-Space Liquid Propulsion Business Employees and ARC In-Space Liquid Propulsion Business Key Employees; (b) allow the Acquirer to interview any ARC In-Space Liquid Propulsion Business Employees; and (c) in compliance with all laws, allow the Acquirer to inspect the personnel files and other documentation relating to such ARC In-Space Liquid Propulsion Business Employees;
 2. not later than thirty (30) days before the Effective Date of Divestiture, provide an opportunity for the Acquirer, (a) to meet personally, and outside the presence or hearing of any employee or agent of Respondent, with any one or

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more of the ARC In-Space Liquid Propulsion Business Employees; and (b) to make offers of employment to any one or more of the ARC In-Space Liquid Propulsion Business Employees;

3. (a) not directly or indirectly interfere with the Acquirer's offer of employment to any one or more of the ARC In-Space Liquid Propulsion Business Employees, not directly or indirectly attempt to persuade any one or more of the ARC In-Space Liquid Propulsion Business Employees to decline any offer of employment from the Acquirer, and not offer any incentive to any ARC In-Space Liquid Propulsion Business Employees to decline employment with the Acquirer;
- (b) irrevocably waive any legal or equitable right to deter any ARC In-Space Liquid Propulsion Business Employee from accepting employment with the Acquirer, including, but not limited to, waiving any non-compete or confidentiality provisions of employment or other contracts with Respondent that relate to the In-Space Liquid Propulsion Products;
- (c) not interfere with the employment by the Acquirer of any ARC In-Space Liquid Propulsion Business Employee; and
- (d) continue employee benefits to ARC In-Space Liquid Propulsion Hold Separate Employees until the Effective Date of Divestiture consistent with the requirements of the Purchase Agreement by and between Atlantic Research Corporation and Aerojet-General Corporation dated May 2, 2003, and as amended August 29, 2003, including regularly scheduled or merit raises and bonuses, regularly scheduled vesting of all pension benefits, and reimbursement of relocation expenses;

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4. provide a retention incentive bonus to ARC In-Space Liquid Propulsion Business Key Employees, who accept employment with the Commission-approved Acquirer, equal to ten (10) percent of such employee's annual salary under the following terms: (a) five (5) percent of the incentive to be paid upon the employee's completion of six (6) months of continuous employment with the Commission-approved Acquirer after the Effective Date of Divestiture; and (b) the remaining five (5) percent to be paid upon the employee's completion of one (1) year of continuous employment with the Commission-approved Acquirer after the Effective Date of Divestiture;
5. subject to the provisions of Paragraph II.B.6. below, for a period of one (1) year from the Effective Date of Divestiture, not, directly or indirectly, solicit, induce, or attempt to solicit or induce any ARC In-Space Liquid Propulsion Business Employees who have accepted offers of employment with the Acquirer to terminate their 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) Respondent advertises for employees in newspapers, trade publications, or other media not targeted specifically at the employees, or (3) Respondent hires employees who apply for employment with Respondent, as long as such employees were not solicited by Respondent in violation of this paragraph; and
6. notwithstanding the provisions of Paragraph II.B.5. above, for a period of six months from the Effective Date of Divestiture, not employ or offer to employ any ARC In-Space Liquid Propulsion Business Employees who have accepted offers of employment with the Acquirer unless any such individual's employment has been terminated by the Acquirer.

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C. In the event that Respondent is unable to satisfy all conditions necessary to divest any intangible asset that is a permit, license or right granted by any domestic or foreign governmental entity, Respondent shall provide such assistance as the Acquirer may reasonably request in the Acquirer's efforts to obtain a comparable permit, license or right.

D. The purpose of the divestiture of the ARC In-Space Liquid Propulsion Assets, and of the other provisions of this paragraph, is to ensure the continued operation of the ARC In-Space Liquid Propulsion Business as a viable, on-going business by a firm that has the ability and incentive to invest and compete in the research, design, development, manufacture, fabrication, assembly, marketing, distribution, sale and service of In-Space Liquid Propulsion Products, and to remedy the lessening of competition as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

A. If Respondent has not, within the time period required, complied with the requirements of Paragraph II, absolutely and in good faith, the Commission may appoint a Trustee to effectuate the divestiture required by Paragraph II, consistent with the purpose stated in Paragraph II.D.

B. In the event that the Commission or the United States 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, Respondent shall consent to the appointment of a Trustee in such action. Neither the appointment of a Trustee nor a decision not to appoint a Trustee under this paragraph shall preclude the Commission or the United States Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed

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Trustee, pursuant to § 5(*I*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondent to comply with this Order.

C. If a Trustee is appointed by the Commission or a court pursuant to Paragraph III.A or III.B of this Order, Respondent shall consent to the following terms and conditions regarding the Trustee's powers, duties, authority, and responsibilities:

1. the Commission shall select the Trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent has 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 Respondent of the identity of any proposed Trustee, Respondent shall be deemed to have consented to the selection of the proposed Trustee;
2. subject to the prior approval of the Commission, the Trustee shall have the exclusive power and authority to divest the ARC In-Space Liquid Propulsion Business, assign the agreements required to be assigned, and enter into the required agreements, thereby binding Respondent, all on such terms and conditions as are necessary to comply with the requirements of the applicable paragraph, to comply with all applicable laws, and to effectuate the remedial purposes of this Order;
3. within ten (10) days after appointment of the Trustee, Respondent shall execute a 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 Trustee all rights and powers necessary to permit

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the Trustee to effect the divestiture required by this Order;

