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**BY EMAIL to** Annette.lang@usdoj.gov **AND U.S. MAIL**

November 6, 2017

Annette M. Lang
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044

**Re: Response to DOJ's Letter Alleging Mueller CERCLA Liability at the East Chicago Superfund Site**

Dear Annette:

We write in response to your letter of October 4, 2017 on behalf of Mueller Industries, Inc. ("Mueller"[1]) and Arava Natural Resources Co., Inc. We appreciate you setting forth the basis for your contentions that Mueller "succeeded to the CERCLA liability of UV/USSRAM" even before the statute was enacted by purchasing certain assets in 1979.[2] **The central fallacy in the government's argument is that it ignores that the 1979 purchase agreement is governed by New York law,[3] and that the New York courts, including the highest court of the state, have ruled that the language used did NOT transfer any such future, after-arising obligations.** *Grant-Howard Assocs. v. Gen. Housewares Corp.*, 472 N.E.2d 1 (N.Y. 1984); *Georgia-Pacific Consumer Prods., LP v. Int'l Paper Co.*, 566 F. Supp. 2d 246 (S.D.N.Y. 2008).

For purposes of brevity, we focus on responding to your arguments relating to the interpretation of the 1979 asset purchase agreement, which conclusively demonstrate that Sharon Steel, Inc. ("Sharon") did *not* assume from UV Industries, Inc. ("UV") the risk that pre-acquisition operations of USS Lead would later result in a claim for response costs under an after-enacted

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[1] We use the term "Mueller" to refer to reorganized Sharon Steel as well as Arava as indicated by context.

[2] We regret, however, that you have refused to disclose to us your basis for claiming that Mueller is responsible for the smaller portion of clean-up costs attributable to USS Lead's period of operation from 1979-1985 as a lower tier subsidiary of Mueller. This impedes the settlement process, as we are unable to evaluate the strength or weakness of your arguments, and we hope you will reconsider.

[3] Agreement for Purchase of Assets ¶ 19 (Nov. 26, 1979), Ex. 1 at ¶ 19.

statute.[4] We fully agree with your position that "Mueller indisputably is not a 'mere continuation' of UV/USSRAM," Letter at 11, and the corresponding implication that the 1979 asset purchase agreement and related assumption of liabilities is your lone basis for attempting to hold Mueller responsible for the debts of UV/USSRAM. Moreover, as discussed below, the government offers no basis whatsoever for assuming that USS Lead's clean-up obligations, even if had they existed in 1979, had become the debts of its parent UV/USSRAM by 1979 and were assumed by contract by Sharon, as at that time USS Lead was a going concern and capable of answering for its own debts.

There are too many factual omissions, incorrect legal assertions, and half-truths in the Government's October 4, 2017 letter to respond to them all. However, the following key points demonstrate that the Government's position is flat-out wrong:

1. **New York Law Is Clear that Claims for Future Superfund Response Costs Were NOT a Liability "as of" a Pre-Enactment Closing Date.** The transactional documents provided that Sharon as asset purchaser was only assuming liabilities "as of the closing date." New York case law is directly on point that the assumption of existing liabilities as of the closing date does NOT include after-enacted statutory liability for response costs that had not yet been incurred. *Georgia-Pacific Consumer Prods., LP v. Int'l Paper Co.*, 566 F. Supp. 2d 246 (S.D.N.Y. 2008); *Grant-Howard Assocs. v. Gen. Housewares Corp.*, 472 N.E.2d 1 (N.Y. 1984). Other cases addressing CERCLA all reach the same conclusion, and the Government cites no contrary authority addressing agreements with similar language. *State ex rel. Bellaire Sanitation, Inc. v. Gopher Oil Co.*, No. C8-94-225, 1994 WL 328631 (Minn. Ct. App. Sept. 16, 1994); *Gopher Oil Co. v. Bunker*, 84 F.3d 1047 (8th Cir. 1996); *United States v. Vermont Am. Corp.*, 871 F. Supp. 318 (W.D. Mich. 1994).

2. **New York Law Clearly Holds that Claims for Future Superfund Response Costs Are NOT a Contingent Liability.** The "contingent" liability language simply cannot bear the weight the Lang letter places on it. Enactment of a new statute creates a new liability; it is not a contingent liability. *Grant-Howard*, 472 N.E.2d at 3-4 (New York law). Indeed, a court has reached precisely that conclusion in the context of CERCLA: "On its face, defendants' argument seems to stretch the meaning of the word contingent. A contingent liability is defined as, 'One which is not now fixed and absolute, but which will become so in the case of the occurrence of some future and uncertain event.' BLACK'S LAW DICTIONARY, 321 (6th Ed. 1990). To say that the 'future event' may include the passage of a law creating the liability is pointless and illogical. A liability is nonexistent until it is created by law." *Chrysler Corp. v. Ford Motor Co.*, 972 F. Supp. 1097, 1108-09 (E.D. Mich. 1997).

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[4] For the record, we are preserving all our defenses and reserve the right to respond in the future to the various other arguments you advance in your letter. We are not doing so at this time because the contractual argument is dispositive in Mueller's favor.

3. **Multiple Contemporaneous Documents Support Mueller's Position, and Any Ambiguity Weighs Against the Government.** As described below, there are multiple contemporaneous transaction documents that indicate the parties did not intend Sharon to assume new obligations arising under after-enacted statutes, but in fact intended them to remain with UV and then go to the UV Liquidating Trust. To the extent the contractual language is ambiguous, these contemporaneous indications of the parties' intent are conclusive in Mueller's favor. Moreover, any ambiguity cuts *against* the government's current argument and must be resolved in Mueller's favor: New York law requires an "unmistakable intent" to transfer liabilities before a court will enforce such an obligation. *Haynes v. Kleinewefers*, 921 F.2d 453, 456 (2d Cir. 1990) (applying New York law, citing *Heimbach v. Metro. Transp. Auth.*, 553 N.E.2d 242 (N.Y. 1990)). Indeed, an alleged indemnification provision "must be strictly construed to avoid reading into it a duty which the parties did not intend to be assumed." *Hooper Assocs., Ltd. v. AGS Computers, Inc.*, 548 N.E.2d 903, 905 (N.Y. 1989); *see also Olin Corp. v. Consol. Aluminum Corp.*, 5 F.3d 10, 15 (2d Cir. 1993) (applying same standard in the CERCLA context).

4. **Federal Precedent Directly on Point Demonstrates that Under These Specific Agreements the UV Trust, NOT Sharon Steel/Mueller, Was and Is the Successor to the Superfund Liabilities of UV Industries**. In 1989-1990, the government successfully litigated the point that the Superfund liabilities of UV Industries under the very same documents at issue here were "unascertained" liabilities that went to the UV Liquidating Trust. *See* Plaintiff United States of America's Memorandum in Response to the Motions for Reconsideration and Summary Judgment on Behalf of Defendants UV Industries, Inc. Liquidating Trust and UV Industries, Inc., and in Support of its Cross Motion for Summary Judgment at 22 n.18, *United States v. Sharon, UV Industries, and the UV Trust*, No. 86-C-924J (D. Utah July 6, 1989). It won summary judgment, recovered $9.8 million and consented to the liquidation of the UV Trust in exchange for an increase of the payment to $11 million. The government's position was based on its considered (and correct) reading of the contract language, as well as the equitable policy judgment that the UV stockholders, who were the beneficiaries of the UV Liquidating Trust, had benefitted financially from the historic disposal policies of UV and its subsidiaries rather than the innocent purchaser of assets that had had nothing to do with disposal practices prior to 1979. That precedent is controlling here. [5]

5. **The Corporate Veil Between USS Lead and UV Industries**. Even assuming *arguendo* that all of the government's contractual arguments about the 1979 asset

[5] As you were one of the attorneys who represented the UV Trust in the Midvale case, I am sure you are aware that the government is now making many of the same arguments that the UV Trust made in 1989, and which were rejected by the Court. We stand by the preclusion arguments in our December 29, 2016 letter that the government is bound by its positions in the Midvale case despite its change in attorneys.

purchase are correct, and are not precluded by its inconsistent positions in the 1989 litigation, Sharon/Mueller would have only assumed the liabilities of *UV Industries, Inc.*, NOT its subsidiary USS Lead. The government's theory that purchasers of assets automatically succeed to Superfund liabilities related to all the assets they purchase was specifically rejected by the Supreme Court in *United States v. Bestfoods*, 524 U.S. 51 (1998) in favor of traditional tests for piercing the corporate veil.

## I. The Plain Text of the Contract, the Governing Case Law, and Multiple Other Lines of Reasoning Compel the Conclusion That Sharon Did *Not* Assume UV's CERCLA Liabilities.

### A. The Plain Language of the Contract Is Limited to Liabilities "as of the Closing Date," and Courts Have Held That This Type of Language In Pre-CERCLA Agreements Precludes Assumption of a CERCLA Liability That Did Not Yet Exist.

The contractual language provides that the "assumed liabilities" of UV that were assumed by Sharon were in relevant part limited to those "as of the Closing Date" in 1979:

> all debts, obligations, contracts and liabilities of the Seller ***as of the Closing Date*** of any kind character or description, direct or indirect, whether accrued, absolute, contingent or otherwise, except the Non-Assumed Liabilities as hereinafter defined . . . .

Agreement for Purchase of Assets ¶ 1(d) (Nov. 26, 1979) (emphasis added) (Exhibit 1).

The Instrument of Assumption of Liabilities used similar language, providing that Sharon assumed liabilities "as of the date hereof":

> all the debts, obligations, contracts and liabilities of UV ***as of the date hereof***, of any kind, character or description, direct or indirect, whether accrued, absolute, contingent or otherwise, and whether asserted before or after such date . . . .

Instrument of Assumption of Liabilities at 2 (Nov. 26, 1979) (emphasis added) (Exhibit 2).

The case law is quite clear that the "as of the Closing Date" language means that Sharon did *not* assume any liabilities under a later-enacted statute, such as CERCLA.

In *Georgia-Pacific Consumer Products, LP v. International Paper Co.*, 566 F. Supp. 2d 246 (S.D.N.Y. 2008), the court interpreted very similar language under New York law and held that after-enacted CERCLA liabilities were not within the scope of the assumption. There, the purchaser assumed:

> all of Federal's debts and liabilities of every kind, character or description, whether known or unknown, whether disclosed or undisclosed, whether accrued,

> absolute, contingent or otherwise, and whether or not reflected or reserved against in Schedules A or B to the Agreement and which are directly attributable to the New Jersey Operations, as the same exist on the date hereof, and does hereby agree to pay, perform and discharge, when due, all of the said debts and liabilities.

*Id.* at 249.

This language is nearly identical to that of the 1979 APA: the purchaser assumed "all . . . liabilities," including those of "every kind, character or description," and "contingent" liabilities – the very same language you rely on in arguing that Mueller assumed after-arising CERCLA liabilities. Yet the court found it quite clear that the purchaser's "assumption of liabilities did not include those arising under CERCLA, a later-enacted . . . law." *Id.* at 250. While you briefly mention the case in a footnote, the only distinguishing language you point to is the phrase "directly attributable to the New Jersey Operations, as the same exist on the date hereof." But the language the court obviously relied on was the "on the date hereof" language, which is effectively identical to that in the 1979 APA.

Substantial additional authority confirms this result, with courts regularly reaching the same conclusion as *Georgia-Pacific*. In *State ex rel. Bellaire Sanitation, Inc. v. Gopher Oil Co.*, No. C8-94-225, 1994 WL 328631 (Minn. Ct. App. Sept. 16, 1994), the court interpreted the following language, which is again nearly identical to that of the 1979 APA:

> *All liabilities* of the Company of any nature, whether accrued, absolute, contingent, or otherwise, *existing at closing*, to the extent not reflected or reserved against in full in the Company's financial statements or otherwise mentioned or excepted herein, * * * *arising out of transactions entered into, or any state of facts existing, prior to such date.*

*Id.* at *1 (emphasis and omission in original).

Once again, the court had no difficulty in concluding that an after-enacted state statute analogous to CERCLA was not within the scope of the assumed liabilities, because "[t]he qualifying phrase 'existing at closing' clearly limits Gopher State's liability," notwithstanding the fact that "[a]ll liabilities" of "any nature" including "contingent" liabilities were assumed. *Id.* The Eighth Circuit followed this decision, holding that CERCLA liabilities did not arise until "after the agreement" was entered into. *Gopher Oil Co. v. Bunker*, 84 F.3d 1047, 1052 (8th Cir. 1996).

A similar agreement was addressed in *United States v. Vermont American Corp.*, 871 F. Supp. 318 (W.D. Mich. 1994). There, the agreement provided that the buyer assumed, among other obligations, "[a]ll additional debts, obligations, and liabilities of the seller, whether or not matured and whether or not contingent, existing on the Closing date." *Id.* at 321. The court

found that because CERCLA was enacted after the agreement "as a matter of law . . . there is no question that the CERCLA liability was not a liability that existed on the closing date." *Id.*[6]

### B. New York Case Law Further Supports the Conclusion that Future CERCLA Liabilities of USS Lead Were Not Assumed by Sharon Steel.

New York law, which governs interpretation of the 1979 APA agreement,[7] reinforces this CERCLA case law.

In *Grant-Howard Associates v. General Housewares Corp.*, 472 N.E.2D 1 (N.Y. 1984), the New York Court of Appeals considered a clause whereby the purchaser agreed to assume only those "obligations and liabilities" of the seller's business "which exist[ed] at the Closing Date," *id.* at 2. The seller brought suit, arguing that tort claims based on injuries which occurred after the sale were contingent liabilities which the buyer had assumed. The Court of Appeals rejected this argument because it concluded that the liabilities did not exist at the time of sale. The Court of Appeals recognized that "'contingency' invokes uncertain events," but held that "the uncertainty should be restricted to the success of asserting an existing claim, *rather than expanding it to include* [*an*] *altogether unpredictable event* . . . . Were plaintiffs' position to be adopted, a purchaser would be unable to meaningfully limit its liability . . . ." *Id.* at 3-4 (emphasis added). Precisely the same rationale applies to the 1979 APA, and requires concluding that the after-arising CERCLA obligations were not transferred to Sharon.

New York courts have also repeatedly held that "[a] court may not construe an agreement so that it is modified by a subsequent statutory enactment which changes the rights and obligations of the parties absent a clear expression in the contract that such is the parties' intention." *Huskission v. Sentry Ins.*, 123 A.D.2d 832, 833 (N.Y. App. Div. 2d Dep't 1986); *see also Travelers Indem. Co. v. Orange & Rockland Utilities, Inc.*, 73 A.D.3d 576, 577 (N.Y. App. Div. 1st Dep't 2010) ("[A] contract generally incorporates the state of the law in existence at the time of its formation . . . ."); *Pioneer Transp. Corp. v. Kaladjian*, 105 A.D.2d 698, 698 (N.Y App. Div. 2d Dep't 1984) ("In the absence of a clear expression in the contract that such is the parties' intention, a court may not construe an agreement so that it is modified by a subsequent statutory enactment which changes the rights and obligations of the parties.").

Moreover, to the extent there is ambiguity in the contract, that compels a conclusion that Sharon did *not* assume CERCLA liabilities. New York requires an "unmistakable intent" to

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[6] The one case reaching a contrary result is *A-C Reorganization Trust v. E.I. DuPont De Nemours & Co.*, No. 94-574, 1997 WL 381962 (E.D. Wis. Mar. 10, 1997). However, that court failed entirely to discuss the limiting language in the assumption agreement that limited the assumed liabilities to those that "exist at the closing date." *Id.* at *5. That unpublished decision has never been followed, and indeed the *Georgia-Pacific* court expressly declined to follow it, commenting on the decision's lack of "analysis." *Georgia-Pacific*, 566 F. Supp. 2d at 253.

[7] Ex. 1 at ¶ 19.

transfer liabilities before a court will enforce such an obligation. *Haynes v. Kleinewefers*, 921 F.2d 453, 456 (2d Cir. 1990) (applying New York law, citing *Heimbach v. Metro. Transp. Auth.*, 553 N.E.2d 242 (N.Y. 1990)). Indeed, an alleged indemnification provision "must be strictly construed to avoid reading into it a duty which the parties did not intend to be assumed." *Hooper Assocs., Ltd. v. AGS Computers, Inc.*, 548 N.E.2d 903, 905 (N.Y. 1989); *see also Olin Corp. v. Consol. Aluminum Corp.*, 5 F.3d 10, 15 (2d Cir. 1993) (applying same standard in the CERCLA context).

### C. The Government's Alternative Interpretation of the "as of the Closing Date" Language Is Unsupported by Precedent and Incorrect.

Your attempt to distinguish the favorable case law – which deals with nearly identical language – rests on two paragraphs arguing that there is an outcome-determinative difference between language referring to "liabilities . . . existing as of the closing date" and "liabilities . . . as of the closing date." Letter at 5-6. That is wrong, and you cite no case law finding that the former language is *required* to limit assumed liabilities to those existing at the time of sale, nor any finding that the latter language is *sufficient* to transfer after-enacted CERCLA liabilities.[8]

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[8] All of the cases you cite in support of your position that Sharon assumed the future-arising CERCLA liabilities do not contain limitations to liabilities as of the closing date in the relevant contractual language, and so are entirely inapposite. *Peoples Gas Light & Coke Co. v. Beazer East, Inc.*, 802 F.3d 876, 881-82 (7th Cir. 2015) (release of "liability of any character" includes release of CERCLA liabilities); *Kerr-McGee Chem. Corp. v. Lefton Iron & Metal Co.*, 14 F.3d 321, 326-27 (7th Cir. 1994) (assumption of "any and all" liabilities relating to "pollution"); *E.I. Du Pont de Nemours & Co. v. United States*, 365 F.3d 1367, 1372 (Fed. Cir. 2004) (assumption of "any" losses arising out of certain conduct); *White Consol. Indus., Inc. v. Westinghouse Elec. Corp.*, 179 F.3d 403, 410 (6th Cir. 1999) (assumption of "[a]ll"' *unknown* liabilities); *Dent v. Beazer Materials & Servs.*, 156 F.3d 523, 534 (4th Cir. 1998) (assumption of "any and every claim"); *ALCOA v. Beazer E., Inc.*, 124 F.3d 551, 566 (3d Cir. 1997) (assumption of "all of the liabilities and obligations"); *Smithkline Beecham Corp. v. Rohm & Hass Co.*, 89 F.3d 154, 159 (3d Cir. 1996) (assumption of "[a]ll" liabilities arising out of pre-closing conduct); *Joslyn Mfg. Co. v. Koppers Co.*, 40 F.3d 750, 754 (5th Cir. 1994) (assumption of "all" liability relating to certain conduct); *United States v. Iron Mountain Mines, Inc.*, 987 F. Supp. 1233, 1241 (E.D. Cal. 1997) (assumption of "all of the liabilities"); *see also Marmon Grp., Inc. v. Rexnord, Inc.*, 822 F.2d 31, 33 (7th Cir. 1987) (reversing on procedural grounds, holding that the scope of the indemnity clause could not be determined at the motion to dismiss stage, but declining to opine about the clause's scope).

Indeed, two of the cases you cite (in addition to *Vermont American and Georgia-Pacific*) *support* the position that the assumption of liabilities as of the closing date does not include future-arising liabilities. In *Olin Corp. v. Consolidated Aluminum Corp.*, 5 F.3d 10 (2d Cir. 1993), the purchaser assumed "all liabilities" "as they exist on the Effective Time *or arise thereafter*," which the court held was language sufficient to encompass "future unknown" CERCLA liabilities, *id.* at 15-16 (emphasis added). The court relied on the "arise thereafter"

(continued...)

As a textual matter, an agreement to assume "liabilities of the Seller as of the closing date" would, in common usage, be understood to encompass those liabilities that existed (including in contingent or other form) as of the closing date. Your alternative reading, that the language "simply provides a cut-off date for the acts or omissions of UV/USSRAM that Mueller assumes liability for," Letter at 5, does not square with the text – had that been the intended position, then the agreement would have assumed all liabilities arising out of actions that took place *before* the closing date, not liabilities "as of" the closing date.

Indeed, the case law confirms that assumption of liabilities "as of" a date limits the assumption to liabilities that exist as of that date. For example, one court has held that the plain language of an assumption of liability "as of" a closing date means that "the agreement says that the [purchaser] agrees to assume only those liabilities in existence 'as of [the closing].'" *Alabama v. FDIC*, 840 F. Supp. 2d 1305, 1311 (M.D. Ala. 2012); *see also Fisher v. A.O. Smith Harvestore Prods., Inc.*, 145 A.3d 738, 751 (Pa. Super. 2016) (Dubow, J., concurring) (agreement to pay for "liabilities . . . as of the Closing Date" means that in order for the buyer "to assume a liability, the liability must exist as of the closing date"). You cite no authority in support of an opposite interpretation of the language "as of the closing date."

Finally, you argue that Mueller's interpretation would render the phrases "all," "any kind, character, or description," and "contingent" superfluous. That is not so: there can be contingent liabilities, and other forms of liabilities, "as of the closing date." Mueller's position is it did indeed assume "all" liabilities of "any kind," but *only* those existing "as of" the date of the asset sale. And, as discussed in the following section, liabilities created by an after-arising statute are not contingent. No word is being read out of the contract, nor is any word being rendered superfluous. Rather, the contract is simply being afforded its plain textual meaning.

### D. Future CERCLA Liabilities Were Not Contingent Liabilities in 1979.

Your argument that Sharon Steel must have assumed the after-arising CERCLA liabilities because they were "contingent" liabilities at the time of sale is incorrect. Construing a "contingent" liability to encompass the enactment of a new law would inappropriately expand the meaning of the term. Indeed, the one case to squarely address this issue in the CERCLA context has rejected your interpretation. *Chrysler Corp. v. Ford Motor Co.*, 972 F. Supp. 1097 (E.D. Mich. 1997). There, the purchaser assumed "all liabilities . . . existing on the closing date of every nature whatsoever, whether absolute [or] contingent." *Id.* at 1108. The court found that CERCLA liabilities were not encompassed because the statute had not yet been enacted, and explained that the future enactment of a statute was not a "contingent" liability:

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language, and acknowledged that under New York law such a "clear and unmistakable intent" to indemnify or assume liabilities must exist. *Id*; *see also John S. Boyd Co. v. Boston Gas Co.*, 992 F.2d 401, 406-07 (1st Cir. 1993) (assumption of obligations "pertaining only to the existing business" and not "future" liabilities does not include CERCLA assumption of liabilities, even where the language indicates that "all the duties and liabilities" were assumed).

> On its face, defendants' argument seems to stretch the meaning of the word contingent. A contingent liability is defined as, 'One which is not now fixed and absolute, but which will become so in the case of the occurrence of some future and uncertain event.' BLACK'S LAW DICTIONARY, 321 (6th Ed. 1990). To say that the 'future event' may include the passage of a law creating the liability is pointless and illogical. A liability is nonexistent until it is created by law.

*Id.* at 1108-09. Precisely the same analysis applies to your attempt to broadly construe the term "contingent" in the 1979 APA to encompass liability stemming from after-enacted statutes.[9]

Other courts, including those of New York law, are in accord with this conclusion. As the Second Circuit has explained:

> There is a difference between a contingent liability and a plain 'contingency.' A contingent liability is one thing, a contingency, the happening of which may bring into existence a liability, is another, and a very different thing. In the former case there is a liability which will become absolute upon the happening of a certain event; in the latter there is none until the event happens. The difference is simply that which exists between a conditional debt or liability and none at all.

*Bush v. Remington Rand*, 213 F.2d 456, 462 (2d Cir. 1954) (internal quotation marks omitted). CERCLA's passage created new liability; it makes no sense to see it as an extant liability at the time of the 1979 Purchase Agreement that was triggered by the occurrence of a subsequent event.

*Grant-Howard Associates v. General Housewares Corp.*, 472 N.E.2d 1 (N.Y. 1984), discussed above, also plainly held under New York law that "contingent" liabilities do not include liabilities based on events that occur after the transaction date, because "the uncertainty should be restricted to the success of asserting an existing claim, *rather than expanding it to include the altogether unpredictable event* . . . . Were plaintiffs' position to be adopted, a purchaser would be unable to meaningfully limit its liability . . . ." *Id.* at 3-4 (emphasis added).

Similarly, in *Climatrol Industries, Inc. v. Fedders Corp.*, 501 N.E.2d 292 (Ill. App. Ct. 1986), the court construed an agreement by which the buyer assumed "liabilities or obligations . . . of any nature, whether accrued, absolute, contingent or otherwise which exist on the Closing Date" – language effectively identical to that contained in the 1979 agreement, *id.* at 293. The court concluded that the agreement "unambiguously" covered "only those liabilities which existed on the closing date" and rejected an argument that tort claims accruing after the date of sale constituted contingent liabilities, *id.* at 294. To hold otherwise, the court concluded, would

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[9] Even if it were true that Sharon Steel assumed UV Industries' CERCLA liabilities, it would only have assumed the CERCLA liabilities of UV Industries itself, not UV's subsidiary, USS Lead. *See generally United States v. Bestfoods*, 524 U.S. 51 (1998).

mean the purchaser "assumed unlimited liabilities, despite its clear intention to assume only specifically disclosed liabilities." *Id.*; *see also Chigos v. Werner Co.*, No. 12-1350, 2014 WL 12596525, at *5 (M.D. Fla. Feb. 26, 2014) (rejecting expansive interpretation of contingent liability language in assumption of liability agreement because it would make it "difficult, if not impossible, for [the buyer] to have meaningfully limited the liability it was willing to assume, as it would have been practically impossible to forecast the scope of potential future claims").

Precisely the same reasoning applies to the 1979 APA. Sharon agreed to assume "contingent liabilities," but only those existing "as of" the closing date. Case law makes clear that contingent liability does not mean any subsequent imaginable liability, nor does it encompass after-enacted statutes.

### E. Other Contemporary Agreements and Documents Demonstrate the Intent of the Parties to Transfer Only Liabilities Existing as of the Closing Date to Sharon.

Mueller submits that the ordinary, plain-language reading of the contractual language is that the liabilities assumed are only those as of the closing date, and the CERCLA liabilities plainly were not liabilities "as of the closing date," because the statute had not even been enacted. However, even if the 1979 agreement was viewed as ambiguous on this point, other contemporaneous agreements between the parties conclusively show that the parties did *not* contract for Sharon to assume UV Industries' future liabilities.[10]

*First*, a November 26, 1979 letter agreement between Sharon Steel and UV Industries – executed the same day as the asset purchase agreement – recites that under the asset purchase agreement "Sharon will purchase all of the assets and assume all of the liabilities of UV *existing on November 26, 1979*." Sharon Steel - UV Industries, Inc. Agreement (Nov. 26, 1979) (Exhibit 3).

*Second*, the contemporaneous 10-K filings of both UV Industries and Sharon Steel confirm that only liabilities existing as of the closing date were transferred. In the 10-K filing attaching the liquidating trust agreement, UV Industries, Inc. explained that the UV-Sharon agreement involved Sharon assuming "all of UV's debts, obligations, contracts and liabilities *existing on such date*." UV Industries FY 1979 10-K at 2 (emphasis added) (Exhibit 4). Sharon Steel articulated precisely the same understanding in its 10-K filing, noting that Sharon assumed "all of UV's liabilities (except for certain tax liabilities) *existing on such date*." Sharon Steel FY 1979 10-K Item 1 (emphasis added) (Exhibit 5).

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[10] While Mueller believes the contractual assumption of liabilities unambiguously excludes any assumption of CERCLA liabilities, this extrinsic evidence provides further support for that position and may be considered to the extent the "contract is ambiguous." *U.S. Fire Ins. Co. v. Gen. Reinsurance Corp.*, 949 F.2d 569, 574 (2d Cir. 1991).

*Third*, a March 24, 1980 contract between UV Industries, Inc. and the UV Liquidating Trust's trustees recites that the 1979 asset purchase agreement involved Sharon Steel's "assumption of substantially all of UV's debts, obligations, contracts and liabilities *existing on such date . . . .*" UV Industries – UV Liquidating Trust Agreement at 1 (Mar. 24, 1980) (emphasis added) (Exhibit 6). Thus, UV's own internal contractual documents demonstrate that only existing liabilities were transferred to Sharon.

*Fourth*, in the APA, UV represented and warranted as follows regarding its liabilities:

> The financial statements contained (i) in Seller's annual report on Form 10-K for the year ended December 31, 1978 and (ii) in Seller's Quarterly Report on Form 10-Q for the quarter ended September 30, 1979 ("Seller's Interim Statements") are true and complete in all material respects . . . and *fairly reflect the financial condition, assets and liabilities (whether accrued, absolute, contingent or otherwise) of the Seller and its Subsidiaries (as defined below) as of the dates thereof . . . .*

Ex. 1 ¶ 5.c. (emphasis added).

Accordingly, UV represented that its financial statements in its 10-K and 10-Q filings "fairly reflect" the "liabilities" of UV and its subsidiaries, "whether accrued, absolute, contingent or otherwise." But those filings do not contain <u>any</u> indication of environmental liabilities. Accordingly, because parallel language was used in this provision describing the liabilities of UV, and those liabilities did not include any CERCLA liabilities, that provides further evidence that the parties did not intend in the APA to transfer any post-enactment environmental liabilities to Sharon. *See* UV Industries, Inc., FY 1978 10-K at F-5 (April 05 1979) (listing only $6 million in long-term liabilities, and not discussing potential CERCLA liabilities) (Exhibit 7); *id.* at 13 ("The Company believes it is in material compliance with applicable environmental laws and regulations and is not aware of any ecological problems at any of its operations which are material to its business."); UV Industries, Inc., 10-Q at 7 (Nov. 14, 1979) ("Management does not know of any material contingent liability.") (Exhibit 8); *id.* at 2 (listing $33 million in "[d]eferred income taxes and other long-term liabilities," most of which are deferred income taxes, given that the 1978 10-K listed nearly $29 million in deferred incomes taxes, *see* Ex. 7 at F-5).

Indeed, the *Chrysler* court reached precisely that conclusion with respect to a similar agreement, explaining in support of its conclusion that a pre-CERCLA agreement did not transfer CERCLA liabilities that when the buyer "accepted responsibility for contingent liabilities existing on the date of closing, neither party understood those contingent liabilities to include environmental liabilities. No such liability was disclosed in [seller's] Annual Reports for the period." 972 F. Supp. at 1110.

### F. The UV Liquidating Trust *Did* Assume UV Industries' After-Arising CERCLA Liabilities, as the Government Previously Argued.

In the *Midvale* litigation, the Government argued that the UV Liquidating Trust—and only the Trust—assumed UV's CERCLA liabilities.[11] In support, it relied on the assumption of liabilities agreement executed by the UV Liquidating Trust, which provided that the UV Liquidating Trust assumed:

> all debts, obligations, contract and liabilities and expenses of UV as of the date [of the assumption], of any kind, character or description, direct or indirect, whether accrued, absolute, contingent, ascertained or otherwise, and whether asserted before or after such date to the extent not assumed and paid for by Sharon Steel Corporation . . . .

Plaintiff United States of America's Memorandum in Response to the Motions for Reconsideration and Summary Judgment on Behalf of Defendants UV Industries, Inc. Liquidating Trust and UV Industries, Inc., and in Support of its Cross Motion for Summary Judgment at 21, *U.S. v. Sharon et al.*, No. 86-C-924J (D. Utah July 6, 1989) (alterations in original) (quoting UV Liquidating Trust assumption agreement) (Exhibit 9).[12]

Because the Trust assumed liabilities only "to the extent not assumed and paid for by Sharon Steel Corporation," the necessary implication of the Government's argument in the *Midvale* case that the UV Liquidating Trust was the successor to UV Industries is that Sharon Steel did *not* assume UV's CERCLA liabilities. That is because under the UV Liquidating Trust assumption agreement, the Liquidating Trust assumed only liabilities *not* assumed by Sharon Steel, and the Government successorship argument as to the UV Liquidating Trust was founded on the assumption of liabilities agreement.

Thus, while as a hypothetical matter it may be possible, as you suggest in your letter, for multiple entities to assume the same liability, the plain language of these agreements makes clear that the CERCLA liabilities could have gone *only* to one party, and the Government has already taken the (correct) position that those liabilities went to the Trust. *See* Reply of the United States to Defendants' Oppositions to the United States' Motion for Partial Summary Judgment and Answer in Opposition to Defendants' Cross-Motions for Summary Judgment at

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[11] *See, e.g.*, Transcript of Summary Judgment Hearing at 37:24-38:1, *U.S. v. Sharon et al.*, No. 86-C-924J (D. Utah Aug. 14, 1990) (Ben Fisherow representing to the court that "[t]he [UV] Trust is *the* successor to the United States Smelting, Mining & Refining Company which owned [and] operated this site for decades" (emphasis added)) (Exhibit 11).

[12] *See also* UV Industries, Inc. Liquidating Trust Agreement ¶ 2.4 (Exhibit 4) ("The Trustees hereby assume all of the liabilities and claims (including unascertained or contingent liabilities and expenses) of UV."

17, *U.S. v. Sharon et al.*, No. 86-C-924J (D. Utah June 21, 1990) ("The Trust is the successor to UV. The instrument of Assumption of Liabilities executed by the Trust . . . provides that the Trust assumed UV's liabilities.") (Exhibit 10).

### G. It Would Be Inequitable to Try to Force Mueller, a Successor to an Innocent Purchaser of Assets (Sharon), to Pay for UV's CERCLA Liabilities.

Moreover, it would be fundamentally unfair to impose liability on Mueller for UV Industries' CERCLA liabilities: it was the UV Liquidating Trust and its stockholders, *not* Sharon Steel, that benefitted from any release of hazardous substances from the USS Lead facility before Sharon's purchase in 1979. *See Olin Corp. v. Consolidated Aluminum Corp.*, 5 F.3d 10, 16 (2d Cir. 1993) (noting the "very strong equitable argument" that it would be unfair to force an asset purchaser "to assume a liability that did not exist at the time of contract for conditions that it did not create").

Indeed, in the *Midvale* case one of the Government's arguments for holding the UV Liquidating Trust liable – characterized by the Government as an "important equitable consideration[]," – was that the Trust beneficiaries "are all people who have profited, or seek to profit, from UV's former business activities," and "have gained significantly, and stand to gain further, from the distribution of the UV sale proceeds." Ex. 9 at 23-24.

This argument was adopted by the *Midvale* court in ruling the on the Government's motion for summary judgment seeking to the hold UV Liquidating Trust liable. The Court explained that it had previously held the Trust was liable as a successor, and indicated that "if we have assets that are transmuted into money, the money rides with the burden" – meaning that the burden of UV's liabilities flowed with the money UV received from the sale of assets to Sharon, and thus flowed to the UV Liquidating Trust. *See* Tr. of Summary Judgment Hearing at 170:22-171:6 (Exhibit 11). The Government then settled with the UV Liquidating Trust and consented to its dissolution, in exchange for a payment of $11 million. *See* Partial Consent Decree at 22-23, *U.S. v. Sharon et al.*, No. 86-C-924J (D. Utah Nov. 15, 1990) (Exhibit 12); Tr. of Hearing on Presentation of Settlement Decrees at 8:15-18, *U.S. v. Sharon et al.*, No. 86-C-924J (D. Utah Nov. 13 1990) (government statement that "UV's settlement will bring 60 percent of the UV Trust's current assets, which are currently approximately $18 million, which nets us about 11 million") (Exhibit 13).

* * *

We note that you decline to discuss "UV/USSRAM's liability for USS Lead," Letter at 2 n.2, which appears to refer to your argument that the corporate veil between USS Lead and its parent entity may be pierced. You also declined to discuss any of your evidentiary basis for that contention in a subsequent phone call. We are surprised at your unwillingness to provide any information about this, particularly given that you apparently intend to seek to recover response costs from Mueller for conducting the review of USS Lead documents. In any event, we do not see how it is in anyone's interest to keep secret the government's basis for believing the

corporate veil can be pierced: that fosters neither goodwill nor settlement negotiations between Mueller, the Government, and the PRP group.

While we appreciate your making available for discussion portions of your legal position, we respectfully and strenuously disagree.

Very truly yours,

E. Donald Elliott
Thomas R. Brugato

cc: Steven Kaiser Office of Regional Counsel, Environmental Protection Agency-Region 5
Chris Miritello, Vice President, General Counsel and Secretary, Mueller Industries, Inc.

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# Mueller Industries • USS Lead Site • No Liability for Pre-1979 Operations

Operative language of 1979 purchase agreement limits the liabilities Mueller assumed **only** to those existing "as of the closing date":

> all debts, obligations, contracts and liabilities of the Seller as of the Closing Date of any kind character or description, direct or indirect, whether accrued, absolute, contingent or otherwise, except the Non-Assumed Liabilities as hereinafter defined . . .

New York law governs the agreement, and New York courts, including **the highest court of the state**, have ruled that this language **does not transfer after-arising obligations**:

I. *Grant-Howard Associates v. General Housewares Corp.*, 472 N.E.2d 1 (N.Y. 1984)

- Purchaser assumed "all of the obligations and liabilities of [seller] which exist at the Closing Date."
- **Held**: After-accrued tort liabilities were not "contingent liability at the closing date." 63 N.E.2d at 3.
- "Granted that 'contingency' invokes uncertain events, the uncertainty should be restricted to the success of asserting an existing claim, rather than expanding it to include [an] altogether unpredictable event . . . . Were plaintiffs' position to be adopted, a purchaser would be unable to meaningfully limit its liability . . . ." 472 N.E.2d at 3–4 (emphasis added).

II. *Georgia-Pacific Consumer Products, LP v. International Paper Co.*, 566 F. Supp. 2d 246, 251 (S.D.N.Y. 2008)

- Purchaser assumed:

  > all of [Seller's] debts and liabilities of every kind, character or description, whether known or unknown, whether disclosed or undisclosed, whether accrued, absolute, contingent or otherwise, . . . as the same exist on the date hereof . . . .

- **Held:** Purchaser's "assumption of liabilities did not include those arising under CERCLA, a later-enacted . . . law." 566 F. Supp. at 250.
- "Courts . . . have regularly held that where a pre-CERCLA contract for the sale of assets required a buyer to assume only those liabilities in existence on the date of the sale, the buyer did not assume later-arising CERCLA liabilities." 566 F. Supp. at 251 (emphasis added) (collecting cases).

Courts **regularly reach the same result outside of New York**:

I. *United States v. Vermont American Corp.*, 871 F. Supp. 318 (W.D. Mich. 1994).

- Purchaser assumed, *inter alia*:

  > All additional debts, obligations, and liabilities of the Seller, whether or not matured and whether or not contingent, existing on the Closing Date . . . and incurred by Seller in the ordinary course of business or as otherwise incurred by the Seller in consonance with the provisions of Section 3 of the Agreement since December 31, 1979.

- **Held:** "[A]s a matter of law . . . there is no question that the CERCLA liability was not a liability that existed on the closing date." 871 F. Supp. at 321 (emphasis added).
- Rejected government's argument that "CERCLA liability was a contingent or not yet matured liability which existed on the closing date." 871 F. Supp. at 321.

II. *Chrysler Corp. v. Ford Motor Co.*, 972 F. Supp. 1097 (E.D. Mich. 1997)

- Purchaser assumed "all liabilities . . . existing on the closing date of every nature whatsoever, whether absolute [or] contingent."
- **Held:** CERCLA was not "'existing' contingent liability at the time of the sale," even though "the waste which in the future would give rise to liability" had already been released. 972 F. Supp. at 1108.
- "On its face, defendants' argument seems to stretch the meaning of the word contingent. A contingent liability is defined as, 'One which is not now fixed and absolute, but which will become so in the case of the occurrence of some future and uncertain event.' BLACK'S LAW DICTIONARY, 321 (6th Ed. 1990). To say that the 'future event' may include the passage of a law creating the liability is pointless and illogical. A liability is nonexistent until it is created by law." 972 F. Supp. at 1108-09 (emphasis added).

63 N.Y.2d 291

**GRANT-HOWARD ASSOCIATES et al., Respondents,**

**v.**

**GENERAL HOUSEWARES CORP., Appellant.**

Court of Appeals of New York.

Oct. 16, 1984.

Corporate plaintiff, shareholder employees of corporate plaintiff, and partnership composed of two individual plaintiffs, moved for summary judgment and ancillary relief in action seeking declaration that successor corporation was successor in interest of corporate plaintiff and was responsible to defend and indemnify for alleged tortious act of corporate plaintiff committed prior to reorganization. The Supreme Court at Special Term, New York County, William P. McCooe, J., 115 Misc. 2d 704, 454 N.Y.S. 2d 521, granted motion, and appeal was taken. The Supreme Court, Appellate Division, 97 A.D.2d 390, 467 N.Y. S.2d 1018, affirmed, and successor corporation appealed. The Court of Appeals, Cooke, C.J., held that successor corporation's liability to purchased corporation for indemnification was not determined by right of election of injured party to proceed against purchased corporation, successor corporation, or both, and pursuant to reorganization agreement, by which successor corporation assumed all purchased corporation's liabilities "which exist at the Closing Date," successor corporation did not assume liability for customer's injuries occurring some five years after closing date.

Order reversed and case remanded for further proceedings on successor corporation's counterclaims for indemnity.

**1. Corporations ⇐445.1**

Doctrine that successor corporation may be held liable for torts of its predecessor does not prevent two companies from allocating risk for such injuries between themselves.

**2. Corporations ⇐445.1**
**Indemnity ⇐13.1(2)**

Successor corporation's liability to purchased corporation for indemnification was not determined by right of election of injured party to proceed against purchased corporation, successor corporation, or both, and pursuant to reorganization agreement, by which successor corporation assumed all purchased corporation's liabilities "which exist at the Closing Date," successor corporation did not assume liability for customer's injuries from allegedly faulty ceramic pitcher occurring some five years after closing date, although pitcher was purchased from defunct corporation before closing date.

**3. Corporations ⇐445.1**

Allowing recovery in tort against successor corporation for purpose of insuring that source remains to pay for victim's injuries is irrelevant to question of indemnification or liability as between selling and purchasing corporations; sale of assets does not vitiate original company's liability, though it may allow injured plaintiff to proceed against successor corporation. McKinney's Business Corporation Law § 1006.

**4. Corporations ⇐445.1**

Right of election of injured party to proceed against purchased corporation, successor corporation, or both, cannot be altered per se by corporations; corporations can regulate how such liability will be allocated between themselves, but they cannot affect rights of strangers to their contract.

**5. Torts ⇐24**

Tort action does not accrue until injury occurs.

**6. Corporations ⇐445.1**

Uninjured party is not "contingent liability" in usual sense of that term, i.e., potential liability, such as pending lawsuit; no liability or claim exists before injury occurs which successor corporation can assume in agreeing to assume purchased cor-

poration's liabilities which exist at closing date.

See publication Words and Phrases for other judicial constructions and definitions.

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James M. O'Brien, Rockville Centre, for appellant.

Mark Jon Sugarman and George B. Yankwitt, New York City, for respondents.

## OPINION OF THE COURT

COOKE, Chief Judge.

[1, 2] The legal doctrine that a successor corporation may be held liable for the torts of its predecessor does not prevent two companies from allocating risk for such injuries among themselves. Thus, the purchasing company here is not required to indemnify plaintiffs in the circumstances of this case.

Plaintiffs are a defunct corporation, Holt Howard Associates, Inc., its major shareholders, and a partnership, Grant-Howard Associates, formed by two of the individual shareholders. The corporate business involved the importing and sale of housewares.