4. the Trustee shall have six (6) months from the date the Commission approves the trust agreement described in Paragraph III.C.3 to accomplish the divestiture to an Acquirer that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission. If, however, at the end of the six-month period, the Trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission or, in the case of a court-appointed Trustee, by the court;
5. subject to all applicable laws and regulations, the Trustee shall have full and complete access to the personnel, books, records and facilities related to the ARC In-Space Liquid Propulsion Business or to any other relevant information, as the Trustee may request. Respondent shall develop such financial or other information as the Trustee may request and shall cooperate with the Trustee. Respondent shall take no action to interfere with or impede the Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent shall extend the time for divestiture under this paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Trustee, by the court;
6. the Trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest expeditiously 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 Trustee receives bona fide offers from more than

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one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Trustee shall divest to the acquiring entity selected by Respondent from among those approved by the Commission; *provided further, however*, that Respondent shall select such entity within five (5) business days of receiving notification of the Commission's approval;

7. the Trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The Trustee shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are reasonably necessary to carry out the Trustee's duties and responsibilities. The 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 the Respondent, and the Trustee's power shall be terminated. The Trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the Trustee's divesting the assets to be divested;
8. Respondent shall indemnify the Trustee and hold the Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the 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,

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damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts or omissions, or bad faith by the Trustee or his or her agents;

9. if the Commission determines that the Trustee has ceased to act or failed to act diligently, a substitute Trustee shall be appointed in the same manner as provided in Paragraph III 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 Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order;
11. the Trustee shall have no obligation or authority to operate or maintain the assets required to be divested by this Order;
12. the Trustee shall report in writing to Respondent and the Commission every sixty (60) days concerning the Trustee's efforts to accomplish the divestiture; and
13. Respondent may require the Trustee to sign a confidentiality agreement; *provided, however*, such agreement shall not restrict the Trustee from providing any information to the Commission.

IV.

IT IS FURTHER ORDERED that within thirty (30) days after the date this Order becomes final and every thirty (30) days thereafter until Respondent has fully complied with the provisions of Paragraphs II and III of this Order, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it has complied, is complying, and will comply with this Order. Respondent shall include in its

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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, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

V.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondent 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 the Order.

VI.

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 Respondent made to its principal United States offices, Respondent shall permit any duly authorized representative of the Commission:

A. Access, during office hours of Respondent 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 Respondent relating to any matters contained in this Order; and

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B. Upon five (5) days' notice to Respondent and without restraint or interference from Respondent, to interview officers, directors, or employees of Respondent, who may have counsel present, regarding any such matters.

By the Commission.

Confidential Appendix A

[Redacted From Public Record Version]

Order

ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent GenCorp Inc. (“GenCorp”) of certain assets of Atlantic Research Corporation (“ARC”), a subsidiary of Sequa Corporation, and Respondent having been furnished thereafter with a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge Respondent 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

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondent 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 Respondent 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 Respondent has 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 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 issues its Complaint, makes the following jurisdictional findings and issues this Order to Hold Separate and Maintain Assets (“Hold Separate”):

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1. Respondent GenCorp is 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 at Highway 50 and Aerojet Road, Rancho Cordova, CA 95670.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Hold Separate, the following definitions and provisions shall apply:

- A. “GenCorp” or “Respondent” means GenCorp Inc., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by GenCorp, including but not limited to Aerojet-General Corporation, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Acquirer” has the same definition as the term does in the Decision and Order.
- C. “Acquisition” means the proposed acquisition of certain assets of ARC by GenCorp, as described in the Purchase Agreement by and between Atlantic Research Corporation and Aerojet-General Corporation dated May 2, 2003, and as amended August 29, 2003.
- D. “ARC” means Atlantic Research Corporation, a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and

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principal place of business located at 5945 Wellington Road, Gainesville, VA 20155, and its subsidiaries, divisions, groups and affiliates controlled by ARC, including, but not limited to, ARC UK Limited (“ARC-UK”).

- E. “ARC In-Space Liquid Propulsion Business” or “Business” means the ARC and ARC-UK business engaged in the research, design, development, manufacture, fabrication, assembly, marketing, distribution, sale, or service of In-Space Liquid Propulsion Products.
- F. “ARC In-Space Liquid Propulsion Business Employees” means all full-time, part-time, or contract employees whose duties primarily relate to the Business or have primarily related to the Business at any time during the period commencing twelve months prior to the Effective Date of Divestiture.
- G. “ARC In-Space Liquid Propulsion Business Key Employees” means those ARC In-Space Liquid Propulsion Business Employees identified in Confidential Appendix A attached hereto.
- H. “ARC In-Space Liquid Propulsion Hold Separate Employees” means all full-time, part-time, or contract employees whose duties primarily relate to the Business during the Hold Separate Period.
- I. “Commission” means the Federal Trade Commission.
- J. “Decision and Order” means:
 - 1. until the issuance and service of a final Decision and Order by the Commission, the proposed Decision and Order contained in the Consent Agreement in this matter; and

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2. following the issuance and service of a final Decision and Order by the Commission, the final Decision and Order issued by the Commission.
- K. "Effective Date of Divestiture" means the date on which the divestiture required by the Decision and Order occurs.
- L. "Held Separate Business" means the ARC In-Space Liquid Propulsion Business and all ARC In-Space Liquid Propulsion Hold Separate Employees.
- M. "Hold Separate Period" means the time period during which the Hold Separate is in effect, which shall begin as of the date the Acquisition occurs and terminate pursuant to Paragraph V hereof.
- N. "Hold Separate Trustee" means the individual appointed to act as the Hold Separate Trustee pursuant to Paragraph II.D. hereof.
- O. "In-Space Liquid Propulsion Products" means monopropellant, bipropellant and dual mode thrusters, systems thereof, and propellant tanks, for use on satellites and spacecraft.
- P. "Material Confidential Information" means competitively sensitive or proprietary information including, but not limited to, all customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets; *provided, however*, Material Confidential Information does not include information in the public domain or independently known to a Person from sources other than the Person to which the information pertains.
- Q. "Person" means any individual, partnership, firm, trust, association, corporation, joint venture, unincorporated organization, or other business or governmental entity.