On July 15, 1969, defendant General Housewares Corporation entered a "Reorganization Agreement" to purchase substantially all of Holt Howard's corporate assets by transferring its own stock and assuming certain specified liabilities of Holt Howard. Specifically, in section 6(b), defendant "agree[d] to assume, perform and discharge (i) all of the obligations and liabilities of [Holt Howard] which exist at the Closing Date, except for such of those liabilities as are excluded from this assumption by the following Section 6(c)," which contained a general and specific enumeration of matters. No express reference was made to contingent tort liability. Section 13 of the Reorganization Agreement was a lengthy indemnification clause providing that: "in no event shall [defendant] be liable for any damages, claims, losses, liabilities or expenses (including legal and other expenses) with respect to any liabilities, obligations or other commitments not assumed by [defendant]"; and the plaintiff shareholders would hold defendant harmless for such liabilities and expenses. The closing was held on August 18, 1969, and Holt Howard was dissolved nine days later.

In 1974, Stephanie Pohl allegedly was injured after she drank juice from a ceramic pitcher that had been imported and sold by Holt Howard in 1967. She commenced two actions. One named Holt Howard, its shareholders, and Grant-Howard as defendants; the other moved against General Housewares as successor in interest to Holt Howard.

Plaintiffs commenced the present action seeking a declaration that, pursuant to the Reorganization Agreement, defendant had assumed liability for the Pohl injuries and that plaintiffs were entitled to indemnity for any and all funds expended for defending the Pohl suit and paying any judgment. Defendant answered and asserted counterclaims for common-law indemnity. On cross motions for summary judgment, Special Term granted plaintiffs' motion. That court discounted the import of the Reorganization Agreement by assessing the controversy as follows: "This issue transcends the intent of the parties to the business arrangement since the rights of an injured third party are involved and poses the question of whether as a matter of law the legal effect of the acquisition subjects the defendant General to liability to the third party in a product liability case" (*Grant-Howard Assoc. v. General Housewares Corp.*, 115 Misc.2d 704, 705, 454 N.Y.S.2d 521). The court then concluded that defendant was a successor corporation to Holt Howard and, as such, had assumed Holt Howard's liabilities as a matter of law. On that basis, the court ruled that plaintiffs were entitled to common-law indemnification. The Appellate Division, 97 A.D.2d 390, 467 N.Y.S.2d 1018, affirmed, and this court granted defendant's motion for leave to appeal.

Plaintiffs continue to argue that they must be indemnified in the Pohl lawsuit because defendant is liable to Pohl as a successor corporation. Although perhaps

logically sound, plaintiffs' argument fails as it commences with a faulty premise: that the doctrine of successor corporations is related to theories of indemnification.

Allowing recovery in tort against a successor corporation is merely an extension of the concept of products liability, which calls for the burden of consumer injuries to be borne by the manufacturer, who can transfer the costs to the general public as a component of the selling price. Strict liability assures that a responsible source is available to compensate the injured party. "A corporation may be held liable for the torts of its predecessor if (1) it expressly or impliedly assumed the predecessor's tort liability, (2) there was a consolidation or merger of seller and purchaser, (3) the purchasing corporation was a mere continuation of the selling corporation, or (4) the transaction is entered into fraudulently to escape such obligations" (*Schumacher v. Richards Shear Co.*, 59 N.Y.2d 239, 245, 464 N.Y.S.2d 437, 451 N.E.2d 195). The second and third items are based on the concept that a successor that effectively takes over a company in its entirety should carry the predecessor's liabilities as a concomitant to the benefits it derives from the good will purchased. This is consistent with the desire to ensure that a source remains to pay for the victim's injuries.

[3, 4] All of this, however, is irrelevant to the question of indemnification or liability as between the seller and purchaser. The precise issue here is the ordering of relations between the two contracting parties, not guaranteeing that some third party has recovery against a tort-feasor. A sale of assets does not vitiate the original company's liability (see Business Corporation Law, § 1006); it may allow an injured plaintiff to proceed against a successor corporation (see *Schumacher v. Richards Shear Co., supra*). In short, the injured party can elect to proceed against the defunct corporation, the successor corporation, or both. This right of election cannot be altered per se by the corporations. The companies can regulate how such liability will be allocated among themselves, but they cannot affect the rights of a stranger to their contract (see *Texas & Pacific Ry. v. Watson*, 190 U.S. 287, 293, 23 S.Ct. 681, 684, 47 L.Ed. 1057; *Robins Dry Dock & Repair Co. v. Navigazione Libera Triestina, S.A.*, 261 N.Y. 455, 463, 185 N.E. 698, cert. den. *sub. nom. Moran Towing & Transp. Co. v. Robins Dry Dock & Repair Co.*, 290 U.S. 656, 54 S.Ct. 72, 78 L.Ed. 568; *Brewer v. New York, Lake Erie & Western R.R. Co.*, 124 N.Y. 59, 26 N.E. 324; *Buck v. Standard Oil Co.*, 224 App.Div. 299, 230 N.Y.S. 192, affd. no opn. 249 N.Y. 595, 164 N.E. 597; *Finegan v. Piercy Contr. Co.*, 189 App.Div. 699, 178 N.Y.S. 785).

By this analysis, it is unnecessary to decide defendant's status as a successor corporation. Who must bear the ultimate burden of defending the Pohl suit and, if unsuccessful, paying the damages, is wholly dependent on the terms of the Reorganization Agreement. That contract included defendant's assumption of *existing* liabilities. As Pohl was not injured until some five years later, this potential liability was excluded and so was not assumed by defendant.

[5, 6] Plaintiffs argue that defendant must bear the burden of the Pohl claim because it was a contingent liability at the closing date. They reason that the allegedly faulty ceramic pitcher was purchased before defendant acquired Holt Howard so that there was already the potential for a lawsuit. This is not persuasive. A tort action does not accrue until injury occurs (see *Martin v. Dierck Equip. Co.*, 43 N.Y.2d 583, 591, 403 N.Y.S.2d 185, 374 N.E.2d 97; *Victorson v. Bock Laundry Mach. Co.*, 37 N.Y.2d 395, 403, 373 N.Y.S.2d 39, 335 N.E.2d 275). An uninjured party simply is not a "contingent liability" in the usual sense of that term (see, e.g., Black's Law Dictionary [5th ed.], p. 291 ["A potential liability; *e.g.* pending lawsuit"]). There is no liability or claim before injury occurs. Granted that "contingency" invokes uncertain events, the uncertainty should be restricted to the success of asserting an existing claim, rather than ex-

panding it to include the altogether unpredictable event that an injury will occur. Were plaintiffs' position to be adopted, a purchaser would be unable to meaningfully limit its liability as every item ever sold by the predecessor would be a potential source of assumed liability. Thus, plaintiffs are not entitled to indemnity because the Pohl claim was not an existing liability at the time of closing.

Inasmuch as defendant's counterclaims sought relief solely on the basis of common-law principles of indemnity, this court does not have occasion to determine whether defendant is entitled to indemnity under the Reorganization Agreement. As the lower courts never ruled on defendant's counterclaims, which may involve questions of fact, the action must be returned for their consideration.

Accordingly, the order of the Appellate Division should be reversed, with costs; defendant's answer should be reinstated; and the case should be remitted to Supreme Court, New York County, for entry of judgment in favor of defendant declaring that defendant has not assumed the liability of Holt Howard Associates, Inc., asserted herein, and for further proceedings in accordance with this opinion.

JASEN, JONES, MEYER, SIMONS and KAYE, JJ., concur.

WACHTLER, J., taking no part.

Order reversed, etc.


63 N.Y.2d 299

**The PEOPLE of the State of New York, Respondent,**

**v.**

**Stephen MOSES, Appellant.**

Court of Appeals of New York.

Oct. 16, 1984.

The People appealed from order of the Supreme Court, New York County, Michael J. Dontzin, J., which granted defendant's motion and set aside jury verdict which convicted him of murder in second degree and robbery in third degree and dismissed indictment. The Supreme Court, Appellate Division, 91 A.D.2d 239, 458 N.Y.S.2d 238, reversed and remanded, and defendant appealed. The Court of Appeals, Kaye, J., held that defendant's false alibi, standing alone, under circumstances presented, was insufficient to corroborate testimony of accomplice, which was only direct evidence on which defendant was convicted of felony-murder and robbery, requiring dismissal of indictment.

Appellate Division reversed; Supreme Court order dismissing indictment reinstated.

Jasen, J., dissented with opinion.

**1. Criminal Law ⇐511.1(7)**

As defendant's visit on day before murder to store at which victim's travelers checks were cashed on day of murder and defendant's presence three or more hours before crime in abandoned apartment in which murder occurred established no nexus with criminal activity, defendant's false alibi, standing alone, under circumstances presented, was insufficient to corroborate testimony of accomplice, which was only direct evidence on which defendant was convicted of felony-murder and robbery, requiring dismissal of indictment for second-degree murder and third-degree robbery. McKinney's CPL § 60.22, subd. 1.

**2. Criminal Law ⇐508(9)**

Especially where circumstances suggest that motivation behind accomplice's testimony may have been to curry favor with prosecution and receive lenient treatment, accomplice testimony lacks inherent trustworthiness of testimony of disinterested witness, and thus, is to be regarded with utmost caution. McKinney's CPL § 60.22, subd. 1.

**3. Criminal Law ⇐508(9)**

Particular scrutiny of accomplice's testimony was appropriate in prosecution for

attorney's statement when it was made, nor did he assert ineffective assistance of counsel on appeal. Finally, the rational basis of Stukes' argument is suspect. Stukes fails to explain why counsel's alleged insistence that he would be able to get the gun charges thrown out would convince Stukes to reject a plea bargain in which the Government dropped those very charges, particularly in light of the strong evidence of guilt with regard to the distribution charges.

For these reasons, Stukes has failed to establish that his counsel was ineffective, or that as a result he was deprived of a fair proceeding.

## IV. CONCLUSION

For the reasons set forth above, Stukes' section 2255 motion is denied and the petition dismissed.

It is so ordered.


**GEORGIA–PACIFIC CONSUMER PRODUCTS, LP, Plaintiff,**

**v.**

**INTERNATIONAL PAPER COMPANY, Defendant.**

**No. 07–Civ–9627(SHS).**

United States District Court, S.D. New York.

July 16, 2008.

**Background:** Successor in interest to a purchaser of paper mills sued the vendor's successor in interest, seeking declaratory relief as to liability for environmental contamination. Plaintiff moved for summary judgment, and defendant moved to dismiss.

**Holdings:** The District Court, Sidney H. Stein, J., held that:

(1) agreement governing the purchase of the paper mills did not impose on the purchaser future-arising liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and

(2) the action was ripe for declaratory judgment.

Plaintiff's motion granted.

**1. Contracts ⇐147(2)**

Under New York law, it is a court's function to discern the intent of contracting parties to the extent their intent is evidenced by their written agreement.

**2. Contracts ⇐176(2)**

Under New York law, if a contract is unambiguous on its face, its proper construction is a question of law.

**3. Contracts ⇐176(2)**

Under New York law, whether the language of a contract is unambiguous is a question of law.

**4. Contracts ⇐143(2)**

Under New York law, contract language is unambiguous if it has a definite and precise meaning, unattended by danger of misconception in the purport of the contract itself, and concerning which there is no reasonable basis for a difference of opinion.

**5. Contracts ⇐143(2)**

Under New York law, contractual language whose meaning is otherwise plain is not ambiguous merely because the parties urge different interpretations in the litigation.

**6. Indemnity ⚿31(5)**

Under New York law, indemnification agreements are strictly construed, and a court may not find a duty to indemnify absent manifestation of a clear and unmistakable intent to do so.

**7. Contracts ⚿164**

Under New York law, where several instruments constitute part of the same transaction, they must be interpreted together.

**8. Contracts ⚿143.5**

Under New York law, a court must strive to give full meaning and effect to all of a contract's provisions; it is a cardinal rule of construction that the court adopt an interpretation that renders no portion of the contract meaningless.

**9. Environmental Law ⚿445(1)**

Under New York law, an agreement governing the purchase of paper mills did not impose on the purchaser future-arising liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); plain terms of the purchase agreement limited the purchaser's assumption of liabilities to the liabilities of the vendor directly attributable to operations "on the Closing Date," at which time CERCLA had not yet been enacted, and that provision was not trumped by the breadth of language used in describing the types of liabilities assumed. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, § 101, 42 U.S.C.A. § 9601.

**10. Declaratory Judgment ⚿82**

Action brought by successor in interest to purchaser of paper mills against vendor's successor in interest, seeking declaratory relief as to CERCLA liability for environmental contamination, was ripe, despite claim that it was premature because plaintiff had not yet discharged any CERCLA liabilities; given plaintiff's stated intention to bring an action against defendant for costs that it was already incurring in connection with an administrative settlement agreement and would likely incur in the future, the controversy between the parties was of sufficient immediacy and reality to justify declaratory relief. 28 U.S.C.A. § 2201(a); Comprehensive Environmental Response, Compensation, and Liability Act of 1980, § 101, 42 U.S.C.A. § 9601.

**11. Declaratory Judgment ⚿62**

Request for declaratory judgment is ripe if there is a substantial controversy, of sufficient immediacy and reality. 28 U.S.C.A. § 2201(a).

**12. Declaratory Judgment ⚿65**

Whether a matter is sufficiently immediate and real to be ripe for purposes of a declaratory judgment suit requires a case-by-case analysis, in which relief should only be granted where it can be of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts. 28 U.S.C.A. § 2201(a).

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David G. Kleiman, Ingo W. Sprie, Jr., Arnold & Porter LLP, New York, NY, for Plaintiff.

Atif Nabeel Khawaja, Joseph Serino, Jr., Kirkland & Ellis LLP, New York, NY, for Defendant.

*OPINION AND ORDER*

SIDNEY H. STEIN, District Judge.

In this action, the Court must chose between two competing interpretations of a 1972 contract for the sale of several paper mills and associated properties by

Federal Paper Board Company ("Federal")—a predecessor of defendant International Paper Company—to Riegel Products Corporation ("RPC")—a predecessor of plaintiff Georgia–Pacific Consumer Products, LP. As part of the consideration it provided to Federal, RPC agreed to assume certain liabilities associated with the transferred assets. Georgia–Pacific and International Paper now dispute whether the liabilities assumed by RPC under the 1972 contract include the costs of cleaning up environmental contamination where those liabilities were imposed by a statute enacted in 1980, nearly a decade after the sale. Plaintiff seeks a declaration that RPC did not assume the liabilities. Defendant moves to dismiss the complaint on the ground that the four corners of the contract unambiguously demonstrate that RPC did assume the liabilities. Pointing to the same contractual language, plaintiff opposes defendant's motion and moves for summary judgment in its favor. Given the intention of RPC and Federal as unambiguously expressed within the four corners of the contract that RPC assume only those liabilities existing on the closing date in 1972, the Court finds as a matter of law that RPC did not contractually assume the liabilities at issue in this case. Accordingly, defendant's motion to dismiss the complaint is denied and plaintiff's motion for summary judgment is granted.

## I. BACKGROUND

This action involves the sale of several properties located in Warren and Hunterdon Counties in New Jersey, including four paper mills opened between the years 1863 and 1903 and a landfill opened in 1938 to receive waste from the paper mills (collectively the "New Jersey Operations"). (Compl. ¶¶ 10–11.) Federal and RPC executed a written contract to sell the New Jersey Operations on February 23, 1972 (the "Purchase Agreement"). (*Id.* ¶¶ 13–18.) The Purchase Agreement is attached as exhibit 1 to the declaration of Joseph Serino in support of defendant's motion to dismiss (the "First Serino Decl.").

Under the Purchase Agreement, Federal promised that on the closing date it would transfer to RPC the New Jersey Operations "together with all assets and properties of Federal . . . directly attributable to the New Jersey Operations on the Closing Date," with certain exceptions not relevant here. (Purchase Agreement § 1.) The contract further provided:

> The consideration to be paid by RPC for the transfer of the Properties to it shall be (i) the payment by RPC to Federal of $6,770,018.00 . . . and (ii) the assumption by RPC of the liabilities of Federal directly attributable to the New Jersey Operations on the Closing Date, including, but not by way of limitation, those listed in Schedule B attached hereto . . . but excluding those expressly excluded in this Agreement or listed in Schedule C attached hereto.

(*Id.*) Neither Schedule B, entitled "Non–Exclusive List of Liabilities Assumed," nor Schedule C, entitled "Liabilities—Not Assumed," refers to liabilities related to environmental cleanup costs. The closing date in the agreement was April 3, 1972. (*Id.* § 2.)

The Purchase Agreement set forth a closing procedure under which RPC was required to provide "a written instrument of assumption by RPC of the liabilities and obligations of Federal to be assumed pursuant to Section 1 hereof in the form attached hereto as Annex A." (Purchase Agreement § 2(c).) Annex A is entitled "Assumption" and confirms RPC's assumption of certain liabilities (the "Assumption Agreement"). In relevant part, the Assumption Agreement states that,

> RPC ... in consideration of the ... sale ... to it of [the New Jersey Operations] ... does hereby assume, pursuant to Section 1 of the Agreement ... all of Federal's debts and liabilities of every kind, character or description, whether known or unknown, whether disclosed or undisclosed, whether accrued, absolute, contingent or otherwise, and whether or not reflected or reserved against in Schedules A or B to the Agreement and which are directly attributable to the New Jersey Operations, as the same exist on the date hereof, and does hereby agree to pay, perform and discharge, when due, all of the said debts and liabilities.

(Annex A to Purchase Agreement at 1, Ex. 1 to First Serino Decl.)

On the closing date, RPC executed and delivered the Assumption Agreement. (Compl. ¶ 16; Executed Assumption Agreement included in Ex. 1 to First Serino Decl. at 2.) For ease of reference, the Court will refer to the Purchase Agreement and the Assumption Agreement collectively as the "Agreement." By its own terms, the Agreement is to be governed by New York law. (Purchase Agreement § 20(e).)

In 1980, eight years after the Purchase Agreement was executed, the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601 *et seq.,* became law. Among other things, CERCLA imposes strict liability on facility owners for certain costs associated with the cleanup of hazardous materials released into the environment. 42 U.S.C. § 9607; *see generally Prisco v. A & D Carting Corp.,* 168 F.3d 593, 602–03 (2d Cir.1999) (describing strict liability for environmental response costs imposed on "potentially responsible parties" under CERCLA). The United States Environmental Protection Agency ("EPA") has discovered hazardous substances on the New Jersey Operations properties and has determined that both Georgia–Pacific and International Paper are potentially responsible parties pursuant to CERCLA. (Compl. ¶ 2; Decl. of Ingo Sprie in Support of Pl.'s Mot. for Summary Judgment ("First Sprie Decl.") ¶¶ 10, 9 and Ex. G.) Georgia–Pacific has entered into an Administrative Settlement Agreement with EPA that requires Georgia–Pacific to conduct a remedial investigation and feasibility study into the extent of contamination at one of the properties. (Compl. ¶ 2; Ex. H to First Sprie Decl.) In addition, EPA has issued a Unilateral Administrative Order to International Paper "requir[ing International paper] to participate in the performance of the remedial investigation and feasibility study ... as well as certain removal activities." (Letter from EPA to Brian Heim, Senior Counsel, Environment, Health and Safety, International Paper Company, dated December 31, 2007 at 1, Ex. F to Decl. of Ingo Sprie in Opposition to Def.'s Rule 56(f) Request ("Second Sprie Decl.").)

Georgia–Pacific maintains that it is not liable for CERCLA clean up costs because the Purchase Agreement did not obligate RPC to assume Federal's CERCLA liabilities. (Compl. ¶ 28.) [1] Georgia–Pacific intends to seek contribution from International Paper to the extent Georgia–Pacific pays more than its equitable share of

1. Georgia–Pacific also believes that it is not liable for any environmental clean up costs related to the New Jersey Operations because Georgia–Pacific does not own any of the properties and RPC did not dispose of any waste. These issues are not before the Court. The only issue in this case is whether under the terms of the Agreement RPC assumed Federal's CERCLA liabilities as part of the consideration RPC paid in exchange for the New Jersey Operations.

CERCLA response costs. (Compl. ¶ 28.) On the other hand, International Paper contends that RPC assumed the CERCLA liabilities associated with the New Jersey Operations and that if International Paper discharges any of those liabilities, it is entitled to indemnification from Georgia Pacific. (Def.'s Mem. of Law in Support of its Mot. to Dismiss at 5, 15 n.8.)

In this litigation Georgia–Pacific seeks a declaration pursuant to 28 U.S.C. § 2201 that RPC did not in the Agreement contractually assume Federal's liability for environmental clean up costs pursuant to CERCLA with respect to the New Jersey Operations. International Paper has moved to dismiss the complaint on the ground that the 1972 Agreement unambiguously reveals that the contracting parties intended RPC to assume liabilities arising under later-enacted environmental clean-up statutes such as CERCLA. International Paper also argues that because it has not yet discharged any CERCLA liabilities, a declaration clarifying the parties' indemnification rights and duties would be premature. Georgia–Pacific opposes the motion to dismiss and simultaneously moves for summary judgment in its favor. Georgia–Pacific agrees that the contracting parties' intent can be gleaned from the unambiguous four corners of the Agreement but argues that the parties explicitly limited RPC's assumption of liabilities to those in existence on the date of closing. Georgia–Pacific points out that because CERCLA was not enacted until several years following the closing date, RPC did not assume CERCLA liabilities under the plain terms of the contract. Georgia–Pacific also argues that its request for declaratory relief is not premature because EPA's enforcement actions create a live controversy between the parties.

Georgia–Pacific has the better argument. Based solely on the four corners of the Purchase Agreement, the Court finds that the parties expressly limited RPC's assumption of liabilities to those existing on the date of the closing in April 1972. RPC's assumption of liabilities did not include those arising under CERCLA, a later-enacted strict liability environmental clean-up law. Further, Georgia–Pacific's request for declaratory relief is ripe for decision. Accordingly, the Court denies International Paper's motion to dismiss the complaint and grants Georgia–Pacific's motion for summary judgment in its favor.

## II. DISCUSSION

### A. *RPC Did Not Contractually Assume Federal's Future Liabilities Arising Under CERCLA*

#### 1. *Standards of Contract Interpretation*

**[1–5]** Whether the Agreement effectively transferred Federal's liabilities to RPC is a question of contract interpretation to be decided pursuant to New York law. (Purchase Agreement ¶ 20(e) ("This Agreement shall be governed by and construed in accordance with the laws of the State of New York.").) "Under New York law, . . . it is [a court's] function to discern the intent of the parties to the extent their intent is evidenced by their written agreement." *Commander Oil Corp. v. Advance Food Service Equipment*, 991 F.2d 49, 51 (2d Cir.1993) (internal quotation omitted). If a contract is unambiguous on its face, its proper construction is a question of law. *Metropolitan Life Ins. Co. v. RJR Nabisco, Inc.*, 906 F.2d 884, 889 (2d Cir.1990); *see also Omni Quartz, Ltd. v. CVS Corp.*, 287 F.3d 61, 64 (2d Cir.2002). Whether the language of a contract is unambiguous is also a question of law. *Seiden Assoc., Inc. v. ANC Holdings, Inc.*, 959 F.2d 425, 429 (2d Cir.1992). Contract language is unambiguous if it has "a definite and precise meaning, unattended by danger of misconception in the purport of the [con-

tract] itself, and concerning which there is no reasonable basis for a difference of opinion." *Metropolitan Life Ins.*, 906 F.2d at 889. Contractual language "whose meaning is otherwise plain is not ambiguous merely because the parties urge different interpretations in the litigation." *Id.*

**[6]** Under New York law, indemnification agreements are strictly construed and a court may not find a duty to indemnify absent manifestation of a "clear and unmistakable intent" to do so. *Olin Corp. v. Consolidated Aluminum Corp.*, 5 F.3d 10, 15 (2d Cir.1993); *see also, e.g., Schiavone Constr. Co. v. County of Nassau*, 717 F.2d 747, 751 (2d Cir.1983) ("An indemnity clause must reflect the unmistakable intent of the parties as to the scope of its coverage." (internal quotation omitted)).

**[7–9]** New York also recognizes certain general principles of contract construction that are relevant here. First, " 'where several instruments constitute part of the same transaction, they must be interpreted together.' " *Commander Oil*, 991 F.2d at 53 (quoting *BWA Corp. v. Alltrans Express U.S.A., Inc.*, 493 N.Y.S.2d 1, 3, 112 A.D.2d 850 (1st Dep't 1985)). In this case, the Purchase Agreement and the Assumption Agreement constitute part of the same transaction and must be interpreted together. *See id.* Second, reading the entire agreement, a court must strive to "give full meaning and effect to all of its provisions." *LaSalle Bank Nat'l Ass'n v. Nomura Asset Capital Corp.*, 424 F.3d 195, 206 (2d Cir.2005) (citation omitted). "It is a cardinal rule of construction that the court adopt an interpretation that renders no portion of the contract meaningless." *Wallace v. 600 Partners Co.*, 618 N.Y.S.2d 298, 301, 205 A.D.2d 202 (1st Dep't 1994). With these principles in mind, the Court now turns to the task of interpreting the relevant language in the Agreement and concludes that, read as a whole, the contract fails to evince an intent that RPC assume Federal's future-arising liability under CERCLA.

2. *The Contract Unambiguously Rules Out RPC's Assumption of CERCLA Liability*

The plain terms of the Purchase Agreement limit RPC's assumption of liabilities to "the liabilities of Federal directly attributable to the New Jersey Operations *on the Closing Date*." (Purchase Agreement § 1 (emphasis added).) Consistent with this language, RPC, in the Assumption Agreement, confirmed that it would assume "Federal's debts and liabilities of every kind, character or description ... which are directly attributable to the New Jersey Operations, *as the same exist on the date hereof*." (Assumption Agreement at 1 (emphasis added).) The closing date set forth in the contract was April 3, 1972. (Purchase Agreement § 2.) Because CERCLA was not enacted until December 1980, there were no extant CERCLA liabilities "on the date hereof." *See Olin Corp. v. Consolidated Aluminum Corp.*, 5 F.3d 10, 14 (2d Cir.1993); *United States v. Vermont Am. Corp.*, 871 F.Supp. 318, 321 (W.D.Mich.1994) ("[T]here is no question t hat ... CERCLA liability [did not] exist[ ]" prior to the statute's enactment.). Accordingly, RPC did not assume any CERCLA liabilities in the Purchase Agreement.

Courts interpreting similar language have regularly held that where a pre-CERCLA contract for the sale of assets required a buyer to assume only those liabilities in existence on the date of the sale, the buyer did not assume later-arising CERCLA liabilities. For example, in *John S. Boyd Co. v. Boston Gas Co.*, the First Circuit interpreted a 1973 contract for the sale of a gas company in which the buyer agreed to assume the liabilities of

the company "as then existing." 992 F.2d 401, 404 (1st Cir.1993). The court determined that this language was decisive and "fairly obviously foreclose[d] the possibility that [the buyer] agreed to assume [CERCLA liabilities.]" *Id.* at 407. Similarly in *North Shore Gas Co. v. Salomon Inc.,* the Seventh Circuit determined that where a buyer of assets agreed to "assume [the] liabilities and obligations of every kind and character ... of the [seller] accrued to or existing on the date of transfer," the buyer did not intend to assume later-arising CERCLA liabilities. 152 F.3d 642, 652 (7th Cir.1998).

3. *International Paper's Construction of the Contract is Flawed*

a. Broad General Language Does Not Trump the Temporal Limitation Imposed by the Contracting Parties

International Paper's chief contention is that the breadth of the language used in describing the types of liabilities assumed by RPC reveals that the contracting parties intended RPC to assume liabilities under later-enacted environmental legislation like CERCLA. Indeed, when isolated from the rest of the agreement, some of the language chosen by the contracting parties does suggest a very broad assumption of liabilities by RPC. Specifically, the Agreement provides that RPC was to assume "*all* of Federal's debts and liabilities," (Assumption Agreement at 1 (emphasis added)), which were further described as "of every kind, character or description, whether known or unknown, whether disclosed or undisclosed, whether accrued, absolute, contingent or otherwise, and whether or not reflected or reserved against in Schedules A or B." (*Id.*)

International Paper cites several cases in which courts have determined that broad assumption provisions entered into prior to CERCLA encompass CERCLA and other environmental liabilities, even though environmental liabilities are not specifically mentioned in the contractual language. *See, e.g., Aluminum Co. of America v. Beazer East, Inc.,* 124 F.3d 551, 566 (3d Cir.1997); *United States v. Iron Mountain Mines, Inc.,* 987 F.Supp. 1233, 1241 (E.D.Cal.1997); *Purolator Prods. Corp. v. Allied–Signal, Inc.,* 772 F.Supp. 124, 131–32 (W.D.N.Y.1991). However, none of these cases involved a temporal limitation like the one in the present case which limited RPC's assumption to liabilities existing on the closing date. Where a contract includes such a temporal limit, courts have not been hesitant to find that CERCLA liabilities were excluded despite the presence of very broad language elsewhere in the agreement. *See Vermont Am. Corp.,* 871 F.Supp. at 321 (holding that although the contract required the buyer to assume "all ... liabilities of the Seller, whether or not matured and whether or not contingent," the buyer did not assume CERCLA liabilities because the contract also limited the assumption to liabilities "existing on the Closing Date"); *Chrysler Corp. v. Ford Motor Co.,* 972 F.Supp. 1097, 1108–09 (E.D.Mich.1997) (same).

Indeed, the leading Second Circuit decision in this area strongly supports Georgia–Pacific's interpretation of the contract. In *Olin Corporation v. Consolidated Aluminum Corporation,* the Second Circuit interpreted a pre-CERCLA agreement for the sale of an aluminum business. 5 F.3d 10, 12 (2d Cir.1993). Under the terms of the agreement, the buyer was to assume "all liabilities (absolute or contingent), obligations and indebtedness of [the seller] related to the Aluminum Assets ... as they exist on the [closing date] or arise thereafter with respect to actions or failures to act occurring prior to the [closing date.]" *Id.* at 12–13. The Second Circuit framed the question presented as "wheth-

er the Agreements at issue, which predate the enactment of CERCLA and which make no mention of environmental liabilities, allocate to ... the buyer, the subsequently created CERCLA obligation to clean up the Hannibal site, which [the buyer] claims was contaminated by ... the seller." *Id.* at 14. The Second Circuit answered the question in the affirmative, but, in so doing, highlighted the key fact that the parties had *expressly included* future-arising liabilities within the assumption clause. *Id.* at 15. The court noted that under New York law, a contract "should not be interpreted to include later statutory enactments that change[ ] the obligations of the parties absent a clear expression in the contract that such is the parties' intention." *Id.* In the case before it, however, the court found a clear intention to incorporate liabilities under later-enacted statutes given the specific language of the contract. The court explained,

> The Purchase Agreement requires [the buyer] to indemnify [the seller] against "*all liabilities,* obligations and indebtedness of [the seller] related to its aluminum business ... as they exist on the Closing Date *or arise thereafter*." In the Assumption Agreement executed at the closing, [the buyer] agreed to "indemnify [the seller] against, *all liabilities* (*absolute or contingent* ), obligations and indebtedness of [the seller] related to the aluminum business ... as they exist on the Effective Time *or arise thereafter* ..."

*Id.* (emphases added by the *Olin* court).

Of course, the language highlighted by the *Olin* court is precisely the sort of language missing from the contract at issue in this case. In stark contrast to the agreement in *Olin* which included liabilities existing on the closing date "*or aris* [*ing* ] *thereafter*," the contract in this case explicitly limited RPC's assumption of liabilities to those existing "on the Closing Date." (Purchase Agreement § 1.)

As noted above, courts confronted with temporally limited pre-CERCLA assumption provisions have consistently held CERCLA liability to be beyond their scope. *See, e.g., John S. Boyd,* 992 F.2d at 404; *North Shore Gas Co.,* 152 F.3d at 652; *Vermont Am. Corp.,* 871 F.Supp. at 321; *Chrysler Corp.,* 972 F.Supp. at 1108–09. The only exception appears to be *A–C Reorganization Trust v. E.I. DuPont De Nemours & Co.,* No. 94–C–574, 1997 WL 381962 (E.D.Wis. Mar. 10, 1997). In that case, the district court interpreted a 1973 contract under which a buyer of assets agreed to assume "all ... liabilities of [the seller] ... of any kind, character or description, whether accrued, absolute, contingent or otherwise ... all as the same shall exist at the Closing Date." 1997 WL 381962, at *5. Citing *Olin,* the court held that the buyer assumed later-arising CERCLA liabilities. *Id.* at *6. The court recognized that the contract included the limiting phrase "as the same shall exist at the Closing Date," while the contract in *Olin* "specifically referenced liabilities arising after the closing date," but determined, without analysis, that this difference was not "significant" and that the language before it "suffice[d] to cover CERCLA liability that would later accrue for a predecessor's previous acts." *Id.* This Court declines to follow the analysis of the Eastern District of Wisconsin in *A–C Reorganization Trust.* Rather, the Court finds that the temporal limitation in the Purchase and Assumption Agreements evinces a clear intent by the contracting parties to limit RPC's assumption of liabilities to only those existing on the date of the closing and to exclude liabilities arising under later-enacted CERCLA legislation.

b. International Paper's Construction of the Contract Renders Relevant Language Meaningless

As further support for its interpretation of the Agreement, Georgia–Pacific points out that including CERCLA liabilities within those assumed by RPC would effectively read the phrase "as the same exist on the date hereof" out of the provision in the Assumption Agreement that states that "RPC ... hereby assume[s] all of Federal's ... liabilities .. which are directly attributable to the New Jersey Operations, as the same exist on the date hereof." Doing so would violate the "cardinal rule of construction that ... no portion of the contract [be rendered] meaningless." *Wallace,* 618 N.Y.S.2d at 301.

In response, International Paper posits an alternative interpretation of this key language; namely, that the phrase "as the same exist on the date hereof" does not modify the phrase "liabilities ... which are directly attributable to the New Jersey Operations," but rather modifies only the words "New Jersey Operations." In other words, International Paper interprets the Assumption Agreement such that "[t]he only limitation on the liabilities assumed by RPC is that they be directly attributable to the New Jersey Operations *as such operations existed on the Closing Date.*" ((Def.'s Mem. of Law in Support of its Mot. to Dismiss at 13 n.7 (emphasis added); Def.'s Reply in Support of its Mot. to Dismiss at 4–5.)) This strained interpretation is highly implausible and does not create an ambiguity sufficient to overcome summary judgment. *See Seiden Assoc.,* 959 F.2d at 428 (Contractual ambiguity does not exist where one party's view "strains the contract language beyond its reasonable and ordinary meaning." (internal quotation and alterations omitted)).

Even if this interpretation had any surface plausibility, which it does not, it would be impermissible given the context. The Assumption Agreement specifically references the Purchase Agreement and provides that "RPC ... hereby assume[s], *pursuant to Section 1 of the* [*Purchase*] *Agreement* ... liabilities ... which are directly attributable to the New Jersey Operations, as the same exist on the date hereof." (Assumption Agreement at 1 (emphasis added).) For its part, the Purchase Agreement provides that RPC will assume "the liabilities of Federal directly attributable to the New Jersey Operations on the Closing Date." (Purchase Agreement § 1.) The phrase "on the Closing Date" in the Purchase Agreement cannot be taken to modify the phrase "New Jersey Operations" under any plausible reading. Rather, "on the Closing Date" clearly refers to "the liabilities of Federal directly attributable to the New Jersey Operations." Because the language in the Purchase Agreement and the Assumption Agreement must be read in tandem, if there were any doubt about the meaning of the Assumption Agreement, it is dispelled by the Purchase Agreement. *See Malleolo v. Malleolo,* 731 N.Y.S.2d 752, 753, 287 A.D.2d 603 (2d Dep't 2001) ("Where possible, a contract should be interpreted to avoid inconsistencies and to give meaning to all of its provisions.")

c. International Paper's Other Contentions Are Without Merit

International Paper also contends that because a list of specifically excluded liabilities was provided in Schedule C attached to the Purchase Agreement and "there [was] no exemption of 'environmental liability' in Schedule C or anywhere else in the Contract," the parties must have intended for RPC to assume CERCLA liabilities. (Def.'s Mem. of Law in Support of its Mot. to Dismiss at 9.) Of course, this ignores that the contract included an ex-

plicit *temporal* limitation on the liabilities to be assumed. Whether or not the contract expressly singled out and excluded "environmental liability" from assumption is not at issue.

International Paper also points to the fact that, as part of the consideration it paid for the New Jersey Operations, RPC agreed to assume certain of Federal's existing contractual obligations to third parties and that some of those contracts had "inherent environmental costs." (Def.'s Mem. of Law in Support of its Mot. to Dismiss at 9.) International Paper specifies, for example, that RPC agreed to assume Federal's contractual duties under a lease agreement with Atlantic Richfield Co. concerning an "underground tank and pump." (Ex. 2 to Schedule B to Purchase Agreement ¶ 37.) International Paper asserts that the fact that RPC assumed obligations with "undeniable environmental exposure for the New Jersey Operations," demonstrates an intent to assume liabilities arising under CERCLA. However, that RPC assumed various contractual obligations from Federal says nothing about whether the parties intended for RPC to assume liabilities under later-enacted legislation. Whether or not RPC can be said to have contemplated that the transaction would result in its assumption of various duties and liabilities touching on the environment is not at issue in the case.

B. *A Declaration Clarifying International Paper's Indemnity Rights Is Not Premature*

**[10–12]** International Paper argues in the alternative that because it has not yet discharged any CERCLA liabilities, Georgia–Pacific's request for a declaration clarifying International Paper's right to indemnification is premature. A request for declaratory judgment is ripe if "there is a substantial controversy, ... of sufficient immediacy and reality." *Olin*, 5 F.3d at 17 (citing *Maryland Cas. Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270, 273, 61 S.Ct. 510, 85 L.Ed. 826 (1941)); *see also* 28 U.S.C. § 2201(a) ("In a case of actual controversy ... any court of the United States ... may declare the rights and other legal relations of any interested party."). Whether a matter is sufficiently immediate and real requires a case-by-case analysis. *Kidder, Peabody & Co. v. Maxus Energy Corp.*, 925 F.2d 556, 562 (2d Cir.1991). In this analysis, relief should only be granted where it can be "of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts." *E.R. Squibb & Sons, Inc. v. Lloyd's & Companies*, 241 F.3d 154, 177 (2d Cir.2001) (internal citations omitted).

Here, EPA has determined that environmental contamination is present on certain of the properties constituting the New Jersey Operations and has taken concrete enforcement actions against both parties. (General Notice Letter from EPA to John Faraci, Chairman & CEO, International Paper Co. dated Apr. 12, 2005, Ex. G to First Sprie Deck; Administrative Settlement Agreement and Order on Consent for Remedial Investigation and Feasibility Study between Georgia–Pacific Consumer Products and EPA, Ex. H to First Sprie Deck; Letter from EPA to Brian Heim, Senior Counsel, Environment, Health and Safety, International Paper Co. dated Dec. 31, 2007, Ex. F to Second Sprie Deck)

Given Georgia–Pacific's stated intention to bring an action against International Paper for costs that Georgia–Pacific is already incurring in connection with the Administrative Settlement Agreement and will likely incur in the future, the controversy between the parties is of sufficient immediacy and reality to justify declaratory relief. *See Solow Bldg. Co. v. ATC Assocs. Inc.*, 388 F.Supp.2d 136, 139

(E.D.N.Y.2005) (collecting cases decided under CERCLA where "parties were granted declaratory relief for indemnification despite the fact that the federal government had not yet, and might never have, brought suit to require the parties to pay for cleaning up the contaminated properties"). *Olin* is not to the contrary. In that action, the Second Circuit determined that a request for declaratory relief regarding CERCLA indemnity rights was speculative where "[t]he record fail[ed] to indicate the location of the[ ] sites [or indicate] the types of claims that might be asserted in the future." 5 F.3d at 17. No such uncertainty attends the present case.

## III. CONCLUSION

For the reasons set forth above, International Paper's motion to dismiss the complaint is denied. Georgia–Pacific's motion for summary judgment in its favor for a declaration that the Riegel Products Corporation did not assume liabilities under CERCLA by virtue of the 1972 Agreement and that International Paper is not entitled to indemnification from Georgia–Pacific for any clean-up costs associated with the New Jersey Operations to the extent any claim for indemnification is premised on a contention that Riegel Products Corporation assumed liabilities under CERCLA by virtue of the 1972 Agreement is granted.

SO ORDERED.


**Alan NEWTON, Plaintiff,**

**v.**

**The CITY OF NEW YORK, District Attorneys Mario Merola and Robert T. Johnson, Individually, and in Their Official Capacity; Andrea Freund and Various John/Jane Does, Individually and in Their Official Capacities as Employees of the City of New York Who are/Were Assistant District Attorneys Within the Office of the District Attorney, County of Bronx; Detective Joanne Newbert, Detective Phillip Galligan, Detective [John Doe] Hartfield, Detective [John Doe] Ryan, Detective [John Doe] Harris, Pollice Officer Douglas Leho, Police Officer William Sean O'Toole, Lieutenant Michael Sheehan, Sergeant Patrick J. McGuire, Police Officer [John Doe] Haskins, Police Officer [Jane Doe] Kiely, Inspector Jack J. Trabitz and Various John/Jane Does, Individually and in Their Official Capacities as Employees of the City of New York Who are/Were Members of the Police Department of the City of New York, Defendants.**

**No. 07 Civ. 6211(SAS).**

United States District Court,
S.D. New York.

July 16, 2008.

**Background:** Former prisoner, who was convicted and imprisoned for more than 22 years for a crime he did not commit, brought action against city, police officers, prosecutors, and other city employees, alleging violations of his civil rights. Defendants moved for judgment on the pleadings.

**Holdings:** The District Court, Shira A. Scheindlin, J., held that:

ney's fees should be denied. The difference between the judgment sought and obtained was great and the public purpose of the litigation was minimal. Therefore, an award of attorney's fees is not appropriate in this case.

*ORDER*

Therefore, it is hereby **ORDERED** that plaintiff's motion for attorney's fees is **DENIED.**

**SO ORDERED.**


**UNITED STATES of America, Plaintiff,**

**v.**

**VERMONT AMERICAN CORP., Defendant.**

**No. 1:93–CV–912.**

United States District Court,
W.D. Michigan,
Southern Division.

Sept. 29, 1994.

Government brought action under Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) to recover costs incurred in responding to release or threat of release of hazardous substances from landfill. Defendant purchaser of manufacturing business moved for summary judgment. The District Court, Robert Holmes Bell, J., held that: (1) CERCLA liability was not assumed by purchaser under assumption agreement, and (2) facts did not warrant application of "continuity of enterprise" doctrine to impose successor liability on purchaser, even assuming viability of that doctrine in CERCLA context under Michigan law.

Motion granted.

**1. Federal Civil Procedure ⇐2553**

Government would not be granted opportunity for further discovery as to issue of whether defendant corporation was successor to CERCLA liabilities of its predecessor, as request for further discovery was untimely and did not satisfy requirements of rule mandating presentation by affidavit of reasons for inability to present facts essential to justify opposition to summary judgment motion. Comprehensive Environmental Response, Compensation and Liability Act of 1980, § 107, 42 U.S.C.A. § 9607.