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II.

IT IS FURTHER ORDERED that:

- A. During the Hold Separate Period, Respondent shall hold the Held Separate Business separate, apart, and independent as required by this Hold Separate and shall vest the Held Separate Business with all rights, powers, and authority necessary to conduct its business; Respondent shall not exercise direction or control over, or influence directly or indirectly, the Held Separate Business or any of its operations, or the Hold Separate Trustee, except to the extent that Respondent must exercise direction and control over the Held Separate Business as is necessary to assure compliance with this Hold Separate, the Decision and Order, and all applicable laws.
- B. Respondent shall:
 - 1. During the Hold Separate Period, take such actions as are necessary to maintain the viability, marketability, and competitiveness of the Held Separate Business to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets, except for ordinary wear and tear; and
 - 2. From the date Respondent executes the Agreement containing Consent Orders until the Hold Separate Period begins, take such actions as are necessary to assure that ARC maintains the viability, marketability, and competitiveness of the Held Separate Business to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets, except for ordinary wear and tear.
- C. The purpose of this Hold Separate is to: (1) preserve the Held Separate Business as a viable, competitive, and ongoing business independent of Respondent until the

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divestiture required by the Decision and Order is achieved; (2) assure that no Material Confidential Information is exchanged between Respondent and the Held Separate Business, except in accordance with the provisions of this Hold Separate; and (3) prevent interim harm to competition pending the relevant divestiture and other relief.

D. Respondent shall hold the Held Separate Business separate, apart, and independent on the following terms and conditions:

1. Charles L. Wilkins of KPMG LLP, shall serve as Hold Separate Trustee, pursuant to the agreement executed by the Hold Separate Trustee and Respondent and attached as Confidential Appendix B to this Hold Separate (“Trustee Agreement”).
 - a. The Trustee Agreement shall require that, no later than five (5) days after this Hold Separate becomes final, Respondent shall transfer to the Hold Separate Trustee all rights, powers, and authorities necessary to permit the Hold Separate Trustee to perform his/her duties and responsibilities, pursuant to this Hold Separate and consistent with the purposes of the Decision and Order.
 - b. No later than five (5) days after this Hold Separate becomes final, Respondent shall, pursuant to the Trustee Agreement, transfer to the Hold Separate Trustee all rights, powers, and authorities necessary to permit the Hold Separate Trustee to perform his/her duties and responsibilities, pursuant to this Hold Separate and consistent with the purposes of the Decision and Order.
 - c. The Hold Separate Trustee shall have the responsibility, consistent with the terms of this Hold Separate and the Decision and Order, for monitoring

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the organization of the Held Separate Business; for managing the Held Separate Business through the Manager; for maintaining the independence of the Held Separate Business; and for monitoring Respondent's compliance with its obligations pursuant to this Hold Separate and the Decision and Order.

- d. Subject to all applicable laws and regulations, the Hold Separate Trustee shall have full and complete access to all personnel, books, records, documents and facilities of the Held Separate Business or to any other relevant information as the Hold Separate Trustee may reasonably request, including, but not limited to, all documents and records kept by Respondent in the ordinary course of business that relate to the Held Separate Business. Respondent shall develop such financial or other information as the Hold Separate Trustee may reasonably request and shall cooperate with the Hold Separate Trustee. Respondent shall take no action to interfere with or impede the Hold Separate Trustee's ability to monitor Respondent's compliance with this Hold Separate and the Decision and Order or otherwise to perform his/her duties and responsibilities consistent with the terms of this Hold Separate.
- e. The Hold Separate Trustee shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Hold Separate Trustee's duties and responsibilities.
- f. The Commission may require the Hold Separate Trustee to sign an appropriate confidentiality agreement relating to materials and information received from the Commission in connection with

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performance of the Hold Separate Trustee's duties.

- g. Respondent may require the Hold Separate Trustee to sign an appropriate confidentiality agreement prohibiting the disclosure of any Material Confidential Information gained as a result of his/her role as Hold Separate Trustee to anyone other than the Commission.
- h. Thirty (30) days after the Hold Separate becomes final, and every thirty (30) days thereafter until the Hold Separate terminates, the Hold Separate Trustee shall report in writing to the Commission concerning the efforts to accomplish the purposes of this Hold Separate. Included within that report shall be the Hold Separate Trustee's assessment of the extent to which the Held Separate Business is meeting (or exceeding) its projected goals as are reflected in operating plans, budgets, projections or any other regularly prepared financial statements.
- i. If the Hold Separate Trustee ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate, the Commission may appoint a substitute Hold Separate Trustee consistent with the terms of this paragraph, subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of the substitute Hold Separate Trustee within five (5) days after notice by the staff of the Commission to Respondent of the identity of any substitute Hold Separate Trustee, Respondent shall be deemed to have consented to the selection of the proposed substitute trustee. Respondent and the substitute Hold Separate Trustee shall execute a trustee agreement, subject to the approval of the Commission, consistent with this paragraph.

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2. No later than one (1) day after the Acquisition is consummated, Respondent shall enter into a management agreement with, and transfer all rights, powers, and authorities necessary to manage and maintain the Held Separate Business to Robert A. Huebner (“Manager”).
 - a. In the event that Robert A. Huebner ceases to act as Manager, then Respondent shall select a substitute Manager, subject to the approval of the Commission, and transfer to the substitute Manager all rights, powers, and authorities necessary to permit the substitute Manager to perform his/her duties and responsibilities, pursuant to this Hold Separate.
 - b. The Manager shall report directly and exclusively to the Hold Separate Trustee and shall manage the Held Separate Business independently of the management of Respondent. The Manager shall not be involved, in any way, in the operations of the other businesses of Respondent during the term of this Hold Separate.
 - c. The Manager shall have no financial interests affected by Respondent’s revenues, profits or profit margins, except that the Manager’s compensation for managing the Held Separate Business may include economic incentives dependent on the financial performance of the Held Separate Business if there are also sufficient incentives for the Manager to operate the Held Separate Business at no less than current rates of operation (including, but not limited to, current rates of production and sales) and to achieve the objectives of this Hold Separate.
 - d. The Manager shall make no material changes in the present operation of the Held Separate Business except with the approval of the Hold Separate Trustee, in consultation with the Commission.

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- e. The Manager shall have the authority, with the approval of the Hold Separate Trustee, to remove employees of the Held Separate Business and replace them with others of similar experience or skills. If any Person ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate, the Manager, in consultation with the Hold Separate Trustee, may request Respondent to, and Respondent shall, appoint a substitute Person, which Person the Manager shall have the right to approve.
 - f. In addition to ARC In-Space Liquid Propulsion Business Employees employed as of the date the Consent Agreement is signed by Respondent, the Manager may employ such Persons as are reasonably necessary to assist the Manager in managing the Held Separate Business.
 - g. The Hold Separate Trustee shall be permitted, in consultation with the Commission staff, to remove the Manager for cause. Within fifteen (15) days after such removal of the Manager, Respondent shall appoint a replacement Manager, subject to the approval of the Commission, on the same terms and conditions as provided in Paragraph II.D.2 of this Hold Separate.
3. The Held Separate Business shall be staffed with sufficient employees to maintain the viability, marketability, and competitiveness of the Held Separate Business. To the extent that any employees of the Held Separate Business leave or have left the Held Separate Business prior to the Effective Date of Divestiture, the Manager, with the approval of the Hold Separate Trustee, may replace departing or departed employees with Persons who have similar experience and expertise or determine not to replace such departing or departed employees.

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4. In connection with support services not included within the Held Separate Business that are being provided by Respondent or ARC or which Respondent or ARC has contracted to provide to the Held Separate Business by third parties, Respondent shall continue to provide or contract to provide, or offer to provide or contract to provide, the same support services to the Held Separate Business as are being provided to the Held Separate Business by Respondent, ARC, or third parties as of the date the Consent Agreement is signed by Respondent. For services that Respondent or ARC previously provided to the Held Separate Business, Respondent may charge the same fees, if any, charged by Respondent or ARC for such support services as of the date the Consent Agreement is signed by Respondent. For any other services or products that Respondent may provide the Held Separate Business, Respondent may charge no more than the same price it charges others for the same services or products. Respondent's personnel providing such services or products must retain and maintain all Material Confidential Information of the Held Separate Business on a confidential basis, and, except as is permitted by this Hold Separate, such Persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any Person whose employment relates to any of Respondent's businesses, other than the Held Separate Business. Such personnel who have or may have access to Material Confidential Information shall also execute confidentiality agreements prohibiting the disclosure of any Material Confidential Information of the Held Separate Business.
 - a. Respondent shall offer to the Held Separate Business any services that Respondent provides to its other businesses directly or through third party contracts, or that it or ARC has provided directly or through third

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party contracts to the ARC In-Space Liquid Propulsion Business at any time since January 1, 2002. The Held Separate Business may, at the option of the Manager with the approval of the Hold Separate Trustee, obtain such services and products from Respondent. The services that Respondent shall offer the Held Separate Business shall include, but shall not be limited to, the following:

- (1) federal and state regulatory policy development and compliance;
 - (2) human resources and administrative services, including, but not limited to, procurement and administration of employee benefits;
 - (3) environmental health and safety services, including, but not limited to, services to develop corporate policies and insure compliance with federal and state regulations and corporate policies;
 - (4) financial accounting services;
 - (5) preparation of tax returns;
 - (6) audit services;
 - (7) technical support and engineering services;
 - (8) information technology support services;
 - (9) processing of accounts payable and accounts receivable;
 - (10) billing and collection services;
 - (11) payroll processing;
 - (12) security clearance services;
 - (13) compliance with import and export controls;
 - (14) procurement of insurance, including, but not limited to, general and product liability insurance; and
 - (15) legal services.
- b. The Held Separate Business shall have, at the option of the Manager with the approval of the Hold Separate Trustee, the ability to acquire services and products, including, but not limited to, those listed in Paragraph

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II.D.4.a. above, from third parties unaffiliated with Respondent.

5. Respondent shall cause the Hold Separate Trustee, the Manager, and each employee of the Held Separate Business having access to Material Confidential Information to submit to the Commission a signed statement that the individual will maintain the confidentiality required by the terms and conditions of this Hold Separate. These individuals must retain and maintain all Material Confidential Information relating to the Held Separate Business on a confidential basis and, except as is permitted by this Hold Separate, such individuals shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing, directly or indirectly, any such information to or with any other Person whose employment relates to any of Respondent's businesses other than the Held Separate Business. These individuals shall not be involved in any way in the management, research, design, development, manufacture, fabrication, assembly, marketing, distribution, sale, service, or financial operations of Respondent's In-Space Liquid Propulsion Products that compete with products or services of the Held Separate Business.
6. No later than ten (10) days after the date this Hold Separate becomes final, Respondent shall establish written procedures, subject to the approval of the Hold Separate Trustee, covering the management, maintenance, and independence of the Held Separate Business consistent with the provisions of this Hold Separate.
7. No later than five (5) days after the date this Hold Separate becomes final, Respondent shall circulate to employees of the Held Separate Business and to Respondent's employees who are responsible for the

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management, research, design, development, manufacture, fabrication, assembly, marketing, distribution, sale, service, or financial operations of In-Space Liquid Propulsion Products, a notice of this Hold Separate and Consent Agreement, in the form attached hereto as Attachment A.