**2. Health and Environment ⇐25.5(5.5)**

Because of its remedial nature, provisions of CERCLA are construed broadly to avoid frustrating legislative purpose. Comprehensive Environmental Response, Compensation and Liability Act of 1980, § 107, 42 U.S.C.A. § 9607.

**3. Corporations ⇐445.1, 542(1), 590(1)**

Traditional rule of successor liability under Michigan law is that purchaser of another corporation's assets does not become responsible for seller's liabilities, except under four circumstances: where purchaser expressly or impliedly agrees to assume seller's liability; where transaction amounts to consolidation or merger; where purchasing corporation was mere continuation or reincarnation of seller corporation; or where transaction was entered into fraudulently, in order to escape liability.

**4. Corporations ⇐445.1**

CERCLA liability was not assumed under assumption agreement, so as to support imposition of successor liability on purchasing corporation, despite claim that CERCLA liability may have been contingent or unmatured liability which existed on closing date and was incurred in ordinary course of business, so as to bring it within assumption agreement; under circumstances, CERCLA liability was not liability existing on closing date and, moreover, the liability was one which would have been set forth in agreement had all facts with respect thereto been known when agreement was signed. Comprehensive Environmental Response, Com-

pensation and Liability Act of 1980, § 107, 42 U.S.C.A. § 9607.

**5. Corporations ⇐445.1**

Purchaser of business which had disposed of hazardous substances at landfill was not liable under CERCLA as seller's successor, even assuming viability of "continuity of enterprise" doctrine in CERCLA context under Michigan law; case involved pre-CERCLA sale of assets, and evidence was insufficient to establish that purchaser knew about dumping of hazardous waste at landfill at time of asset purchase. Comprehensive Environmental Response, Compensation and Liability Act of 1980, § 107, 42 U.S.C.A. § 9607.

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W. Francesca Ferguson, Asst. U.S. Atty., Michael H. Dettmer, U.S. Atty., Grand Rapids, MI, Elliot M. Rockler, Environmental Enforcement Section, Environment & Natural Resources Div., U.S. Dept. of Justice, Washington, DC, for the U.S.

Louis M. Rundio, Jr., Robert J. Slobig, Linda M. Bullen, McDermott, Will & Emery, Chicago, IL, for Vermont American Corp.

Steven C. Kohl, Howard & Howard, P.C., Bloomfield Hills, MI, for Atkinson Mfg. Co., Jack L. Rasmussen.

*OPINION*

ROBERT HOLMES BELL, District Judge.

Plaintiff United States of America filed this action pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9607, to recover unreimbursed costs incurred in response to the release or threat of release of hazardous substances from the Mason County Landfill. The government alleges that Atkinson Manufacturing Company disposed of hazardous wastes at the landfill from 1971 to 1975, and that Defendant Vermont American Corporation is the successor to the liabilities of Atkinson.

This matter is currently before the Court on Defendant Vermont American's motion for summary judgment.

I.

The background facts of the case are largely undisputed. During the relevant time period (1961–1980) Atkinson was a closely held Michigan corporation owned by Jack Rasmussen and his three sons. Atkinson had an industrial facility in Ludington where it manufactured metal tool boxes and closet accessories. Waste generated from Atkinson's electroplating and painting operations was disposed of at the Mason County Landfill from 1971 to 1975. The landfill closed in 1978.

On March 10, 1980, Vermont American purchased the assets of Atkinson for $3 million and the assumption of certain liabilities. On March 21, 1980, Vermont American incorporated Atkinson Mfg. Co. ("AMC"), a Delaware corporation which was a wholly owned subsidiary of Vermont American. Vermont American assigned its rights and liabilities involving the Atkinson purchase to AMC on March 31, 1980.

AMC continued the business of Atkinson under the same name, at the same location, and with essentially the same customers, suppliers and employees. AMC employed Jack Rasmussen as President or General Manager of AMC for less than a year, and as a consultant until March 31, 1985. There was no identity of shareholders, or directors between Atkinson and either Vermont American or AMC.

CERCLA was enacted in December 1980. In 1982 the Mason County Landfill was placed on the National Priority List. In 1986 the United States Environmental Protection Agency began a Remedial Investigation and Feasibility Study to investigate and determine the nature and extent of contamination at the Mason County Landfill. The government first notified Vermont American about its potential liability in connection with the Mason county Landfill in 1988. As of March 1, 1993, the government has incurred at least $1,800,000 in response costs.

## II.

Defendant Vermont American has moved for summary judgment on the basis that it is not, as a matter of law, the successor to the CERCLA liabilities of Atkinson.

Under Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is proper if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. In evaluating a motion for summary judgment the Court must look beyond the pleadings and assess the proof to determine whether there is a genuine need for trial. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538 (1986). If Defendants carry their burden of showing there is an absence of evidence to support a claim then Plaintiff must demonstrate by affidavits, depositions, answers to interrogatories, and admissions on file, that there is a genuine issue of material fact for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324–25, 106 S.Ct. 2548, 2553–54, 91 L.Ed.2d 265 (1986). The mere existence of a scintilla of evidence in support of Plaintiff's position is not sufficient to create a genuine issue of material fact. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252, 106 S.Ct. 2505, 2512, 91 L.Ed.2d 202 (1986). The proper inquiry is whether the evidence is such that a reasonable jury could return a verdict for Plaintiff. *Id. See generally, Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1476–80 (6th Cir.1989).

[1] At oral argument the attorney for the government stated that the government needed more opportunity to determine what Vermont American or Jack Rasmussen knew about liability for cleanup costs at Mason County Landfill, and to determine the intention of the parties to the Assumption Agreement.

The case management order dated January 24, 1994, set a discovery cut off date of March 1, 1994. To date the government has not filed a motion for extension of discovery. Neither has the government complied with the requirements of Rule 56(f) to present by affidavit the reasons for its inability to present facts essential to justify its opposition to the motion. *Klepper v. First American Bank*, 916 F.2d 337, 343 (6th Cir.1990); *Emmons v. McLaughlin*, 874 F.2d 351, 357 (6th Cir.1989).

Because the government's request for further discovery is untimely and fails to satisfy the requirements of Rule 56(f), the Court denies the request for further discovery and deems this motion ripe for decision.

## III.

[2] Because of its remedial nature, the provisions of CERCLA are construed broadly to avoid frustrating the legislative purposes. *Anspec Co. v. Johnson Controls, Inc.*, 922 F.2d 1240, 1247 (6th Cir.1991). Thus, the Sixth Circuit has determined that successor corporations are within the description of entities that are potentially liable under CERCLA for cleanup costs. *Id.* at 1245. In *Anspec* the Sixth Circuit looked to state law for the definition of a successor corporation. *Id.* at 1244–45. *But see United States v. Mexico Feed and Seed Co.*, 980 F.2d 478, 487 n. 9 (8th Cir.1992); *United States v. Carolina Transformer Co.*, 978 F.2d 832, 837 (4th Cir. 1992); *Louisiana–Pacific Corp. v. Asarco, Inc.*, 909 F.2d 1260, 1263 (9th Cir.1990); *Smith Land & Improvement Corp. v. Celotex Corp.*, 851 F.2d 86, 91 (3rd Cir.1988), *cert denied*, 488 U.S. 1029, 109 S.Ct. 837, 102 L.Ed.2d 969 (1989) (CERCLA successor liability to be determined by federal common law).

[3] The traditional rule of successor liability under Michigan law is that a purchaser of another corporation's assets does not become responsible for the seller's liabilities, except under the following circumstances:

1. where the purchaser expressly or impliedly agrees to assume the seller's liabilities;
2. where the transaction amounts to a consolidation or merger;
3. where the purchasing corporation was a mere continuation or reincarnation of the seller corporation; or
4. where the transaction was entered into fraudulently, in order to escape liability.

*Turner v. Bituminous Casualty Co.*, 397 Mich. 406, 417 n. 3, 244 N.W.2d 873; (1976);

*City Environmental, Inc. v. U.S. Chemical Co.*, 814 F.Supp. 624, 634 (E.D.Mich.1993).

In this case there is no allegation that Vermont American's purchase of Atkinson's assets amounted to a consolidation or merger. Neither is there any allegation that the asset purchase involved fraud or was for the purpose of improperly evading any Mason County Landfill liability. The government seeks to hold Vermont America liable under the assumption of liabilities and the mere continuation exceptions to the general rule of non-liability.

In connection with the purchase of Atkinson's assets, Vermont American signed an Assumption Agreement, under which Vermont American agreed to assume:

> (i) All of the debts, obligations, and liabilities of the Seller reflected or reserved against on the December 31, 1979 balance sheet ... or are otherwise disclosed in the Disclosure Letter....
>
> (ii) All additional debts, obligations, and liabilities of the Seller, **whether or not matured and whether or not contingent, existing on the Closing Date** ... and incurred by Seller in the ordinary course of business or as otherwise incurred by the Seller in consonance with the provisions of Section 3 of the Agreement since December 31, 1979.

¶ 1 (emphasis added). Under ¶ 3 the Purchaser does **not** assume:

> (iii) Any liability ... which is not set forth in the Agreement ... which would have been set forth therein had all the facts with respect thereto been known on the date thereof, regardless of when said facts became or become known.

[4] The government contends there is a question of fact as to whether CERCLA liability was a contingent or not yet matured liability which existed on the closing date and which was incurred in the ordinary course of business. ¶ 1(ii). The Court disagrees. CERCLA was not enacted until 8 months after the sale, the Mason County Landfill was not placed on the National Priority List until 1982, and Vermont American was not notified of its potential liability until 1988. Under these circumstances the Court finds as a matter of law that there is no question that the CERCLA liability was not a liability that existed on the closing date. Furthermore, the liability is clearly one which would have been set forth in the Assumption Agreement had all the facts with respect thereto been known when the Assumption Agreement was signed. There is no question of fact that the CERCLA liability was not assumed under the Assumption Agreement.

[5] The government's alternative theory on which to base liability is that the purchasing corporation was a "mere continuation" of Atkinson. There is no dispute that under the traditional "mere continuation" exception there must be a common identity of officers, directors and shareholders between selling and purchasing corporations. *Kelley v. Thomas Solvent Co.*, 725 F.Supp. 1446, 1458 (W.D.Mich.1988); *City Environmental*, 814 F.Supp. at 635. There is also no dispute that there was no identity of shareholders or directors between Atkinson and Vermont American or between Atkinson and AMC. Nevertheless, the government contends that the "mere continuation" exception does apply to this case because it has been expanded under Michigan law to eliminate the identity of shareholders requirement.

The government relies on the adoption by the Michigan Supreme Court of the "continuity of enterprise" doctrine in *Turner v. Bituminous Casualty Co.*, 397 Mich. 406, 244 N.W.2d 873 (1976). In *Turner*, a products liability action, the Court adopted the rule that in a sale of corporate assets for cash, successor liability on the part of the purchasing corporation can be found even in the absence of a continuity of shareholders if the following three requirements are satisfied:

1. There is a continuation of the enterprise of the seller corporation, so that there is a continuity of management, personnel, physical location, asset, and general business operations;
2. The seller corporation ceases its ordinary business operations, liquidates and dissolves as soon as legally and practically possible; and
3. The purchasing corporation assumes those liabilities and obligations of the seller ordinarily necessary for the uninterrupted

> continuation of normal business operations of the seller corporation.

397 Mich. at 430, 244 N.W.2d 873. This is known as the "continuity of the enterprise" or "substantial continuity" exception to asset purchase liability.

Defendant contends that Michigan courts would not extend the application of the "continuity of enterprise" doctrine beyond the field of products liability. No Michigan state court has applied the "continuity of enterprise" doctrine in a CERCLA case. However, both the Eastern and Western Districts of Michigan have found this doctrine applicable to CERCLA cases. In *City Environmental,* Judge Rosen found that "the 'substantial continuity a/k/a continuity of enterprise' doctrine, as interpreted by the Eighth Circuit, would apply—under the appropriate factual circumstances—in CERCLA successor corporation liability actions in Michigan." 814 F.Supp. at 635 (citing *United States v. Mexico Feed and Seed Co.,* 980 F.2d 478, 487 n. 9 (8th Cir.1992)). In *Charter Township of Oshtemo v. American Cyanamid Co.,* No. 1:92–CV–843, 1994 U.S.Dist. LEXIS 2158 (W.D.Mich. January 12, 1994), Judge Enslen agreed with the court in *City Environmental* that the test from the Eighth Circuit concerning a substantial continuity test would apply to CERCLA cases in Michigan.

For purposes of this motion this Court will assume that the "continuity of enterprise" doctrine has viability in CERCLA successor corporation liability actions in Michigan. The issue remains whether this case presents the appropriate factual circumstances to warrant application of the doctrine.

In *United States v. Mexico Feed and Seed Co.,* 980 F.2d 478, 487 n. 9 (8th Cir.1992), the case followed by both *City Environmental* and *Oshtemo,* the Eighth Circuit analyzed the "substantial continuity" or "continuity of enterprise" doctrine and determined that the doctrine requires more than mere continuation of the business. The court noted that the doctrine originated with a line of Supreme Court labor relations cases where broadening the net of liability was justified by the purchasing corporation's knowledge of the pending wrongs. 980 F.2d at 487–88 (citing *Golden State Bottling Co. v. NLRB,* 414 U.S. 168, 182–85, 94 S.Ct. 414, 424–26, 38 L.Ed.2d 388 (1973)). Because the successor must have notice before liability can be imposed, its potential liability could be reflected in the purchase price or in an indemnity provision, and it could then reasonably be held responsible for remedying the problem. *Mexico Feed,* 980 F.2d at 488.

The Eighth Circuit noted that in product liability cases as well, these same factors of knowledge and responsibility have been present when "substantial continuation" liability has been imposed on an asset purchaser. *Id.* at 488. The Eighth Circuit reasoned that because CERCLA is aimed at imposing clean up costs on the parties responsible for the creation or maintenance of hazardous waste sites, in the CERCLA context "the imposition of successor liability under the 'substantial continuation' test is justified by a showing that in substance, if not in form, the successor is a responsible party." *Mexico Feed,* 980 F.2d at 488.

It is evident from the case law that courts have implicitly been following the *Mexico Feed* approach. Each time the substantial continuity test has been applied in the CERCLA context, the factors of knowledge and responsibility have been present. In *United States v. Carolina Transformer Co.,* 978 F.2d 832, 838 (4th Cir.1992), the children purchased the company from their father. According to the Eighth Circuit, "There was no colorable question of the purchaser's knowledge of and benefit from the seller's conduct for which CERCLA liability attached, or of the seller's and purchaser's practical identity." *Mexico Feed,* 980 F.2d at 489. In *United States v. Distler,* 741 F.Supp. 637 (W.D.Ky.1990), the company was purchased by three employees who virtually ran the company. "They were well aware of their employer's practices." *Mexico Feed,* 980 F.2d at 488.

Similarly, this court applied the "substantial continuity" test in *Oshtemo,* where the president and member of the board of directors of the selling corporation became one of the two owners of the successor corporation, as well as president of the successor corporation, and the Treasurer of the successor corporation was controller of the prede-

cessor. 1994 U.S.Dist. LEXIS 2158 at *7–8. More recently, the "substantial continuity test" was applied in *Atlantic Richfield Co. v. Blosenski*, 847 F.Supp. 1261, 1287 (E.D.Pa. 1994), where the undisputed facts showed that the asset purchaser knew of the potential CERCLA liability of the Blosenski corporations at the time of the purchase in 1987.

This Court agrees with Judge Rosen's determination in *City Environmental* that Michigan courts would not apply the "continuity of enterprise" doctrine without considering whether there were any substantial "ties" between the selling and purchasing corporations. 814 F.Supp. at 638.

> To not require that consideration would be to ignore the express congressional mandate that CERCLA be applied to prevent those responsible for hazardous waste from escaping liability. This Court does not find that it was Congress's intent that persons having nothing whatsoever to do with hazardous waste dumping should become liable for clean-up costs or responsibility, and the Court does not believe that the Michigan court would contravene such expressly stated congressional intent, either.

814 F.Supp. at 638.

The requirement of linking CERCLA successor liability to responsibility for the waste is consistent with Sixth Circuit case law. In *Anspec* the Court stated that the two essential purposes of CERCLA were "to provide ... the tools immediately necessary for a swift and effective response to hazardous waste sites ... [and to ensure] that those responsible for disposal of chemical poisons bear the cost and responsibility for remedying the harmful conditions they created." 922 F.2d at 1247 (emphasis added) Or, as more recently stated in *Kelley v. E.I. DuPont De Nemours and Co.*, 17 F.3d 836, 843 (6th Cir.1994), "CERCLA has two overriding objectives—cleaning up hazardous waste, and doing so at the expense of those who created it."

In *City Environmental* there was a continuation of the business at the same facility, with the same customers, using the same stationary, with many of the same employees, including one of the former directors. Notwithstanding this evidence of continuation of the business, the court held that without evidence that the purchasing corporation was somehow "responsible" for the toxic waste dumping, these facts were not sufficient to show a "substantial continuity" for the purpose of holding City Environmental responsible and liable for the cost of clean-up. 814 F.Supp. at 639.

In *United States v. Atlas Minerals and Chemicals, Inc.*, 824 F.Supp. 46 (E.D.Pa. 1993), plaintiffs alleged that Garnet Electroplating Corporation was the successor to Garnet Chemical Corporation which had dumped waste at the landfill between 1969 and 1972. It was undisputed that Garnet Chemical had sold virtually all its assets to Robert Williams in 1985, and that Williams assigned his rights to Garnet Electroplating, that Garnet Electroplating continued to do business at the same production facility, that it held itself out as the continuation of Garnet Chemical, and that most of the employees were former Garnet Chemical employees. 824 F.Supp. at 48–49.

Notwithstanding the strong indicia of continuity of the business, the court declined to apply the "continuity of enterprise" doctrine. The court reasoned that the "continuity of enterprise" doctrine should be applied "only when the application of traditional corporate law principles would frustrate the remedial goals of CERCLA, namely to have *responsible* parties contribute to the cleanup costs." 824 F.Supp. at 50 (emphasis in original). The court described the doctrine as an exception designed "to prevent strategic behavior by corporate actors who know of or anticipate CERCLA problems." *Id.* at 50. Because no such conduct had been alleged, court determined that the "continuity of enterprise" doctrine should not be applied. *Id.*

Because Garnet Chemical ceased its transfer of waste to the Dorney Landfill in 1972, and because Mr. Williams had no ties to Garnet Chemical, the court held that the 1985 asset sale did not render Garnet Electroplating a responsible party. 824 F.Supp. at 51.

The same analysis precludes a finding of successor liability in this case. Like *Atlas*

*Minerals*, this case involved a pre-CERCLA sale of assets. CERCLA was not enacted until December 1980, nine months after the purchase, and the government did not notify Atkinson or Vermont American of any potential liability with respect to the Mason County Landfill until 1988, 8 years after the purchase. There is no evidence or allegation that Vermont American ever arranged for the disposal of substances at the Mason County Landfill, and there is no allegation that the sale of assets to Vermont American was structured to avoid CERCLA problems.

The government contends there is an issue of fact as to Vermont American's actual knowledge of its potential liability. The only evidence the government has come forward with is the ambiguous statement by Jack Rasmussen that before the sale to Vermont American, he reviewed the entire operation at Atkinson with a representative of Vermont American by walking through the plant and discussing the manufacturing processes, including wastestreams. Rasmussen also testified, however, that he did not discuss where Atkinson disposed of its waste during 1971–1978, (Ras. dep. p. 38), he did not discuss the Mason County Landfill, (Ras 40, 84), and he did not discuss the issue of environmental liability or waste disposal in connection with assumption of liability agreement. (Ras 51–52, 56–57). The evidence is not sufficient to create an issue of fact as to whether Vermont American knew about the dumping of hazardous waste at the Mason County Landfill at the time of the asset purchase.

in this case the facts, viewed in the light most favorable to the government, are not legally sufficient to establish that Vermont American had knowledge of the potential CERCLA liability, or that it had any other "ties" with Atkinson that would justify holding it liable for Atkinson's CERCLA liability at the Mason County Landfill. There is no basis for finding successor liability on the part of Vermont American. Accordingly, Vermont American's motion for summary judgment will be granted.


**MUTUAL SERVICE CORPORATION, a Michigan corporation, and Carol A. Holesha, Plaintiffs,**

**v.**

**Margaret SPAULDING and Joseph P. O'Connell and James Weber, as Co-Trustees of the Helen Spaulding Trust, Defendants.**

**No. 94 C 6463.**

United States District Court,
N.D. Illinois,
Eastern Division.

Dec. 7, 1994.

Opinion Granting in Part and Denying in Part Motion to Alter or Amend Jan. 19, 1995.

Broker sued investors, seeking to vacate arbitration award, and investors counterclaimed for enforcement of award. On broker's motion to vacate award and investors' motion to confirm award, the District Court, Alesia, J., held that claims regarding purchases which occurred more than six years before investors' attempt to arbitrate these claims were time barred.

Plaintiffs' motion granted.

**1. Arbitration ⇐23.14**

It is job of court, and not arbitrator, to define limits of arbitral jurisdiction.

**2. Exchanges ⇐11(11.1)**

Whether six-year time requirement of National Association of Securities Dealer (NASD) Code of Arbitration Procedure bars claim from submission to arbitrators is for court to decide, and it is irrelevant whether arbitrators have already ruled on the question.

**3. Exchanges ⇐11(11.1)**

"Occurrence or event," for purposes of six-year time requirement of National Asso-

received the letter, the plaintiff received unofficial notice from his wife. *Hill*, 830 F.Supp. at 274. The *Hill* court stated that the issue in these cases is not the "timeliness of the notification but whether the government's attempts to notify the plaintiff of the seizure constitutes legal notification." *Hill*, 830 F.Supp. at 273. The court concluded that the government's actions constituted legal notification. *id.* *Hill* seems to focus on what constitutes notice instead of what constitutes timely issuance of notice. In the present case, Claimant not only received adequate notice, but he received that notice in a timely fashion.

In determining what "earliest practicable opportunity" means, the Court must consider the realities of law enforcement. When initiating a drug related arrest, the government's first priority is to pursue criminal prosecution. Commencing a civil forfeiture is usually a secondary, if not a tertiary, concern. Also, the sheer number of claims tends to frustrate the administrative system which handles civil forfeitures. This is, of course, no excuse for an excessive delay, but a brief delay should be tolerated. The ultimate goal is to promote expediency while recognizing the limitations of the system.

In future cases, the facts may demand a different outcome. Given the construction of the statute, a case by case analysis the best approach. In the present case, Claimant Key was incarcerated when the government seized the vehicle. The fact that the government held the vehicle for twenty-one days before sending notice, did not interfere with Claimant Key's ability to use the vehicle. There is little else the government could have done except arresting Claimant Key and providing notice almost simultaneously.

In this case, a strict interpretation of the statute is not reasonable. Since the government sent three notices to three different addresses and then followed up on the returned notices, the government acted with appropriate diligence.[7] The government did not wait an excessive amount of time to send notice. This Court adopts the reasoning used in *Hill*, and the Claimant's Motion for Dismissal is denied.

Based on the foregoing analysis, the Court **GRANTS** Plaintiff's Motion for Summary Judgment and **DENIES** Claimant's Motion to Dismiss.

**IT IS SO ORDERED.**


**CHRYSLER CORPORATION, Plaintiff,**

**v.**

**FORD MOTOR COMPANY, General Motors Corporation, County of Wayne, Michigan, The Charter Township of Ypsilanti, Ypsilanti Community Utilities Authority, and the Regents of the University of Michigan, Defendants,**

**and**

**FORD MOTOR COMPANY, General Motors Corporation, County of Wayne, Michigan, The Charter Township of Ypsilanti, Ypsilanti Community Utilities Authority, and the Regents of the University of Michigan, Third-Party Plaintiffs,**

**v.**

**CHRYSLER PENTASTAR AVIATION, INC., Third-Party Defendant.**

**Civil Action No. 95-72112.**

United States District Court,
E.D. Michigan,
Southern Division.

Aug. 21, 1997.

Successor to subsidiary filed action seeking declaratory judgment that it was not liable for response costs under Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Michigan Environmental Response Act (MERA), and various defendants filed counterclaims as-

7. It is important to note that Claimant Key's girlfriend, Rhonda Morris, called this court numerous times in December 1996 regarding the forfeiture action. Such behavior indicates that Claimant Key knew about this proceedings.

serting liability of successor under CERCLA and MERA and under theories of public nuisance and undue enrichment. The District Court, Feikens, J., held that: (1) issue of whether subsidiary was successor to parent's alleged environmental liabilities concerned external liability and thus would be determined under law of state having most significant relationship to lawsuit rather than law of state of incorporation; (2) Michigan law would guide application of theories of successor liability of subsidiary based on factors indicating that Michigan had most significant relationship to lawsuit; (3) evidence of alleged functional integration of subsidiary and parent was not sufficient to pierce corporate veil and deem subsidiary alter-ego of parent and liable for parent's pollution; (4) contracts between parent and subsidiary did not create joint venture under Michigan law; and (5) corporate reorganization by which subsidiary purchased assets of parent and assumed all contingent liabilities of parent existing at time of closing did not support liability of subsidiary for parent's pollution under principles of contract law or de facto merger.

Ordered accordingly.

**1. Corporations ⇐310(1)**

In matters of internal corporate governance, law of state of incorporation will ordinarily govern, whereas more general choice of law rules apply in matters external to corporation.

**2. Corporations ⇐445.1**

Issue of whether subsidiary was successor to parent's alleged liabilities under CERCLA and state law concerned external liability rather than internal corporate governance and thus would be determined under law of state having most significant relationship to lawsuit rather than under law of state of incorporation of subsidiary. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, § 101 et seq., 42 U.S.C.A. § 9601 et seq.; Restatement (Second) of Conflict of Laws §§ 301, 302.

**3. Corporations ⇐445.1**

Michigan law would guide application of alter-ego theories of successor liability of subsidiary under CERCLA and state environmental law, as well as contractual and de facto merger theories, in light of factors indicating that Michigan had most significant relationship to lawsuit; although subsidiary was incorporated in Pennsylvania, release of hazardous substances and incurrence of cleanup costs took place in Michigan, relationship between subsidiary and parent was negotiated and centered in Michigan and Ohio, and subsidiary and parent had principal places of business in Michigan. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, § 101 et seq., 42 U.S.C.A. § 9601 et seq.; Restatement (Second) of Conflict of Laws §§ 145, 188.

**4. Corporations ⇐1.7(2)**

Evidence of alleged functional integration of subsidiary and parent, through interlocking boards of directors and common managers and employees, was not sufficient to pierce corporate veil and deem subsidiary alter-ego of parent so as to be liable for parent's pollution, absent additional showing that integration was done for wrongful purpose; evidence established that subsidiary's activation and relations with parent were for legal purpose of securing credit for performance of defense contracts, satisfying creditor-imposed requirements, and obtaining favorable tax consequences, without consideration of potential for environmental cleanup liability.

**5. Corporations ⇐1.4(3)**

Organization of corporation for avowed purpose of avoiding personal responsibility does not itself constitute fraud or reprehensible conduct justifying disregard of corporate form.

**6. Joint Adventures ⇐1.2(1)**

Under Michigan law, joint venture requires agreement indicating intention to undertake joint venture, joint undertaking, single project for profit, sharing of profits as well as losses, contribution of skills or property by parties, and community interest and control over subject matter of enterprise.

**7. Joint Adventures ⇐1.12**

Contracts between parent and subsidiary did not create joint venture under Michigan law, so as to support liability of subsidiary for parent's pollution, in light of facts that contracts were explicitly made on no-

profit and no-loss basis and consistently referred to parties and contractor and subcontractor.

8. Corporations ⇐579(5)

Corporate reorganization in 1956 by which subsidiary purchased assets of parent and assumed all contingent liabilities of parent existing at time of closing did not support imposition of liability on subsidiary for parent's pollution under principles of Michigan contract law, in light of evidence that parties were not aware of potential environmental liability for parent's discharges at time of reorganization, and in light of absence of agreement for subsidiary to assume all future-arising liabilities of parent.

9. Contracts ⇐15

Under Michigan law, parties must have meeting of minds or mutual assent on all material facts in order for contract to be valid.

10. Corporations ⇐445.1

Under Michigan law, corporation which purchases assets from another corporation does not normally take on that corporation's debts and liabilities, but where two companies merge in effect, if not formally, resulting corporation takes on liabilities of both.

11. Corporations ⇐445.1

Requirements for de facto merger under Michigan law are: (1) continuation of enterprise of seller corporation, with continuity of management, personnel, physical location, assets, and general business operations; (2) continuity of shareholders, resulting from purchasing corporation's use of its own stock to purchase acquired assets; (3) cessation of seller's ordinary business operations, liquidation and dissolution of seller as soon as legally and practically possible; and (4) assumption by purchasing corporation of liabilities and obligations of seller necessary for uninterrupted continuation of normal business operations of seller.

12. Corporations ⇐579(5)

Corporate reorganization by which subsidiary purchased assets of parent did not constitute de facto merger under Michigan law so as to support imposition of liability on subsidiary for parent's pollution, absent continuity of enterprise or cessation of ordinary business by seller; parent survived sale as separate holding company with substantial assets, subsidiary did not assume parent's former production niche, and relationship between corporations was governed by joint operating agreements and monitored by creditors and independent accounting firm.

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Steven C. Kohl, Howard & Howard, Bloomfield Hills, MI, for plaintiffs.

Eugene Driker and John Libby, Barris, Sott, Denn & Driker, Detroit, MI, for defendants.

*OPINION AND ORDER*

FEIKENS, District Judge.

This dispute centers on response costs for the cleanup of pollution at the Willow Run Creek Site ("Willow Run") in Wayne and Washtenaw Counties. Willow Run is well known in Michigan as the site where Ford Motor Company produced bomber airplanes during World War II. Defendants are the previous and current owners and operators of Willow Run Airport, a nearby waste water treatment facility, and nearby industrial plants: Ford Motor Company ("Ford"), General Motors Corporation ("GM"), Wayne County, Ypsilanti Township, the Ypsilanti Utilities Authority, and the University of Michigan Regents. These parties negotiated a consent decree with the Michigan Department of Natural Resources ("MDNR", now Michigan Department of Environmental Quality, "MDEQ"), acting as an agent for the United States Environmental Protection Agency ("EPA"), to implement a remedial action plan for Willow Run pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 *et seq.* The consent decree was entered in March 1995.

Plaintiff Chrysler Corporation ("Chrysler") was not a party to the 1995 consent decree, though in July 1993 it had received notice that it was a potentially liable party under CERCLA § 107(a), 42 U.S.C. § 9607(a). Chrysler filed this lawsuit seeking a declaratory judgment that it is not liable for response costs under CERCLA or the Michigan Environmental Response Act ("MERA", now the Natural Resources and Environmen-

tal Protection Act, "NREPA"), M.C.L. § 324.20101 *et seq.* Chrysler's complaint seeks a declaration that it is not liable for CERCLA or MERA response costs because of its 1987 purchase of a company formerly know as Kaiser Manufacturing Corporation ("KMC"), which had been a subsidiary of the Kaiser–Frazer Corporation ("KFC"). Chrysler denies that it is a successor in interest to KFC by virtue of its purchase of KMC. While Chrysler admits that it is the successor to KMC, it seeks a declaration that KMC did not "own," "operate," or "arrange" for disposal of hazardous substances at Willow Run as defined by CERCLA or MERA.

Defendants filed a counterclaim in which they asserted that Chrysler is not only liable as the successor to KFC and KMC, but also that Chrysler and third-party defendant Chrysler Pentastar Aviation, Inc. ("Pentastar") are directly liable by virtue of their own activities at Hangar One of the Willow Run Airport. In addition to CERCLA and MERA liability, defendants assert theories of public nuisance and undue enrichment.

A November 7, 1995 stipulated case management order separated liability issues ("Phase I") from allocation questions ("Phase II"). After I denied motions for summary judgment from both sides, a bench trial was begun on July 15, 1997 on Phase I issues. The issues at trial were limited to Chrysler's successor in interest liability.

For the reasons stated below, I find that Chrysler is not the successor in interest to KFC and therefore is not liable under CERCLA, MERA or the common law for releases of hazardous wastes by KFC. I do not now rule whether Chrysler's acknowledged predecessor in interest, KMC, was an "operator" or "arranger" under CERCLA and MERA. Neither do I decide the amount of Chrysler and Pentastar's liability for activities in Hangar One; since Chrysler and Pentastar admit liability for Hangar One as a threshold matter, the only remaining issue is cost allocation, which has not yet been subject to discovery or argument.

## I. *Jurisdiction*

This court has exclusive jurisdiction over the CERCLA claims pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 9613(b). I exercise supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367. Authority to issue a declaratory judgment and other necessary relief is provided by 28 U.S.C. §§ 2201 and 2202. Venue is proper pursuant to 28 U.S.C. §§ 1391(b) and (c) and 42 U.S.C. § 9613(b).

## II. *Background*

Key to this case is the relationship between a parent and subsidiary corporation controlled by the Kaiser family. The parent, Kaiser–Frazer Corporation, produced motor vehicles at the Willow Run Manufacturing Plant from 1946 to 1953. By the time KFC's manufacturing and assembly operations at Willow Run ended, it was known as Kaiser Motors Corporation. Subsequently, a 1956 reorganization turned the corporation into a holding company for various Kaiser interests, at which point it was known as Kaiser Industries.

The subsidiary, Kaiser Manufacturing Corporation, was created when a formerly inactive KFC subsidiary, Phoenix Iron Works Corporation, was activated in 1951. As will be discussed in greater detail, this was done in order to secure contracts for military aircraft which were also produced at Willow Run in the following years. In 1953, KMC changed its name to Willys Motors Corporation when it bought the assets of Willys–Overland of Toledo, Ohio. It was later renamed Kaiser–Jeep until its stock was purchased by American Motors Corporation ("AMC") in 1970. Chrysler in turn purchased AMC and its wholly-owned Jeep subsidiary in 1987.

For the sake of simplicity, throughout this opinion I refer to the parent corporation as "KFC" and the subsidiary as "KMC" (*i.e.*, Kaiser Manufacturing Corporation, as distinct from the parent Kaiser Motors Corporation). I refer to the Chrysler Corporation in the singular as "Chrysler" or "plaintiff," although Chrysler Pentastar Aviation, Inc., was named as a third-party defendant for its activities at the Willow Run Airport.

Chrysler acknowledges that its purchase of AMC makes it a successor in interest to the liabilities of KMC, but maintains that KMC had no activities at Willow Run which could give rise to liability. Chrysler denies the defendants' claim that KMC was the succes-

sor to KFC, and thus denies that its purchase of AMC carried with it liability for KFC's activities at the site.

Defendants' claim of successor liability is based on several theories. They assert that when KMC purchased KFC's assets in 1956, KMC contractually assumed all of KFC's liabilities, including CERCLA liability. In the alternative, if there was not a contractual assumption of liability, they maintain that the sale created a *de facto* merger of the two corporations. Finally, they argue that from the time of KMC's activation in 1951 it was in effect the "alter-ego" of KFC and thus should be held liable for KFC's waste. In other words, defendants seek to "pierce the corporate veil" and thereby ignore the formal separation of the two companies.

With this opinion, I resolve only Chrysler's successor in interest liability for KFC's pollution. I do not decide the extent to which KMC's activities may have generated direct liability under CERCLA (as an operator or arranger), or common law theories of public nuisance or unjust enrichment. Neither do I decide any issues related to the allocation of response costs, including costs resulting from Chrysler's operations of Hangar One at the Willow Run Airport, for which Chrysler has acknowledged threshold CERCLA liability.

### III. *Choice of law*

CERCLA does not limit or define successor in interest liability. The U.S. Court of Appeals for the Sixth Circuit ("Sixth Circuit") has held that this question is answered by the application of state corporation law principles rather than federal common law. *Anspec Co., Inc. v. Johnson Controls, Inc.*, 922 F.2d 1240, 1246 and 1248 (6th Cir.1991). State law applies to a determination of successor liability under an *alter-ego* theory, *United States v. Cordova Chemical Company of Michigan*, 113 F.3d 572, 580 (6th Cir. 1997), and under a theory based on the purchase of assets, *City Management Corp. v. U.S. Chemical Company Inc.*, 43 F.3d 244, 251 (6th Cir.1994).

The threshold question is, which state's law shall govern? [1] Defendants argue that the law of the state of incorporation should govern; since the purported successor liabilities of KMC are at issue, the law of the state of KMC's incorporation, Pennsylvania, would presumably control.[2] Plaintiff argues that Michigan law should apply because Michigan has the greatest interest in, and connection to, the events in question.

Previous cases involving CERCLA liability of alleged successor or *alter-ego* corporations have not directly confronted whether the law of the state of incorporation or the state with the greatest interest in the lawsuit should govern. A plurality concurrence in *Anspec* references the state of incorporation, without discussion; but from that opinion it appears that the state of incorporation was also the pollution site, so the choice faced in this case did not arise. *Id.* at 1248. Similarly, a later decision by the Sixth Circuit applied Michigan law where both predecessor and successor corporation were incorporated in Michigan. *City Management* at 250 (citing *Anspec, supra*). But in that case, as well, Michigan was the site

1. No precedent clearly establishes whether the rules of the forum state (Michigan) or federal common law should govern the choice of state law here. Since jurisdiction arises under federal law rather than by diversity, forum state choice of law is not mandated. Some courts have held that where comprehensive legislation is silent on choice of law (as is CERCLA), forum state choice rules apply. *A.I. Trade Finance, Inc. v. Petra International Banking Corp.*, 62 F.3d 1454 (D.C.Cir.1995). Others have applied federal common law choice of law rules when faced with federal legislation. *Enterprise Group Planning, Inc. v. Elaine Falba*, No. 94-3827, 1995 WL 764117 (6th Cir. Dec.27, 1995) (unpublished); *Aaron Ferer & Sons Limited v. Chase Manhattan Bank*, 731 F.2d 112, 120-121 (2nd Cir.1984); *Halkias v. General Dynamics Corp.*, 31 F.3d 224, 237 (5th Cir.1994), *vacated on rehearing*, 56 F.3d 27 (5th Cir.1995). Because analysis under either framework leads me to the application of Michigan law, I need not choose between the two. In an area such as this one, federal common law borrows from state law principles in any event.

2. In her *Anspec* concurrence, Judge Cornelia G. Kennedy stated, "[T]he existence and status of a 'corporation' allegedly liable under section 9607 should be determined by reference to the law under which the 'corporation' was created." *Anspec* at 1248. Since the existence, status and liability of KMC are at issue, the relevant law would be that under which KMC was created, *i.e.*, Pennsylvania. Thus I reject the suggestion that the law of Delaware, the state of Chrysler's incorporation, or Nevada, the state where KFC was incorporated, might apply.

of pollution and other material events. This is an issue of first impression.

[1] In matters of internal corporate governance, the law of the state of incorporation will ordinarily govern; while in matters external to the corporation, more general choice of law rules apply.

> "[T]he law of the state of incorporation normally determines issues relating to the *internal* affairs of a corporation. Application of that body of law achieves the need for certainty and predictability of result while generally protecting the justified expectations of parties with interests in the corporation.... Different conflicts principles apply, however, where the rights of third parties *external* the corporation are at issue."

*First Nat. City Bank v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 621, 103 S.Ct. 2591, 2597, 77 L.Ed.2d 46 (1983) (citing Restatement (Second) of Conflict of Laws §§ 301 and 302) (emphasis in original).

[2] The choice of law in this case thus depends on whether the various successor in interest theories are characterized as internal corporate matters. Michigan law has not confronted this particular issue (as noted in the analysis of the *Anspec* and *City Management* decisions, above). The Restatement (Second) of Conflict of Laws provides useful guidance. Chapter 13, covering Business Corporations, contains the following language:

> § 301: The rights and liabilities of a corporation with respect to a third person that arise from a corporate act of a sort that can likewise be done by an individual are determined by the same choice-of-law principles as are applicable to non-corporate parties.
>
> § 302:(1) Issues involving the rights and liabilities of a corporation, other than those dealt with in § 301, are determined by the local law of the state which, with respect to the particular issue, has the most significant relationship to the occurrence and the parties under the principles stated in § 6.(2) The local law of the state of incorporation will be applied to determine such issues, except in the unusual case where, with respect to the particular issue, some other state has a more significant relationship to the occurrence and the parties, in which event the local law of the other state will be applied.

Thus if a corporation does an act that can be committed by a non-corporate entity, § 301 applies standard choice of law rules according to the particular liability involved (*e.g.*, contract or tort law); while if the act is one peculiar to corporations, the law of the state of incorporation will normally be applied, unless another state has a "more significant relationship" to the lawsuit.

A non-corporate entity may accrue CERCLA liability, and on that basis § 301 would appear to apply here, leading to the application of normal contract or tort choice of law rules. However, it could also be argued that successor liability or piercing of the corporate veil are theories of liability peculiar to corporations, in which case § 302 applies. Even if that is so, the terms of § 302 do not mandate the law of the state of incorporation in this case, where the matter is not one of internal corporate governance but rather external liability, and where Michigan has a far more significant relationship to the events in question than does the state of incorporation. The comment to § 302(2) states,

> The reasons for applying the local law of the state of incorporation carry less weight when the corporation has little or no contact with this state other than the fact that it was incorporated there. In such situations, some other state will almost surely have a greater interest than the state of incorporation in the determination of the particular issue.

Rest. (Second) § 302, comment g. This is the case here, as the parties have stipulated that KMC's principal places of business were in Michigan, Ohio and California and not its state of incorporation, Pennsylvania; neither did any of the facts precipitating this lawsuit arise in Pennsylvania. Thus even under § 302, the law of the state with the greatest interest—in this case, Michigan—should prevail over the law of the state of incorporation.

More specific sections of the Restatement Chapter 13 which bear specifically on *alter-ego* and veil-piercing theories are § 307, Shareholders' Liability, and § 309, Directors' or Officers' Liability. In general terms, both

of these sections apply the law of the state of incorporation except where another state has a more significant relationship to the parties and the transaction.

> The local law of some state other than the state of incorporation is most likely to be applied to determine issues of this sort [regarding directors' or officers' liability] where the corporation does all, or nearly all, of its business and has most of its shareholders in this other state and has little contact, apart from the fact of its incorporation, with the state of incorporation.

Section 309, comment a. While the state of incorporation would have the greatest stake in disputes between the investors and directors or managers of a corporation, since "this is the law which the shareholders, to the extent that they thought about the question, would usually expect to have applied to determine their liability," § 307 comment a., the facts of this case are clearly otherwise.

Other district courts within the Sixth Circuit faced with a choice of law question regarding successor liability have declined to look to the state of incorporation. In two diversity personal injury cases, district courts applying forum choice of law principles characterized the liability of an alleged successor in a product liability suit as a tort matter, rather than a matter of corporate governance, and therefore applied tort choice of law rules. *Korzetz v. Amsted Industries, Inc.*, 472 F.Supp. 136, 142 (E.D.Mich.1979); *Hoover v. Recreation Equipment Corp.*, 792 F.Supp. 1484 (N.D.Ohio 1991). In *Korzetz*, the court followed Michigan choice of law rules for tort actions and thus applied *lex locus delicti*, the law of the place of injury. *Korzetz* at 142. The court in Hoover held that Ohio choice of law principles for tort actions called for the law of the state with the most significant relationship to the lawsuit, considering factors in § 175 of Rest. of Conflicts (Second); the state where injury occurred had a more significant relationship than the state of incorporation. *Hoover* at 1491; *accord, Litarowich v. Wiederkehr*, 170 N.J.Super. 144, 150–151, 405 A.2d 874 (1979).