8. The Hold Separate Trustee and the Manager shall serve, without bond or other security, at the cost and expense of Respondent, on reasonable and customary terms commensurate with the person's experience and responsibilities.
9. Respondent shall indemnify the Hold Separate Trustee and Manager and hold each harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Hold Separate Trustee's or the Manager'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 misfeasance, gross negligence, willful or wanton acts or omissions, or bad faith by the Hold Separate Trustee or the Manager, or their respective agents.
10. Respondent shall provide the Held Separate Business with sufficient financial resources:
 - a. as are appropriate in the judgment of the Hold Separate Trustee to operate the Held Separate Business at no less than current rates of operation and at no less than the rates of operation projected in the ARC Propulsion Division CY 03 Annual Operating Plan dated December 9, 2002 ("ARC 2003 Operating Plan");

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- b. to perform all reasonable maintenance to, and replacements of, the assets of the Held Separate Business;
- c. to carry on existing and planned capital projects and business plans for the Held Separate Business at levels no less than the levels reflected in the ARC 2003 Operating Plan;
- d. to carry on existing and planned bid and proposal and research and development plans at levels no less than the levels reflected in the ARC 2003 Operating Plan; and
- e. to maintain the viability, marketability, and competitiveness of the Held Separate Business.

Such financial resources to be provided to the Held Separate Business shall include, but shall not be limited to, (i) general funds, (ii) capital, (iii) working capital, and (iv) reimbursement for any operating losses, capital losses, or other losses; *provided, however*, that, consistent with the purposes of the Decision and Order, the Manager may substitute any capital or research and development project for another of the same cost.

11. Respondent shall:

- a. not later than forty-five (45) days before the Effective Date of Divestiture, (a) provide to the Acquirer a list of all ARC In-Space Liquid Propulsion Business Employees and ARC In-Space Liquid Propulsion Business Key Employees; (b) allow the Acquirer to interview any ARC In-Space Liquid Propulsion Business Employees; and (c) in compliance with all laws, allow the Acquirer to inspect the personnel files and other documentation relating to such ARC In-Space Liquid Propulsion Business Employees;

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- b. not later than thirty (30) days before the Effective Date of Divestiture, provide an opportunity for the Acquirer, (a) to meet personally, and outside the presence or hearing of any employee or agent of Respondent, with any one or more of the ARC In-Space Liquid Propulsion Business Employees; and (b) to make offers of employment to any one or more of the ARC In-Space Liquid Propulsion Business Employees;
- c. not directly or indirectly interfere with the Acquirer's offer of employment to any one or more of the ARC In-Space Liquid Propulsion Business Employees, not directly or indirectly attempt to persuade any one or more of the ARC In-Space Liquid Propulsion Business Employees to decline any offer of employment from the Acquirer, and not offer any incentive to any ARC In-Space Liquid Propulsion Business Employees to decline employment with the Acquirer;
- d. irrevocably waive any legal or equitable right to deter any ARC In-Space Liquid Propulsion Business Employee from accepting employment with the Acquirer, including, but not limited to, waiving any non-compete or confidentiality provisions of employment or other contracts with Respondent that relate to In-Space Liquid Propulsion Products;
- e. not interfere with the employment by the Acquirer of any ARC In-Space Liquid Propulsion Business Employee;
- f. continue employee benefits to ARC In-Space Liquid Propulsion Hold Separate Employees until the Effective Date of Divestiture consistent with the requirements of the Purchase Agreement by and between Atlantic

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Research Corporation and Aerojet-General Corporation dated May 2, 2003, and as amended August 29, 2003, including regularly scheduled or merit raises and bonuses, regularly scheduled vesting of all pension benefits, and reimbursement of relocation expenses; and

- g. provide a retention incentive bonus to ARC In-Space Liquid Propulsion Business Key Employees, who accept employment with the Commission-approved Acquirer, equal to ten (10) percent of such employee's annual salary under the following terms: (a) five (5) percent of the incentive to be paid upon the employee's completion of six (6) months of continuous employment with the Commission-approved Acquirer after the Effective Date of Divestiture; and (b) the remaining five (5) percent to be paid upon the employee's completion of one (1) year of continuous employment with the Commission-approved Acquirer after the Effective Date of Divestiture.
12. Subject to the provisions of Paragraph II.D.13. below, for a period of one (1) year from the Effective Date of Divestiture, Respondent shall not, directly or indirectly, solicit, induce, or attempt to solicit or induce any ARC In-Space Liquid Propulsion Business Employees who have accepted offers of employment with the Acquirer to terminate their 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) Respondent advertises for employees in newspapers, trade publications, or other media not targeted specifically at the employees, or (3) Respondent hires employees who apply for employment with Respondent, as long as such employees were not solicited by Respondent in violation of this paragraph.

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13. Notwithstanding the provisions of Paragraph II.D.12. above, for a period of six (6) months from the Effective Date of Divestiture, Respondent shall not employ or make offers of employment to any ARC In-Space Liquid Propulsion Business Employees who have accepted offers of employment with the Acquirer unless any such individual's employment has been terminated by the Acquirer.
14. Except for the Manager, employees of the Held Separate Business, and support services employees involved in providing services to the Held Separate Business pursuant to Paragraph II.D.4., and except to the extent provided in Paragraph II.A., Respondent shall not permit any other of its employees, officers, or directors to be involved in the operations of the Held Separate Business.
15. Respondent's employees (excluding support services employees involved in providing support to the Held Separate Business pursuant to Paragraph II.D.4.) shall not receive, have access to, or use or continue to use any Material Confidential Information of the Held Separate Business except:
 - a. as required by law; and
 - b. to the extent that necessary information is exchanged:
 - (1) in the course of consummating the Acquisition;
 - (2) in negotiating agreements to divest assets pursuant to the Consent Agreement and engaging in related due diligence;
 - (3) in complying with the Hold Separate or the Consent Agreement;

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- (4)in overseeing compliance with policies and standards concerning the safety, health and environmental aspects of the operations of the Held Separate Business and the integrity of the financial controls of the Held Separate Business;
- (5)in defending legal claims, investigations or enforcement actions threatened or brought against or related to the Held Separate Business; or
- (6)in obtaining legal advice.

Nor shall the Manager or employees of the Held Separate Business receive, have access to, or use or continue to use, any Material Confidential Information about Respondent and relating to Respondent's businesses, except such information as is necessary to maintain and operate the Held Separate Business. Respondent may receive aggregate financial and operational information relating to the Held Separate Business only to the extent necessary to allow Respondent to prepare consolidated financial reports, tax returns, reports required by securities laws, and personnel reports. Any such information that is obtained pursuant to this paragraph shall be used only for the purposes set forth in this paragraph.

16. Respondent and the Held Separate Business shall jointly implement, and at all times during the Hold Separate Period maintain in operation, a system, as approved by the Hold Separate Trustee, of access and data controls to prevent unauthorized access to or dissemination of Material Confidential Information of the Held Separate Business, including, but not limited to, the opportunity by the Hold Separate Trustee, on terms and conditions agreed to with Respondent, to audit Respondent's networks and systems to verify compliance with this Hold Separate.

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III.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondent 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 Hold Separate.

IV.

IT IS FURTHER ORDERED that for the purposes of determining or securing compliance with this Hold Separate, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondent, Respondent shall permit any duly authorized representatives of the Commission:

- A. Access, during office hours of Respondent 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 Respondent relating to compliance with this Hold Separate; and
- B. Upon five (5) days' notice to Respondent and without restraint or interference from Respondent, to interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

V.

IT IS FURTHER ORDERED that this Hold Separate shall terminate at the earlier of:

- A. three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the

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provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or

- B. the day after the divestiture required by the Decision and Order is completed.

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ATTACHMENT A**NOTICE OF DIVESTITURE AND REQUIREMENT FOR
CONFIDENTIALITY**

GenCorp Inc., hereinafter referred to as “Respondent,” has entered into an Agreement Containing Consent Orders (“Consent Agreement”) with the Federal Trade Commission relating to the divestiture of certain assets and other relief.

As used herein, the term “Held Separate Business” means the ARC In-Space Liquid Propulsion Business and personnel as defined in Paragraph I.L. of the Order to Hold Separate and Maintain Assets (the “Hold Separate Order”) contained in the Consent Agreement. Under the terms of the Decision and Order contained in the Consent Agreement, Respondent must divest certain assets, which are included within the Held Separate Business, within six (6) months of the date the acquisition by GenCorp of certain assets of Atlantic Research Corporation from Sequa Corporation is consummated.

During the Hold Separate Period (which begins after the Hold Separate Order becomes final and ends after Respondent has completed the required divestiture), the Held Separate Business shall be held separate, apart, and independent of Respondent’s businesses. The Held Separate Business must be managed and maintained as a separate, ongoing business, independent of all other businesses of Respondent, until Respondent has completed the required divestiture. All competitive information relating to the Held Separate Business must be retained and maintained by the persons involved in the operation of the Held Separate Business on a confidential basis, and such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any other of Respondent’s businesses, except as otherwise provided in the Hold Separate Order. These persons involved in the operation of the Held Separate Business shall not be involved in any way in the

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management, production, distribution, sales, marketing, or financial operations of Respondent relating to competing products. Similarly, persons involved in similar activities in Respondent's businesses shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any similar information to or with any other person whose employment involves the Held Separate Business, except as otherwise provided in the Hold Separate Order.

Until the Held Separate Business is divested, Respondent must take such actions as are necessary to maintain the viability, marketability, and competitiveness of the Held Separate Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets, except for ordinary wear and tear.

Any violation of the Consent Agreement may subject Respondent to civil penalties and other relief as provided by law.

By the Commission.

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Confidential Appendices A and B

[Redacted from Public Record Version]

Analysis

**Analysis of Agreement Containing Consent Orders to Aid
Public Comment**

I. Introduction

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from GenCorp Inc. (“GenCorp”), which is designed to remedy the anticompetitive effects resulting from GenCorp’s acquisition of the propulsion business of Atlantic Research Corporation (“ARC”), a subsidiary of Sequa Corporation (“the Acquisition”). The Consent Agreement includes a proposed Decision and Order (“Order”) that would require GenCorp to divest ARC’s in-space liquid propulsion business within six (6) months after the date the Acquisition is consummated. The Consent Agreement also includes an Order to Hold Separate and Maintain Assets that requires GenCorp to preserve the ARC in-space liquid propulsion business as a viable, competitive, and ongoing operation until the divestiture is achieved.

The proposed Consent Agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and the comments received and will decide whether it should withdraw from the Consent Agreement or make final the Consent Agreement’s proposed Order.

On May 2, 2003, Aerojet-General Corporation (“Aerojet”), a subsidiary of GenCorp, entered into an asset purchase agreement with ARC (which was subsequently amended on August 29, 2003) to acquire substantially all of the assets of ARC, as well as the shares of ARC UK Limited, for \$133 million in cash. The Commission’s Complaint alleges that the Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade

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Commission Act, as amended, 15 U.S.C. § 45, by lessening competition in the U.S. markets for the research, development, manufacture and sale of monopropellant thrusters, bipropellant apogee thrusters, dual mode apogee thrusters, and bipropellant attitude control thrusters – four different types of in-space propulsion thrusters.