The logic behind these decisions is that a state's interest in applying its law to citizens injured by foreign corporations outweighs the interest of the incorporating state. "[W]hile Indiana has an interest in seeing that its law governs asset purchase agreements entered into between two Indiana corporations, Ohio has a greater interest in seeing that Ohio law applies to its own citizens who may be *affected* by the legal implications of those agreements." *Hoover* at 1491 (emphasis in the original).

This logic also prevailed in the U.S. Court of Appeals for the Fifth Circuit, in a suit by the U.S. government against the shareholders of a Delaware corporation doing business in Louisiana. In determining whether to pierce the corporate veil, the court applied Louisiana law rather than that of the state of incorporation, because Louisiana had a more significant relationship to the lawsuit. *U.S. v. Clinical Leasing Service, Inc.*, 982 F.2d 900, 902 n. 5 (5th Cir.1992) (citing Restatement (Second) Conflicts of Law § 305).

A state which is the site of a CERCLA action similarly has interests which outweigh those of an incorporating state. A single CERCLA lawsuit may adjudicate the claims of a large number of actors, including the federal and state government and a variety of potentially responsible parties. The alleged successor (or *alter-ego*) and those who seek to recover from it did not organize their relationship under the umbrella of the incorporating state's law, as would be the case in an internal dispute within a corporation or between a corporation and its shareholders. The interests here go far beyond corporate governance, as the acts of predecessor and successor corporation affect a wide range of interests outside the corporation. The state directly affected by the alleged corporate wrongdoing must be allowed to determine the extent to which the corporate veil may be pierced.

[3] Having determined that law of the state of incorporation is not entitled to preference on successor liability issues, I must decide which state has the "most significant relationship" to the lawsuit. An elaborate consideration of various factors is not necessary, because nearly all point to the application of Michigan law.

The above-cited cases do not reach the question whether successor liability under CERCLA should be characterized as tort or contract for choice of law purposes. While

*alter-ego* theories relying on the piercing of the corporate veil might resonate in tort, following the guidelines laid out in § 145 of the Restatement, theories based on contractual or quasi-contractual assumption of liability would seem to invoke the provisions of § 188, which specifies factors to be considered in contract actions in the absence of effective choice of law by the parties. (The contract which allegedly gives rise to KMC's liability for KFC had no choice of law provision.)

Section 145 lists the following factors to be considered in tort cases: (a) the place of injury; (b) the place of the conduct causing the injury; (c) the domicil, residence, nationality, place of incorporation and place of business of the parties; and (d) the place where the relationship between the parties is centered. Section 188 takes into account (a) the place of contracting; (b) the place of negotiation of the contract; (c) the place of performance; (d) the location of the subject matter of the contract; and (e) the domicil residence, nationality, place of incorporation and place of business of the parties.

Under either set of factors, Michigan law clearly has the strongest claim on all of the successor in interest issues in this case. The only factor pointing elsewhere is the fact that KMC was incorporated in Pennsylvania. All relevant injury (incurrence of cleanup costs) and conduct causing injury (release of hazardous substances) took place in Michigan. The alleged *alter-ego* or successor relationship between KFC and KMC is based on relationships between that parent and subsidiary which were negotiated and centered in Michigan and Ohio. The parties' stipulated facts indicate that the principal places of business for KFC and KMC were Michigan, Ohio or California. (No party has argued that Ohio or California law has a claim here.) The broader choice of law principles set forth in § 6 of the Restatement [3] point to Michigan as well.

Thus Michigan law guides the application here of *alter-ego* theories of liability as well as contractual and *de facto* merger theories. As a matter of policy, a state in which a parent and its subsidiary do business must be able to regulate the extent to which one is liable for the wrongs of the other, particularly when those wrongs are committed within the state. This establishes predictability, consistency and ease of administration, as well as fundamental fairness. This is particularly true where there are pendant state law claims, as is true in this case. Regardless of the choice of law for CERCLA purposes, I will have to analyze the MERA and public nuisance claims under Michigan law, creating further complication if another state's law were to govern the successor issues.

It must be pointed out that the choice between Michigan and Pennsylvania law is not material so far as piercing the corporate veil is concerned, since the legal standards in the two states are substantially similar. As discussed below, the determinant factor in Michigan law is the requirement of fraud, subversion of justice, or circumvention of overriding public policy. *Cordova*, 113 F.3d at 580 n. 4. Under Pennsylvania law "the corporate form 'will be disregarded only when the entity is used to defeat public convenience, justify wrong, protect fraud or defend crime.'" *First Realvest, Inc. v. Avery Builders, Inc.*, 410 Pa.Super. 572, 577, 600 A.2d 601 (Pa.Super.1991) (citing *Sams v. Redevelopment Authority of City of New Kensington*, 431 Pa. 240, 244 A.2d 779 (1968)).[4]

3. These factors include (a) the needs of the interstate and international systems; (b) the relevant policies of the forum; (c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue; (d) the protection of justified expectations; (e) the basic policies underlying the particular field of law; (f) certainty, predictability and uniformity of result; and (g) ease in the determination and application of the law to be applied. Rest. (Second) of Conflict of Laws § 6.

4. "[T]here is a strong presumption in Pennsylvania against piercing the corporate veil." *Lumax Industries, Inc. v. Aultman*, 543 Pa. 38, 669 A.2d 893, 894 (1995), citing *Wedner v. Unemployment Compensation Bd. of Review*, 449 Pa. 460, 464, 296 A.2d 792, 794 (1972) ("[A]ny court must start from the general rule that the corporate entity should be recognized and upheld, unless specific, unusual circumstances call for an exception."). The factors considered by Pennsylvania courts are undercapitalization; failure to adhere to corporate formalities; substantial intermingling of corporate and personal affairs; and use of the corporate form to perpetrate a fraud. *Lumax Industries, Inc. v. Aultman*, 543 Pa. 38, 669

So far as contractual assumption of liability is concerned, my holding is based on interpretation of contractual language and not determined by the particularities of state law. Thus here, too, the choice of law does not materially affect the outcome.

## IV. *Successor Liability*

### A. Alter-Ego Liability

Defendants argue that KMC was in effect the *alter-ego* of KFC. On that basis, they seek to "pierce the corporate veil" between KFC and KMC and thus hold Chrysler, as the acknowledged successor to KMC, liable for all wastes released by KFC.[5] A large part of the trial and thousands of pages of exhibits were devoted to the relationship between the two companies, *i.e.*, the observance (or non-observance) of corporate formalities, the commingling of corporate assets, and the interlocking of boards, management, and employees. Rather than sift through this voluminous evidence here, I first address the one determining question: the existence of fraud or wrongdoing.

The Sixth Circuit has recently stated that in addition to the existence of "such a unity of interest and ownership that the separate personalities of the corporation and its owner cease to exist," some form of culpable conduct is required: "[T]he circumstances must be such that adherence to the fiction of separate corporate existence would sanction a fraud or promote injustice." *United States v. Cordova Chemical Company of Michigan,* 113 F.3d 572, 580 (6th Cir.1997) (*en banc* decision). The court further clarified that wrongdoing may be established by abuse of the corporate form *either* to subvert justice *or* to circumvent overriding public policy. *Id.* at 580 n. 4; *see also Seasword v. Hilti, Inc.*, 449 Mich. 542, 548, 537 N.W.2d 221 (1995) ("[The] 'corporate veil' may be pierced only where an otherwise separate corporate existence has been used to 'subvert justice or cause a result that [is] contrary to some other clearly overriding public policy.' "); *In re RCS Engineered Products Company, Inc.*, 102 F.3d 223, 226 (6th Cir.1996) ("A court may find that one entity is the *alter-ego* of another and pierce the corporate veil upon proof of three elements: first, the corporate entity must be a mere instrumentality of another; second, the corporate entity must be used to commit a fraud or wrong; and third, there must have been an unjust loss or injury to the plaintiff. *Nogueras v. Maisel & Associates of Michigan,* 142 Mich.App. 71, 86, 369 N.W.2d 492, 498 (1985).")

[4] Thus the claimed functional integration of KMC and KFC, through interlocking boards of directors and common managers and employees, could not be sufficient to pierce the corporate veil unless there was an additional showing that this was done for a wrongful purpose. The motives of KFC and KMC in organizing their relationship are amply documented, as discussed below. Because their concern was patently to satisfy conditions imposed by creditors and by the U.S. government in awarding defense contracts, there can be no doubt that their intentions were fully lawful.

KMC was formed as a tool for KFC to secure U.S. government contracts and private credit. In May 1951 an inactive KFC subsidiary called Phoenix Iron Works Corporation ("Phoenix") was activated and its name changed to Kaiser Manufacturing Corporation ("KMC"). At the time of KMC's activation, KFC was already indebted and its valuable assets were all held as security for its loans, preventing it from securing more credit. The Bank of America and Mellon Bank had previously loaned KFC $20 million. The Reconstruction Finance Corporation ("RFC") had loaned KFC $34.4 million in 1949, and loaned a wholly-owned subsidiary of KFC, Kaiser–Frazer Sales Corporation

A.2d 893, 894 (1995), citing *Kaites v. Dept. of Environmental Resources,* 108 Pa.Cmwlth. 267, 273, 529 A.2d 1148, 1151 (1987). This multi-factor approach might not on the surface appear to require fraud, wrongdoing, or circumvention of public policy. However, given the preceding admonitions from Pennsylvania courts it is clear that failure to adhere to corporate formalities would not, by itself, be sufficient to pierce the corporate veil.

5. Defendants seek to assign to a subsidiary, KMC, liability for the pollution of the parent, KFC. Defendants acknowledge that veil-piercing is usually done to impose liability on the parent for acts of the subsidiary. However the corporate veil may be pierced to hold a subsidiary liable for its parent's actions as well. *Shirley v. Drackett Products Co.*, 26 Mich.App. 644, 648–49, 182 N.W.2d 726 (1970). Chrysler has not argued to the contrary.

("K–F Sales"), $10 million in 1949 and $25 million in 1950. As security, the RFC had been given a mortgage on the Willow Run Plant and a security interest in KFC's other assets, including equipment, tooling and account receivables. The RFC received a pledge of stock in KFC subsidiaries, including Phoenix and K–F Sales. The RFC loans were also secured by a $20 million guarantee from the Kaiser family's privately held company, Henry J. Kaiser Co. ("HJKCO"). (Statement of Stipulated Facts, hereafter "SF," nos. 48–49). At the time of the 1949 loans, the liquidation value of KFC's assets was $37.3 million, or approximately half of the debt to the RFC. (SF no. 52.)

U.S. government agencies required KFC to seek defense contracts, and required the formation of KMC as a separate entity to execute those contracts. KFC agreed to seek defense contracts as a condition for an additional RFC loan of $25 million to K–F Sales in 1950. (SF no. 55.) In 1950 the U.S. Air Force ("USAF") contracted with KFC for the production of C–119 aircraft at the Willow Run Plant and R–1300 engines at other Michigan plants. Given KFC's financial difficulties, in order to finance performance of the defense contracts, a new entity was needed whose assets and profits could be insulated from its troubled parent. KMC was formed for this purpose. In June 1951, KMC borrowed $25 million from the Bank of America and Mellon Bank to finance performance of the defense contracts. The USAF "V Loan" program provided a 90% guarantee for the loan "and mandated the assignment of the defense contracts to KMC." (SF no. 59.)

In June 1951, KFC duly assigned the C–119 contracts to KMC, and then the two companies executed subcontracts in which KFC agreed to provide all labor and services for the aircraft production at cost. (SF no. 60.) In October 1952, the two companies signed a similar subcontract for the performance of a contract for production of C–123 aircraft. (SF no. 62.) KMC was not operational as a manufacturer.

The relationship between KFC and KMC was overseen by government agents and independent auditors. As a condition of the 1950 loan, the RFC was given the right to appoint a representative to the KFC Board of Directors, which it did on July 31, 1952 when it named Alan E. Schwartz. Schwartz testified that his task was to advise the RFC of what happened in KFC board meetings, though he was not involved in day-to-day management.[6] (SF no. 67.) Cost allocation and cost segregation between the companies were subject to audit by USAF personnel at the Willow Run Plant. (SF no. 70.)

These facts disclose the actual purpose behind KMC's activation and its contractual relations with KMC. This was to secure credit for the performance of defense contracts, and to satisfy creditor-imposed requirements that those contracts be insulated from the troubled KFC. Not only was this purpose legal, it was explicitly known to, and approved by, the U.S. government, creditors and shareholders. There is no additional evidence in the record which indicates that anyone connected with KFC or KMC had another purpose in mind.

Neither is any improper purpose apparent in the subsequent relations between the parent and subsidiary. In mid–1953 the C–119 and C–123 contracts were terminated by USAF "for its convenience." (SF no. 65.) KFC was still in poor financial shape, having lost $12 million in 1951 and over $4.7 million in 1952. In these circumstances, KMC purchased the Willys–Overland Corp. in Toledo Ohio and changed its name to Willys Motors Corporation. The RFC approved of the purchase. (SF no. 74.) The purchase was financed in part through new loans from Bank of America and Transamerica Bank, which allowed KMC (now Willys Motors) to pay $15 million on outstanding RFC loans, and thereby obtain the release of the RFC pledge of KMC stock and HJKCO guarantees. KMC was then able to invest $10 million in KFC and loan KFC an additional $6.5 million. (SF no. 76.) The purpose was clearly to enable the financial survival of KFC.

6. The RFC also obtained KFC's voting rights in its wholly-owned subsidiaries, including KMC. On December 5, 1952, Schwartz was instructed to use the RFC proxy to re-elect the KMC Board of Directors, none of which were U.S. government representatives. (SF no. 66.)

At the time of KMC's purchase of Willys, it was expected that KFC and KMC each would provide services to the other. The terms of loans to KMC for that purchase required cost and expense accounting between KMC and KFC, and a methodology was developed by an independent accounting firm, Ernst & Ernst, with the approval of Transamerica Bank. At least two written joint operating agreements reflected these lender requirements. The audited financial statements of the two companies indicated that the loan restrictions had resulted in the effective segregation of assets and earnings, though many operational areas were consolidated. (SF nos. 88–91.) After the Willys purchase, passenger car production ceased at the KFC Willow Run Plant, which was sold to General Motors in late 1953. GM leased the plant back to KFC, which continued production of component parts. By August 1954, production had ceased and only three Willow Run personnel remained to oversee storage of KFC tooling and parts. (SF nos. 80–84.) In January 1955, KFC entered the Argentine car market, with the approval of the RFC.

In March 1956 a reorganization turned HJKCO into a wholly-owned subsidiary of KFC, and entities owned or controlled by HJKCO, the Kaiser family's privately held corporation, became indirect subsidiaries of KFC. The Internal Revenue Service ("IRS") gave KFC a letter ruling that the exchange of stock would be a tax-free reorganization. This infusion of capital allowed KFC (by then, Kaiser Motors) to pay off its outstanding debt to the RFC and restructure its commercial debt. As part of this transaction, KMC purchased KFC's assets and assumed its liabilities in January 1956. After the reorganization, KFC became purely a holding company, and its name was changed to Kaiser Industries Corporation. KFC (now Kaiser Industries) sold its stock in KMC (Willys) to American Motors Corporation. KFC formally dissolved in 1977 and wound up its affairs during the 1980s. (SF nos. 99–108).

Thus it is apparent that all collaboration between KFC and KMC was approved and monitored by the company's stockholders, the U.S. government, commercial lenders, and outside auditors. Favorable tax and credit consequences were an open and expected consequence of these arrangements. There was nothing illegal or improper about the relationship. Most significantly, there was no contemporaneous impairment of the rights of any creditors.

Nevertheless, defendants have attempted to argue that the arrangement between KFC and KMC violated public policy because it ultimately insulated the companies from environmental liability. "Recognition of the separate corporate existence of KFC and KMC would mean that no monies were available to remediate the pollution from the Willow Run Manufacturing Plant after 1949." (Defendants' Post–Trial Proposed Findings of Fact and Conclusions of Law at 75.) Defendants argue that KFC could have been found liable under environmental laws in effect during its existence, in particular the Water Resources Commission Statute of 1929 and common law public nuisance rules, and have introduced evidence of contemporaneous awareness that KFC was releasing hazardous wastes.

There is no evidence in the record that when structuring their relationship KFC and KMC considered any environmental cleanup costs. In addition, the mere potential for liability is not the same as actual liability. Nobody ever asserted an injury amounting to public nuisance during the time of KMC and KFC's existence, and neither were the procedures for enforcement of the Water Resources Commission Statute of 1929 initiated. With no adjudication of liability, I cannot say that such liability existed at all.

[5] Finally, the lawful use of the corporate form to avoid personal liability is not cause for piercing the corporate veil. "Organization of a corporation for the avowed purpose of avoiding personal responsibility does not itself constitute fraud or reprehensible conduct justifying a disregard of the corporate form." *Cordova* at 580 (citing *Gledhill v. Fisher & Co.*, 272 Mich. 353, 359, 262 N.W. 371, 373 (1935)).

A party seeking to pierce the corporate veil must show, at a minimum, that the corporate form was abused in a manner which circumvented overriding public policy. The evidence in this case does not support such a finding, let alone a finding of actual fraud or

wrongdoing. Thus there is no basis to hold KMC responsible for pollution released by KFC.

### B. Joint Venture

[6] Another theory that defendants put forward is that of a joint venture between KMC and KFC, which would make KMC liable for waste produced in KFC's Willow Run bomber production. Under Michigan law, a joint venture requires (a) an agreement indicating an intention to undertake a joint venture; (b) a joint undertaking; (c) a single project for profit; (d) a sharing of profits as well as losses; (e) contribution of skills or property by the parties; and (f) community interest and control over the subject matter of the enterprise. *John Harris & Associates, Inc. v. Day,* 916 F.Supp. 651 (E.D.Mich.1996) (citing *Berger v. Mead,* 127 Mich.App. 209, 214–15, 338 N.W.2d 919 (1983)). Although the Sixth Circuit has acknowledged that "at least conceivably" there could be a joint venture between parent and subsidiary, *Cordova* at 579, I do not find that necessary elements outlined above are present in this case.

[7] Defendants' allegations of joint venture are based on KMC's contracts for production of C–119 and C–123 aircraft and KMC's subcontracts with KFC for performance. As noted above, these subcontracts were explicitly on a no-profit, no-loss basis. Thus there was no sharing of profits and losses. The companies were not partners in a common enterprise, but acted rather as contractor and subcontractor. The contracts consistently refer to the parties in those terms. Each contains a clause stating that KFC ("the subcontractor") will "perform all work called for by said [supply or facilities] contract as an independent contractor and not as an agent of the Contractor [KFC]." [7]

Relatively few cases have considered a joint venture theory for CERCLA liability, perhaps because so many other avenues of liability are usually available. One case where such liability was found is *U.S. v. South Carolina Recycling and Disposal, Inc.,* 653 F.Supp. 984 (D.S.C.1984) *aff'd in part, vacated in part on other grounds by United States v. Monsanto,* 858 F.2d 160 (4th Cir.1988), *cert. denied,* 490 U.S. 1106, 109 S.Ct. 3156, 104 L.Ed.2d 1019 (1989). That court's finding was based on the existence of a written contract establishing the joint venture, which provided that each party would receive fifty percent of the net profits. *Id.* at 1005. This reflects an entirely different relationship than the subcontractor relationship entered into between KMC and KFC.

### C. Contractual Merger

[8] As part of a corporate reorganization in early 1956, KMC (then known as Willys Motors) purchased the assets of KFC (then known as Kaiser Motors). The January 17, 1956 sale agreement specified that KMC would assume KFC's liabilities, including "all liabilities of Kaiser [Motors, f/k/a KFC] existing on the closing date of every nature whatsoever, whether absolute of contingent," followed by exceptions which are not relevant here.[8] In a March 15, 1956 instrument executing the sale, KMC formally assumed those labilities "absolutely and forever."

Defendants maintain that with this contract KMC assumed all of KFC's environmental liabilities, including those arising under the CERCLA statute enacted some 24 years later, and thus Chrysler, as the admitted successor to KMC, inherited liability for KFC's pollution. According to defendants, CERCLA liability was an "existing" contingent liability at the time of the sale, because KFC had already released the waste which in the future would give rise to liability.

On its face, defendants' argument seems to stretch the meaning of the word contingent. A contingent liability is defined as, "One which is not now fixed and absolute, but

7. Language stating that KFC would purchase materials and supplies as an agent of KMC simply reflected the parties' intent that KMC, as the contractor, would supply the materials. It does not indicate that KFC acted as an agent of KMC in the aircraft production; in fact, the limitation of agency to the purchase of materials and supplies indicates to the contrary.

8. The clause continues, "except liabilities to the extent covered by insurance and liabilities, if any, which Kaiser may then have to Graham–Paige Corporation, a Delaware corporation, Henry J. Kaiser Company, a Nevada corporation (herein called 'HJKCO') and Reconstruction Finance Corporation, a United States Government corporation, or any one or more of them."

which will become so in the case of the occurrence of some future and uncertain event." BLACK'S LAW DICTIONARY, 321 (6th Ed.1990). To say that the "future event" may include the passage of a law creating the liability is pointless and illogical. A liability is nonexistent until it is created by law. Were it otherwise, there would be no distinction between a contingent liability and a future-arising liability, making the contractual assumption of both redundant. In this case, there was no mention of future-arising liability. To the contrary, the parties specifically limited liabilities to those "existing on the closing date."

One court which interpreted strikingly similar contractual language under Michigan law reached the same conclusion. *U.S. v. Vermont American Corp.*, 871 F.Supp. 318 (W.D.Mich.1994). There, in a pre-CERCLA contract the purchasing corporation assumed "all additional debts, obligations, and liabilities of the Seller, *whether or not matured and whether or not contingent, existing on the Closing Date* . . . ." *Id.* at 321 (emphasis in original). Although the buyer assumed all contingent liabilities, the court found this did not include CERCLA liability: "[T]here is no question that the CERCLA liability was not a liability that existed on the closing date." *Id.*

Other courts have held that a broad pre-CERCLA assumption of contingent liabilities can include CERCLA. *Beazer East, Inc. v. Mead Corp.*, 34 F.3d 206, 211 (3d Cir.1994), *cert. denied*, 514 U.S. 1065, 115 S.Ct. 1696, 131 L.Ed.2d 559 (1995); *SmithKline Beecham Corp. v. Rohm and Haas Co.*, 89 F.3d 154 (3d Cir.1996); *Kerr–McGee Chemical Corp. v. Lefton Iron & Metal*, 14 F.3d 321 (7th Cir.1994), *reh. denied* (Feb. 9, 1997); *U.S. v. Hardy*, 916 F.Supp. 1385 (W.D.Ky. 1996).[9] To the extent that the contracts in question were limited to existing liabilities, I do not agree with this reasoning, and I am not controlled by it. But these cases are also distinguishable from the present one.

Although CERCLA was not yet in force at the time of the contracts in the aforementioned cases, all of these agreements were made in an era when Congress had undertaken far-reaching environmental legislation[10], and any corporation would be cognizant of environmental costs. Given the awareness of pollution costs in the 1970s, a broad acceptance of all contingent liabilities at that time likely included environmental cleanup, and thus might be said to include CERCLA liability even before that legislation had been enacted.

The facts of these cases indicate an awareness of environmental costs. In *Beazer*, the buyer agreed to assume obligations for ongoing compliance with environmental regulations. 34 F.3d at 209. In *SmithKline*, the seller had undertaken some remediation and pollution was discussed at the time of sale. 89 F.3d at 157. The provision in *Kerr–McGee Chemical* promised to assume losses resulting from "the maintenance of any . . . claim . . . concerning pollution or nuisance. . . ." 14 F.3d at 327. The contract in *Hardy* assumed costs "resulting directly or

9. These cases for the most part concern indemnification agreements, rather than the direct assumption of liability. CERCLA provides that no indemnification agreement shall be effective to transfer liability from one party to another, though one party may agree to indemnify another or hold the other harmless. 42 U.S.C. § 9607(e). Thus KMC's promise could not have absolved KFC of CERCLA liability, but could only serve to make KMC responsible for KFC's liability, which would have remained joint and several. *SmithKline*, 89 F.3d at 158; *Olin Corp. v. Consolidated Aluminum Corp.*, 5 F.3d 10, 14 (2d Cir.1993). Chrysler has not argued that this *per se* prevents the operation of the 1956 contract to transfer liability to KFC.

10. Though Congress legislated on water pollution in the Federal Water Pollution Control Act passed in 1948, Pub.L. No. 80–845, 62 Stat. 11555, and in subsequent amendments, this legislation was deferential to industry. It was not until the Amendments of 1972, Pub.L. 92–500, 86 Stat. 816, supplemented by the Clean Water Act of 1977, Pub.L. 95–217, 91 Stat. 1566, that Congress established the framework in place today. Stephanie L. Hersperger, *A Point Source of Pollution Under the Clean Water Act: A Human Being Should Be Included*, 5 Dick.J.Envtl.L. & Pol'y 97 (1996). Similarly, the Air Pollution Control Act of 1955, 69 Stat. 322, had a primary focus on research and support for state programs, and federal control of pollution was established through the Clean Air Act of 1963, Pub.L. No. 88–206, 77 Stat. 392, the Air Quality Act of 1967, Pub.L. No. 90–148, Pub.L. No. 90–148, 81 Stat. 465, and the Clean Air Act Amendments of 1970, 1977 and 1990, Pub.L. No. 91–604, 84 Stat. 1676; Pub.L. No. 95–95, 91 Stat. 685; Pub.L. No. 101–549, 104 Stat. 2399.

indirectly by the collection, transportation, and disposal [of hazardous materials]." *U.S. v. Hardy,* 916 F.Supp. at 1390. It is strange, indeed, that the courts in these cases so broadly interpreted the concept of existing contingent liability, rather than relying upon the facts presented to them to link the contractual language to the awareness and expectations of the parties as to those liabilities.

In contrast, the KMC asset purchase from KFC took place decades before federal environmental enforcement became a reality. Neither the language nor the implied intentions of the parties indicates any reference to environmental costs whatsoever. Thus even under *Beazer's* formulation that a pre-CERCLA contract can include CERCLA liability, if it is "either specific enough to include CERCLA liability or general enough to include any and all environmental liability," 89 F.3d at 211, there would be no CERCLA liability in the instant case. An assumption of all existing contingent liabilities might be considered "general enough to include ... environmental lability" in an era when such liability is a generally understood contingency. In 1956, this simply was not the case.

Neither is there any indication that the enforcement of state environmental law against KFC was an existing contingency at the time of the 1956 sale. There is no evidence that any party existed who might have sustained injury of the type that could support a suit for public nuisance. And while the Water Resources Commission Statute of 1929, P.A.1929, no. 245, regulated discharge of waste, there is no evidence that state authorities considered or attempted enforcement against KFC, or that KFC's conduct would have resulted in liability under that statute. The enforcement mechanisms contained in that statute required notice of violations, hearings, an order from the Michigan Water Resources Commission ("Commission"), and review by the Michigan Circuit Court. M.C.L. 323.7. The notice provided an opportunity to correct the violation "within a reasonable period of time." *Id.* Absent any notice of a possible violation from the Commission, I cannot assume that potential liability under this statute existed.

[9] It is a fundamental principle of contract law that the parties must have a meeting of the minds on all material facts, *i.e.,* there must be mutual assent in order for the contract to be valid. *Kamalnath v. Mercy Memorial Hosp.,* 194 Mich.App. 543, 548, 487 N.W.2d 499 (1992), *appeal denied,* 441 Mich. 923, 497 N.W.2d 185 (1993) (citing *Stanton v. Dachille,* 186 Mich.App. 247, 256, 463 N.W.2d 479 (1990)). When KMC accepted responsibility for contingent liabilities existing on the date of closing, neither party understood those contingent liabilities to include environmental liabilities. No such liability was disclosed in KFC's Annual Reports for the period. Chrysler presented uncontested testimony from an accounting expert, Robert J. Rock, that accounting industry standards require a contingent liability to be included on company balance sheets if it is probable and the cost can be estimated, and that any possible, material contingencies must be disclosed even if they are not probable. KFC's records were regularly audited by outside firms and no such environmental liability was ever recorded.

Of course, a party may contractually accept all future-arising liabilities, and thus accept liabilities not existing in either contingent or absolute form at the time of the contract. This was the case in *Olin Corp. v. Consolidated Aluminum Corp.,* 5 F.3d 10, 15 (2d Cir.1993) (purchase agreement required indemnifications for "*all liabilities* ... as they exist on the closing date *or arise thereafter*") (emphasis in the original). In the present case, however, there was no such language. Therefore, KMC did not accrue environmental liability by virtue of the 1956 asset sale.

### D. De Facto Merger

[10] Defendants argue that KMC's 1956 purchase of KFC's assets constituted a *de facto* merger of the two companies, providing an alternative basis for successor liability. A corporation which purchases assets from another corporation does not normally take on that corporation's debts and liabilities, *Clark v. Detroit Curling Club,* 298 Mich. 339, 342, 299 N.W. 99 (1941). But where the two companies merge in effect, if not formally, the resulting corporation takes on the liabilities of both. *Turner v. Bituminous Casual-*

*ty Co.*, 397 Mich. 406, 419–420, 244 N.W.2d 873 (1976); *Schmidt v. Wilbur*, 783 F.Supp. 329, 331–32 (E.D.Mich.1992).

[11] The requirements for *de facto* merger under Michigan law are: (1) continuation of the enterprise of the seller corporation, with continuity of management, personnel, physical location, assets, and general business operations; (2) continuity of shareholders, resulting from the purchasing corporation's use of its own stock to purchase the acquired assets; (3) the seller corporation must cease ordinary business operations, liquidate and dissolve as soon as legally and practically possible; and (4) the purchasing corporation must assume the liabilities and obligations of the seller necessary for the uninterrupted continuation of normal business operations of the seller.[11] *Turner* at 420 (quoting *Shannon v. Samuel Langston Co.*, 379 F.Supp. 797, 801 (W.D.Mich.1974)).

[12] The *de facto* merger doctrine seeks to prevent one company from transferring its assets to a second company and dissolving, thus sheltering its assets from creditors, and then continuing its former business as the second company. This was patently not the intent or the effect of the 1956 asset sale. Far from dissolving after it sold its assets to KMC, KFC survived as a holding company with substantial assets until its formal dissolution in 1977. The assets sale was part of a broader reorganization which permitted KFC to pay off debt to the RFC and commercial lenders.

Neither did the assets sale bring about a continuity in the operations of KMC and KFC. In 1953 KMC had purchased Willys Overland and begun production as Willys Motors in Toledo, Ohio. KFC's car production at Willow Run ceased in late 1953, when the plant was sold to GM, and its parts production stopped some two years before the 1956 assets purchase. While KMC did manufacture passenger cars, including the Kaiser, in its Toledo plant, the parties agree that this had ceased by 1955. (SF nos. 93 and 95.) Thus the 1956 assets purchase did not mark the onset of KMC assuming KFC's former production niche.

It is irrelevant that KMC and KFC may have continued to share directors and managers after the asset purchase, or that their operations were functionally integrated. As discussed above in the context of *alter-ego* liability, the relationship between the corporations was governed by joint operating agreements. Cost accounting methodologies were developed and monitored by creditors and an independent accounting firm.

As discussed above, the assets purchase was part of a broader reorganization in which entities formerly held by HJKCO, the Kaiser family's closely held corporation, became a subsidiary of KFC. The IRS issued to KFC an opinion letter stating that the exchange of HJKCO and KFC stock would be a tax-free reorganization under § 368 of the Internal Revenue Code. Defendants argue that because the assets sale to KMC was part of this tax-free reorganization, it was not a mere sale and therefore should be deemed a *de facto* merger. In light of the continued maintenance of KMC and KFC as separate entities after the reorganization (KMC as Willys Motors, KFC as Kaiser Industries), this argument carries no weight. Neither is the fact that KMC paid for KFC's assets with stock sufficient, standing alone, to create *de facto* merger.

Finally, defendants argue that KFC survived after the assets sale only because KMC and HJKCO needed to make use of KFC's losses to offset their own income for tax purposes, and IRS rules demanded the continued existence of KFC in order to do this. Whether or not this was the sole reason for

11. Defendants acknowledged at trial that under Michigan law all four factors must be present. However, following their argument that the law of the state of incorporation should control, defendants put forward cases from Pennsylvania, Delaware, New York, Maryland, and Massachusetts which they assert hold that de-facto merger is an equitable doctrine and the absence of any one factor is not determinative. As noted above, if any state of incorporation had a claim to govern this case it would be Pennsylvania. That state employs factors substantively identical to Michigan law, but Pennsylvania courts have indicated that not all factors need be present to find a merger. *Commonwealth v. Lavelle*, 382 Pa.Super. 356, 375, 555 A.2d 218, 227–28 (1989), *appeal denied*, 524 Pa. 595, 568 A.2d 1246 (1989). The difference is not determinative in this case, since I find that there was neither continuity of enterprise nor cessation of ordinary business by the seller, two factors which are key to *de facto* merger under any balancing test.

KFC's survival is irrelevant, however, since KFC did indeed survive, with substantial assets, as Kaiser Industries.

### V. *Conclusion*

For the reasons stated above, I conclude that Chrysler is not the successor in interest of the Kaiser–Frazer Corporation. Therefore Chrysler is not liable for remediation costs at the Willow Run site attributable to KFC under CERCLA or MERA, nor for any claims of public nuisance or unjust enrichment.

IT IS SO ORDERED.


**Linda A. SCARBOROUGH, Gracie Myrick, Charlotte Roberson, Cathy D. Walker, Tina J. Lowery, and Jo Ellen Spurgeon, Plaintiffs,**

**v.**

**BROWN GROUP, INC. d/b/a Brown Shoe Company; Billy Spellings and Nelson Siler, Defendants.**

**No. 95–1150.**

United States District Court,
W.D. Tennessee,
Eastern Division.

March 11, 1997.

Employees sued employer, supervisor, and general manager, for sexual harassment. On defendants' motions for summary judgment, the District Court, Todd, J., held that: (1) claims did not have to be dismissed for failure to exhaust grievance/arbitration procedure; (2) sexual harassment charge was time-barred; (3) sexual harassment was not severe enough to constitute hostile environment; (4) employee stated constructive discharge claim; (5) employee was not constructively discharged; and (6) employee did not suffer retaliation.

Motion granted.

**1. Labor Relations ⇐416.8**

Title VII sexual harassment claims were not subject to dismissal for employee's failure to exhaust grievance/arbitration procedure in collective bargaining agreement (CBA), as there was no evidence that valid arbitration agreement existed. Civil Rights Act of 1964, § 701 et seq., as amended, 42 U.S.C.A. § 2000e et seq.

**2. Civil Rights ⇐342**

Under continuing violation doctrine, where there is continuous pattern of discrimination, administrative charge is timely if at least one of acts complained of occurred within three hundred day limitations period. Civil Rights Act of 1964, § 706(d), as amended, 42 U.S.C.A. § 2000e–5(e), (e)(1).

**3. Civil Rights ⇐342**

Employee's sexual harassment charge was untimely, where harassment ended more than 300 days before charge was filed, and she admitted that no harassment occurred within 300 day period. Civil Rights Act of 1964, § 706(d), as amended, 42 U.S.C.A. § 2000e–5(e), (e)(1).

**4. Civil Rights ⇐342**

Employee's sexual harassment charge was untimely, where she could not give examples of sexual conduct within 300–day limitations period. Civil Rights Act of 1964, § 706(d), as amended, 42 U.S.C.A. § 2000e–5(e), (e)(1).

**5. Civil Rights ⇐364**

"Single filing rule" allows administrative charge of one employment discrimination plaintiff to satisfy charge filing obligations of other plaintiffs under certain circumstances. Civil Rights Act of 1964, § 706(d), as amended, 42 U.S.C.A. § 2000e–5(e), (e)(1).

See publication Words and Phrases for other judicial constructions and definitions.

**6. Civil Rights ⇐364**

In order to "piggyback" on timely filed charge of employment discrimination pursuant to "single filing rule," which allows administrative charge of one plaintiff to satisfy charge filing obligations of other plaintiffs under certain circumstances, claim must be substantially related, arising out of similar discriminatory treatment occurring in same time frame. Civil Rights Act of 1964,

Exhibit 1

Exhibit D

# AGREEMENT FOR PURCHASE OF ASSETS

AGREEMENT dated as of November 26, 1979 between SHARON STEEL CORPORATION, a Pennsylvania corporation with its principal executive office located at 6917 Collins Avenue, Miami Beach, Florida 33141 (herein called "Buyer"); and

UV INDUSTRIES, INC., a Maine corporation with its principal business office located at 437 Madison Avenue, New York, New York 10022 (herein called "Seller").

W I T N E S S E T H :

WHEREAS, the Seller desires to sell and the Buyer desires to buy the Seller's assets, subject to its liabilities, in exchange for the purchase price set forth herein;

NOW, THEREFORE, the parties hereby agree as follows:

1. DEFINITIONS

As used herein the following terms shall, unless the context clearly indicates otherwise, have the following meanings:

(a) "Closing Date" shall mean 10:00 A.M., New York City time on November 26, 1979.

(b) "Escrow Release Date" shall mean 10:00 a.m. New York City time on the later of (i) November 26, 1979, (ii) the first business day following the expiration of the waiting period provided for in Section 7A of the Clayton Act (Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976) and the rules of the Federal Trade Commission thereunder (collectively, the "H-S-R Act") applicable to Buyer's acquisition of the Seller's assets or (iii) if an Injunction shall be in effect, then the Escrow Release Date shall be the first business day after such Injunction is vacated or otherwise eliminated.

(c) "Purchased Property" shall mean all of the assets, properties and rights of the Seller on the Closing Date of every type and description, real, personal and mixed, tangible and intangible.

(d) "Assumed Liabilities" shall mean all debts, obligations, contracts and liabilities of the Seller as of the Closing Date of any kind, character or description, direct or indirect, whether accrued, absolute, contingent or otherwise, except the Non-Assumed Liabilities as hereinafter defined, together with all administrative expenses (other than income taxes) incident to the liquidation under the UV Liquidating Trust.

(e) "Non-Assumed Liabilities" shall mean any tax liabilities attributable to the Seller's failure to satisfy

the requirements of Section 337 of the Internal Revenue Code of 1954 except as otherwise provided in a letter agreement concerning Section 337 of the Code dated the date hereof between Buyer and Seller.

(f) "Interim Note" shall mean the promissory note of Buyer, dated the Closing Date, in the form of Exhibit A annexed hereto and made a part hereof.

(g) "Debentures" shall mean the Subordinated Sinking Fund Debentures of Buyer contemplated by Paragraph 4(ii) hereof, having the terms described in Exhibit B annexed hereto.

(h) "Escrow Agreement" shall mean the escrow agreement among Buyer, Seller and The First Jersey National Bank (the "Escrow Agent") substantially in the form of Exhibit C annexed hereto and made a part hereof.

(i) "Seller's Disclosure Schedule" shall mean the information relating to the Seller's business and properties delivered to Buyer on or before the date hereof and identified by both Buyer and Seller as constituting the Seller's Disclosure Schedule.

(j) "Buyer's Disclosure Schedule" shall mean the information relating to the Buyer's business and properties delivered to Seller on or before the date hereof and identified by both Seller and Buyer as constituting the Buyer's Disclosure Schedule.

(k) "Seller's SEC Materials" shall refer collectively to all reports filed by Seller with the Securities

and Exchange Commission ("SEC") during the period commencing on January 1, 1979 and ending on the date hereof and any definitive proxy materials or effective prospectuses of Seller dated at any time during such period.

(l) "Buyer's SEC Materials" shall refer collectively to all reports filed by Buyer with the SEC during the period commencing on January 1, 1979 and ending on the date hereof and any definitive proxy materials or effective prospectuses of Buyer dated at any time during such period.

(m) "Exchange" shall have the meaning set forth in Paragraph 4 hereof.

(n) "Subsidiaries" shall have the meaning set forth in Paragraph 5(e) hereof.

(o) "Seller's Interim Statements" shall have the meaning set forth in Paragraph 5(c) hereof.

(p) "Buyer's Interim Statements" shall have the meaning set forth in Paragraph 6(c) hereof.

(q) "Injunction" shall have the meaning set forth in Paragraph 9(e) hereof.

(r) "Fund" shall have the meaning set forth in Paragraph 13(a)(x) hereof.

(s) "Registration Statement" shall have the meaning set forth in Paragraph 8(a) hereof.

(t) "Liquidating Trustee" shall mean the trustee or trustees under the UV Industries, Inc. Liquidating Trust described in Paragraph 20 hereof ("UV Liquidating Trust").

2. PURCHASE OF ASSETS, ASSUMPTIONS OF LIABILITIES

(a) Purchase. On the Closing Date, subject to the terms and conditions herein set forth, the Seller shall sell, and the Buyer shall purchase, all of the Purchased Property.

(b) Sale at Closing Date. The sale, transfer, assignment and delivery by the Seller of the Purchased Property to the Buyer, as herein provided, shall be effected on the Closing Date by such deeds of title, bills of sale, endorsements, assignments, drafts, checks and other instruments of transfer and conveyance as shall be effective to vest in Buyer all of Seller's right, title and interest in and to the Purchased Property and as shall be satisfactory in form and substance to counsel for the Buyer. The deeds of title or instruments of conveyance as to all real property and mineral rights included in the Purchased Property shall contain covenants of warranty, if any, comparable to those contained in the deeds of title or instruments of conveyance received by Seller upon its acquisition of such properties.

(c) Sales Taxes. The Buyer will pay all sales and other transfer taxes imposed by reason of the sale of the Purchased Property contemplated hereby.

(d) Subsequent Documentation. The Seller will, at any time and from time to time after the Closing Date, upon the request of the Buyer and without further consideration, do, execute, acknowledge and deliver or will cause to be done, executed, acknowledged and delivered all such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably requested by the Buyer for the better assignment, transferring, granting, conveying, assuring and confirming to the Buyer or to its successors and assigns, or for aiding and assisting in collecting and reducing to possession, any or all of the Purchased Property.

Buyer shall have the right and authority to collect, for the account of Buyer, all receivables and other items which shall be transferred to Buyer as provided herein, and to endorse with the name of Seller any checks received on account of any such receivables or other items. Seller shall promptly transfer and deliver to Buyer any cash or other property that Seller may receive in respect of such receivables or other items on or after the Closing Date.

To the extent that the assignment of any contract, license, lease, commitment, sales order or purchase order

to be assigned to Buyer hereunder shall require the consent of the other party thereto, this Agreement shall not constitute an agreement to assign the same if an attempted assignment would constitute a breach thereof. The Seller will use its best efforts from and after the date hereof to obtain the consent of the parties to such contracts, licenses, leases, commitments, sales orders or purchase orders for the assignment thereof to the Buyer. If any such consent is not obtained, the Seller will cooperate with the Buyer in any reasonable arrangement requested by the Buyer to provide for the Buyer the benefits under any such contract, license, lease, commitment, sales order or purchase order, including enforcement at the cost of and for the benefit of the Buyer, of any and all rights thereunder of the Seller against the other party thereto.

(e) Assumption of Liabilities. On the Closing Date, the Buyer shall assume and thereafter pay, perform and discharge in the ordinary course of business and on or before the applicable due date all of the Assumed Liabilities. Buyer shall effect such assumption by executing such instruments of assumption, from time to time, as shall be reasonably satisfactory to counsel for Seller. The Buyer shall not assume or pay, perform or discharge, nor shall the Buyer be responsible, directly or indirectly, for the Non-Assumed Liabilities.

3. PURCHASE PRICE, CLOSING, DELIVERY INTO ESCROW

(a) Purchase Price. The purchase price for the Purchased Property shall be $517,753,938 which, subject to the terms and conditions set forth herein, shall be paid by the Buyer to the Seller by the delivery of the Interim Note to Seller on the Closing Date.

(b) Closing. The Closing under this Agreement shall take place at the offices of Messrs. Shearman & Sterling, Citicorp Center, 153 East 53rd Street, New York, New York 10022, on the Closing Date or at such other place and date as may be agreed upon in writing by the Seller and the Buyer.

(c) Delivery into Escrow. On the Closing Date, Buyer, Seller and the Escrow Agent shall enter into the Escrow Agreement and pursuant to the terms thereof:

(i) Seller shall deliver to the Escrow Agent all of the bills of sale, deeds of title or other instruments of conveyance referred to in Paragraph 2(b) hereof and shall thereafter until the Escrow Release Date, deliver to the Escrow Agent any of the subsequent documentation referred to in Paragraph 2(d) hereof; and

(ii) Buyer shall deliver to the Escrow Agent the Interim Note and the Instruments of Assumption referred to in Paragraph 2(e) hereof and shall thereafter, until the Escrow Release Date, deliver any further instruments of assumption which may be executed,

to be held, in each case, by the Escrow Agent pursuant to the terms of the Escrow Agreement until the Escrow Release Date.

4. EXCHANGE OF SECURITIES

On the later of January 2, 1980 or the twentieth business day after the Registration Statement described in Paragraph 8(a) hereof shall have become effective (or if any Injunction shall then be in effect relating to such exchange, on the twentieth business day after the same is vacated or otherwise eliminated) the following transaction (the "Exchange") shall take place:

(i) Seller shall assign and deliver the Interim Note to Buyer in exchange for the cash, Debentures and obligations described in (ii) and (iii) below;

(ii) Buyer, in exchange for the Interim Note, shall transfer $106,596,399 in immediately available funds to an account of Seller at a bank in New York City designated by Seller and shall deliver to Seller $411,157,539 aggregate principal amount of duly executed and authenticated Debentures in such denominations and registered in such names as Seller shall have designated in writing to Buyer not less than fifteen business days prior to the date of the Exchange;

(iii) Buyer shall become obligated, and shall confirm in writing to Seller its obligation, to pay to Seller on the earlier of the Exchange Date or June 30, 1980 the sum of $3,000,000 (the "Liquidation Expense Amount"), such amount to be (a) used by Seller in accordance with the provisions of Paragraph 7(c) hereof and (b) deducted from amounts payable pursuant to the provisions of Paragraph 4(iv)(a) or (b).

Buyer shall become obligated, and shall confirm in writing to Seller its obligation, to pay to Seller the following amounts depending upon the date of the Exchange:

(a) If the date of the Exchange occurs on or prior to June 30, 1980, the Buyer shall pay on November 30, 1980 an amount equal to (and in lieu of) the interest which shall have accrued on the Interim Note from the date of its issuance through the date prior to the date of the Exchange, less the Liquidation Expense Amount; or

(b) If the date of the Exchange occurs on or after July 1, 1980, the Buyer shall pay (x) on the date of the Exchange the interest which shall have accrued on the Interim Note from July 1, 1980 to the day prior to the date of the Exchange, to the extent not previously paid, and (y) on November 30, 1980, the interest which shall have accrued on the Interim Note from the date of its issuance to June 30, 1980; provided, however, that there shall first be deducted from the aggregate amounts payable under this subparagraph the Liquidation Expense Amount;

such payment to be effected in either case by the transfer by Buyer of immediately available funds to an account and bank in New York City designated by Seller, subject, however, in either case to Buyer's right to set-off against any such obligation and to retain, as described in Paragraph 14, the amounts described in Paragraph 13 hereof.

5. REPRESENTATIONS AND WARRANTIES OF SELLER

The Seller represents and warrants to Buyer as follows:

(a) Organization and Power. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Maine. Seller has the corporate power and authority to enter into and perform all of its obligations under this Agreement. As of the date hereof, Seller is in compliance in all material respects with the provisions of the indentures to which it is a party and the guarantees by it of lease obligations with respect to industrial revenue or pollution control revenue bonds.

(b) Authorization and Effect of Agreement. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all requisite corporate action of Seller and will not result in a violation of the Articles of Incorporation or By-Laws of Seller or, to the best of Seller's knowledge, such a violation of any law, rule, license, regulation, judgment, order or decree governing or affecting the operation of the business of Seller as would have a materially adverse impact upon the business or financial condition of Seller and its Subsidiaries taken as a whole.

(c) Financial Statements. The financial statements contained (i) in Seller's Annual Report on Form 10-K

for the year ended December 31, 1978 and (ii) in Seller's Quarterly Report on Form 10-Q for the quarter ended September 30, 1979 ("Seller's Interim Statements") are true and complete in all material respects, have been prepared in accordance with generally accepted accounting principles consistently applied by the Seller throughout the periods involved and fairly reflect the financial condition, assets and liabilities (whether accrued, absolute, contingent or otherwise) of the Seller and its Subsidiaries (as defined below) as of the dates thereof and the results of operations, changes in financial position and changes in stockholders' equity for the periods then ended, except that, although the Seller's Interim Statements reflect all adjustments which are, in the opinion of Seller, necessary to a fair presentation of the results for the interim periods therein described, the Seller's Interim Statements may be subject to year end audit adjustments.

(d) Outstanding Common Stock. As of the date hereof, there are outstanding 15,228,057 shares of Seller's Common Stock, $1.00 par value, all of which shares were duly authorized, validly issued, fully paid and non-assessable.

(e) Subsidiaries. Seller's Disclosure Schedule correctly sets forth Seller's direct and indirect ownership of the capital stock of each of its material subsidiaries

(the "Subsidiaries"), and except as set forth in such Schedule, there are not outstanding any offers, subscriptions, options, conversion rights, warrants or other agreements or commitments (firm or conditional) obligating the Seller or any of the Subsidiaries to issue, sell, grant or otherwise dispose of any of the capital stock of the Subsidiaries.

(f) Liquid Assets. On November 2, 1979, the aggregate value of cash and cash equivalents in the accounts of Seller was $286,066,000 and the aggregate market value of marketable securities owned by Seller was $20,028,000.

(g) Disclosure. Seller's SEC Materials and Seller's Disclosure Schedule do not in the aggregate contain any untrue statement of a material fact or omit to state all material facts which are necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

(h) Conduct of Business since September 30, 1979. Except as disclosed in Seller's Disclosure Schedule, since September 30, 1979, neither the Seller nor any of its Subsidiaries has:

(i) amended its Certificate of Incorporation or By-Laws;

(ii) incurred any obligations or liabilities (absolute or contingent), except for obligations disclosed herein and except current liabilities incurred, and obligations under contracts entered into,

in the ordinary course of business;

(iii) declared or made any payment or distribution to stockholders or purchased or redeemed any shares of capital stock;

(iv) disposed of or encumbered any material tangible asset or assets other than in the ordinary course of business;

(v) sold, assigned or transferred any trademarks, tradenames, servicemarks, copyrights or other intangible assets;

(vi) suffered any extraordinary losses or waived any rights of substantial value;

(vii) entered into any transaction other than in the ordinary course of business; or

(viii) entered into any agreement (other than this Agreement) to do any of the things described in clauses (i) through (vii) above.

(i) Liens. To the best knowledge of Seller, except as set forth in Seller's Disclosure Schedule, the Purchased Property is free and clear of all material mortgages, liens, charges, encumbrances or title defects of any nature whatsoever.

(j) Material Adverse Change. Except as disclosed in Seller's Disclosure Schedule, since September 30, 1979, there has been no material adverse change in the condition,

financial or otherwise, of the Seller and its Subsidiaries, taken as a whole, as shown in Seller's Interim Statements, except changes occurring in the ordinary course of business.

6. REPRESENTATIONS AND WARRANTIES OF BUYER

The Buyer represents and warrants to Seller as follows:

(a) Organization and Power. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Pennsylvania. Buyer has the corporate power and authority to enter into and perform all of its obligations under this Agreement.

(b) Authorization and Effect of Agreement. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all requisite corporate action of Buyer and will not result in a violation of the Articles of Incorporation or By-Laws of Buyer or, to the best of Buyer's knowledge, a violation of any law, rule, license, regulation, judgment, order or decree governing or affecting the operation of the business of Buyer as would have a materially adverse impact upon the business or financial condition of Buyer and its subsidiaries taken as a whole.

(c) Financial Statements. The Financial Statements contained in (i) Buyer's Annual Report on Form 10-K for the year ended December 31, 1978 and (ii) Buyer's Quar-

terly Report on Form 10-Q for the quarter ended September 30, 1979 ("Buyer's Interim Statements") are true and complete in all material respects, have been prepared in accordance with generally accepted accounting principles consistently applied by the Buyer throughout the periods involved and fairly reflect the financial condition, assets and liabilities (whether accrued, absolute, contingent or otherwise) of the Buyer and it subsidiaries as of the dates thereof and the results of operations, changes in financial position and changes in stockholders' equity for the periods then ended, except that, although the Buyer's Interim Statements reflect all adjustments which are, in the opinion of Buyer, necessary to a fair presentation of the results for the interim periods therein described, the Buyer's Interim Statements may be subject to year end audit adjustments.

(d) Disclosure. Buyer's SEC Materials and Buyer's Disclosure Schedule do not in the aggregate contain any untrue statement of a material fact or omit to state all material facts which are necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

(e) Material Adverse Change. Except as disclosed herein or in Buyer's Disclosure Schedule, since September 30, 1979, there has been no material adverse change in the condition, financial or otherwise, of the Buyer and its subsidiaries, taken as a whole, as shown in Buyer's Interim

Statements except changes occurring in the ordinary course of business.

(f) Registration Statement. On the date the Registration Statement becomes effective, the Registration Statement and the prospectus contained therein will contain all statements required to be stated therein in accordance with the Securities Act of 1933, as amended (the "Act"), and the rules and regulations of the SEC thereunder and will in all respects conform with the requirements of the Act and the rules and regulations of the SEC thereunder; and neither the Registration Statement nor such prospectus nor any amendment or supplement thereto will include any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; provided, however, that the Buyer makes no representation or warranty as to information contained in or omitted from the Registration Statement or such prospectus in reliance upon written information furnished to the Buyer by or on behalf of the Seller, including without limitation Seller's SEC Materials.

7. CERTAIN COVENANTS OF SELLER

(a) Preservation of Business Organization. Prior to the Escrow Release Date, Seller shall use its best efforts to preserve intact its business organization and to preserve the good will of its suppliers, customers and others having business relations with it and shall cause each of its Subsidiaries to do so also.

(b) Course of Conduct Prior to Escrow Release. Prior to the Escrow Release Date, Seller shall conduct its business and cause each Subsidiary to conduct its business only in the usual and ordinary course, diligently and in a manner consistent with the past practices, and (without limiting the generality of the foregoing provision) Seller shall not take any of the actions described in Paragraph 5(h) hereof nor permit or cause any of its Subsidiaries to do so. In addition:

(i) Seller shall maintain its present portfolio of marketable securities (with cash proceeds of any dividends, redemptions or other distributions in respect of such portfolio to be invested as described in sub-paragraph (ii) below); and

(ii) Seller shall invest its cash and cash equivalents in high grade money market instruments having maturities of thirty (30) days or less.

(c) Use of Liquidation Expense Amount. Seller shall cause the Liquidation Expense Amount to be used solely for payment of the administrative expenses, including legal fees and expenses, incident to the liquidation of UV under the UV Liquidating Trust. Any amounts not so expended shall promptly become part of the Fund (as defined in Paragraph 13(a)(x)).

8. CERTAIN COVENANTS OF BUYER

(a) Registration of Debentures. Promptly after the Closing Date, Buyer shall file a registration statement under the Act covering the Debentures (the "Registration

Statement") and Buyer shall use its best efforts to cause such Registration Statement to become effective and remain in effect for at least 90 days. Buyer shall also use its best efforts: (i) to qualify an indenture covering the Debentures under the Trust Indenture Act of 1939, (ii) to qualify the distribution of the Debentures to the shareholders of Seller under the Blue Sky laws of such jurisdictions as may be appropriate and (iii) to cause the Debentures to be listed for trading on the New York Stock Exchange. Seller shall promptly furnish Buyer with such information concerning the business and financial condition of Seller, and shall provide such assistance to Buyer, as Buyer may reasonably request in order to enable Buyer to set forth in such Registration Statement, a New York Stock Exchange listing application or such Blue Sky filings information pertaining to Seller. Buyer shall promptly notify Seller upon receipt of notification from the SEC that the Registration Statement relating to the Debentures has become effective.

(b) Exchange Date Opinion. On the date of the Exchange, the Buyer shall deliver to the Seller an opinion of Messrs. Reed Smith Shaw & McClay to the effect that:

(1) The indenture covering the Debentures has been duly authorized, executed and delivered by the Buyer, is duly qualified under the Trust Indenture Act of 1939, and is a legal, valid and enforceable instrument

in accordance with its terms, except as limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights; and

(2) The Debentures have been duly authorized by all necessary corporate action and, when the same have been executed and authenticated as specified in the indenture described above, the Debentures will be legal, valid and binding obligations of the Buyer enforceable in accordance with their terms, except as limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights.

(3) The Registration Statement has become effective under the Act, and, to the best knowledge of such counsel, no stop order suspending the effectiveness of the Registration Statement has been issued and no proceedings for that purpose have been instituted or are pending or contemplated under the Act; and based upon such counsel's familiarity with the affairs of the Buyer and participation in conferences with officers of the Buyer in connection with the preparation of the Registration Statement, nothing has come to the attention of such counsel which would cause them to believe that the Registration Statement, on the effective date thereof, or any amendment or supplement thereto,

contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading (except that no opinion need be expressed as to financial statements and other financial data contained in the Registration Statement).

9. CERTAIN COVENANTS OF BUYER AND SELLER

(a) Cooperation. Buyer and Seller shall each use their best efforts to cause the Closing, the release from escrow and the Exchange to occur as promptly as possible and neither of them shall undertake any course of action inconsistent with such intended result.

(b) Press Releases. Buyer and Seller shall use their best efforts to cooperate with each other in making any press releases or other public announcements concerning the transactions contemplated by this Agreement.

(c) Access to Information. From and after the date hereof, Buyer and Seller will each afford to the officers, accountants, counsel and other representatives of the other party free access on a reasonable basis to its properties and records in order that Buyer and Seller may each have full opportunity to make such investigation as it shall desire of the affairs of the other party, and such investigation shall not affect either party's representations and warranties hereunder; provided, however, that if the transactions

contemplated by this Agreement are not consummated, Seller and Buyer will each hold all information which it obtains through such investigation, which it did not previously know or which was not previously in the public domain, confidential. The foregoing agreement as to confidentiality shall be in addition to any obligation of Buyer with respect to confidentiality contained in its letter to Seller dated November 19, 1979.

(d) Regulatory Filings. Buyer and Seller shall each promptly take all actions necessary to make each filing it is required to make with any governmental agency or authority as a condition to or consequence of the consummation of the transactions contemplated hereby, including without limitation the filings required under the H-S-R Act and compliance at the earliest possible date with any request for additional information received by it from the Federal Trade Commission or Antitrust Division of the Department of Justice pursuant to the H-S-R Act, and shall each use its best effort to assist the other in making such required filings.

(e) Injunctions. If any court having jurisdiction over either party hereto issues or otherwise promulgates any restraint, injunction, decree or similar order which prohibits any action contemplated hereby (an "Injunction"), both parties hereto shall use their best efforts to have such Injunction dissolved or otherwise eliminated as soon as

possible, provided, however, that the foregoing provision with respect to best efforts shall not require any party hereto to dispose of any of its assets or businesses or to agree to any restriction on its ownership, acquisition or disposition of assets or the conduct of its business, or take any action other than to pursue the litigation diligently and in good faith.

(f) Employment Agreements. Buyer shall offer to enter into employment or consulting agreements, as the case may be, with each of the individuals whose names appear on Exhibit D hereto, with such agreements to contain those terms and provisions described in such Exhibit, as well as such other terms and provisions as are mutually satisfactory to the parties thereto. Seller shall assist Buyer with respect to the foregoing.

(g) Maintenance of Assets. Pending the consummation of the transactions contemplated by Paragraph 4 of this Agreement or the payment in full of the principal and interest on the Interim Note, Buyer (and any subsidiary or affiliate to whom Buyer assigns all or a portion of its rights pursuant to Paragraph 20 of this Agreement) will (i) maintain the portfolio of marketable securities to be transferred by Seller pursuant to this Agreement (with cash proceeds of any dividends, redemptions, or other distributions in respect of such portfolio to be invested as described in (ii); (ii) invest the cash and cash equivalents to be transferred by

Seller in high grade money market instruments having maturities of thirty (30) days or less, (iii) not dispose of any other asset, property or right to be transferred by Seller pursuant to this Agreement except for cash or cash equivalents, and (iv) invest such cash or cash equivalents described in (iii) as described in (ii).

10. BROKERAGE

Each of Buyer and Seller represents and warrants to the other that all negotiations relative to this Agreement and the transactions contemplated hereby have been carried on by it or in its behalf directly with the other party and without the intervention of any broker, finder, or other person, and that no person is entitled to any broker's or finder's fee as a result of its actions or anyone acting in its behalf in connection with or on account of this Agreement or any transaction herein contemplated.

11. CONDITIONS PRECEDENT OF BUYER

All of the obligations of Buyer under this Agreement are subject to the conditions that, on the Closing Date:

(a) Injunction. No Injunction shall be in effect.

(b) Opinion of Seller's Counsel. Seller shall have delivered to Buyer an opinion of Messrs. Skadden, Arps, Slate, Meagher & Flom, dated the Closing Date, to the effect that:

(1) The Seller is a corporation organized, existing and in good standing under the laws of the State of Maine with the corporate power and authority to enter into and perform all of its obligations under this Agreement.

(2) All corporate and other proceedings required to be taken by or on the part of Seller to authorize Seller to enter into and carry out this Agreement have been duly and properly taken, and this Agreement constitutes a valid and binding obligation of Seller.

(3) The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby do not violate any provision of the Certificate of Incorporation or By-Laws of Seller.

In rendering such opinion, such counsel may rely as to all matters of Maine law on the opinion of Messrs. Bernstein, Shur, Sawyer and Nelson, Portland, Maine.

12. CONDITIONS PRECEDENT OF SELLER

All of the obligations of Seller under this Agreement are subject to the condition that, on the Closing Date:

(a) Injunction. No Injunction shall be in effect.

(b) Opinion of Buyer's Counsel. Buyer shall have delivered to Seller an opinion of Messrs. Reed Smith Shaw & McClay, dated the Closing Date, to the effect that:

(1) The Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Pennsylvania with the corporate power and authority to enter into and perform all of its obligations under this Agreement.

(2) All corporate and other proceedings required to be taken by or on the part of Buyer to authorize Buyer to enter into and carry out this Agreement have been duly and properly taken, and this Agreement constitutes a valid and binding obligation of Buyer.

(3) The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby do not violate any provision of the Articles of Incorporation or By-Laws of Buyer.

(4) The Interim Note has been duly authorized by all necessary corporate action and, when the same has been executed and delivered to the Seller against transfer of the Purchased Property, the Interim Note

will be a legal, valid and binding obligation of the Buyer enforceable in accordance with its terms, except as limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights.

13. INDEMNIFICATION

(a) The Seller shall indemnify and hold Buyer harmless from and against and in respect of any and all liabilities, losses, damages, claims, judgments, amounts paid in settlement, costs and expenses, including but not limited to attorneys' fees, arising out of or due to (i) a breach of any representation, warranty or covenant of the Seller contained in this Agreement and any and all actions, suits, proceedings, demands, assessments or judgments, costs and expenses incidental to any of the foregoing, or (ii) the Non-Assumed Liabilities; provided that Seller's liability in respect of indemnification arising out of matters described in the foregoing clause (i) shall be limited

(x) in amount, to an amount equal to the interest which shall have accrued on the Interim Note to the earlier of the date of the Exchange or June 30, 1980 less that portion of the Liquidation Expense Amount actually expended pursuant to Paragraph 7(c) (such amount being herein called the "Fund"); and

(y) in time, in that Buyer shall assert no claim against Seller in respect of such indemnity at any time after the first anniversary of the Closing Date.

(b) Buyer shall indemnify and hold harmless the Seller from and against and in respect of any and all liabilities, losses, damages, claims, costs and expenses, including but not limited to attorneys' fees, arising out of or due to a breach of any representation, warranty or covenant of Buyer contained in this Agreement and any and all actions, suits, proceedings, demands, assessments or judgments, costs and expenses incidental to any of the foregoing.

(c) Buyer shall indemnify and hold harmless the Seller and Liquidating Trustee against any and all loss, liability, claim, damage, cost and expenses arising out of any untrue statement of a material fact contained in the Registration Statement or the prospectus contained therein on the date the same became effective, or any amendment or supplement thereto, or the omission therefrom of a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, unless such statement or omission was made in reliance upon and in conformity with information furnished in writing to the Buyer by or on behalf of the Seller or the Liquidating Trustee, including

without limitation Seller's SEC Materials or resulting from the fact that Buyer was an unregistered "Investment Company" as such term is defined in the Investment Company Act of 1940, as amended. In no case shall the Buyer be liable under this indemnity with respect to any claim made against the Seller or the Liquidating Trustee unless the Buyer shall be notified in writing of the nature of the claim within a reasonable time after the assertion thereof, but failure so to notify the Buyer shall not relieve it from any liability which it may have otherwise than on account of this indemnity.

14. SET OFF AND PROCEDURE

(a) Claim. Buyer may, at any time or from time to time prior to the first anniversary of the Closing Date, by notice (the "Claim Notice") to the Seller, assert a claim based upon Seller's indemnification provided in Paragraph 13(a) (the "Claim") to the extent of the Fund against the interest due under the Interim Note or if the Note is no longer outstanding the amount described in Paragraph 4(iii). The Claim Notice shall briefly state the basis for the Claim and the dollar amount thereof. In addition to the foregoing, the Buyer shall have the right to set-off against such interest or amount $1,000,000, provided that in no event shall Buyer's right of set-off pursuant to this Agreement exceed the amount of the Fund.

(b) Response. If the Seller receives a Claim Notice, it may, as herein provided, respond to such Claim

Notice within thirty (30) days from the date the same was delivered (herein called the "Response Period"). If the Seller does not respond to the Claim Notice within the Response Period, then the Buyer shall have the right to set-off against its obligations to pay the Fund and retain the full amount of the Claim.

(c) Dispute. At any time within the Response Period, the Seller may notify Buyer that a Claim Notice is disputed by Seller. (Any such notice by the Seller is hereinafter referred to as the "Dispute Notice".) Upon the receipt of a Dispute Notice, the Buyer (i) shall have the right to set-off against its obligation to pay the Fund and retain that portion, if any, of the Claim which is not disputed by the Seller and (ii) shall so set-off against the Fund, but segregate in a special account as described in Paragraph 14(d), that portion of the Claim which is disputed by the Seller; and thereafter, the Buyer shall maintain such disputed amounts until the occurrence of one of the following events:

(x) Buyer and Seller shall have agreed, in writing, to the distribution thereof; or

(y) A court of competent jurisdiction shall have rendered a final decision with respect to the disputed Claim or Claims, in which case Buyer shall distribute such amounts, if any, to Seller as shall be in accordance

with such final decision and Buyer shall be entitled to set-off against the Fund and retain the balance of the Claim or Claims. For this purpose, a final decision shall mean the final decision of any court of competent jurisdiction from which no appeal may be taken, because of lapsed time or otherwise.

(d) Disputed Funds. On November 30, 1980, Buyer shall place in a separate account, segregated from its other funds, that portion of the Fund which shall then be the subject of a disputed Claim or Claims. Thereafter, and during the pendency of any dispute in respect of a Claim, the amounts so held and segregated by Buyer shall be invested in such money market instruments as Buyer in its sole discretion shall determine. The proceeds of such investments shall be distributed to Buyer and Seller in direct proportion to the amount of the disputed Claim or Claims ultimately distributed to Seller or retained by Buyer.

15. TERMINATION

At any time prior to the Closing Date, Seller may terminate this Agreement by notice to Buyer. In addition, Buyer and Seller, by action of their respective Boards of Directors, may jointly, at any time prior to the Closing Date, agree to the termination of this Agreement. If the Closing hereunder has not occurred on or before December 31, 1979, this Agreement may be terminated at the election of Buyer or Seller as of that date. Upon any such termination, Buyer and Seller shall have no further obligations under this Agreement except under Paragraphs 9(c) and 21 hereof.

16. NATURE AND SURVIVAL OF REPRESENTATIONS

All representations and warranties contained herein shall survive the Closing hereunder and any investigation at any time made by or on behalf of Buyer or Seller for a period of one year after the Closing.

17. NOTICES

All notices, consents, requests, demands, and other communications hereunder shall be in writing and shall be deemed to have been duly given or delivered if delivered personally or mailed by registered mail, return receipt requested, with first class postage prepaid to:

(a) Seller:

UV Industries, Inc.
437 Madison Avenue
New York, New York 10022
Attention: Chairman of the Board

Copy to:

Skadden, Arps, Slate, Meagher & Flom
919 Third Avenue
New York, New York 10022
Attention: Robert Pirie, Esq.

(b) Buyer:

Sharon Steel Corporation
6917 Collins Avenue
Miami Beach, Florida 33141
Attention: Chairman of the Board

Copy to:

Shearman & Sterling
53 Wall Street
New York, New York 10005
Attention: Dennis J. Friedman, Esq.

or such other addresses as the parties may, from time to time, have specified by notice to the other parties hereto.

18. MODIFICATION

This Agreement contains the entire agreement between the parties hereto with respect to the transactions contemplated herein and shall not be modified or amended except by an instrument in writing signed by or on behalf of the parties hereto.

19. NEW YORK LAW TO GOVERN

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York without giving effect to the principles of conflicts of law thereof.

20. ASSIGNMENT

This Agreement shall not be assignable by any party hereto, except that Seller may assign its rights, subject to its obligations, hereunder to the UV Industries, Inc. Liquidating Trust, as such Trust is described in the proposed UV Industries, Inc. Liquidating Trust Agreement set forth in Exhibit 1 to Annex 1 of Seller's Proxy Statement dated February 20, 1979, and except that Buyer may, at its election, direct Seller to convey all or a portion of the Purchased Property to a subsidiary or affiliate of Buyer, subject to the assumption by such subsidiary or affiliate of the Assumed Liabilities related thereto. In the event that the Seller transfers its rights, subject to its obligations,

hereunder to the Liquidating Trustee, all references herein to the Seller shall be deemed to refer to the Liquidating Trustee. Nothing in this Agreement is intended to confer upon any person, other than the parties hereto and their successors, any right or remedies under or by reason of this Agreement.

21. EXPENSES

If this Agreement shall terminate at any time prior to the Closing Date, each of the parties hereto shall bear its respective expenses in connection with this Agreement.

22. WAIVER

No waiver by an party hereto, whether express or implied, of its rights under any provision of this Agreement shall constitute a waiver of such party's rights under any other provision of this Agreement. No failure by any party hereto to take any action against any breach of this Agreement or default by another party hereto shall constitute a waiver of the former party's right to enforce any provision of this Agreement or to take action against such breach or default or any subsequent breach or default by such other party.

23. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

24. PARAGRAPH HEADINGS

The paragraph headings in this Agreement are for convenience of reference only and shall not be deemed to alter or affect any provision thereof. Reference to numbered "Paragraphs", "subparagraphs" and "Exhibits" refer to Paragraphs and subparagraphs of this Agreement and the Exhibits annexed hereto.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first hereinabove written.

SHARON STEEL CORPORATION

By _____

UV INDUSTRIES, INC.

By _____
Chairman of the Board

Exhibit 2

# INSTRUMENT OF ASSUMPTION OF LIABILITIES

INSTRUMENT OF ASSUMPTION OF LIABILITIES, made, executed and delivered as of November 26, 1979, by SHARON STEEL CORPORATION, a Pennsylvania corporation ("Sharon") in favor of UV INDUSTRIES, INC., a Maine corporation ("UV").

W I T N E S S E T H:

WHEREAS, UV and Sharon are parties to an Agreement For Purchase Of Assets, dated as of November 26, 1979 (the "Agreement") providing for, among other things, the transfer and sale to Sharon of all of the Purchased Property (as such term is defined in Section 1(c) of the Agreement) in consideration of $517,753,938 (to be paid by Sharon in accordance with and subject to the terms and conditions of the Agreement) and the assumption by Sharon of the Assumed Liabilities (as such term is defined in Section 1(d) of the Agreement) of UV; and

WHEREAS, all of the terms and conditions precedent provided in the Agreement have been met and performed by the respective parties thereto, and the parties now desire to carry out the intent and purpose of the Agreement by execution and delivery by Sharon of this instrument evidencing the assumption by Sharon of the debts, obligations, contracts and liabilities of UV hereinafter described, in addition to such other instruments as UV may hereinafter request;

NOW, THEREFORE, in consideration of the premises and the sale of the Purchased Property to Sharon pursuant to the Agreement, Sharon hereby assumes and agrees to pay, perform and discharge and to indemnify and hold UV harmless from and against (except for any tax liabilities attributable to UV's failure to satisfy the requirements of Section 337 of the Internal Revenue Code, as amended) all the debts, obligations, contracts and liabilities of UV as of the date hereof, of any kind, character or description, direct or indirect, whether accrued, absolute, contingent or otherwise, and whether asserted before or after such date, together with all the administrative expenses (other than income taxes), whether incurred prior to, on or subsequent to the date hereof, incident to the liquidation of UV under the UV Liquidating Trust (as such Trust is described in the proposed UV Industries, Inc. Liquidating Trust Agreement set forth in Exhibit 1 to Annex 1 of UV's Proxy Statement dated February 20, 1979). The debts, obligations, contracts and liabilities to be assumed being, without limitation on the generality of the foregoing, more particularly described as follows:

(i) all obligations and liabilities of UV arising on account of defective property sold or defective services performed by UV prior to or on the date hereof whether asserted before or after the date hereof;

(ii) all obligations and liabilities of UV under all contracts and agreements of every nature and description to which, on the date hereof, UV is a party or to which UV has succeeded to or been substituted for any other party or parties;

(iii) all obligations and liabilities of UV arising under all mortgages, indentures, notes, leases, guarantees and other indebtedness of UV on the date hereof, including but not limited to UV's obligations and liabilities under its

(a) 5-3/8% Subordinated Debentures due November 15, 1995 and the related indenture dated as of September 1, 1965, between UV and The Chase Manhattan Bank (National Association), Trustee, under which such Subordinated Debentures were issued;

(b) 8-7/8% Debentures due April 15, 1997 and the related indenture dated as of April 15, 1977, between UV and Manufacturers Hanover Trust Company, Trustee, under which such Debentures were issued;

(c) 9-1/4% Senior Subordinated Notes due April 15, 1987 and the related indenture dated as of April 15, 1977, between UV and United States Trust Company of New York, Trustee, under which such Senior Subordinated Notes were issued; and

(d) guarantees of (w) a lease obligation with respect to the City of Port Huron 6-1/4% Industrial Development Revenue Bonds Series A, due December 1, 1993, issued under an Indenture between the City and The Chase Manhattan Bank, N.A., as Trustee; (x) a lease obligation with respect to the County of Itawamba 6-1/4% Industrial Revenue Bonds issued under an Indenture between the County and Union Planters

National Bank of Memphis dated as of November 12, 1968; (y) an installment sale obligation with respect to the City of Port Huron 7% - 8-1/8% Pollution Control Revenue Bonds (1976 Series A Bonds), due 1981-2001, issued under an Indenture between the City and Michigan National Bank of Detroit, as Trustee; and (z) a lease obligation with respect to the City of Port Huron 7-1/2% Industrial Development Revenue Bonds (1975 Series B Bonds) due 1979-1990, issued under an Indenture between the City and Michigan National Bank of Detroit, as Trustee;

(iv) all obligations and liabilities of UV accrued or incurred as of the date hereof for federal, state and local taxes (excluding, however, all obligations and liabilities of UV accrued or incurred as of the date hereof for federal, state and local taxes attributable to UV's failure to satisfy the requirements of Section 337 of the Internal Revenue Code of 1954, as amended, except as otherwise provided in a letter agreement concerning Section 337 of the Code dated the date hereof between Sharon and UV);

(v) all administrative expenses (other than income taxes) incident to the liquidation under the UV Liquidating Trust;

(vi) all obligations and liabilities of UV, whether as obligor or guarantor under all employment agreements and arrangements and under all pension, retirement, profit-sharing, bonus and stock option plans and all other so-called fringe benefit plans, undertakings and arrangements;

(vii) UV's obligation to indemnify all persons entitled to indemnification as provided in Section 719 of the Maine Business Corporation Act (as in force from time to time) and the UV Certificate of Incorporation and By-laws (as both are in force at the date hereof) for all actions taken or omitted by them through the time of the Closing;

(viii) all expenses accrued or incurred by UV in connection with the negotiation, preparation, execution, delivery or performance of the Agreement, including (but not limited to) legal fees, accountants' fees, and investment bankers' fees;

(ix) all obligations of UV under the Letter Agreement, dated November 23, 1979, between UV and Salomon Brothers; and

(x) all other debts, obligations and liabilities of UV as of the date hereof of any kind, character or description, whether direct or indirect, whether accrued, absolute, contingent or otherwise, whether asserted before or after the execution hereof and whether or not specifically mentioned or described herein.

The assumption by Sharon of the Assumed Liabilities shall not be construed to defeat, impair or limit in any way any rights or remedies of Sharon to contest or dispute the validity or amount thereof, provided that Sharon will indemnify

and hold UV harmless from any liability which Sharon causes to be contested or disputed.

For the consideration aforesaid, Sharon, for itself and its successors and assigns, has covenanted, and by this Instrument of Assumption of Liabilities does covenant, with UV, its successors and assigns, that Sharon and its successors and assigns, will do, execute and deliver, or will cause to be done, executed and delivered, all such further acts and instruments which UV may reasonably request in order to more fully effectuate the assumption of liabilities provided for in this Instrument.

IN WITNESS WHEREOF, this Instrument of Assumption of Liabilities has been duly executed and delivered by the duly authorized officers of Sharon as of November 26, 1979.

SHARON STEEL CORPORATION

By: _____

[Corporate Seal]

Attest:

_____

Exhibit 3

SHARON STEEL CORPORATION

277 PARK AVE. • NEW YORK, NEW YORK 10017 • (212) 593-1483

November 26, 1979

UV Industries, Inc.
437 Madison Avenue
New York, New York 10022

Attention: Martin Borwitz
Chairman of the Board

Gentlemen:

UV Industries, Inc. ("UV") and Sharon Steel Corporation ("Sharon"), are parties to an Agreement for Purchase of Assets, dated as of November 26, 1979, pursuant to which Sharon will purchase all of the assets and assume all of the liabilities of UV existing on November 26, 1979 (the "Agreement"). Sharon hereby agrees that it shall indemnify and hold harmless UV and each of UV's directors and officers against any and all claims which arise out of, relate to or are based upon any action or failure to take action by any officer or director of UV in connection with the execution and delivery of the Agreement and the consummation of the transactions contemplated thereby.

Please indicate your acceptance of the foregoing by signing the enclosed duplicate copy of this letter.

Very truly yours,

SHARON STEEL CORPORATION

By _____

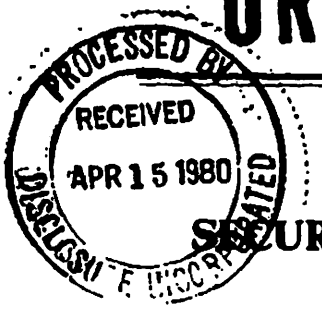
Accepted and Agreed to

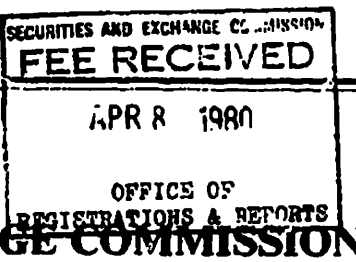
UV INDUSTRIES, INC.

By _____

Exhibit 4

11252 ORIGINAL 4993204

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# SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D. C. 20549

## FORM 10-K 1980 FY 1979

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

**For the fiscal year ended December 31, 1979** **Commission file number 1-5172**

# UV INDUSTRIES, INC.

Incl. Liquidating Trust Agreement

(Exact name of registrant as specified in its charter)

| Maine | 04-2380295 |
|---|---|
| (State or other jurisdiction of incorporation or organization) | (I. R. S. Employer Identification No.) |
| 437 Madison Avenue, New York, New York | 10022 |
| (Address of principal executive offices) | (Zip code) |

Registrant's telephone number, including area code 212-754-0660

**Securities registered pursuant to Section 12(b) of the Act:**

| Title of each class | Name of each exchange on which registered |
|---|---|
| Common Stock ($1 par value) | New York Stock Exchange, Inc. |
| | Boston Stock Exchange, Inc. |
| | Pacific Stock Exchange, Inc. |

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Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to the filing requirements for the past 90 days.

Yes ✓ No ___

Indicate the number of shares outstanding of each of the issuer's classes of common stock as of the close of the period covered by this report:

| Class | Outstanding at December 31, 1979 |
|---|---|
| Common Stock ($1 par value) | 15,228,057 shares |

# PART I

## Item 1. Business

### Background

On January 1, 1979 UV Industries, Inc. ("UV" or the "Company") was engaged in business within the following industry segments;

1. *Electrical Equipment and Electronic Components.* Through a wholly-owned subsidiary, Federal Pacific Electric Company, UV designed, manufactured and marketed, primarily in the United States and Canada, electrical control, distribution and transmission equipment. This equipment consisted of stab-lok™ circuit breakers and other standard low voltage equipment sold to distributors and contractors for use in residential and other types of buildings; panelboards, switchboards and other specially designed low voltage equipment utilized in industrial, commercial and institutional facilities; and power equipment, including large transformers and switchgear, which was sold primarily to utilities and industrial users. In addition, UV produced a broad line of capacitors and other electronic components, sold both to original equipment manufacturers and through distributors for replacement and repair use.

2. *Natural Resources.* UV mined and milled copper ore in New Mexico which, after smelting and refining by others, was utilized in UV's copper fabricating operation. UV also mined low sulphur steam coal in Utah, a significant portion of which was sold under long-term contract to a public utility. UV produced oil and gas from properties in the United States and, to a minor extent, Canada, dredged placer gold in Alaska, and engaged in the exploration and development of mineral resources on both UV-owned and leased properties.

3. *Copper and Brass Fabrication.* Through a wholly-owned subsidiary, Mueller Brass Co., UV fabricated copper and brass products, including brass rod and forgings and other industrial products sold chiefly to manufacturers, and Streamline™ tube, wrought fittings and other standard products sold principally to plumbing/heating and refrigeration/air conditioning jobbers.

### Plan of Liquidation and Dissolution and Sale of Assets

On March 26, 1979 a Special Meeting of Stockholders of UV was held at which the following matters were voted upon and approved;

1. To consider the advisability of dissolving the Company by acting upon a proposal to approve and adopt a Plan of Liquidation and Dissolution (the "Plan") attached as Annex I to the Proxy Statement dated February 20, 1979 (the "Proxy Statement") whereby, within a twelve-month period from the date of stockholder approval, the assets of the Company will be sold (or distributed to stockholders or to a liquidating trust on behalf of stockholders), and the proceeds of any such sales, including the proceeds of the sale of shares of the Company's wholly-owned subsidiary, Federal Pacific Electric Company ("Federal"), after paying or providing for claims, liabilities and other obligations, will be distributed to the Company's stockholders, and the Company will thereafter be dissolved.

2. To consider and act upon a proposal to approve the sale of all of the outstanding capital stock of Federal to New REC, Inc., a wholly-owned subsidiary of Reliance Electric Company, pursuant to a Stock Purchase Agreement (the "Stock Purchase Agreement") attached as Annex II to the Proxy Statement.

3. To consider and act upon an alternative proposal to approve the sale of substantially all of the Company's property and assets upon such terms and conditions and for such consideration as the Board of Directors of the Company may fix.

Further information with respect to the matters voted upon at the Special Meeting is incorporated herein by reference to the Registrant's Proxy Statement dated February 20, 1979 and Supplemental Proxy Statement dated March 6, 1979 (Commission File No. 1-5172)

Pursuant to the Stock Purchase Agreement and the UV stockholders' approval thereof, the sale of Federal was consummated on March 29, 1979 for an aggregate sales price of $345,000,000.

On April 30, 1979 the stockholders were paid an initial liquidating cash distribution of $18 per share, aggregating $274,070,000.

On October 2, 1979 UV closed the sale of substantially all of its oil and gas properties to Tenneco Oil Company and received the aggregate sales price of $133,921,000 pursuant to a purchase agreement entered into on July 23, 1979. In addition, in accordance with the purchase agreement, UV reserved a 5% interest, in the form of a production payment, in certain of the properties sold to Tenneco Oil.

On November 26, 1979 UV and Sharon Steel Corporation ("Sharon") entered into an Agreement For Purchase of Assets ("Purchase Agreement") whereby Sharon purchased all of UV's assets for a total purchase price of $517,753,938 and assumed all of UV's debts, obligations, contracts and liabilities existing on such date, except for any tax liabilities attributable to UV's failure to satisfy the requirements of Section 337 of the Internal Revenue Code, as amended. At the closing, UV delivered instruments of conveyance of assets, and Sharon delivered the instruments of assumption of liabilities and a Promissory Note ("Note") in the principal amount of $517,753,938. The Note is due September 30, 1980, and bears interest at 10% per annum through March 15, 1980, 15% per annum thereafter through June 30, 1980 and thereafter at 13½% per annum. Interest accrued through June 30, 1980 and for the period October 1, 1980 through November 30, 1980 is payable on November 30, 1980; interest for the period July 1, 1980 through September 30, 1980 is payable on September 30, 1980; and interest from December 1, 1980 is payable quarterly and at maturity.

The Purchase Agreement further provides for an exchange ("Exchange") whereby the Note is to be exchanged for $106,596,399 in cash and $411,157,539 aggregate principal amount of duly executed and authenticated debentures of Sharon (the "Debentures") which will bear interest at the rate of 15½% per annum for a period of two years and thereafter at the rate of 13½% per annum; mature on January 2, 2000; be redeemable at the principal amount thereof, through the operation of a sinking fund providing for the redemption of 5% of the outstanding Debentures per annum beginning in the eleventh year; be redeemable after 10 years at the option of Sharon as a whole or from time to time at optional redemption prices ranging from 106.56% in the tenth year to 100.665% in the nineteenth year and 100% thereafter; shall include a covenant by Sharon that Sharon shall not at any time pay any dividend that exceeds in the aggregate the sum of $45,000,000 plus 60% of cumulative net after tax earnings of Sharon from January 1, 1979. The Exchange is to take place on the twentieth business day after the date of effectiveness of the Registration Statement (the "Registration Statement") covering the Debentures described above. If the Registration Statement is not effective by September 30, 1980 the Note becomes due and payable. Pending the consummation of the Exchange or the payment in full of the Note, Sharon is obligated to maintain the portfolio of marketable securities; invest cash and cash equivalents in high grade money market instruments having maturities of thirty days or less; not dispose of any other assets acquired pursuant to the Agreement except for cash and cash equivalents; and invest all cash or cash equivalents received as indicated above. If the Exchange takes place UV, in furtherance of its Plan, will thereafter distribute all the cash and Debentures to the holders of the Common Stock of UV in the ratio of $7 in cash and $27 principal amount of Debentures for each of the 15,228,057 shares of UV Common Stock outstanding. If the Exchange does not take place and the Note is paid in cash, UV will then distribute all the cash to the holders of Common Stock of UV in the ratio of $34 for each of the 15,228,057 shares of UV Common Stock outstanding.