II. The Parties

GenCorp is a technology-based manufacturing company headquartered in Rancho Cordova, California. Its businesses are concentrated in three areas: aerospace and defense, fine chemicals and automotive. Through its Aerojet subsidiary, GenCorp researches, develops, manufactures and sells propulsion products and systems for space and defense applications, as well as armament systems for precision tactical weapon systems. Aerojet produces a full range of in-space propulsion thrusters at its facility located in Redmond, Washington.

Sequa Corporation (“Sequa”) is a diversified industrial company that produces a broad range of products through operating units in five business segments: aerospace, propulsion, metal coating, specialty chemicals and other products. The propulsion segment of Sequa’s business consists of the ARC business. ARC, headquartered in Gainesville, Virginia, is a leading supplier of liquid and solid fuel propulsion products and systems for military, commercial and civil applications. ARC produces a full range of in-space propulsion thrusters at its liquid propulsion facilities in Niagara, New York, and Westcott in the United Kingdom.

III. The In-Space Propulsion Markets

In-space propulsion thrusters (which are, essentially, engines) are used to maneuver spacecraft, such as satellites and interplanetary vehicles, through space after a launch vehicle delivers them to the upper atmosphere. In-space propulsion thrusters are essential components of in-space propulsion systems,

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which include valves, fuel tanks, fuel lines and other parts necessary to generate the thrust needed to move spacecraft in space.

In-space propulsion thrusters are used primarily to either place spacecraft into their intended orbits, or maintain their proper position while in orbit. The process of transferring a spacecraft to its intended orbit after it has been dropped off by a launch vehicle is referred to as “apogee insertion,” and the space propulsion thrusters that perform apogee insertion are known as “apogee thrusters.” Apogee thrusters typically generate between 90 pounds and 140 pounds of force.

Attitude control thrusters are used to provide gentle pushes that allow spacecraft to control their angular position while in orbit so that sensors, transponders or other hardware on the spacecraft are properly oriented with respect to the Earth (or other target) to perform their functions. Attitude control thrusters can also perform a function called “station-keeping,” which refers to a spacecraft’s ability to maintain its position in an assigned orbital slot, in its proper orientation. Because attitude control and station-keeping functions require only small, short bursts of thrust to perform, attitude control thrusters typically produce five pounds of thrust or less.

There are two primary types of in-space propulsion thrusters: monopropellant thrusters and bipropellant thrusters. The primary difference between these two types of thrusters is that monopropellant thrusters utilize a single liquid fuel source (typically hydrazine), whereas bipropellant thrusters operate using a combination of both a liquid fuel (typically monomethylhydrazine) and an oxidizer. Monopropellant thrusters are well-suited for pulsed operations of short duration, making them ideal for attitude control and station-keeping. As such, monopropellant thrusters typically produce less than a pound to about 5 pounds of thrust (although for particular applications, some monopropellant thrusters are designed to produce as much as 140 pounds of thrust).

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A bipropellant in-space propulsion system typically consists of separate attitude control and apogee thrusters. As with other apogee thrusters, bipropellant apogee thrusters generally produce thrust that ranges between 90 to 140 pounds of force. Bipropellant attitude control thrusters provide thrusts comparable to monopropellant thrusters, which are usually 5 pounds of force or less. Bipropellant in-space propulsion systems are more fuel efficient, as well as more expensive, than monopropellant propulsion systems.

Dual mode apogee thrusters are specialized bipropellant apogee thrusters that operate using hydrazine, the same fuel used by monopropellant thrusters, in combination with an oxidizer. A dual mode propulsion system affords spacecraft manufacturers the option of using monopropellant thrusters and a bipropellant apogee thruster on a single spacecraft without having to use two separate fuel systems. As a result, a spacecraft can attain the benefit of using highly reliable and accurate monopropellant thrusters for attitude control while at the same time utilizing bipropellant apogee thrusters. Dual mode apogee thrusters are more fuel efficient, as well as more expensive, than traditional bipropellant apogee thrusters.

The determination by customers of the appropriate type of propulsion thruster to put on a satellite or spacecraft is based on the satellite's or spacecraft's mission and encompasses a variety of factors. Those factors can include the nature of the mission, the length of the mission, the orbit(s) in which the spacecraft will operate, the mass and volume of the spacecraft itself, the launch vehicle it will be placed on, other equipment that will be on the spacecraft, and the price of the thrusters. An engineering decision is made, based on all of these factors, as to which type of propulsion thruster(s) is best suited for a particular satellite or spacecraft. Although the price of an in-space propulsion thruster is a factor that customers take into consideration when selecting an in-space propulsion thruster, it is rarely the most important factor. For these reasons, customers for one type of in-space propulsion thruster – monopropellant, bipropellant apogee, dual

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mode apogee, or bipropellant attitude control – would not be likely to switch to any of the other types of thrusters for use on a particular satellite or spacecraft, if the price of the first type of thruster were to increase by five to ten percent.

The relevant geographic market for each in-space propulsion market is the United States. Although there are a handful of foreign suppliers of in-space propulsion thrusters, they are not effective competitors in the U.S. in-space propulsion markets. The principal reason for this is that U.S. export regulations, in particular the International Traffic in Arms Regulations, make it very burdensome and time consuming for U.S. commercial, civil and defense customers to procure foreign thrusters, making foreign suppliers an unattractive option. In addition, on many U.S. Department of Defense as well as other U.S. governmental spacecraft programs, foreign-supplied thrusters are not an option at all due to national security issues. Accordingly, for the vast majority of in-space propulsion applications, only U.S. manufacturers are effective competitors.