In addition Sharon is obligated to pay UV $3,000,000 (the "Liquidation Expense Amount") on the earlier of the Exchange date or June 30, 1980 to be used by UV solely for payment of the administrative expenses incident to the liquidation of UV. Sharon may seek to offset such amount against interest payment requirements under the Note

UV has agreed to indemnify Sharon for breaches of any representation, warranty or covenant of UV under the Agreement or arising out of any non-assumed liabilities. UV's liabilities for breaches of any representation, warranty or covenant under the Agreement are limited, in amount, to an amount equal to the interest which shall have accrued on the Note to the earlier of the date of the Exchange or June 30, 1980 less any portion of the Liquidation Expense Amount offset by Sharon and, in time, in that Sharon shall assert no claim against UV in respect of such indemnity at any time after November 26, 1980.

In connection with the Agreement Sharon has agreed that it will indemnify the Company, its officers and directors, and each of its stockholders if the liquidation of the Company fails to constitute a complete liquidation within the meaning of Section 337 of the Internal Revenue Code, if such failure is due solely to or arises solely from the purchase by Sharon of the assets of the Company and if such liquidation, and purchases pursuant thereto by parties other than Sharon or an affiliate of Sharon, would otherwise have satisfied the requirements of Section 337 of the code.

**Liquidating Trust and Dissolution**

On March 24, 1980 all the remaining assets of UV, consisting principally of the Note of Sharon in the principal amount of $517,753,938 plus accrued interest thereon, were transferred to the UV Industries, Inc. Liquidating Trust (the "Liquidating Trust") in order to assure compliance by UV with the provisions of Section 337 of the Internal Revenue Code. On March 25, 1980 UV was dissolved. The Trustees of the Liquidating Trust will hold such assets for the benefit of UV shareholders.

As a result of the transfer of assets, shareholders of record as of the close of business on March 24, 1980 became the holders of beneficial interests in the Liquidating Trust. The certificates representing shares of UV Common Stock will be deemed to evidence the same number of units of beneficial interest in the property held under the Liquidating Trust as shares of UV Common Stock.

The Liquidating Trust Agreement provides that the beneficial interests in the Liquidating Trust may become transferable, provided that UV can first obtain a ruling from the Internal Revenue Service (the "IRS") that the transferability of such interests will not adversely affect the tax status of the Liquidating Trust or such other assurances as the Trustees deem necessary and appropriate. On April 7, 1980 UV received a ruling from the IRS to the effect that units of beneficial interest in the Liquidating Trust may be transferable for a period of no more than forty (40) business days without adverse tax effect. Under the IRS ruling, public trading will be limited to quotations of individual brokers and dealers.

The New York Stock Exchange suspended trading in UV shares before the opening of trading on March 18, 1980 and thereafter applied to the Securities and Exchange Commission to delist UV Common Stock from the Exchange. UV was informed that the Boston Stock Exchange and the Pacific Stock Exchange would follow the same procedure.

**Tax Consequences**

As indicated above, all of the remaining assets of UV have been distributed to the Liquidating Trust and UV has been dissolved within one year from the date of adoption of the Plan. Accordingly no gain or loss has been recognized by UV upon the sale of its assets during such one-year period, except that UV will have incurred some tax liability as a result of the recapture of investment tax credits, intangible drilling costs, mining exploration expenditures, and depreciation with respect to directly held assets, all of which liabilities have been assumed by Sharon under the Purchase Agreement

The tax consequences to shareholders of the transfer of UV assets (which consist principally of the Note) to the Liquidating Trust will be as follows: Under federal income tax law, the transfer is deemed to be first a distribution of the Note directly to shareholders in exchange for their UV stock and second a transfer by the shareholders of the Note to the Liquidating Trust. Shareholders are required to report their proportionate share of the fair market value of the Note (less their proportionate share of known liabilities assumed by the Liquidating Trust) as an amount received in exchange for their stock. Since Sharon has assumed all of the liabilities of UV as of November 26, 1979, the liabilities to be assumed by the Liquidating Trust are not expected to be material in amount. It is likely that the final trading price of the UV stock prior to the transfer to the Liquidating Trust will be deemed to reflect the fair market value of the Note. It may be argued that no amount should be currently taxable on the grounds that the Note does not have a determinable fair market value because it is non-negotiable and non-transferable (except to the Liquidating Trust) and was issued as a mere temporary evidence of Sharon's obligation to deliver the Debentures and cash. However, it seems unlikely that such treatment could be sustained because the Treasury Regulations provide that only in "rare and extraordinary cases" will property be considered not to have a determinable fair market value.

A shareholder will recognize gain or loss separately with respect to each block of UV stock (group of shares purchased in the same transaction) held, measured by the difference between the fair market value of the Note allocable to such stock and the shareholder's adjusted basis in such stock, as reduced to reflect the amount of the previous liquidating distribution if received by such shareholder allocable to such stock. If the amount of such previous liquidating distribution allocable to a block of stock equalled or exceeded the adjusted basis of such stock, the fair market value of the Note allocable to such stock will be taxable as gain in its entirety. Gain or loss recognized by a shareholder will be capital gain or loss if the shares are held as a capital asset by the shareholder and such capital gain or loss will be long-term if the shareholder's holding period on the date of the transfer to the Liquidating Trust is more than one year.

After the transfer to the Liquidating Trust, the shareholders are deemed to be the owners of the Liquidating Trust property under the "grantor trust" provisions of the Internal Revenue Code. Under such provisions, each shareholder will take into account his proportionate share of each item of trust income, deduction or credit as if he directly owned a proportionate share of the Liquidating Trust property. Interest income on the Note accrued subsequent to its transfer to the Liquidating Trust will be taxable to each shareholder as if he were the holder of his proportionate share of the Note even if such interest is not currently distributed to him. In the case of shareholders who report income on the "cash basis" for income tax purposes (as is the case for most individuals) such interest income will become taxable to them only upon actual receipt by the Liquidating Trust. It is expected that such interest, to the extent not required to meet claims and expenses, will be distributed to shareholders shortly after receipt by the Liquidating Trust. Interest accrued prior to June 30, 1980 is not payable until November 30, 1980, which means that the distribution of such interest, net of claims and expenses, may be after the distribution to shareholders of the amounts received in exchange for, or in payment of, the Note.

Interest accrued on the Note prior to its transfer to the Liquidating Trust is taxable income to UV, rather than to the shareholders. UV's tax liability on that interest, and any other claims against and expenses of UV, will be paid by the Liquidating Trust.

If the Debentures and cash are received by the Liquidating Trust in exchange for the Note, the portion of such exchange in which Debentures are received may, although the issue is not free from doubt, be viewed as a transaction in which neither gain nor loss is recognized. Such treatment would be founded on the fact that the issuance of the Note was intended as a mere temporary evidence of Sharon's obligation to issue the Debentures, and that from the inception the Debentures were intended, upon registration, to be substituted for the Note, so that their actual issuance constitutes a transformation of the Note into a long-term obligation rather than an exchange of the Note for a different property interest.

Non-recognition treatment would also be supported by the principle that no gain or loss is recognized upon the exchange of property for other property not differing materially either in kind or in extent. Under this principle, it has been held that changes in the maturity date of an obligation generally do not, without more, cause realization of gain or loss. Although each case is decided upon its particular facts, the fact that the issuance of the Debenture in the present case would not result in a significant change in the interest rate or any change in the face value of the portion of the Note for which it is being substituted, but primarily only in an extension of maturity date, would tend to support the position that it does not materially differ from the Note.

To the extent that cash of $7 per share is received, it is possible that such cash would be viewed for tax purposes as having been separately received in exchange for a portion of the Note. Under this view, the shareholder would report gain or loss with respect to this proportionate interest in the Note equal to the difference between such cash received and the tax basis in the portion of the Note allocable to the right to receive such cash. If the right to receive cash of $7 per share under the Note may be separately valued at the time of transfer to the Liquidating Trust, such allocable basis may be expected to be substantially equal to the actual $7 in cash, plus interest, that is to be received on or before September 30, 1980. If no separate valuation can be established, the shareholder's total tax basis in the Note (fair market value as reported by the shareholder at the time of the transfer to the Liquidating Trust) would be allocated in proportion to the then relative values of the Debentures and amount of cash ultimately to be received. Any such gain or loss will be capital gain or loss if the shares are held as a capital asset by the shareholder, and will be short-term capital gain or loss.

In the event that no Debentures are issued prior to September 30, 1980 so that only cash is received, shareholders will recognize gain or loss measured by the difference between such cash and their tax basis in the Note exchanged. Such gain or loss will be capital gain or loss if the shares are held as a capital asset by the shareholder, and will be short-term capital gain or loss.

**Item 2.** ***Summary of Operations***

As described in Item 1, UV is in liquidation and has disposed of all of its former business operations to other Registrants and no longer owns or control any operating assets. Accordingly, UV believes that a summary of operations for the last five years together with the related management's analysis and discussion thereof would no longer be meaningful to an understanding of UV's current activities.

**Item 3.** ***Properties***

UV no longer owns any physical properties as contemplated by this item.

**Item 4.** ***Parents and Subsidiaries***

UV has no parent company nor does it own any subsidiaries.

**Item 5.** ***Pending Legal Proceedings***

*Kaplan v. UV Industries, Inc. and Sharon Steel Corporation* (Supreme Court, State of New York, County of New York).

This action was commenced by the service of a summons and complaint on or about December 19, 1979. On March 21, 1980 plaintiff amended his complaint. As amended, the action is a purported class action brought on behalf of a purported class consisting of all holders of the following debt securities issued by UV (the "Debt Securities"): (a) 5⅜% Subordinated Debentures due November 15, 1995; (b) 9¼% Senior Subordinated Notes due April 18, 1987 and holders of UV Common Stock. Plaintiff alleges, among other things, that UV's payment of the $18 cash liquidating dividend, UV's alleged failure and refusal to pay now the entire principal and interest of the Debt Securities to the owners thereof, UV's alleged arrangement to keep the Debt Securities in existence in accordance with their stated terms (with the concurrence of the indenture trustees for each of the trust indentures for each of the Debt Securities) and UV's arrangement to sell its remaining assets (which constitute less than all or substantially all of its assets) on terms which contemplate the assumption of the Debt Securities by the purchaser of said assets, was an illegal and *ultra vires* act because the UV stockholders did not authorize such a sale upon its stated terms, or if such authorization was obtained, it was obtained fraudulently, and violates: (1) the laws of the State of Maine, (2) UV's obligation to marshall its assets in liquidation equitably, (3) the provisions of trust indentures for each of Debt Securities (the "Trust Indentures"). The plaintiff further alleges that since the stated rates of interest of the Debt Securities are "far below" market rates, such acts have caused damage to the holders of UV's Debt Securities. Plaintiff also alleges that pursuant to agreement, on November 26, 1979 Sharon Steel Corporation ("Sharon") purchased the remaining assets and agreed to assume certain obligations of UV. Plaintiff further alleges that a dispute has arisen between the plaintiff and the alleged class and UV and Sharon with regard to a refusal by the latter to immediately pay the Debt Securities with interest to date, and with regard to UV paying any future liquidating dividends to UV's shareholders but not to the owners of the Debt Securities.

Plaintiff seeks a judgment declaring (a) that the action is a class action; (b) the relative rights and obligations of UV, Sharon and the members of the class in connection with the dissolution and liquidation of UV; (c) that the sale of the remaining assets to Sharon was illegal and *ultra vires*; (d) that said sale be rescinded; or alternatively (e) that UV had no right to pay the $18 liquidating dividend or any other liquidating dividend without first paying the Debt Securities; (f) that UV and Sharon account and pay to plaintiff and the class (i) the principal amount of the Debt Securities, (ii) interest at market rates from the date of the $18 liquidating dividend, and (iii) any damages sustained by plaintiff and the class; that the Court allow plaintiff's attorneys a reasonable fee plus expenses; and grant plaintiff his costs and disbursements.

UV has filed a motion to dismiss or stay this complaint.

*The Chase Manhattan Bank, N.A., Trustee v. UV Industries, Inc. and Sharon Steel Corporation* (Supreme Court, State of New York, County of New York).

This action was commenced by the service of a summons and complaint on or about December 24, 1979. Plaintiff alleges that it is the trustee under an indenture dated as of September 1, 1965 (the "1965 Indenture"), pursuant to which UV publicly issued 5⅜% subordinated debentures (the "Debentures") due November 1, 1995, of which there is currently outstanding an aggregate principal amount of approximately $14,200,000. Plaintiff also alleges that it and the City of Port Huron, State of Michigan, entered into a Mortgage and Indenture of Trust dated as of December 1, 1968 (the "1968 Indenture"), pursuant to which the City of Port Huron issued Industrial Development Revenue Bonds (the "Bonds") of which there is currently outstanding an aggregate principal amount of approximately $17,380,000. Plaintiff alleges that it is trustee under the 1968 Indenture and that principal, interest, and redemption premiums on the Bonds are payable from revenues derived from a lease, dated as of December 1, 1968, the lessee under which is Mueller Brass Co., a subsidiary of UV. Plaintiff alleges that pursuant to a Lease Guaranty Agreement (the "Lease Guaranty") dated as of December 1, 1968, UV unconditionally guaranteed to the City of Port Huron and to plaintiff as indenture trustee all amounts due under that lease. On or about March 26, 1979, plaintiff alleges, UV's shareholders voted their approval of a sale of its wholly-owned subsidiary, Federal, and voted their approval of the Plan. Thereafter, plaintiff alleges, UV sold all the stock of Federal for $345,000,000 and announced that it would distribute approximately $273,600,000 to its stockholders. Plaintiff alleges further that at its insistence and that of certain other indenture trustees, UV entered into an agreement dated April 27, 1979 (the "April Agreement"), pursuant to which UV agreed, among other things: (1) to deposit on April 20, 1979 $155,000,000 in cash or certain investments and to maintain such accounts as provided under the April Agreement; (2) to initiate discussions with, and by July 26, 1979 provide a proposal to, each indenture trustee (including plaintiff) who entered into the April Agreement for the satisfaction and discharge of UV's obligations under each indenture described in April Agreement (including the 1965 and 1968 Indentures), and (3) not to terminate the April Agreement except under certain conditions. After entering into the April Agreement, plaintiff alleges, UV: (a) distributed the aforementioned approximately $273,600,000 to its stockholders; (b) took unspecified "other steps" to implement and complete its Plan of Liquidation and Dissolution; (c) on or about October 2, 1979, sold its oil and gas properties to Tenneco Oil Company for $135,000,000 in cash; and (d) on or about November 26, 1979 sold its remaining assets to Sharon. Plaintiff alleges that in connection with the Company's sale of assets to Sharon in exchange for certain cash and debentures (which purport to be superior in right to the Debentures and *pari passu* in right to the Bonds), Sharon agreed to assume all of UV's obligations, including those relating to: (i) the Debentures and Bonds, (ii) their respective indentures, (iii) the Lease Guaranty, and (iv) the April Agreement. Plaintiff further alleges that: (a) UV's sale of assets to Sharon did not constitute a sale or transfer of "all or substantially all" the assets of UV within the terms of the 1965 Indenture or the Lease Guaranty; (b) that UV and Sharon have refused to comply with the provisions of the April Agreement; (c) that neither UV nor Sharon has redeemed the Debentures or Bonds; (d) that neither UV nor Sharon has satisfied and discharged the 1965 or 1968 Indentures nor UV's obligations thereunder; and (e) despite a legal obligation to do so, neither UV nor Sharon has come forward with a proposal to redeem the Debentures and Bonds and satisfy and discharge the 1965 and 1968 Indentures. Plaintiff alleges that UV and Sharon have acted, and will continue to act, "in total disregard" of the duties and obligations imposed on them by law and by the agreements referred to above. UV and Sharon, according to plaintiff, have asserted that they are without any obligation to redeem the Debentures and Bonds at any time prior to their stated maturities or satisfy and discharge the 1965 and 1968 Indentures or UV's obligations thereunder, and have asserted that plaintiff, as trustee, is under an obligation to accept Sharon as successor obligor on the Debentures and execute a supplemental indenture tendered by Sharon.

Based on the foregoing allegations, plaintiff asserts six causes of action against UV. The first seeks a declaratory judgment that the April Agreement ought to be enforced according to its terms and that the Debentures be redeemed forthwith; seeks an order directing that UV satisfy and discharge the 1965 Indenture, and seeks plaintiff's costs in securing such relief. The second cause of action seeks like relief

with regard to the Bonds and the 1968 Indenture. The third cause of action claims that by pursuing its liquidation and dissolution "in a series of separate transactions," and by distributing approximately $273,600,000 to its stockholders, UV has failed to comply with the terms of the 1965 Indenture, has rendered itself unable to fulfill its obligations thereunder, and is in wilfull and intentional default under the 1965 Indenture and the Debentures. Plaintiff seeks a declaratory judgment that UV is in default under the 1975 Indenture, an order directing that the Debentures be redeemed forthwith, and also seeks plaintiff's costs in securing such relief. Plaintiff's fourth cause of action seeks like relief with regard to the Bonds and the 1968 Indenture. Plaintiff's fifth cause of action alleges that by entering the process of liquidation and making a distribution in partial liquidation to its stockholders without paying the Debentures and satisfying and discharging the 1965 Indenture, UV has acted contrary to the laws of Maine. Plaintiff seeks an order requiring UV to comply fully with Maine law and, according to plaintiff, redeem the Debentures forthwith, satisfy and discharge the 1965 Indenture and, pending such redemption, satisfaction and discharge, hold in trust for the holders of the Debentures all assets and monies received by it in the course of liquidation and dissolution. The sixth cause of action alleges a like breach of Maine law with respect to the Bonds and the 1968 Indenture and seeks like relief with regard to those instruments.

UV has filed a motion to dismiss or stay this complaint.

*United States Trust Company of New York, Trustee*, v. *UV Industries, Inc. and Sharon Steel Corporation* (Supreme Court, State of New York, County of New York).

This action was commenced by the service of a summons and complaint on or about December 24, 1979. Plaintiff alleges that it is the trustee under an indenture dated as of April 15, 1977 (the "1977 Indenture") pursuant to which UV issued 9¼% Senior Subordinated Notes due April 15, 1987 (the "Notes"), of which there is currently outstanding an aggregate principal amount of approximately $16,410,000. Plaintiff's substantive allegations and the relief plaintiff seeks with regard to the Notes and the 1977 Indenture are identical to the allegations made and relief sought by The Chase Manhattan Bank, N.A., Trustee ("The Chase"), with regard to the Debentures, the Bonds, and the 1965 and 1968 Indentures, in the complaint brought on behalf of The Chase, described *supra*.

UV has filed a motion to dismiss or stay this complaint.

*Manufacturers Hanover Trust Company, Trustee* v. *UV Industries Inc. and Sharon Steel Corporation* (Supreme Court, State of New York, County of New York).

This action was commenced by the service of a summons and complaint on or about March 21, 1980. The factual allegations and relief sought are substantially similar to those in the complaints described above brought by The Chase and by United States Trust Company of New York.

*Sharon Steel Corporation* v. *The Chase Manhattan Bank, N.A., Manufacturers Hanover Trust Company, and United States Trust Company of New York; Manufacturers Hanover Trust Company* (the "defendants"). (Third-Party Plaintiff) v. *UV Industries, Inc.* (Third-Party Defendant) (United States District Court, Southern District of New York).

The Amended Complaint is brought on behalf of Sharon, and alleges that in December 1979, Sharon acquired all the assets and, with certain exceptions not relevant to the Amended Complaint, assumed all the liabilities of UV. As background, the Amended Complaint refers to the Debentures, the Bonds (and the Lease Guaranty) and the Notes; alleges that the principal amount outstanding of these obligations is approximately $15,219,000, $17,380,000 and $16,510,000 respectively; and alleges that Manufacturers Hanover Trust Company is the trustee under an indenture dated as of April 15, 1977 (the "MH Indenture") pursuant to which the Company issued 8¾% Debentures (the "MH Debentures") of which there is currently outstanding a principal amount of $66,775,000. The Amended Complaint alleges that the defendants, pursuant to an "unlawful agreement, combination and conspiracy", coerced UV to enter the April Agreement, which is an "unauthorized, improper, and illegal alteration of the rights and obligations set forth in the [Trust] Indentures and an unlawful restraint of trade." The Amended Complaint further alleges that the April Agreement does not apply to the "current situation" in which, rather than UV selling its assets step by step to different purchasers as originally contemplated under the Plan, UV sold all or substantially all of its assets to Sharon. Sharon, the Amended Complaint alleges, assumed UV's liabilities and obligations and, specifically and lawfully assumed UV's obligations under the Trust Indentures and the Lease Guaranty. Nevertheless, the Amended Complaint continues, although Sharon and UV properly met all requirements to assume UV's obligations under the Trust Indentures and the Lease Guaranty, the defendants have improperly refused to execute instruments recognizing Sharon's

assumption of those obligations. The Amended Complaint further alleges that the defendants, acting pursuant to an illegal agreement, combination and conspiracy, delivered to Sharon and UV notices asserting that UV's sale of assets to Sharon constituted a default under the Trust Indentures and/or the Lease Guaranty, and that two of the defendants agreed to take further joint illegal efforts by commencing litigation against Sharon and UV. Finally, the Amended Complaint alleges that although Sharon has notified the defendants that it intends to withdraw the funds that UV deposited pursuant to the April Agreement, the defendants have "collusively, improperly, wrongfully and unreasonably" refused to permit such withdrawals. By such acts, the Amended Complaint charges, the defendants hope to reap an improper windfall by causing UV to repay now money which was borrowed at rates much lower than rates prevailing today and which defendants agreed was not due to be repaid in full for many years.

As a result of the foregoing, the Amended Complaint asserts nine claims for relief. The first through fourth claims allege that the April Agreement is of no force and effect against Sharon or UV because: (a) defendants coerced UV to enter into it; (b) the April Agreement was an unlawful attempt to modify the Trust Indentures; (c) the April Agreement fail[s] for lack of consideration given by the defendants; and (d) the April Agreement expired when Sharon purchased all the assets of UV. The fifth through eighth claims allege with respect to the 1965 Indenture, the Lease Guaranty, the MH Indenture, and the 1977 Indenture, respectively, that although Sharon has satisfied the requirements of each such instrument by Sharon's assumption of UV obligations under that instrument, the defendants have improperly refused to permit Sharon to succeed formally to UV's obligations under these instruments. The ninth claim for relief alleges that certain acts of the defendants, as generally described above, constitute unlawful restraints of trade in violation of Section 1 of the Sherman Act. The Amended Complaint seeks declaratory and injunctive relief, damages, counsel fees, costs, and disbursements as against the defendants.

On March 4, 1980 Manufacturers Hanover Trust Company ("Manufacturers") served on UV a Amended Third-Party Compsint Containing Claims for Declaratory and Other Relief against UV. In the Amended Third-Party Complaint, the third-party plaintiff alleges that it is the trustee under the MH Indenture pursuant to which UV issued the MH Debentures, of which there is currently outstanding a principal amount of approximately $66,775,000. The substantive allegations of the Amended Third-Party Complaint with regard to the MH Debentures and Indenture (although phrased somewhat differently) are virtually identical to the allegations made by The Chase with regard to the Debentures, the Bonds, and the 1965 and 1968 Indentures in the complaint brought on behalf of The Chase, described *supra*. The Amended Third-Party Complaint, however, does allege that on July 26, 1979, representatives of UV made a proposal with respect to the payment of the MH Debentures and the satisfaction and discharge of UV's obligations under the MH Indenture, which did not comply with the MH Indenture.

As a result of the foregoing, the Amended Third-Party Complaint asserts a claim for indemnification against UV under the MH Indenture for all "loss, expense or liability (including the reasonable compensation and the expenses and disbursements of its counsel) . . . it incurs in connection with this action." The Amended Third-Party Complaint also asserts four "Additional Claims" against UV. The first, second and fourth "Additional Claims" are asserted with regard to the MH Debentures and Indenture and are virtually identical to the first third and fifth claims for relief, respectively, asserted by The Chase with regard to the Debentures and 1965 Indenture in the Complaint brought on behalf of The Chase, described *supra*. The third "Additional Claim" seeks a judgment against UV in an amount equal to: (i) 108.375% of the principal amount of the MH Debentures "as specified in the MH Indenture", together with interest from "at least the date of the sale of Federal" and (ii) costs incurred in securing and collecting such judgment.

UV has answered the Amended Third-Party Complaint denying liability and asserting affirmative defenses. Manufacturers has moved for summary judgements on its counterclaim against Sharon and on its amended Third-Party Complaint against UV.

In connection with the foregoing action, on February 20, 1980 UV received a copy of a pleading denominated "Motion to Intervene", annexed to which is a proposed "Intervenors' Complaint", entitled *Connecticut Mutual Life Insurance Company, et al. v. Sharon Steel Corporation and UV Industries, Inc.*

The Motion to Intervene has been granted. The Intervenors' Complaint is brought on behalf of purported class, consisting of all holders of the MH Debentures. The purported class representatives of the intervenors consist of 20 corporations or banks, each of which allegedly owns MH Debentures in principal

amounts of between $6,000,000 and $950,000. The intervenors assert four causes of actions against UV. The first cause of action alleges that Sharon's assumption of liabilities under the MH Indenture and the MH Debentures is void and of no lawful force and effect. The second cause of action alleges that the liquidation of UV prior to redemption of the MH Debentures is in violation to of the MH Indenture, the MH Debentures, and the laws of the State of Maine. The third cause of action alleges that UV is in default under the MH Indenture and the MH Debentures and, as a result, presently owes the plaintiff class approximately $72,368,490, plus interest. The fourth cause of action alleges that assets UV transferred to Sharon, up to the amount of 108.375 percent of the principal amount of the MH Debentures outstanding, plus interest and costs, belong to the purported class of intervenor plaintiffs and that Sharon holds such assets in trust for such persons pending the redemption of the MH Debentures and satisfaction of the MH Indenture. In the prayer for relief in their proposed complaint, intervenors seek declaratory relief; an injunction: (a) directing UV to redeem the MH Debentures and satisfy the MH Indenture, (b) restraining UV and Sharon from taking any action in furtherance of the liquidation of UV, (c) directing Sharon to account for assets it acquired from UV and restraining Sharon from transferring such assets; a judgment against Sharon and the Company in the amount of 108.375 percent of the principal amount of the MH Debentures, plus interest and costs; specific performance of the MH Indenture; and intervenors' costs and expenses, including attorneys' fees.

UV has obtained an extension of time in which to answer the Intervenors' Complaint. The intervenors' have moved for a summary judgement against Sharon and UV.

UV is a defendant in two lawsuits now pending in the United States District Court for the Southern District of New York:

(i) Joseph A. Siciliano and Robert B. Glynn sued UV for damages in the United States District Court for the Southern District of New York on June 7 and August 28, 1979, respectively. By order dated November 8, 1979, these two actions were consolidated for all purposes. On January 3, 1980, plaintiffs served a single consolidated complaint for both actions, in which plaintiffs purport to be suing on behalf of themselves as well as all persons or entities that sold warrants to purchase UV Common Stock and/or UV Common Stock in the period from December 18, 1978 through February 20, 1979. Named as defendants in the consolidated complaint are UV and certain present and former officers of UV. The consolidated complaint alleges that the defendants violated section 10(b) of the Securities Exchange Act of 1934 (the "Act") and Rule 10b-5 promulgated thereunder in connection with an alleged failure to make a timely public announcement of UV's Plan of Liquidation and Dissolution. On January 22, 1980, the defendants served an answer to the consolidated complaint, in which the defendants have denied any violation of law. Discovery in this action is in progress.

(ii) David Jaroslawicz and Samuel Badian sued UV for damages and injunctive relief on August 17, 1979 in the United States District Court for the District of Maine. By order dated October 26, 1979, this action was transferred to the United States District Court for the Southern District of New York. Plaintiffs claim to be suing on behalf of themselves as well as (a) all persons or entities that sold warrants to purchase UV Common Stock in the period from December 18, 1978 through January 15, 1979, and (b) all persons or entities that sold UV subordinated convertible debentures in the period from December 18, 1978 through February 28, 1979 or redeemed such debentures after December 18, 1978. The complaint in this action alleges that UV violated section 10(b) of the Act and Rule 10b-5 promulgated thereunder in connection with an alleged failure to make a timely disclosure of the liquidation value of UV and that insiders and affiliates of UV knew of the said liquidation value and purchased warrants and convertible debentures and exercised their conversion rights on the basis of such information. On November 30, 1979, UV served its answer to the complaint, in which answer UV has denied any violation of law.

**Item 6.** ***Increases and Decreases in Outstanding Securities***

| | Shares of $1.265 Convertible Preferred | Shares of $0.50 Cumulative Preferred | Shares of $1.00 Par Common | 5½% Convertible Subordinated Debentures (PPR) | Stock Options | Warrants | 5½% Convertible Subordinated Debentures | 5½% Subordinated Debentures | 5½% Debentures | 9½% Senior Subordinated Notes |
|---|---|---|---|---|---|---|---|---|---|---|
| Outstanding, December 31, 1978 | 101,301 | 119,509 | 9,998,598 | $328,000 | 136,600 | 2,912,272 | $46,886,000 | $15,218,900 | $75,000,000 | $25,000,000 |
| Preferred shares tendered for conversion into common prior to redemption | (84,717) | | 200,312 | | | | | | | |
| Redeemed on February 28, 1979 | (16,584) | | | | | | (211,000) | | | |
| Redeemed on May 21, 1979 | | (119,509) | | | | | | | | |
| Issued upon conversion of Federal Pacific Electric Company 5½% debentures | | | 33,579 | (316,000) | | | | | | |
| Issued upon exercise of stock options during the year | | | 136,600 | | (136,600) | | | | | |
| Issued upon exercise of warrants | | | 2,907,304 | | | (2,730,184) | | | | |
| Warrants expired during the year | | | | | | (182,088) | | | | |
| Issued upon conversion of 5½% debentures prior to redemption | | | 651,644 | | | | (46,075,000) | | | |
| Purchased for Treasury and subsequently surrendered to Trustees for cancellation | | | | | | | | (1,000,000) | (8,225,000) | (8,965,000) |
| Indebtedness assumed by Sharon Steel Corporation | | | | | | | | (14,218,900) | (66,775,000) | (16,035,000) |
| Redeemed by Federal Pacific Electric Company | | | | (12,000) | | | | | | |
| Outstanding, December 31, 1979 | — | — | 15,228,037 | — | — | — | — | — | — | — |

**Item 7.** ***Changes in Securities and Changes in Security for Registered Securities***

None.

**Item 8.** ***Defaults upon Senior Securities***

Reference is made to Item 5, "Pending Legal Proceedings," included in this Report.

**Item 9.** ***Approximate Number of Equity Security Holders***

| (1) Title of Class | (2) Number of Record Holders* |
|---|---|
| Common Stock ($1 par value) | 8,987 |

* At December 31, 1979

**Item 10.** ***Submission of Matters to a Vote of Security Holders***

Reference is made to Registrant's Form 10-Q filed for the quarter ended March 31, 1979

**Item 11.** ***Indemnification of Directors and Officers***

Information with respect to the indemnification of the Company's Directors, officers, agents and employees is incorporated by reference to the registrant's Annual Report on Form 10-K (Commission file number 1-5172) for the year ended December 31, 1976.

**Item 12.** ***Financial Statements and Exhibits***

(1) Financial statements and supporting schedules, as indexed on page F-1 (to be filed by amendment).

(2) Exhibits.

(a) Copy of the UV Industries, Inc. Liquidating Trust Agreement.

(b) Copy of the Articles of Dissolution of UV Industries, Inc.

(3) Reports on Form 8-K.

(a) Current Report on Form 8-K dated November 26, 1979; Items 2 and 7(b).

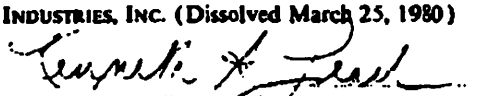
## PART II

(To be filed by amendment)

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

UV INDUSTRIES, INC. (Dissolved March 25, 1980)

By 

Kenneth A. Leach
Former Vice President—Corporate Comptroller

Date: April 8, 1980

[CONFORMED COPY]

# UV INDUSTRIES, INC. LIQUIDATING TRUST AGREEMENT

AGREEMENT AND DECLARATION OF TRUST by and between UV Industries, Inc., a corporation in liquidation under the laws of the state of Maine, hereinafter called "UV", and David Finkelstein, Arthur R. Gralla, Paul Kolton, Theodore W. Kheel, Edwin Jacobson, and Martin Horwitz, hereinafter collectively called the Trustees.

WHEREAS: On January 17 and February 9, 1979, the Board of Directors of UV voted to submit to the stockholders of UV a Plan of Liquidation and Dissolution (the "Plan"). The Plan was adopted by the stockholders of UV at a meeting thereof held on March 26, 1979. The Plan provides for the creation of this liquidating trust.

NOW, THEREFORE, in consideration of the premises and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, UV hereby grants, releases, assigns, transfers, conveys and delivers unto the Trustees all of UV's right, title and interest in and to all assets it presently owns, holds, or otherwise possesses any interest in, together with the appurtenances and all the estate and rights of UV in and to such assets, in trust for the uses and purposes stated hereinabove, subject to the terms and provisions set out below, and the Trustees hereby accept such assets and such Trust, subject to the same terms and provisions; to wit:

## ARTICLE I.

## NAME AND DEFINITIONS

1.1 *Name.* This trust shall be known as the UV Industries, Inc. Liquidating Trust (the "trust").

1.2 *Certain Terms Defined.* For all purposes of this instrument, unless the context otherwise requires:

(a) *Agreement or Agreement of Trust* shall mean this instrument as originally executed or as it may from time to time be amended pursuant to the terms hereof.

(b) *Beneficiaries* shall mean stockholders of UV, their legal representatives, transferees and assignees, who hold a beneficial interest in the Trust Estate.

(c) *Beneficial Interest* shall mean the proportionate share of each stockholder in the Trust Estate, expressed in units, determined by the ratio of the number of issued and outstanding shares of Common Stock of UV each stockholder held on the close of business on the date of the transfer of UV's assets to the Trustees hereunder to the number of issued and outstanding shares of such stock held by all stockholders.

(d) *UV* shall mean UV Industries, Inc., a corporation organized under the laws of the state of Maine and intended to be dissolved after the execution of this instrument.

(e) *Stockholders* shall mean the holders of record of the shares of the outstanding capital stock of UV at the close of business on the date of the transfer of UV's assets to the Trustees hereunder.

(f) *Trust Estate* shall mean all the property held from time to time by the Trustees under this Agreement of Trust.

(g) *Trust Assets* shall mean all dividends, rents, royalties, income, proceeds, and other receipts of or from the Trust Estate, including but not limited to (i) dividends and other cash distributions from any corporation, all or a portion of the outstanding stock of which is part of the Trust Estate, (ii) compensation for any part of the Trust Estate taken by eminent domain, (iii) proceeds (whether cash or securities) of sale of any part of the Trust Estate, (iv) proceeds of insurance upon any part of the Trust Estate, and (v) interest earned on any moneys or securities held by the Trustees under this Agreement of Trust.

(h) *Trust Certificates* shall mean the certificates representing shares of UV Common Stock which upon the transfer of UV's assets to the Trustees under this Agreement of Trust shall be deemed for all

trust purposes, subject to the provisions of this Agreement of Trust, to evidence the ownership of the same number of units of beneficial interest in the Trust Estate as shares of UV Common Stock, and shall also mean any instrument denominated by the Trustees as a Trust Certificate issued under this Agreement of Trust in exchange for, or in substitution for, said UV Common Stock certificates. The Trustees may require the surrender of Trust Certificates for legending or other identification or for substitution if such certificates become transferable under Section 3.5.

(i) *Trust Certificate holder, or holders of Trust Certificates*, or any similar terms, shall mean the registered owner of a Trust Certificate, as shown by the registration books maintained by the Trustees.

(j) *Trustees* shall mean the original Trustees and their successors.

1.3 *Meaning of Other Terms.* Except where the context otherwise requires, words importing the masculine gender include the feminine and the neuter, if appropriate, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include firms, associations, and corporations. All references herein to Articles, Sections, and other subdivisions refer to the corresponding Articles, Sections, and other subdivisions of this instrument; and the words herein, hereof, hereby, hereunder, and words of similar import, refer to this instrument as a whole and not to any particular Article, Section, or subdivision of the Agreement.

## ARTICLE II.

## NATURE OF TRANSFER

2.1 *Purpose of Trust.* The sole purpose of this Trust is to liquidate the Trust Estate in a manner calculated to conserve and protect the Trust Estate, and to collect and distribute the income and proceeds therefrom to the beneficiaries in as prompt and orderly a fashion as possible after the payment of, or provision for, expenses and liabilities.

2.2 *No Reversion to UV.* In no event shall any part of the Trust Estate, as this term is hereinabove defined, revert to or be distributed to UV or to any stockholder, as such.

2.3 *Instruments of Further Assurance.* UV and such persons as shall have the right and power after the dissolution of UV will, upon reasonable request of the Trustees, execute, acknowledge, and deliver such further instruments and do such further acts as may be necessary or proper to effectively carry out the purposes of this Agreement, to transfer any property intended to be covered hereby, and to vest in the Trustees, their successors and assigns, the estate, powers, instruments or funds in trust hereunder.

2.4 *Payment of UV Liabilities.* The Trustees hereby assume all the liabilities and claims (including unascertained or contingent liabilities and expenses) of UV. With respect to claims by officers, directors or other persons for indemnification under UV's Bylaws, the Trustees may engage independent legal counsel acceptable to them to render a written opinion as to whether the applicable standard of conduct set forth in UV's Bylaws has been met. Should any liability be asserted against the Trustees as the transferees of the Trust Estate or as a result of the assumption made in this paragraph the Trustees may use such part of the Trust Estate as may be necessary in contesting any such liability or in payment thereof.

2.5 *Assignment for Benefit of UV Stockholders.* The Trustees hereby assign to the stockholders of UV the beneficial interest in all the Trust Estate, and retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized herein.

## ARTICLE III.

## BENEFICIARIES

3.1 *Beneficial Interests.* The beneficial interest of each stockholder shall be determined by the Trustees in accordance with a certified copy of UV's stockholder list as of the date of transfer of UV's assets to the Trustees. UV will deliver such a certified copy of its stockholder list to the Trustees within a reasonable time after such date of transfer. For ease of administration, the Trustees shall express the beneficial interest of each stockholder in terms of units and said beneficial interests shall be evidenced by Trust Certificates.

When the Trustees have determined the beneficial interests of the stockholders, they shall notify each stockholder of the amount of his beneficial interest and shall advise him to surrender his Trust Certificates (to wit, his certificates of UV Common Stock or other Trust Certificates issued in exchange or substitution therefor) in exchange for the rights of a beneficiary herein. Such notices shall be accompanied by a letter of transmittal for use by each stockholder in transmitting his certificates to the Trustees, or to such agent as the Trustees may designate.

If any conflicting claims or demands are made or asserted to any shares of UV Common Stock or units of beneficial interest, or to any interest of any stockholder or Trust Certificate holder, or if there should be any disagreement between the transferees, assignees, heirs, representatives or legatees succeeding to all or a part of the interest of any stockholder or Trust Certificate holder resulting in adverse claims or demands being made in connection with such interest, then, in any of such events, the Trustees shall be entitled, at their sole election, to refuse to comply with any such conflicting claims or demands. In so refusing, the Trustees may elect to make no payment or distribution to the interest represented by the UV Common Stock or Trust Certificates involved, or any part thereof, and in so doing the Trustees shall not be or become liable to any of such parties for their failure or refusal to comply with any of such conflicting claims or demands, nor shall the Trustees be liable for interest on any funds which it may so withhold. The Trustees shall be entitled to refrain and refuse to act until (i) the rights of the adverse claimants have been adjudicated by a final judgment of a court of competent jurisdiction, (ii) all differences have been adjusted by valid written agreement between all of such parties, and the Trustees shall have been furnished with an executed counterpart of such agreement, or (iii) there is furnished to the Trustees a surety bond or other security satisfactory to the Trustees, as they shall deem appropriate, to fully indemnify them as between all conflicting claims or demands.

All liquidating distributions and other payments due any Trust Certificate holder who has failed to surrender his Trust Certificates (to wit, his certificates of UV Common Stock or other Trust Certificates issued in exchange or substitution therefor) shall be retained by the Trustees for his benefit until his Trust Certificates are surrendered or until he furnishes (i) evidence satisfactory to them of the loss, theft, or destruction of such certificates and (ii) a surety bond satisfactory to them, unlimited in amount if they shall so specify, or such other security or indemnity as may be required by them, in which event the Trustees shall release all liquidating distributions due such stockholder to him

3.2 *Rights of Beneficiaries.* Each beneficiary shall be entitled to participation in the rights and benefits due to a beneficiary hereunder according to his beneficial interest. Each beneficiary shall take and hold the same subject to all the terms and provisions of this Agreement of Trust. The interest of the beneficiary is hereby declared and shall be in all respects personal property and upon the death of an individual beneficiary his interest shall pass to his legal representative and such death shall in no wise terminate or affect the validity of this Agreement. A beneficiary shall have no title to, right to, possession of, management of, or control of, the Trust Estate except as herein expressly provided. No widower, widow, heir, or devisee of any person who may be a beneficiary shall have any right of dower, homestead, or inheritance, or of partition, or of any other right, statutory or otherwise, in any property whatever forming a part of the Trust Estate, but the whole title, legal and equitable, to all the Trust Estate shall be vested in the Trustees and the sole interest of the beneficiaries shall be the rights and benefits given to such persons under the Agreement of Trust.

3.3 *Issuance of Trust Certificates.* The beneficial interests hereunder shall be divided into equal undivided portions, herein called Units, equal in number to the number of issued and outstanding shares of UV Common Stock each stockholder held at the close of business on the date of the transfer of UV's assets to the Trustees hereunder, which shall be evidenced by the Trust Certificates, as defined in Section 1.2(h) above. The number of Units represented by any single Trust Certificate shall be designated on such Trust Certificate. No fractional part of a single Unit shall be issued but in lieu thereof the Trustees may make such provision with respect to fractions of Units as they may deem appropriate. As set forth in Section 1.2(h) above, the certificates representing shares of UV Common Stock shall be deemed to be Trust Certificates. Trust Certificates issued in exchange or in substitution for said UV Common Stock certificates shall be in such form as may be fixed by the Trustees, with such changes as the Trustees may from time to time find necessary or desirable to conform to any applicable laws or regulations.

3.4 *Registration of Trust Certificates.* The Trustees shall cause to be kept, at such other place or places within or without the State of New York as the Trustees may determine, books for the registration and transfer of any of the Trust Certificates, herein sometimes called the Register of the Trustees; and, upon presentation for such purpose, the Trustees shall, under such reasonable regulations as they may prescribe, cause to be registered or transferred therein, any of the Trust Certificates. The Registrar for the UV Common Stock shall be the Registrar for the Trust Certificates and the Trustees may appoint one or more successor or additional registrars for such purpose, and may pay such registrar or registrars reasonable compensation for services.

3.5 *Transfer of Trust Certificates.* Upon receiving a ruling from the Internal Revenue Service that the Trust Certificates may be transferable without adversely affecting the tax status of the Trust as a liquidating trust, or such other assurances as they deem necessary and appropriate, the Trustees may, in their discretion, provide that the Trust Certificates and the interests represented thereby (but no fractional part of a single Unit thereof) may be transferred by the holder thereof in person or by a duly authorized agent or attorney, or by the properly appointed legal representatives of the holder, upon the surrender of the Trust Certificate, duly executed for transfer, to the Trustees with directions that such transfer be made and recorded in the Register of the Trustees, upon the delivery of such other documents as the Trustees may reasonably require and upon the payment of the reasonable transfer charges, if any established by the Trustees for the purpose of reimbursing the Trustees for the expenses incident thereto. Until any such transfer is recorded in the Register of the Trustees, the Trustees may treat the holder of record of any Trust Certificate as the owner thereof for all purposes and shall not be charged with notice of any claim or demand to such Trust Certificate or the interest of any other person. The ownership and registration of the Trust Certificates may be in any form which the applicable law permits, subject to the reasonable regulation thereof by the Trustees. The Transfer Agent for the UV Common Stock shall be the Transfer Agent for the Trust Certificates and the Trustees may appoint one or more successor or additional transfer agents, and may pay such Transfer Agent or transfer agents reasonable compensation for services. The Trustees in their sole discretion may terminate the transferability of the Trust Certificates. In the event the Trustees do not provide for transferability of the Trust Certificates and the interests represented thereby or in the event the Trustees terminate such transferability, the Trust Certificates and the interests represented thereby may not be transferred either by the beneficiary in person or by a duly authorized agent or attorney, or by the properly appointed legal representatives of the beneficiary, nor may a beneficiary have authority or power to sell, assign, transfer, encumber, or in any other manner anticipate or dispose of his interest in the trust; provided, however, that the interest of a beneficiary shall be assignable or transferable by will, intestate succession, or operation of law.

3.6 *Effect of Transfer.* The recordation in the Register of the Trustees of a transfer of a Trust Certificate shall, for the purposes of this trust, transfer to the transferee as of the date of such recordation all right, title and interest of the transferor in and to the Trust Certificate to which the transferor might then be or thereafter become entitled, except that a transfer of a Trust Certificate shall not by such transfer, transfer to the transferee the right of the transferor to any sum payable by the Trustees to holders of record on a date prior to the date of recordation in the Register of the Trustees of the transfer.

3.7 *Mutilated, Lost, Stolen, and Destroyed Certificates.* In case any Trust Certificate shall be mutilated, lost, stolen, or destroyed, then, upon the production of such mutilated Trust Certificate or upon the receipt of evidence satisfactory to the Trustees of the loss, theft, or destruction of such Trust Certificate and upon receipt also of a surety bond satisfactory to them, unlimited in amount if they shall so specify, or such other security or indemnity as may be required by them, the Trustees in their discretion may execute and deliver or cause to be executed and delivered a new Trust Certificate in exchange for, and upon cancellation of, the mutilated Trust Certificate, or in lieu of the Trust Certificate so lost, stolen, or destroyed. Any holder of a new Trust Certificate issued under this Section shall be entitled to the benefits of this Agreement of Trust equally and ratably with all other holders of Trust Certificates. The Trustees, in their discretion, may place upon such new Trust Certificate a distinguishing mark or legend to comply with the rules of any securities exchange or to conform to any usage with respect thereto, but such mark or legend shall in no wise affect the validity of such new Trust Certificate. If required by the Trustees, the applicant for such substitute certificate may also be required, as a condition precedent to the issuance of

such certificate, to pay all reasonable costs, expenses, and attorneys' fees incurred in connection with the issuance of such Trust Certificate.

3.8 *Applicable Law.* As to matters affecting the title, ownership, transferability, or attachment of the interest of a beneficiary in the trust and Trust Certificates evidencing said interest, the laws from time to time in force in the state of Maine shall govern except as otherwise herein specifically provided.

3.9 *Trustees as Beneficiaries.* Each Trustee, either individually or in a representative or fiduciary capacity may be a beneficiary and may acquire, own and dispose of Trust Certificates evidencing his beneficial interest to the same extent as if he were not a Trustee hereunder.

3.10 *Limitations of Liability of Beneficiaries.* No beneficiary shall be subject to any personal liability whatsoever to any other person or persons in connection with the Trust Estate or the affairs of this trust, save only that arising from his own willful misconduct, knowingly and intentionally committed in bad faith; and all such other persons shall look solely to the Trust Estate for satisfaction of claims of any nature arising in connection with the affairs of this trust. If any beneficiary of this trust is made party to any suit or proceedings to enforce any such liability, he shall not on account thereof be held to any personal liability.

3.11 *Indemnification of Beneficiaries.* Each beneficiary of this trust shall be indemnified by and receive reimbursement from the Trust Estate against and from any and all loss, liability or damage which he may incur or sustain, in good faith and without gross negligence, in the exercise and performance of any of the powers and duties of a beneficiary.

## ARTICLE IV.

## DURATION AND TERMINATION OF TRUST

4.1 *Duration.* The existence of this trust shall terminate three years from the date of the transfer of UV's assets to the Trustees, unless an earlier termination is required by the applicable laws of the state of Maine or by the action of the beneficiaries as provided in Section 4.2, or unless earlier terminated by the distribution of all of the Trust Estate as provided in Section 5.5.

4.2 *Termination by Beneficiaries.* The trust may be terminated at any time by the action of beneficiaries having an aggregate beneficial interest of ⅔ as evidenced in the manner provided in Article XII.

4.3 *Continuance of Trust for Winding Up.* After the termination of the trust and for the purpose of liquidating and winding up the affairs of this trust, the Trustees shall continue to act as such until their duties have been fully performed. Upon distribution of all of the Trust Estate, the Trustees shall retain the books, records, stockholder lists, Common Stock certificates and files which shall have been delivered to or created by the Trustees. At the Trustees' discretion, all of such records and documents may be destroyed at any time after three years from the distribution of all of the Trust Estate. Except as otherwise specifically provided herein, upon the distribution of all of the Trust Estate, the Trustees shall have no further duties or obligations hereunder except to account as provided in Section 5.6.

## ARTICLE V.

## ADMINISTRATION OF TRUST ESTATE

5.1 *Sale of Trust Estate.* The Trustees may, at such times as they may deem appropriate, transfer, assign, or otherwise dispose of all or any part of the Trust Estate as they deem appropriate at public auction or at private sale for cash or securities, or upon credit (either secured or unsecured as the Trustees shall determine).

5.2 *Collection of Trust Assets.* All Trust Assets shall be collected by the Trustees and held as a part of the Trust Estate. The Trustees shall hold the Trust Estate without provision for or the payment of any interest thereon to any beneficiary.

5.3 *Payment of Claims, Expenses and Liabilities.* The Trustees shall pay from Trust Assets all claims, expenses, charges, liabilities, and obligations of the Trust Estate and all liabilities and obligations which the Trustees specifically assume and agree to pay pursuant to this Agreement of Trust and such transferee liabilities which the Trustees may be obligated to pay as transferees of the Trust Estate, including among the foregoing, and without limiting the generality of the foregoing, interest, taxes, assessments, and public charges of every kind and nature and the costs, charges, and expenses connected with or growing out of the execution or administration of this trust and such other payments and disbursements as are provided in this Agreement or which may be determined to be a proper charge against the Trust Estate by the Trustees. The Trustees may, in their discretion, make provisions by reserve or otherwise out of the Trust Assets or the Trust Estate, for such amount as the Trustees in good faith may determine to be necessary to meet present or future claims and liabilities of the trust, whether fixed or contingent.

5.4 *Interim Distributions.* At such times as may be determined by them, but at least semi-annually if practicable, the Trustees may distribute, or cause to be distributed, to the beneficiaries of record on the close of business on such record date as the Trustees may determine, in proportion to the respective interests of the beneficiaries in the Trust Estate, such cash or non-cash property comprising a portion of the Trust Estate as the Trustees may in their sole discretion determine may be distributed without detriment to the conservation and protection of the Trust Estate.

5.5 *Final Distribution.* If the Trustees determine that all claims, debts, liabilities, and obligations of the trust have been paid or discharged, or if the existence of the trust shall terminate pursuant to Sections 4.1 or 4.2, the Trustees shall, as expeditiously as is consistent with the conservation and protection of the Trust Estate, distribute the Trust Estate to the beneficiaries of record on the close of business on such record date as the Trustees may determine, in proportion to their interests therein. The Trustees shall make disposition of all liquidating distributions and other payments due any stockholders who have not been located or who have not surrendered their Trust Certificates for cancellation pursuant to Section 3.1 in accordance with Maine law.

5.6 *Reports to Beneficiaries.* As soon as practicable after the end of each fiscal year of the trust and after termination of the trust, the Trustees shall submit a written report and account to the beneficiaries showing (i) the assets and liabilities of the trust at the end of such fiscal year or upon termination and the receipts and disbursements of the Trustees for such fiscal year or period, certified by independent public accountants, (ii) any changes in the Trust Estate which they have not previously reported, and (iii) any action taken by the Trustees in the performance of their duties under this Agreement of Trust which they have not previously reported and which, in their opinion, materially affects the Trust Estate. The Trustees may submit similar reports for such interim periods during the fiscal year as they deem advisable. The approval by beneficiaries having an aggregate beneficial interest of more than 50% of any report or account shall, as to all matters and transactions disclosed therein, be final and binding upon all persons, whether in being or not, who may then or thereafter become interested in the Trust Estate. The fiscal year of the trust shall end on the last day of February of each year unless the Trustees deem it advisable to establish some other date as the date on which the fiscal year of the trust shall end.

5.7 *Federal Income Tax Information.* As soon as practicable after the close of each fiscal year, the Trustees shall mail to each beneficiary at the close of the year, a statement showing on a unit basis the dates and amounts of all distributions made by the Trustees, depletion and depreciation allowances, if any, and such other information as is reasonably available to the Trustees which may be helpful in determining the amount of taxable income from the trust that such beneficiary should include in his Federal income tax return for the preceding year. In addition, after receipt of a request in good faith, or in their discretion without such request, the Trustees may furnish to any person who has been a beneficiary at any time during the preceding year a statement containing such further information as is reasonably available to the Trustees which may be helpful in determining the amount of taxable income which such person should include in his Federal income tax return.

## ARTICLE VI.

## POWERS OF AND LIMITATIONS ON THE TRUSTEES

6.1 *Limitations on Trustees.* The Trustees shall not at any time, on behalf of the trust or beneficiaries, enter into or engage in any business, and no part of the Trust Estate or the proceeds, revenue or income therefrom shall be used or disposed of by the Trustees in furtherance of any business. This limitation shall apply irrespective of whether the conduct of any such business activities is deemed by the Trustees to be necessary or proper for the conservation and protection of the Trust Estate. The Trustees shall not invest any of the funds held in the Trust Estate, except that the Trustees may invest any portion of the Trust Estate in certificates of deposit of domestic banks having in excess of $10,000,000 in capital and surplus, savings accounts or certificates of deposit issued by any savings institution insured by the Federal Savings and Loan Insurance Corporation, and marketable direct obligations of, or guaranteed as to principal and interest by, the United States Government or any agency thereof. The Trustees shall be restricted to the holding and collection of the Trust Assets and the payment and distribution thereof for the purposes set forth in this Agreement and to the conservation and protection of the Trust Estate and the administration thereof in accordance with the provisions of this Agreement. In no event shall the Trustees receive any property, make any distribution, satisfy or discharge any obligation, claim, liability or expense or otherwise take any action which is inconsistent with a complete liquidation of UV as that term is used and interpreted by Sections 337 and 331 of the Internal Revenue Code of 1954, regulations promulgated thereunder, and rulings, decisions, and determinations of the Internal Revenue Service and courts of competent jurisdiction.

6.2 *Specific Powers of Trustees.* Subject to the provisions of Section 6.1, the Trustees shall have the following specific powers in addition to any powers conferred upon them by any other Section or provision of this Agreement of Trust; provided, however, that enumeration of the following powers shall not be considered in any way to limit or control the power of the Trustees to act as specifically authorized by any other Section or provision of this Agreement and to act in such a manner as the Trustees may deem necessary or appropriate to conserve and protect the Trust Estate or to confer on the beneficiaries the benefits intended to be conferred upon them by this Agreement:

(a) To determine the terms on which assets comprising the Trust Estate should be sold or otherwise disposed of;

(b) To collect and receive any and all money and other property of whatsoever kind or nature due to or owing or belonging to the trust and to give full discharge and acquittance therefor;

(c) Pending sale or other disposition or distribution, to retain all or any assets constituting part of the Trust Estate regardless of whether or not such assets are, or may become, underproductive, unproductive or a wasting asset, or whether such assets, if considered to be investments, might be considered to be speculative or extrahazardous. The Trustees shall not be under any duty to reinvest such part of the Trust Estate as may be in cash, or as may be converted into cash, nor shall the Trustees be chargeable with interest thereon except to the extent that interest may be paid to the Trustees on such cash amounts;

(d) To retain and set aside such funds out of the Trust Estate as the Trustees shall deem necessary or expedient to pay, or provide for the payment of (i) unpaid claims, liabilities, debts or obligations of the trust or UV, (ii) contingencies and (iii) the expenses of administering the Trust Estate.

(e) To do and perform any acts or things necessary or appropriate for the conservation and protection of the Trust Estate, including acts or things necessary or appropriate to maintain assets held by the Trustees pending sale or other disposition thereof or distribution thereof to the beneficiaries, and in connection therewith to employ such agents and to confer upon them such authority as the Trustees may deem expedient, and to pay reasonable compensation therefor;

(f) To cause any investments of Trust Assets to be registered and held in the name of any one or more of their names or in the names of a nominee or nominees without increase or decrease of liability with respect thereto;

(g) To institute or defend actions or declaratory judgments or other actions and to take such other action, in the name of the trust or of UV if otherwise required, as the Trustees may deem necessary or desirable to enforce any instruments, contracts, agreements, or causes of action relating to or forming a part of the Trust Estate;

(h) To cancel, terminate, or amend any instruments, contracts, or agreements relating to or forming a part of the Trust Estate, and to execute new instruments, contracts, or agreements, not withstanding that the terms of any such instruments, contracts, or agreements may extend beyond the terms of this trust, provided that no such new instrument, contract, or agreement shall permit the Trustees to engage in any activity prohibited by Section 6.1;

(i) To vote by proxy or otherwise and with full power of substitution all shares of stock and all securities held by the Trustees hereunder and to exercise every power, election, discretion, option and subscription right and give every notice, make every demand, and to do every act and thing in respect to any shares of stock or other securities held by the Trustees which the Trustees might or could do if they were the absolute owners thereof;

(j) To undertake or join in any merger, plan of reorganization, consolidation, liquidation, dissolution or readjustment of any corporation, any of whose shares of stock or other securities, obligations, or properties may at any time constitute a part of the Trust Estate, and to accept the substituted shares of stock, bonds, securities, obligations and properties and to hold the same in trust in accordance with the provisions hereof;

(k) In connection with the sale or other disposition or distribution of any securities held by the Trustees, to comply with the applicable Federal and state securities laws, and to enter into agreements relating to sale or other disposition or distribution thereof;

(l) To contract for and to borrow money in such amounts as the Trustees deem advisable for any trust purpose (including, but without limitation, protecting or conserving any portion of the Trust Estate and making any payment of income or principal) and, in connection therewith, to draw, make, accept, endorse, execute, issue and deliver promissory notes, drafts and other negotiable or transferable instruments and evidence of indebtedness and all renewals or extensions of same;

(m) To authorize transactions between corporations or other entities held by the Trustees as part of the Trust Estate;

(n) In the event any of the property which is or may become a part of the Trust Estate is situated in any state or other jurisdiction in which any Trustee is not qualified to act as Trustee, to nominate and appoint an individual or corporate trustee qualified to act in such state or other jurisdiction in connection with the property situated in that state or other jurisdiction as a trustee of such property and require from such trustee such security as may be designated by the Trustees. The trustee so appointed shall have all the rights, powers, privileges and duties and shall be subject to the conditions and limitations of this trust, except as modified or limited by the Trustees and except where the same may be modified by the laws of such state or other jurisdiction (in which case, the laws of the state or other jurisdiction in which such trustee is acting shall prevail to the extent necessary). Such trustee shall be answerable to the Trustees herein appointed for all monies, assets and other property which may be received by it in connection with the administration of such property. The Trustees hereunder may remove such trustee, with or without cause, and appoint a successor trustee at any time by the execution by the Trustees of a written instrument declaring such trustee removed from office, and specifying the effective date and time of removal;

(o) To grant or consent to licenses, easements, and consents for roads, rights-of-way, power lines, telephone lines, pipe lines, boundary line agreements, and similar uses and to grant other usage rights, on or with respect to the Trust Estate, whether or not the term thereof may extend beyond the duration of this trust; and

(p) To perform any act authorized, permitted, or required under any instrument, contract, agreement, or cause of action relating to or forming a part of the Trust Estate whether in the nature of

an approval, consent, demand, or notice thereunder or otherwise, unless such act would require the consent of the beneficiaries in accordance with the express provisions of this Agreement.

6.3 *Powers of Trustees to Deal with Trust in Non-Fiduciary Capacity.* Any Trustee may, except as limited by Section 6.1 herein, loan property to, borrow property from, purchase property from, sell property to, or otherwise deal with the Trust Estate as if he were not a Trustee thereof, provided that any such dealing shall be with the prior written consent of a majority of the Trustees not otherwise interested therein. If there is no Trustee not otherwise interested in the transaction for which such prior written consent is required, then the transaction shall be prohibited.

## ARTICLE VII.

## CONCERNING THE TRUSTEES

7.1 *Generally.* The Trustees accept and undertake to discharge the trusts created by this Agreement, upon the terms and conditions thereof. The Trustees shall exercise such of the rights and powers vested in them by this Agreement, and use the same degree of care and skill in their exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs. No provision of this Agreement shall be construed to relieve the Trustees from liability for their own negligent action, their own negligent failure to act, or their own willful misconduct, except that:

(a) No Trustee shall be responsible for the acts or omissions of any other Trustee if done or omitted without his knowledge or consent unless it shall be proved that such Trustee was negligent in ascertaining the pertinent facts, and no successor Trustee shall be in any way responsible for the acts or omissions of any Trustees in office prior to the date on which he becomes a Trustee.

(b) No Trustee shall be liable except for the performance of such duties and obligations as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Trustees.

(c) In the absence of bad faith on the part of the Trustees, the Trustees may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustees and conforming to the requirements of this Agreement; but in the case of any such certificates or opinions which are specifically required to be furnished to the Trustees by any provision hereof, the Trustees shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Agreement.

(d) No Trustee shall be liable for any action taken, suffered, or omitted to be taken by them in good faith.

(e) No Trustee shall be liable with respect to any action taken or omitted to be taken by them in good faith in accordance with the direction of beneficiaries having an aggregate beneficial interest of more than 50% relating to the time, method, and place of conducting any proceeding for any remedy available to the Trustees, or exercising any trust or power conferred upon the Trustees under this Agreement.

7.2 *Reliance by Trustees.* Except as otherwise provided in Section 7.1:

(a) The Trustees may rely and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document believed by them to be genuine and to have been signed or presented by the proper party or parties.

(b) The Trustees may consult with legal counsel to be selected by them, and the Trustees shall not be liable for any action taken or suffered by them in accordance with the advice of such counsel.

(c) Persons dealing with Trustees shall look only to the Trust Estate to satisfy any liability incurred by the Trustees to such person in carrying out the terms of this trust, and the Trustees shall have no personal or individual obligation to satisfy any such liability.

7.3 *Indemnification of Trustees.* Each Trustee shall be indemnified by and receive reimbursement from the Trust Estate against and from any and all loss, liability or damage which such Trustee may incur or sustain, in good faith and without gross negligence, in the exercise and performance of any of the powers and duties of such Trustee under this Agreement. The Trustees may purchase with assets of the Trust Estate, such insurance as they feel, in the exercise of their discretion, adequately insures that each Trustee shall be indemnified against any such loss, liability or damage pursuant to this Section.

## ARTICLE VIII.

## PROTECTION OF PERSONS DEALING WITH THE TRUSTEES

8.1 *Action by Trustees.* All action required or permitted to be taken by the Trustees, in their capacity as Trustees, shall be taken (i) at a meeting at which a quorum is present, having been duly called by one or more of the Trustees on at least three days' prior written or telegraphic notice to all of the Trustees then serving, or (ii) without a meeting, by a written vote, resolution, or other writing signed by all the Trustees then serving. Except where this Agreement otherwise provides, all action taken at such a meeting shall be by vote or resolution of a majority of such of the Trustees as are present and shall have the same force and effect as if taken by all the Trustees. A majority of the Trustees then serving shall constitute a quorum.

8.2 *Reliance on Statement by Trustees.* Any person dealing with the Trustees shall be fully protected in relying upon the Trustees' certificate signed by any one or more of the Trustees that they have authority to take any action under this trust. Any person dealing with the Trustees shall be fully protected in relying upon the Trustees' certificate setting forth the facts concerning the calling of any meeting of the beneficiaries, the giving of notice thereof, and the action taken at such meeting, including the aggregate beneficial interest of beneficiaries taking such action.

8.3 *Application of Money Paid or Transferred to Trustees.* No person dealing with the Trustees shall be required to follow the application by the Trustees of any money or property which may be paid or transferred to the Trustees.

## ARTICLE IX.

## COMPENSATION OF TRUSTEES

9.1 *Amount of Compensation.* In lieu of commissions or other compensation fixed by law for trustees, each Trustee shall receive as compensation for services as Trustee hereunder and as additional compensation from the cash proceeds of the sale of any part of the Trust Estate while he is serving as Trustee, such compensation as shall be first determined by the Board of Directors of UV at the time this Agreement is entered into, or as may subsequently be approved by beneficiaries having an aggregate beneficial interest of more than 50%.

9.2 *Dates of Payment.* The compensation payable to each Trustee pursuant to the provisions of Section 9.1 shall be paid quarterly or at such other times as the Trustees may determine.

9.3 *Expenses.* Each Trustee shall be reimbursed from the Trust Estate for all expenses reasonably incurred by him in the performance of his duties in accordance with this Agreement.

## ARTICLE X.

## TRUSTEES AND SUCCESSOR TRUSTEES

10.1 *Number of Trustees.* Subject to the provisions of Section 10.3 relating to the period pending the appointment of a successor Trustee, there shall always be not less than three Trustees of this trust, each of whom shall be a citizen and resident of the United States.

If any corporate Trustee shall ever change its name, or shall reorganize or reincorporate, or shall merge with or into or consolidate with any other bank or trust company, such corporate Trustee shall be

deemed to be a continuing entity and shall continue to act as a Trustee hereunder with the same liabilities, duties, powers, titles, discretions and privileges as are herein specified for a Trustee.

10.2 *Resignation and Removal.* Any Trustee may resign and be discharged from the trusts hereby created by giving written notice thereof to the remaining Trustees and by mailing such notice to the beneficiaries at their respective addresses as they appear in the records of the Trustees. Such resignation shall become effective on the day specified in such notice or upon the appointment of such Trustee's successor and such successor's acceptance of such appointment, whichever is earlier. Any Trustee may be removed at any time, with or without cause, by beneficiaries having an aggregate beneficial interest of ⅔.

10.3 *Appointment of Successor.* Should at any time a Trustee resign or be removed, or die or become incapable of action, or be adjudged a bankrupt or insolvent, a vacancy shall be deemed to exist and a successor shall be appointed by the remaining Trustee or Trustees. If such vacancy is not filled by the remaining Trustee or Trustees within 30 days, the beneficiaries may, pursuant to Article XIII hereof, call a meeting to appoint a successor Trustee by majority in interest. Pending the appointment of a successor Trustee or Trustees, the remaining Trustee or Trustees then serving may take any action in the manner set forth in Section 8.1.

10.4 *Acceptance of Appointment by Successor Trustee.* Any successor Trustee appointed hereunder shall execute an instrument accepting such appointment hereunder and shall deliver one counterpart thereof each to the other Trustees and, in case of a resignation, to the retiring Trustee. Thereupon such successor Trustee shall, without any further act, become vested with all the estates, properties, rights, powers, trusts, and duties of his or its predecessor in the trust hereunder with like effect as if originally named therein; but the retiring Trustee shall nevertheless, when requested in writing by the successor Trustee or by the remaining Trustees, execute and deliver an instrument or instruments conveying and transferring to such successor Trustee upon the trust herein expressed, all the estates, properties, rights, powers and trusts of such retiring Trustee, and shall duly assign, transfer, and deliver to such successor Trustee all property and money held by him hereunder.

10.5 *Bonds.* Unless required by the Board of Directors of UV prior to the transfer of the assets of UV to the Trustees, or unless a bond is required by law, no bond shall be required of any original Trustee hereunder. Unless required by a majority vote of the Trustees prior to a successor Trustee's acceptance of an appointment as such pursuant to Section 10.4, or unless a bond is required by law, no bond shall be required of any successor Trustee hereunder. If a bond is required by law, no surety or security with respect to such bond shall be required unless required by law or unless required by the Board of Directors of UV (in the case of an original Trustee) or the Trustees (in the case of a successor Trustee). If a bond is required by the Board of Directors of UV or by a majority vote of the Trustees, the Board of Directors of UV or the Trustees, as the case may be, shall determine whether, and to what extent, a surety or security with respect to such bond shall be required.

## ARTICLE XI.

## CONCERNING THE BENEFICIARIES

11.1 *Evidence of Action by Beneficiaries.* Whenever in this Agreement it is provided that the beneficiaries may take any action (including the making of any demand or request, the giving of any notice, consent, or waiver, the removal of a Trustee, the appointment of a successor Trustee, or the taking of any other action), the fact that at the time of taking any such action such holders have joined therein may be evidenced (i) by any instrument or any number of instruments of similar tenor executed by beneficiaries in person or by agent or attorney appointed in writing, or (ii) by the record of the beneficiaries voting in favor thereof at any meeting of beneficiaries duly called and held in accordance with the provisions of Article XII.

11.2 *Limitation on Suits by Beneficiaries.* No beneficiary shall have any right by virtue of any provision of this Agreement to institute any action or proceeding at law or in equity against any party other than the Trustees upon or under or with respect to the Trust Estate or the agreements relating to or forming

part of the Trust Estate, and the beneficiaries do hereby waive any such right, unless beneficiaries having an aggregate beneficial interest of 25% shall have made written request upon the Trustees to institute such action or proceeding in their own names as Trustees hereunder and shall have offered to the Trustees reasonable indemnity against the costs and expenses to be incurred therein or thereby, and the Trustees for 30 days after their receipt of such notice, request, and offer of indemnity shall have failed to institute any such action or proceeding.

11.3 *Requirement of Undertaking.* The Trustees may request any court to require, and any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Agreement, or in any suit against the Trustees for any action taken or omitted by them as Trustees, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; provided, that the provisions of this Section shall not apply to any suit by the Trustees, and such undertaking shall not be requested by the Trustees or otherwise required in any suit by any beneficiary or group of beneficiaries having an aggregate beneficial interest of more than 5%.

## ARTICLE XII.

## MEETING OF BENEFICIARIES

12.1 *Purpose of Meetings.* A meeting of the beneficiaries may be called at any time and from time to time pursuant to the provisions of this Article for the purposes of taking any action which the terms of this Agreement permit a beneficiary having a specified aggregate beneficial interest to take either acting alone or with the Trustees.

12.2 *Meeting Called by Trustees.* The Trustees may at any time call a meeting of the beneficiaries to be held at such time and at such place within the state of Maine (or elsewhere if so determined by a majority of the Trustees) as the Trustees shall determine. Written notice of every meeting of the beneficiaries shall be given by the Trustees (except as provided in Section 12.3), which written notice will set forth the time and place of such meeting and in general terms the action proposed to be taken at such meeting, and shall be mailed not more than 60 nor less than 10 days before such meeting is to be held to all of the beneficiaries of record not more than 60 days before the date of such meeting. The notice shall be directed to the beneficiaries at their respective addresses as they appear in the records of the Trustees.

12.3 *Meeting Called on Request of Beneficiaries.* Within 30 days after written request to the Trustees by beneficiaries having an aggregate beneficial interest of 25% to call a meeting of all the beneficiaries, which written request shall specify in reasonable detail the action proposed to be taken, the Trustees shall proceed under the provisions of Section 12.2 to call a meeting of the beneficiaries, and if the Trustees fail to call such meeting within such 30-day period then such meeting may be called by beneficiaries having an aggregate beneficial interest of 25% or their designated representative.

12.4 *Persons Entitled to Vote at Meeting of Beneficiaries.* Each beneficiary on the record date shall be entitled to vote at a meeting of the beneficiaries either in person or by his proxy duly authorized in writing. The signature of the beneficiary on such written authorization need not be witnessed or notarized.

12.5 *Quorum.* At any meeting of beneficiaries, the presence of beneficiaries having an aggregate beneficial interest sufficient to take action on any matter for the transaction of which such meeting was called shall be necessary to constitute a quorum; but if less than a quorum be present, beneficiaries having an aggregate beneficial interest of more than 50% of the aggregate beneficial interest of all beneficiaries represented at the meeting may adjourn such meeting with the same effect and for all intents and purposes as though a quorum had been present.

12.6 *Adjournment of Meeting.* Any meeting of beneficiaries may be adjourned from time to time and a meeting may be held at such adjourned time and place without further notice.

12.7 *Conduct of Meetings.* The Trustees shall appoint the Chairman and the Secretary of the meeting. The vote upon any resolution submitted to any meeting of beneficiaries shall be by written ballot. Two Inspectors of Votes, appointed by the Chairman of the meeting, shall count all votes cast at the meeting for or against any resolution and shall make and file with the Secretary of the meeting their verified written report.

12.8 *Record of Meeting.* A record of the proceedings of each meeting of beneficiaries shall be prepared by the Secretary of the meeting. The record shall be signed and verified by the Secretary of the meeting and shall be delivered to the Trustees to be preserved by them. Any record so signed and verified shall be conclusive evidence of all the matters therein stated.

## ARTICLE XIII.

## AMENDMENTS

13.1 *Consent of Beneficiaries.* At the direction or with the consent (evidenced in the manner provided in Section 11.1) of beneficiaries having an aggregate beneficial interest of ⅔, the Trustees shall promptly make and execute a declaration amending this Agreement for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Agreement or amendments hereto, provided, however, that no such amendment shall permit the Trustees hereunder to engage in any activity prohibited by Section 6.1 or affect the beneficiaries' rights to receive their pro rata shares of the Trust Estate at the time of distribution.

13.2 *Notice and Effect of Amendment.* Promptly after the execution by the Trustees of any such declaration of amendment, the Trustees shall give notice of the substance of such amendment to the beneficiaries or, in lieu thereof, the Trustees may send a copy of the amendment to each beneficiary. Upon the execution of any such declaration of amendment by the Trustees, this Agreement shall be deemed to be modified and amended in accordance therewith and the respective rights, limitations of rights, obligations, duties, and immunities of the Trustees and the beneficiaries under this Agreement shall thereafter be determined, exercised, and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any such amendment shall be thereby deemed to be part of the terms and conditions of this Agreement for any and all purposes.

## ARTICLE XIV.

## MISCELLANEOUS PROVISIONS

14.1 *Filing Documents.* This Agreement shall be filed or recorded in the office of the Secretary of State of the state of Maine, or in such other office or offices as the Trustees may determine to be necessary or desirable. A copy of this Agreement and all amendments thereof shall be filed in the office of each Trustee and shall be available at all times for inspection by any beneficiary or his duly authorized representative. The Trustees shall file or record any amendment of this Agreement in the same places where the original Agreement is filed or recorded. The Trustees shall file or record any instrument which relates to any change in the office of Trustee in the same places where the original Agreement is filed or recorded.

14.2 *Intention of Parties to Establish Trust.* This Agreement is not intended to create and shall not be interpreted as creating an association, partnership, or joint venture of any kind. It is intended as a trust to be governed and construed in all respects as a trust.

14.3 *Laws as to Construction.* This Agreement shall be governed by and construed in accordance with the laws of the state of Maine, and UV, the Trustees, and the beneficiaries (by their acceptance of any distributions made to them pursuant to this Agreement) consent and agree that this Agreement shall be governed by and construed in accordance with such laws.

14.4 *Separability.* In the event any provision of this Agreement or the application thereof to any person or circumstances shall be finally determined by a court of proper jurisdiction to be invalid or

unenforceable to any extent, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

14.5 *Notices.* Any notice or other communication by the Trustees to any beneficiary shall be deemed to have been sufficiently given, for all purposes, if given by being deposited, postage prepaid, in a post office or letter box addressed to such person at his address as shown in the records of the Trustees.

14.6 *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, UV Industries, Inc. has caused this Agreement to be signed and acknowledged by its Chairman of the Board and its corporate seal to be affixed hereto, and the same to be attested by its Secretary, and the Trustees herein have signed, sealed, and executed this Agreement, effective at 11:59 P.M. this twenty-fourth day of March, 1980.

UV INDUSTRIES, INC.

By: MARTIN HORWITZ
*Chairman of the Board*
*and Chief Executive Officer*

Corporate Seal

ATTEST:

SEYMOUR HORWITZ
*Secretary*

DAVID FINKELSTEIN*
*Trustee*

ARTHUR R. GRALLA*
*Trustee*

PAUL KOLTON*
*Trustee*

THEODORE W. KHEEL*
*Trustee*

EDWIN JACOBSON*
*Trustee*

MARTIN HORWITZ*
*Trustee*

* As Trustee of the UV Industries, Inc. Liquidating Trust and not individually.

The name UV Industries, Inc. Liquidating Trust (the "Trust") is the designation of the Trustees for the time being under an Agreement and Declaration of Trust dated March 24, 1980. All persons dealing with the Trust must look solely to the trust property for the enforcement of any claims against the Trust as neither the Trustees, officers nor holders of beneficial interests assume any personal liability for obligations entered into on behalf of the Trust.

Secretary of State

| For Use By The Secretary of State |
|---|
| File No. |
| Fee Paid |
| C. B. |
| Date |

STATE OF MAINE

# ARTICLES OF DISSOLUTION*

OF

UV INDUSTRIES, INC.

Pursuant to 13-A MRSA §1110, the undersigned corporation adopts the following Articles of Dissolution for the purpose of dissolving the corporation.

**FIRST:** A statement of intent to dissolve the corporation was filed with the Secretary of State on:

March 27, , 19 79.

**SECOND:** All debts, obligations and liabilities of the corporation have been paid and discharged, or adequate provision has been made therefor.

**THIRD:** All remaining property and assets of the corporation have been distributed among its shareholders, in accordance with their respective rights and interests.

**FOURTH:** There are no suits pending against the corporation in any court, or adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suit.

**FIFTH:** The address of the registered office of the corporation in Maine is One Monument Square,

Portland, Maine 04101
(street, city, state and zip code)

Dated: 3/25/80 , 1980

UV INDUSTRIES, INC. **
(name of corporation)

By: _____
(signature)

Edwin Jacobson, President
(type or print name and capacity)

By: _____
(signature)

Seymour Horwitz, Secretary
(type or print name and capacity)

Legibly print or type name and capacity of all signers 13-A MRSA §104.

I certify that I have custody of the minutes showing the above action by the shareholders.

_____
(signature of clerk, secretary or asst. secretary)

Seymour Horwitz, Secretary

*Must be accompanied by ORIGINAL TAX CLEARANCE LETTER from Bureau of Taxation.

**The name of the corporation should be typed, and the document must be signed by (1) the Clerk or (2) by the President or a vice-president and by the Secretary or an assistant secretary or such other officer as the bylaws may designate as a second certifying officer or (3) if there are no such officers, then by a majority of the directors or by such directors as may be designated by a majority of directors then in office or (4) if there are no such directors, then by the holders, or such of them as may be designated by the holders, of record of a majority of all outstanding shares entitled to vote thereon or (5) by the holders of all of the outstanding shares of the corporation.

FORM NO MIC'A-11D

- END

Exhibit 5

Manual Signature Copy

1979

SECURITIES AND EXCHANGE COMMISSION
Washington, D. C. 20549

ORIGINAL

FORM 10-K

S308700

Annual Report Pursuant to Section 13 or 15(d) of
The Securities Exchange Act of 1934

74

For the fiscal year ended December 31, 1979

Commission file number 1-569

# SHARON STEEL CORPORATION

(Exact name of registrant as specified in its charter)

| Pennsylvania | 25-0790410 |
|---|---|
| (State or other jurisdiction of incorporation or organization) | (I.R.S. Employer Identification No.) |
| Thomas Road<br>Hubbard, Ohio | 44425 |
| (Address of principal executive offices) | (Zip Code) |

Registrant's telephone number, including area code (216) 448-4011

**Securities registered pursuant to Section 12(b) of the Act:**

| Title of each class | Outstanding at December 31, 1979 | Name of each exchange on which registered |
|---|---|---|
| Common Stock, $1 Par Value | 37,367,195 shares | American Stock Exchange<br>Pacific Stock Exchange |
| 14-1/4% Subordinated Sinking Fund Debentures due 1999 | $ 60,000,000 | American Stock Exchange |

**Securities registered pursuant to Section 12(g) of the Act:**

5-3/8% Subordinated Debentures due November 15, 1995 *
8-7/8% Debentures due April 15, 1997 *
9-1/4% Senior Subordinated Notes due April 15, 1987 *

* See Item 5 - "Legal Proceedings" for a description of litigation concerning these securities.

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days.

Yes ✓ No

## ITEM 1. BUSINESS

Sharon Steel Corporation was incorporated in Pennsylvania in 1900. Reference herein to "Sharon" includes collectively Sharon Steel Corporation and its majority-owned subsidiaries unless the context otherwise indicates. Approximately 86% of Sharon's outstanding common stock is owned by NVF Company.

Sharon's principal business is the production and sale of basic steel mill products. Sharon is a leading domestic producer of certain specialty steels, such as high carbon and alloy flat rolled steels and forging quality steels. Sharon is also engaged in the mining and sale of coal and in the manufacture and sale of welded stainless steel pipe and tubing and steel strapping. By virtue of Sharon's purchase of the assets of UV Industries, Inc. (UV) in November 1979, Sharon is now also engaged in natural resource operations (consisting principally of mining and milling of copper ore, coal mining, secondary lead refining and placer gold mining) and in the fabrication of copper and brass. Sharon also invests in equity securities.

On November 26, 1979 Sharon and UV entered into an agreement pursuant to which Sharon acquired all of the assets of UV in consideration of an Interim Note (which matures on September 30, 1980) in the amount of $517,754,000 and the assumption by Sharon of all of UV's liabilities (except for certain tax liabilities) existing on such date. By the terms of the agreement, UV will exchange the Interim Note for $106,596,000 in cash and $411,158,000 aggregate principal amount of Sharon's Subordinated Sinking Fund Debentures due 2000, provided Sharon's registration statement covering the Debentures is effective by September 30, 1980. In furtherance of UV's Plan of Liquidation and Dissolution, following the exchange the UV Liquidating Trust will distribute all such cash and Debentures to the holders of beneficial interests in the UV Liquidating Trust in the ratio of $7 in cash and $27 principal amount of Debentures for each of the 15,228,057 outstanding units of beneficial interest in the UV Liquidating Trust, including the 3,423,094 units owned by Sharon (amounting to $23,962,000 of cash and $92,423,000 of Debentures to Sharon). Sharon has accounted for its purchase of UV's net assets in accordance with the provisions of Accounting Principles Board Opinion No. 16, using audited data from UV as of November 26, 1979 and making adjustments to fair values of assets acquired and liabilities assumed.

### INDUSTRY SEGMENT INFORMATION

Sharon's consolidated statement of earnings for the year ended December 31, 1979 includes the results of operations of the businesses acquired from UV for the period November 27, 1979 through December 31, 1979 under the caption "Other income, net". The industry segment information presented below for net sales and operating profits does not include results of operations for the businesses acquired from UV. Information for identifiable assets at December 31, 1979 includes assets of the businesses acquired from UV (natural resources and copper and brass fabrication). The natural resource segment information shown below under net sales and operating profits consists of Sharon's coal mining operations in Pennsylvania. For an explanation of changes in segment sales and operating profits, see Item 2 "Management's Discussion and Analysis of the Consolidated Summary of Operations". "General corporate assets" consist primarily of cash, marketable securities and investments.

**CBI**

**HAS BEEN REDACTED**

## STEEL SEGMENT

Sharon is the fourteenth largest steel company in the United States, based on tons of raw steel produced by the domestic steel industry in 1979. The principal steel mill products produced by Sharon are hot and cold flat rolled steels in carbon and alloy grades, carbon and alloy steels used by the forging industry and coated flat rolled steels. Sharon's flat rolled steels are used to produce a wide variety of products in the agricultural, aircraft, appliance, automotive, construction, cutlery and leisure industries. Forging quality steels are produced primarily for the capital equipment industry.

Sharon's steel product shipments represent approximately one percent of total domestic steel mill shipments. Sharon holds a significant share of the domestic market in high carbon and alloy flat rolled steels and forging quality steels. Sharon's shipments of steel mill products, excluding intersegment shipments, for the five years ended December 31, 1979 were as follows:

| | 1979 | 1978 | 1977 | 1976 | 1975 |
|---|---|---|---|---|---|
| | | (thousands of net tons) | | | |
| Low carbon flat rolled steels | 509.2 | 579.4 | 540.5 | 605.8 | 318.5 |
| High carbon flat rolled steels | 161.7 | 144.5 | 112.5 | 114.1 | 64.6 |
| Coated flat rolled steels | 156.3 | 147.2 | 146.9 | 125.2 | 63.1 |
| Forging quality steels | 119.3 | 125.0 | 103.4 | 93.8 | 171.4 |
| Alloy flat rolled steels | 88.8 | 92.5 | 86.5 | 62.4 | 56.8 |
| Other | 26.8 | 32.1 | 34.0 | 51.8 | 35.1 |
| Total steel shipments | 1,062.1 | 1,120.7 | 1,023.8 | 1,053.1 | 709.5 |

### Steel Marketing

Sharon markets its steel products through its own sales organization that leases office space in Canton, Cleveland, Dayton, and Hubbard, Ohio; Chicago, Illinois; Dearborn, Michigan; Philadelphia, Pennsylvania; Rochester, New York; and Hartford, Connecticut. These sales offices are responsible primarily for the northern and northeastern United States, including the states of Ohio, Pennsylvania and Michigan (Sharon's largest geographical markets). Those three states accounted for approximately 60% of Sharon's steel product dollar sales in 1979 and approximately 57% of such sales in 1978.