The U.S. markets for the research, development, manufacture and sale of monopropellant, bipropellant apogee, and dual mode apogee thrusters are all highly concentrated. Aerojet and ARC are the only viable suppliers of these thrusters to commercial, civil and defense customers in the United States for most programs. Even for customers where other suppliers (such as foreign manufacturers) are potential options, Aerojet and ARC are each other's closest competitors and the other suppliers are substantially less attractive options. Prior to the acquisition, Aerojet and ARC frequently competed against each other for U.S. monopropellant, bipropellant apogee, and dual mode apogee thruster business, and this competition benefitted customers of these products. By eliminating competition between the only two viable competitors for most customers and by far the two best options for other customers in these highly concentrated markets, the proposed acquisition would create a virtual monopoly in each of these markets. As a result, the combined firm would be able to exercise market power unilaterally. It is thus likely that as a result

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of the acquisition purchasers of monopropellant, bipropellant apogee and dual mode apogee thrusters would be forced to pay higher prices and that innovation, service levels, and product quality in these markets would decrease.

The U.S. market for the research, development, manufacture and sale of bipropellant attitude control thrusters is also highly concentrated. In fact, ARC is the only firm with recent sales of bipropellant attitude control thrusters to U.S. customers. For many customers, including the vast majority of U.S. governmental customers, ARC essentially has a monopoly position in the bipropellant attitude control thruster market. Although Aerojet does not currently produce bipropellant attitude control thrusters, it has substantial existing expertise and technology in this area, has produced these thrusters in the recent past, and is a likely potential entrant into the market. Aerojet's acquisition of the ARC in-space liquid propulsion business eliminates the most likely potential competitor in this market and for many customers, including the vast majority of U.S. governmental customers, leaves the market with a single supplier for the foreseeable future.

There are significant impediments to new entry into each in-space propulsion market. A new entrant into any one of these markets would need to undertake the difficult, expensive and time-consuming process of researching and developing a viable in-space propulsion thruster, acquiring the necessary production and testing assets, obtaining the appropriate environmental permits, and developing the expertise needed to successfully design, manufacture, and market these products. Finally, a new entrant would need to establish what is commonly referred to as "heritage" for each new thruster, which is a successful track record of use in space. It would take a new entrant over two years to accomplish these steps and achieve a significant market impact. Additionally, new entry into the in-space propulsion market is unlikely to occur because the sunk costs and economies of scale necessary to enter the market and effectively produce in-space propulsion thrusters are extremely high relative to the limited sales opportunities available to new entrants.

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IV. The Consent Agreement

The Consent Agreement effectively remedies the acquisition's anticompetitive effects by requiring GenCorp to divest ARC's in-space liquid propulsion business. This business consists of, among other things, ARC's Niagara and Westcott production facilities, specialized manufacturing and testing equipment, technical drawings, advertising and training materials, customer lists, intellectual property and other assets at the Niagara and Westcott facilities used in the research, development, manufacturing, testing, marketing, customer support and sale of monopropellant, bipropellant apogee, dual mode apogee, and bipropellant attitude control thrusters (collectively "ARC In-Space Liquid Propulsion Assets"). Pursuant to the Consent Agreement, GenCorp is required to divest the ARC In-Space Liquid Propulsion Assets to a buyer, at no minimum price, within six (6) months from the date of the Acquisition. The acquirer of the ARC In-Space Liquid Propulsion Assets must receive the prior approval of the Commission.

If GenCorp has not divested the ARC In-Space Liquid Propulsion Assets within the time and in the manner required by the Consent Agreement, the Commission may appoint a trustee to divest these assets, subject to Commission approval. The trustee will have the exclusive power and authority to accomplish the divestiture within six (6) months, subject to any necessary extensions by the Commission. The Consent Agreement requires GenCorp to provide the trustee with access to information related to the ARC in-space liquid propulsion business as necessary to fulfill his or her obligations.

The proposed Order to Hold Separate and Maintain Assets that is also included in the Consent Agreement requires that GenCorp hold separate and maintain the viability of the ARC In-Space Liquid Propulsion Assets as a viable and competitive operation until the business is transferred to the Commission-approved acquirer. Furthermore, it contains measures designed to ensure that no material confidential information is exchanged between

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GenCorp and the ARC in-space liquid propulsion business (except as otherwise provided in the Order or in the Order to Hold Separate and Maintain Assets) and provisions designed to prevent interim harm to competition in each in-space propulsion market pending divestiture. The Order to Hold Separate and Maintain Assets provides for the Commission to appoint a Hold Separate Trustee who is charged with the duty of monitoring GenCorp's compliance with the Order to Hold Separate and Maintain Assets. Pursuant to that Order, the Commission has appointed Charles L. Wilkins of KPMG LLP as Hold Separate Trustee to oversee the In-Space Liquid Propulsion Assets prior to their divestiture and to ensure that GenCorp complies with its obligations under the Consent Agreement regarding the In-Space Liquid Propulsion Assets. Mr. Wilkins has more than 35 years of experience both inside the aerospace and defense industry and as a professional advisor. He has held several key management positions in the aerospace and defense industry, including senior corporate auditor, controller and chief financial officer, and during his professional consulting career has assisted most of the larger defense contractors in the United States in a wide array of services including litigation and dispute resolution, compliance matters and profit maximization.

The proposed Order requires GenCorp to provide the Commission, within thirty (30) days from the date the Order becomes final, a verified written report setting forth in detail the manner and form in which GenCorp intends to comply, is complying, and has complied with the provisions relating to the proposed Order and the Order to Hold Separate and Maintain Assets. The proposed Order further requires GenCorp to provide the Commission with a report of compliance with the Order every thirty (30) days after the date of that initial compliance report until the divestiture has been completed.

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The purpose of this analysis is to facilitate public comment on the Consent Agreement, and it is not intended to constitute an official interpretation of the Consent Agreement, the proposed Decision and Order, or the Order to Hold Separate and Maintain Assets, or to modify their terms in any way.