Steel sales are also made through independent commissioned sales representatives located throughout the United States and in eastern Canada, through the steel marketing operations of Sharonsteel Products Company (a wholly owned subsidiary located in Farrell, Pennsylvania) and through The Steel Corporation of Texas (SCOT), a 51%-owned subsidiary of NVF Company. SCOT is primarily responsible for Sharon's sales in the southern and southwestern United States and receives normal sales commissions. The approximate percentages of Sharon's steel product dollar sales on which SCOT received commissions as a commissioned sales representative were 7.2% in 1979, 7.2% in 1978, 6.7% in 1977, 5.2% in 1976 and 4.1% in 1975. In addition to steel sales, SCOT represents Sharon in the sale of welded stainless steel pipe and tubing and steel strapping (see "Other Segments").

Sharon also sells steel products (primarily forging quality steels) to SCOT, and SCOT resells such steel through its steel service center and distribution

warehouses. Sharon's sales to SCOT are made in the ordinary course of business at list prices less a distributor discount. Sharon's income on these sales is recognized when the products are shipped to SCOT. Sharon provides significant credit to SCOT on extended terms and charges interest to SCOT on open accounts receivable. Sharon's accounts receivable from SCOT (arising from all business segments of Sharon) ranged from $12.4 million to $15.3 million in 1979 at an average interest rate of 12.1%. At December 31, 1979 Sharon's accounts receivable from SCOT were $12.4 million and the interest rate was 12.5%. Sharon believes that the terms of its credit arrangements with SCOT are not unfavorable to Sharon. Sharon's steel sales to SCOT, in percentages of Sharon's steel product dollar sales, aggregated 5.4% in 1979, 5.5% in 1978, 4.9% in 1977, 4.7% in 1976 and 10.4% in 1975. Excluding SCOT, no customer accounted for more than 4.3% of Sharon's steel product dollar sales in 1979.

The principal markets for Sharon's steel products by percentage of net tons shipped, including shipments to affiliates, for the five years ended December 31, 1979 were as follows:

| | 1979 | 1978 | 1977 | 1976 | 1975 |
|---|---|---|---|---|---|
| Steel service centers and distributors, including SCOT | 21% | 25% | 32% | 32% | 41% |
| Converting and processing | 26 | 25 | 19 | 23 | 14 |
| Automotive | 12 | 14 | 16 | 15 | 11 |
| Forgings | 5 | 5 | 5 | 5 | 11 |
| Contractors' products | 10 | 8 | 6 | 6 | 4 |
| Machinery, industrial equipment and tools | 7 | 5 | 5 | 4 | 4 |
| All other | 19 | 18 | 17 | 15 | 15 |
| | 100% | 100% | 100% | 100% | 100% |

The steel industry is highly competitive among producers of steel products, both domestic and foreign, and with producers of such other materials as aluminum and plastics. The principal methods of competition within the steel industry are pricing, quality of product and customer services. In Sharon's major market area--the states of Ohio, Pennsylvania and Michigan--Sharon is subject to intense competition from a number of steel producers, many of which are larger than Sharon. In 1979 approximately 44% of all domestic steel was produced in those three states.

Competition in the United States by foreign steel producers, especially Japanese and Western European steel companies, has grown more intense in recent years and has been particularly strong during the years 1977-1979, when large quantities of foreign steel were sold in the United States. Sharon's steel sales have not been significantly affected by foreign competition, and there have not been any import quotas on the steel products produced by Sharon.

Steel Facilities

Sharon's primary steelmaking and finishing facilities are located at its plant in Farrell, Pennsylvania. This plant, covering more than 1.5 square miles of land with about 3.5 million square feet of buildings, produces raw steel by both the basic oxygen and electric arc processes. Sharon also has small steel finishing plants located in Dearborn, Michigan, and Union, New Jersey.

Sharon's primary steelmaking facilities include two 1,500-ton per day blast furnaces, one 150-ton per heat conventional LD-type basic oxygen converter, two 150-ton per heat Stora-Kaldo basic oxygen converters (standby facilities that

are operated only while the LD-type furnace is not operating because of relining or major maintenance), two 125-ton per heat electric arc furnaces, an in-line 44" blooming mill and 60" semicontinuous hot strip mill, and a 60" hot rolled recoil and shear line. Finishing facilities include two 60" cold rolling mills (a five stand tandem mill and a single stand reversing cluster mill), annealing furnaces, a continuous galvanizing line, a 60" tension leveler for improving steel flatness, temper mills, pickling lines and slitting, cutting, grinding and other finishing facilities, together with the necessary support facilities.

Sharon's steel finishing facilities located in Dearborn, Michigan, include a cold rolling mill, a temper mill, slitting and related handling, finishing and service equipment. Finishing facilities located in Union, New Jersey, consist of cold reduction mills and annealing, tempering and slitting lines. Steel operations also include electrogalvanizing facilities located at Sharon's Brainard Strapping Division in Warren, Ohio.

Steel Production

Sharon's present raw steelmaking capacity is approximately 1.45 million net tons per year (1.1 million net tons basic oxygen furnace and 350,000 net tons electric arc furnace). Approximate annual rolling capacities are 1.4 million net tons of hot flat rolled products and 240,000 net tons of forging blooms, and the approximate annual finishing capacity (from the hot flat rolled capacity above) is 820,000 net tons of cold rolled products, including 220,000 net tons of coated products and 2,200 net tons of tempered steel. The capacity of Sharon's finishing facilities exceeds its steel melting and slabbing capacities. Consequently, Sharon also purchases steel slabs from outside sources when management believes domestic steel market conditions support such purchases. Management believes it will continue to be able to purchase slabs in the future at competitive prices.

Sharon's raw steel production and its purchases of steel slabs for the five years ended December 31, 1979 were as follows:

| | 1979 | 1978 | 1977 | 1976 | 1975 |
|---|---|---|---|---|---|
| | | | (thousands of net tons) | | |
| Raw steel production: | | | | | |
| Basic oxygen | 1,042.5 | 1,071.7 | 915.3 | 992.3 | 574.8 |
| Electric arc | 321.2 | 340.7 | 300.0 | 300.0 | 240.1 |
| Total raw steel production | 1,363.7 | 1,412.4 | 1,215.3 | 1,292.3 | 814.9 |
| Steel slab purchases | 114.0 | 194.8 | 201.7 | 177.0 | 89.4 |

Steel Raw Materials

Sharon obtains approximately 60% of its iron ore requirements (totaling approximately 1.2 million gross tons per year at full production) under a long-term contract, at prevailing prices, with The Cleveland-Cliffs Iron Company; the balance is obtained from Sharon's participation in an iron ore venture. Sharon currently purchases on the open market at prevailing prices all its supplies of other important steelmaking raw materials such as coke, steel scrap, limestone, nickel, ferro chrome, ferro silicon, other ferro alloys and zinc. In the past Sharon has been able to purchase adequate supplies of these raw materials for its steelmaking operations, and management expects to be able to do so in the future.

Under its contract with Sharon, Cleveland-Cliffs will supply in pellet form Sharon's purchased iron ore requirements up to 1.2 million gross tons annually until 13.5 million gross tons have been so supplied. Sharon's purchases from Cleveland-Cliffs totaled approximately 627,300 gross tons of such pellets in 1979 and 794,000 gross tons in 1978. At December 31, 1979 approximately 7.5 million gross tons remained to be supplied under this agreement.

Sharon has a 5% interest in the Tilden Mining Company (a joint venture), an integrated iron ore mine and pellet producing facility in the Marquette Range of the upper peninsula of Michigan. Other participants in the Tilden venture include four steel companies and Cleveland-Cliffs. Sharon's interest in Tilden's proven crude ore reserves at December 31, 1979 was approximately 36 million gross tons. Since becoming operational in 1974, Tilden has supplied approximately 20% of Sharon's annual pellet ore requirements. An expansion of Tilden, which was completed and became operational in November 1979, will approximately double Tilden's capacity and Sharon's supply of iron ore from Tilden. The cost of the Tilden expansion was approximately $435 million, of which Sharon's portion was approximately $22 million. The entire Tilden venture, including the expansion, has been financed primarily through loans guaranteed by each of the participants to the extent of its ownership interest. At December 31, 1979 the portion of the Tilden loans guaranteed by Sharon was $24.6 million, including $18.3 million relating to the expansion project.

Sharon also has a 15.6% interest in the Pioneer Pellet Plant Venture (a joint venture) and in the Negaunee Mine Company. Over the past five years Sharon has obtained approximately 20% of its annual iron ore requirements from Negaunee/Pioneer. The Negaunee/Pioneer facilities were shut down in July 1979, but the shutdown will not have a significant effect on Sharon's operations because of the expansion of the Tilden Mining Company venture described above. Shutdown costs were not significant to Sharon.

Sharon's requirements for coke (totaling approximately 600,000 net tons per year at full production) are supplied in part under contracts expiring at various times through 1983 and in part by open market purchases. Such coke purchases totaled 556,500 net tons in 1979 and 468,200 net tons in 1978. Sharon presently has contracts to purchase coke, at prices that fluctuate with economic indices or supplier production costs, totaling 360,000 net tons in 1980, 208,000 net tons in 1981 and 120,000 net tons in both 1982 and 1983. In prior years a portion of Sharon's coke requirements was provided by Sharon's coking facilities at Fairmont, West Virginia, which supplied 77,500 net tons of coke in 1979 and 105,400 net tons in 1978. Because of the age of the Fairmont coke plant and the impracticability of modifying the facility to put it in condition to operate efficiently and in accordance with environmental regulations, Sharon shut down the Fairmont coke plant on May 31, 1979 (see "Environmental Matters - Fairmont Coke Works"). Shutdown costs did not have a significant effect on Sharon's operating results. Sharon has been able in the past, and management expects to be able in the future, to obtain adequate supplies of coke for its steelmaking operations.

## NATURAL RESOURCE SEGMENT

Sharon's natural resource operations, including the businesses acquired from UV, consist principally of mining and milling of copper ore, coal mining in Utah and Pennsylvania, placer gold mining and secondary lead refining.

Copper

Copper ore is mined--by both the underground and open pit methods--at the Continental Mine located in southwestern New Mexico. The copper ore is processed into a copper concentrate (averaging approximately 24% copper) through a process of crushing, grinding and flotation in two concentrating mills located at the mine site. Smelting and refining of the copper concentrate is contracted on a toll basis to Asarco Incorporated under a contract extending through February 1982. The entire output of Continental Mine's refined copper is currently sold at prevailing producers' prices to Mueller Brass Co., a wholly owned subsidiary of Sharon acquired from UV. Refined copper sales totaled 11,900 net tons in 1979. 15,500 net tons in 1978, 19,700 net tons in 1977, 23,500 net tons in 1976 and 17,700 net tons in 1975.

The properties on which the Continental Mine is located are in highly mineralized areas contiguous to operations of the Kennecott Copper Company and Asarco Incorporated. Sharon's copper properties consist of approximately 9,300 acres, of which 8,150 are owned and 1,150 are leased. Mine facilities include both underground and open pit mining equipment and two mills for processing copper ore into copper concentrate. The underground mining rate averages approximately 2,500 to 3,000 net tons of copper ore per day, while the open pit mining rate averages approximately 5,000 net tons per day. The two concentrating mills have a total rated capacity of approximately 8,000 net tons of copper ore per day based on a 24-hour 3-shift workday. Production of copper concentrate totaled 77,000 net tons in 1979, 21,000 net tons in 1978, 86,000 net tons in 1977, 88,900 net tons in 1976 and 66,000 net tons in 1975. Operations in 1978 were interrupted by a nine-month strike.

At December 31, 1979, the Continental Mine's estimated mineable copper ore reserves, determined by drilling and development, consisted of 12.4 million net tons of underground reserves with an average copper assay of 1.99% and 14.8 million net tons of open pit reserves with an average copper assay of .85%. A significant portion of the estimated open pit reserves will require expansions of the present pit, and such expansions are presently under study.

The Continental Mine is relatively new, and the estimates of mineable reserves are based upon the drilling and development program conducted to date. There are believed to be additional copper mineralization at depths below and adjacent to the existing known ore reserves. Recent exploration drilling on Sharon's properties adjacent to the present mine sites has defined 9.9 million tons of mineable material with an average copper assay of .63%. This material is only marginally economic at current metal prices, but is a potential resource for the future.

Steam Coal

United States Fuel Company, a wholly owned subsidiary acquired from UV, mines high quality steam coal utilizing the room and pillar mining method at its coal properties in southern Utah. The majority of the coal is washed at U.S. Fuel's on-site coal cleaning plant, which has an annual rated capacity of approximately 600,000 net tons of cleaned coal. As a result of efforts to sell coal directly to utilities and industrial users, U.S. Fuel is competing with major coal producers having substantially larger financial resources and production capabilities. Although U.S. Fuel is not one of the major producers of coal, management believes that the low sulphur content and high BTU rating of its coal, as well as the desirable mining conditions, place U.S. Fuel in a relatively favorable competitive position.

U.S. Fuel presently sells the majority of its coal production under a contract entered into in July 1976 and extending through December 1994. The contract, which contains price escalation provisions, provides that U.S. Fuel will supply 400,000 tons of coal per year and gives the customer the right to increase or decrease such purchases by 50,000 tons per year. The customer has exercised its right to decrease its purchases by 50,000 tons for 1979. Coal sales totaled 687,300 net tons in 1979, 600,800 net tons in 1978, 821,900 net tons in 1977, 616,000 net tons in 1976 and 529,200 net tons in 1975.

U.S. Fuel's coal properties consist of approximately 9,800 acres containing multi-seam coal deposits, of which 6,300 acres are owned and 3,500 acres are leased. The area is divided into northern and southern sections, and there is currently no active work in the southern section (which consists of 1,400 owned acres and 2,100 leased acres). U.S. Fuel currently operates two mines in the northern section which, utilizing the room and pillar mining method, have an annual rated capacity of approximately one million tons of coal. Coal mined by U.S. Fuel totaled 739,400 net tons in 1979, 670,000 net tons in 1978, 822,000 net tons in 1977, 614,800 net tons in 1976 and 529,200 net tons in 1975.

Based upon independent engineering studies, it is estimated that raw recoverable coal reserves in the northern section totaled 42.9 million tons at December 31, 1979. Coal seams in the northern section extend into the southern section, where a drilling program has been conducted. It is estimated that raw recoverable coal reserves in the southern section totaled 33 million tons at December 31, 1979. The foregoing reserves are based on the present recovery rate of 55%. Production in the southern section would require substantial capital investments and the obtaining of government approvals and permits, which can be a time-consuming process. After obtaining necessary permits, a period of one to two years of site preparation and mine development work would be required before initial production could begin. Development of the southern section will be dependent upon the economic desirability of increasing coal production and the availability of funds for the substantial capital investments that would be required to develop the properties.

Metallurgical Coal

Sharon mines high volatile metallurgical coal--by both the deep-mine and strip-mine processes--from the Upper Freeport seam at its Mahoning Creek coal facility near Kittanning, Pennsylvania. The coal is washed at Sharon's coal cleaning plant located near the mine sites, which has an annual capacity of approximately 500,000 net tons of cleaned coal. The cleaned coal is sold pursuant to a coal supply and coke purchase contract and on the open market at prevailing prices. The coal mined at Mahoning Creek is suitable for making coke but, under certain market conditions for coking coal, this coal is also sold by Sharon for other uses, such as boiler coal. Sharon's coal sales totaled 306,200 net tons in 1979, 284,300 net tons in 1978, 427,100 net tons in 1977, 356,000 net tons in 1976 and 136,800 net tons in 1975. Four coal customers accounted for all of Sharon's coal sales in 1979. In view of the current weak market for coal, there is no assurance that Sharon will be able to return to its previous level of coal sales in the near future.

Coal mined at Mahoning Creek totaled 292,300 net tons in 1979, 299,700 net tons in 1978, 358,100 net tons in 1977, 325,800 net tons in 1976 and 279,300 net tons in 1975. Based on operating experience and core analysis, Sharon believes that its Mahoning Creek properties contain approximately 2.6 million net tons of

recoverable coal reserves in the Upper Freeport seam. Sharon has not recovered coal from the Lower Freeport or Lower Kittanning seams, and at present no estimate has been made of the recoverable coal reserves in those portions of Sharon's coal properties.

Sharon has the right to mine approximately 2,600 acres of coal properties at its Mahoning Creek coal mine under a lease entered into in 1959 that gives Sharon the right to mine coal for 20 years, with an option to extend the lease for successive additional five-year terms provided that at least 200,000 tons per year are mined during the preceding five-year period. Sharon exercised its option to extend the lease for an additional five years upon expiration of the initial term of the lease. Approximately 375 acres of coal reserves remain to be mined under this lease. Sharon also has the right to mine approximately 775 acres of other coal properties located near its Mahoning Creek mine, with approximately 400 acres of coal reserves remaining to be mined, under leases entered into in 1975 through early 1980 and expiring at various times through 1987.

Gold

Alaska Gold Company, an 85%-owned subsidiary acquired from UV, mines placer gold in Nome, Alaska. Placer gold consists of gold particles accumulated or concentrated in sand and gravel. Such gold is mined by a dredging process that is complicated by a variety of factors related to the Alaska location, including harsh weather, difficulties in hiring and retaining personnel, high cost of thawing the permafrost (often more than 100 feet down to bedrock) in preparation for dredging, and long distances for shipment of supplies and equipment.

Because of the severe climatic conditions in the Nome area, dredging operations can normally be conducted only from early May to early November. The dredges are shut down for the balance of the year, during which time the dredges are repaired and preparations are made for the subsequent operating and thawing season. Thawing of gold-bearing gravel is accomplished by circulating water through pipes inserted in holes drilled through the permafrost down to bedrock, and several months are required to achieve adequate thawing. The thawing season is generally limited to the period from May through August.

Gold dredging operations were commenced in Nome in the 1975 season. Production and sales of gold for the five years ended December 31, 1979 were as follows:

| | Troy Ounces Produced | Cost of Production Per Troy Ounce | Troy Ounces Sold | Average Selling Price Per Troy Ounce |
|---|---|---|---|---|
| 1975 | 11,156 | $ 159 | - | - |
| 1976 | 14,320 | 110 | - | - |
| 1977 | 11,563 | 182 | 38,515 | $ 152 |
| 1978 | 11,295 | 338 | 11,295 | 226 |
| 1979 | 3,187 | 620 | - | - |

Gold production in 1979 was significantly lower than in 1978 because of a lack of properly thawed gravel in front of the dreges, which was caused by changes in thawing procedures in 1978. The reduced production resulted in a significant increase in unit production costs in 1979. The lack of properly thawed gravel completely curtailed operations at one dredge and reduced opera-

tions at the other dredge. Additional thawing will be required in 1980 in the areas in front of both dredges, and therefore only limited operations are scheduled for 1980.

Gold properties consist of approximately 17,500 acres in the Nome district in Alaska, of which 16,182 acres are owned and 1,318 acres are unpatented claims. Estimated gold reserves (commercially mineable gold deposits under existing conditions of gold prices and production costs) at Nome total approximately 1.1 million troy ounces, contained in approximately 122 million cubic yards of dredgeable gravel within an area of approximately 1,280 acres. Mining operations are conducted using two floating bucket-line dredges.

In addition to the Nome property, Alaska Gold owns or controls approximately 11,600 acres in the Fairbanks district, on which there is located gravel containing gold deposits; however, any decision to mine this property would depend upon cost, environmental and other conditions. Alaska Gold also owns approximately 2,600 acres of commercial and/or residential property in or close to Fairbanks.

### Secondary Lead Refining

U.S.S. Lead Refinery, Inc. (Lead Refinery), a wholly owned subsidiary acquired from UV, is engaged in the secondary refining of lead. Approximately 60% of Lead Refinery's business is done on a toll conversion basis using customer-supplied material, and one customer accounts for a substantial portion of the overall business. Lead Refinery's manufacturing facility is located in East Chicago, Indiana, and consists of approximately 79 acres of land and 79,000 sq. ft. of floor space. Raw material, basically battery scrap, is purchased on the open market at competitive prices.

Lead Refinery faces competition from both primary and secondary lead refineries, some of which are significantly larger than Lead Refinery. Because of the regional nature of the secondary lead industry, management believes that Lead Refinery is in a relatively good competitive position.

### Other Natural Resources

Sharon also acquired interests in various other mineral properties and other operations from UV. None of these properties or operations is presently significant to Sharon's business. The natural resource exploration properties acquired from UV consist of approximately 67,500 acres located in Arizona, California, Nevada, New Mexico and Utah, of which 21,500 acres are owned and 46,000 acres are unpatented claims.

## COPPER AND BRASS FABRICATION SEGMENT

Mueller Brass Co., a wholly owned subsidiary acquired from UV, is engaged in the fabrication of copper and brass and the fabrication of aluminum impact extrusions. Mueller is a major fabricator of copper tube, wrought copper fittings, brass rod and forgings. Mueller maintains 30 sales offices throughout the United States, employs 50 full-time salesmen and retains four agents. Some of the companies with which Mueller competes are affiliates of major copper producers. The principal methods of competition for Mueller's products are price, quality and service. No material portion of Mueller's business is dependent upon a single customer or a small group of related customers.

Mueller's industrial products include brass rod, specialty tube produced in a variety of brass alloys, nonferrous forgings, screw machine products and impact extrusions. Mueller's standard products include Streamline™ copper tube, copper and red brass pipe, wrought and cast fittings and related components for the plumbing and heating industry. Mueller also fabricates mechanical valves, wrought copper and brass fittings, filter driers and other related assemblies for the commercial air conditioning and refrigeration industry.

Mueller's products are manufactured in plants located in Port Huron, Michigan (963,000 sq. ft.), Fulton, Mississippi (314,000 sq. ft.), Covington, Tennessee (153,000 sq. ft., including the central warehouse facility described below), Marysville, Michigan (92,000 sq. ft.) and Hartsville, Tennessee (71,000 sq. ft.). Mueller's central warehouse facility in Covington, Tennessee services 13 regional warehouses located in key marketing areas throughout the United States. All of these facilities are either owned by Mueller or leased under industrial revenue bond issues. In addition, Mueller leases approximately 326,000 square feet of office and regional warehouse space.

A major portion of Mueller's raw copper requirements is normally obtained from the Continental Mine, with additional amounts of copper obtained through open market purchases. See "Natural Resource Segment--Copper." The Continental Mine provided approximately 27% of Mueller's raw copper requirements in 1979, 41% in 1978, 43% in 1977, 69% in 1976 and 78% in 1975. Other raw materials used in the production of brass, including brass scrap, zinc, tin and lead, are obtained from zinc and lead producers, open-market dealers and customers with brass process scrap. Raw materials used in the fabrication of aluminum products are purchased in the open market from major producers.

OTHER SEGMENTS

Sharon's Damascus Tubular Products Division, located in Greenville, Pennsylvania, manufactures welded stainless steel pipe and tubing in sizes ranging from under one inch to six inches in diameter for use primarily in the petrochemical and energy industries. The principal manufacturing facilities at Damascus consist of welding mills, pickling, annealing and cold finishing facilities. Damascus has an annual capacity of 6,000 net tons of stainless pipe and 2,400 net tons of stainless tubing.

Sharon's Brainard Strapping Division, located in Warren, Ohio, manufactures steel strapping and strapping tools for use in packaging a wide variety of products, including steel coils. Brainard also supplies materials and equipment for the nonmetallic strapping market, as well as other packaging materials such as protective cornerboard. Brainard manufactures steel strapping using cold flat rolled steel supplied from Sharon's steelmaking plant. The principal facilities at Brainard consist of slitting and coating equipment. Brainard has an annual capacity of approximately 43,000 net tons of steel strapping.

Sales of Sharon's welded stainless steel pipe and tubing and steel strapping products are made both by salaried salesmen and through commissioned sales representatives, including SCOT. For the five years ended December 31, 1979 sales of these products to SCOT, and through SCOT (as a commissioned sales representative) on which SCOT receives normal sales commissions, in percentages of Sharon's other segments' dollar sales, were 18.2% in 1979, 14.2% in 1978, 16.5% in 1977, 17.8% in 1976 and 21.8% in 1975 (see also "Steel Marketing"). No other customer accounted for more than 4.0% of other segments' dollar sales in 1979.

## LABOR RELATIONS

At December 31, 1979 Sharon employed approximately 1,850 salaried and 6,300 hourly persons, including approximately 900 salaried and 2,600 hourly employees in the businesses acquired from UV. A majority of the hourly employees are represented by the United Steelworkers of America under a contract that expires in August 1980 and provides general wage increases and certain increases in employee benefits at various times, including increases that became effective August 1, 1979. Most of the remaining hourly employees are represented by the United Autoworkers, the International Association of Machinists, the United Mine Workers of America, and several other labor organizations. Sharon believes that relations with its employees are satisfactory.

## ENERGY AVAILABILITY

Sharon has generally been able to purchase sufficient energy in the form of natural gas, coal, coke, fuel oils and electricity to operate its facilities at or near capacity. Although Sharon does not presently anticipate any significant cutbacks in its energy allocations, if the nationwide petroleum shortage and related energy shortages have a significant adverse effect on the public utilities that provide Sharon with natural gas and electricity, Sharon's steelmaking and other operations may be adversely affected.

Mueller's operations require substantial amounts of natural gas, which has been subject to the threat of possible shortage. In order to provide natural gas for its Fulton plant, Mueller has purchased a portion of the production of a nearby natural gas field, which Mueller believes will provide a significant portion of its near-term natural gas requirements. Natural gas requirements for the Port Huron plant continue to be subject to curtailments by pipeline suppliers, and Mueller has installed a propane storage facility to serve as an emergency source of energy in the event of a serious curtailment. Although the use of propane is less desirable than natural gas, Mueller has been able to continue production operations using propane during periods of natural gas curtailment. Energy conservation programs have been instituted at all plants to conserve natural gas and soften the impact of any short-term curtailment of natural gas.

## ENVIRONMENTAL MATTERS

Sharon is engaged in a continuing program of installing environmental control equipment at its steelmaking and other facilities to meet the requirements of applicable environmental quality regulations. For the five years from 1975 through 1979, Sharon spent approximately $15.9 million on environmental control equipment. Sharon estimates that it will spend approximately $18 million on such equipment in 1980 and approximately $12 million during the three-year period 1981 through 1983.

The amount and timing of expenditures for environmental control facilities are subject to considerable uncertainty, principally because action to establish standards has not been completed and because existing standards are being reconsidered by environmental authorities or challenged by industry, including the steel industry. Sharon is unable to estimate the total future cost of compliance with environmental regulations or the effect of nonproductive environmental capital expenditures on its future net income.

Steel Segment - Water Quality Control

Sharon's steelmaking plant in Farrell, Pennsylvania, is under the concurrent jurisdiction of two governmental agencies with respect to the enforcement of environmental control laws, rules and regulations--the Environmental Protection Agency (EPA) and the Pennsylvania Department of Environmental Resources (DER).

Water quality at the steelmaking plant is regulated by a National Pollution Discharge Elimination System (NPDES) water discharge permit issued by the EPA. An amended NPDES permit issued in November 1978 contains effluent limitations effective as of July 1, 1977. In accordance with the consent decree referred to below, by the end of 1981 Sharon expects to have completed installation of water treatment facilities (at an estimated cost of $12 million) designed to comply with all effluent limitations contained in the NPDES permit. This time schedule is known to the EPA, and Sharon does not expect the schedule to result in any significant penalty. Sharon has been informed, however, that the DER intends to request the EPA to commence an action against Sharon for alleged violations of the Federal Clean Water Act. Under the provisions of the Federal Clean Water Act the EPA has the right to institute administrative, injunctive, civil and criminal penalty proceedings against Sharon. Such civil and criminal penalties could be imposed in the maximum potential amounts of $10,000 and $25,000, respectively, for each day since July 1, 1977 that it is determined Sharon was in violation of the applicable effluent limitations.

In February 1979 the DER sought a permanent injunction in the Commonwealth Court of Pennsylvania enjoining the discharge of industrial waste at Sharon's steelmaking plant and requiring the installation of water treatment facilities. On December 17, 1979 the Court entered a consent decree settling this litigation. The decree establishes schedules for the installation of the water treatment facilities referred to above and requires certain monitoring and reporting by Sharon. The DER also filed a complaint with the Pennsylvania Environmental Hearing Board (EHB) on June 6, 1979 regarding the discharge of industrial waste, seeking civil penalties for alleged violations going back to 1971. Although Sharon and the DER are not currently engaged in settlement discussions, Sharon has been negotiating with the DER in an effort to resolve the penalty action filed by the DER. A comprehensive calculation of all possible penalties at their absolute maximum amounts dating back to 1971 for these alleged violations could total $194 million through June 6, 1979, if Sharon is found to be in violation as alleged, and $10,000 per day for each of the 18 alleged operating violations for each day subsequent to June 6, 1979 that Sharon is found to be in violation. However, based on negotiations with the DER, Sharon believes that it can settle this proceeding, and it is the present view of Sharon, a view that counsel has advised Sharon is a reasonable view, that Sharon's liability, if any, under a settlement will not have a material adverse effect on Sharon's consolidated financial position.

Steel Segment - Air Quality Control

Sharon has installed an electrostatic precipitator designed to control air emissions from the slab scarfing operation at its steelmaking plant. Sharon has also contracted for the installation of new facilities in 1980 to control air emissions at its electric furnace shop (at an estimated cost of $10.5 million). The installation of these facilities is being made in response to a notice of violation issued by the EPA in September 1977 under the Federal Clean Air Act. The timely installation of the control facilities at the electric furnace shop is the

subject of a consent order and agreement with the DER which provides for the payment of civil penalties to the Clean Air Fund of the Commonwealth of Pennsylvania in the amount of $3,500 per month from September 1976 through January 1980, in the amount of $5,000 per month from February 1980 through May 1980, and in the amount of $10,000 per month for each month, or part thereof, thereafter that the electric furnace shop is operated without the control equipment being installed or operated. The notice of violation issued by the EPA also cited the basic oxygen furnace shop and blast furnace cast house. Sharon is currently studying alternatives for equipment designed to control air emissions at the basic oxygen furnace shop (at an estimated cost of $5 million) and the blast furnace cast house (at an estimated cost of $5 million). In February 1979 the EPA issued a second notice of violation with respect to the basic oxygen furnace shop.

On August 30, 1979 the EPA brought an action against Sharon in the United States District Court for the Western District of Pennsylvania, alleging that Sharon is in violation of the Federal Clean Air Act and the Pennsylvania Implementation Plan with respect to air emissions from the basic oxygen furnace shop and the electric arc furnace shop at Sharon's steelmaking plant. The complaint seeks to enjoin the operation of the basic oxygen furnace shop except in accordance with the Federal Clean Air Act and also seeks civil penalties of $25,000 for each day since August 7, 1977 that it is determined Sharon was in violation of the applicable emission limitations. Sharon has begun negotiations with the EPA in an effort to resolve this matter.

The Federal Clean Air Act provides for mandatory administrative noncompliance penalties for facilities that were not in compliance with an applicable implementation plan by July 1, 1979. These penalties were designed to remove economic benefits that might be derived from noncompliance. Sharon has made no estimate of the amount of such penalties that could be imposed because regulations governing liability for, assessment of and calculation of these penalties have not been promulgated in final form.

By letter dated August 31, 1979, the EPA informed Sharon that the EPA is considering placing Sharon's steelmaking plant on an EPA List of Violating Facilities (the List) because of Sharon's alleged violations of the Federal Clean Air Act at its steelmaking plant. A listing proceeding is in process which is presently expected to conclude in 1980. EPA regulations provide that if the steelmaking plant is placed on the List, Sharon would not be permitted to enter into, renew or extend any nonexempt contractual or subcontractual relationship with the federal government where the listed facility would be involved. These regulations also provide that once a facility is listed by EPA, the facility may be removed from the List if a company enters into an EPA-approved plan for compliance with applicable environmental regulations. Sharon intends to resist the listing of its steelmaking plant and hopes to negotiate a prompt EPA-approved plan for compliance at the steelmaking plant. If Sharon is unsuccessful in such efforts and its steelmaking plant is placed on the List, Sharon does not anticipate that the resulting loss of business, if any, would have a material adverse effect on its consolidated sales or results of operations.

On March 3, 1978 the EPA designated the cities of Sharon and Farrell, Pennsylvania, as "nonattainment areas" for particulate matter. Sharon Steel Corporation appealed this designation to the United States Court of Appeals for the Third Circuit, and the court of appeals remanded the matter to the EPA. The EPA held administrative hearings in June 1979 but has not yet made a determination in accordance with the court of appeals' order. If the cities of

Sharon and Farrell, Pennsylvania, are eventually determined to be "nonattainment areas", certain new or modified facilities constructed in such areas would be required to achieve the "lowest achievable emission rate" and the owner of such facilities would also be required to be in compliance, or under an approved schedule of compliance, for all of its existing facilities located within the Commonwealth of Pennsylvania.

In June 1978 the DER filed with the EHB a complaint against Sharon seeking civil penalties not to exceed $10,000 for the first day of violation, plus up to $2,500 for each day of continued violation from October 26, 1972, until Sharon controls fugitive air emissions from its hot metal transfer station at the basic oxygen furnace shop. On November 19, 1979 the EHB approved a consent adjudication between the DER and Sharon that requires Sharon to install and begin operation of approved control equipment by September 1, 1980 and to pay a civil penalty of $80,000. Sharon estimates that the control facility will cost approximately $1.3 million. The consent adjudication provides that if Sharon fails to install and begin operation of the control equipment by September 1, 1980, for reasons within its control, Sharon will cease operation of its hot metal transfer station until controls are installed which will achieve compliance with applicable regulations. If the control equipment is installed and operating by September 1, 1980, but the control equipment does not operate to bring the emissions into compliance by October 1, 1980, Sharon is obligated to pay a stipulated penalty of $5,000 for the first month and $15,000 for each month thereafter until compliance is achieved. In addition to these stipulated penalties, noncompliance after October 1, 1980 may subject Sharon to a suit by the DER seeking injunctive relief.

Fairmont Coke Works

In February 1979 the EPA filed a complaint in the United States District Court for the Northern District of West Virginia alleging violations of particulates and opacity limitations and seeking to enjoin the operation of Sharon's coke oven battery in Fairmont, West Virginia, and requesting a civil penalty of $25,000 for each day from August 7, 1977 through May 31, 1979 that it is determined Sharon was in violation of the Federal Clean Air Act. Sharon's coke oven battery was closed on May 30, 1979, and the closing satisfied both a March 1979 consent order with the West Virginia Air Pollution Control Commission and a partial consent decree entered with the EPA in May 1979.

On February 1, 1980 the EPA filed a complaint in the United States District Court for the Northern District of West Virginia alleging violations of certain environmental standards and limitations resulting from the emission of hydrogen sulfide from Sharon's Fairmont coke oven battery contrary to the requirements of both the Federal Clean Air Act and the West Virginia Implementation Plan "since 1975" through May 30, 1979, when the battery was closed, and the discharge of pollutants at the facility contrary to the requirements of both the Federal Clean Water Act and a NPDES permit from May 17, 1978 through November 30, 1979, and the Federal Clean Water Act from December 1, 1979 to the present. The complaint seeks a permanent injunction against the discharge by Sharon of pollutants from the Fairmont Coke Works in violation of the Federal Clean Water Act, civil penalties of up to $10,000 for each day from May 17, 1978 that it is determined Sharon was in violation of the Federal Clean Water Act and civil penalties of up to $25,000 for each day of violation from August 7, 1977 to May 30, 1979 that it is determined Sharon was in violation of the Federal Clean Air Act.

Notwithstanding the closing of the Fairmont Coke Works, state and federal environmental authorities have informed Sharon that it will have to take actions to prevent any continuing discharges from the ponds and fills at the Fairmont Coke Works. Sharon has retained an independent consultant to determine the nature and scope of any prevention measures necessary to prevent the site from becoming a source of pollution in the future.

Natural Resource Segment

The copper concentrate produced at the Continental Mine is currently being treated under contracts at two of Asarco's smelters. Under the terms of a previous contract with Asarco, UV (in common with other users of one of Asarco's smelters) had been paying a surcharge in connection with special capital expenditures related to compliance with prevailing federal, state and local air pollution regulations. This surcharge was terminated by Asarco in May 1975. If pollution standards should be changed, however, additional major capital expenditures could be required by Asarco for the control of smelter emissions, which in turn could result in the reinstatement of surcharges or the possible shutdown of the smelter, with the resulting need to seek other smelting facilities.

Lead Refinery, as a member of the secondary lead industry, will be subject to a five-year program of increasingly stringent limitations on fugitive lead emissions and workplace exposure to lead. The full cost of compliance cannot presently be determined because the EPA and Occupational Safety and Health Administration (OSHA) standards which impose these limitations are the subject of litigation which may affect the final standards and the means to achieve the standards. Lead Refinery believes that compliance with the EPA and OSHA standards, as promulgated, will be extremely difficult as a technological matter and, in any event, will increase operating costs and require capital expenditures which will be substantial in comparison with Lead Refinery's operations.

Copper and Brass Fabrication Segment

The majority of Mueller's operations are subject to environmental legislation and implementing regulations adopted or proposed by the EPA and by comparable agencies in various states, and environmental regulations have increased the operating expenses of certain of Mueller's facilities. In 1977 Mueller completed a $6 million program designed to improve its pollution control facilities. Mueller believes it is in substantial compliance with applicable environmental regulations and, to the extent that it may not be in compliance with these regulations, such noncompliance will not materially or substantially affect its business. Mueller cannot predict the effect on its operations, if any, that could result from any future federal and state environmental regulations.

Other Segments

In November 1977 Sharon filed an appeal to the EHB from a denial by the DER of an application for an Industrial Waste Permit respecting discharges from facilities at Sharon's Damascus Tubular Products Division located in Greenville, Pennsylvania. In December 1979 the EHB entered a consent adjudication of this matter requiring Sharon to install water treatment facilities at the Damascus plant (at an estimated cost of $750,000). Sharon has received no indication that the EPA will seek to impose penalties under the Federal Clean Water Act in respect of these discharges.

## INVESTMENTS

Sharon invests in equity securities primarily through a wholly owned subsidiary. Over the past several years Sharon has invested funds to acquire equity positions in various companies in order to achieve diversification through equity participation in the growth, assets and earnings of companies engaged in a broad range of business activities. At March 21, 1980 Sharon's investments in equity securities (excluding its beneficial interest in the UV Liquidating Trust) had a market value of approximately $182.3 million and a carrying value of approximately $186.9 million. Described below are Sharon's investments in companies other than UV in which Sharon held 5% or more of the investee's equity securities at March 21, 1980.

### Burnup & Sims Inc.

At March 21, 1980 Sharon held 2,397,590 shares of Burnup & Sims Inc. (Burnup) common stock, representing approximately 28.6% of Burnup's outstanding common stock. At March 21, 1980 Sharon's investment in Burnup stock had a market value of approximately $22.2 million and a carrying value of approximately $14.3 million. Sharon began accounting for its investment in Burnup using the equity method beginning in the fourth quarter of 1979.

Burnup is involved in the installation of aerial and underground telephone and utility systems and CATV systems and owns drive-in theatres and soft drink bottling plants.

### Howell Industries, Inc.

At March 21, 1980 Sharon held 281,500 shares of Howell Industries, Inc. (Howell) common stock, representing approximately 19.6% of Howell's outstanding common stock. At March 21, 1980 Sharon's investment in Howell common stock had a market value of approximately $1.1 million and a cost of approximately $1.3 million.

Howell is engaged in the original manufacture of structural components for the automotive industry, and its principal products are steel automotive structural supports and miscellaneous stampings, windshields and seat guides.

### Foremost-McKesson, Inc.

At March 21, 1980 Sharon held 1,431,700 shares of Foremost-McKesson, Inc. (Foremost) common stock and 73,900 Series A preferred shares convertible into an additional 120,087 shares of Foremost common stock. At March 21, 1980 Sharon's holdings of common shares represent approximately 9.9% of Foremost's outstanding common stock, and Sharon's holdings of Series A preferred shares represent approximately 7.9% of Foremost's outstanding Series A preferred stock. If Sharon were to convert its Foremost preferred stock into common stock, Sharon's resultant holdings of 1,551,787 shares of common stock would represent approximately 9.9% of Foremost's outstanding voting securities. At March 21, 1980 Sharon's investment in Foremost stock had a market value of approximately $36.7 million and a cost of approximately $30 million.

Foremost is a diversified company involved in the manufacture and sale of drugs and drug sundries, the production and sale of dairy and food products, the sale and distribution of liquors and land development.

The Marley Company

At March 21, 1980 Sharon held 512,400 shares of The Marley Company (Marley) common stock, representing approximately 10.1% of Marley's outstanding common stock. At March 21, 1980 Sharon's investment in Marley common stock had a market value of approximately $10.2 million and a cost of approximately $11.4 million.

Marley is engaged in the manufacture of water cooling towers and vertical turbine pumps, the construction and maintenance of water well and water treatment equipment and the manufacture of shell and tube heat exchangers, boiler feedwater deaerating equipment and feedwater heaters and condensers.

City Investing Company

At March 21, 1980 Sharon held 2,302,700 shares of City Investing Company (City Investing) common stock, representing approximately 9.7% of City Investing's outstanding common stock. At March 21, 1980 Sharon's investment in City Investing common stock had a market value of approximately $36.8 million and a cost of approximately $41.1 million.

City Investing's principal businesses are insurance, manufacturing, housing and food services.

Nashua Corporation

At March 21, 1980 Sharon held 423,000 shares of Nashua Corporation (Nashua) common stock, representing approximately 9.1% of Nashua's outstanding common stock. At March 21, 1980 Sharon's investment in Nashua common stock had a market value of approximately $9.6 million and a cost of approximately $10.4 million.

Nashua is engaged in the manufacture of office copy systems and supplies, graphic and coated papers and tapes, magnetic memory products and in photofinishing.

Dayton Malleable, Inc.

At March 21, 1980 Sharon held 98,100 shares of Dayton Malleable Inc. (Dayton Malleable) common stock, representing approximately 6.7% of Dayton Malleable's outstanding common stock. At March 21, 1980 Sharon's investment in Dayton Malleable common stock had a market value of approximately $1.7 million and a cost of approximately $1.8 million.

Dayton Malleable is engaged in the production and sale of castings and forgings.

Evans Products Company

At March 21, 1980 Sharon held 642,700 shares of Evans Products Company (Evans Products) common stock, representing approximately 5.2% of Evans Products' oustanding common stock. At March 21, 1980 Sharon's investment in Evans Products common stock had a market value of approximately $12.1 million and a cost of approximately $14.8 million.

Evans Products is a leading retailer of building materials and related products and is also engaged in the production of pre-cut houses, steel fabrication and the leasing of railcars and truck trailers.

GAF Corporation

At March 21, 1980 Sharon held 1,280,200 shares of GAF Corporation (GAF) common stock, representing approximately 5.1% of GAF's outstanding common stock. At March 21, 1980 Sharon's investment in GAF common stock has a market value of approximately $6.2 million and a cost of approximately $6.7 million.

GAF is engaged in the manufacture and sale of building materials, specialty chemicals and photographic products.

Ranco, Incorporated

At March 21, 1980 Sharon held 239,050 shares of Ranco, Incorporated (Ranco) common stock, representing approximately 6.8% of Ranco's outstanding common stock. At March 21, 1980 Sharon's investment in Ranco common stock had a market value of approximately $3.6 million and a cost of approximately $3.5 million.

Ranco is a leading manufacturer of environmental comfort, convenience and safety control devices and systems.

**CBI**

**HAS BEEN REDACTED**

## MANAGEMENT'S DISCUSSION AND ANALYSIS OF THE CONSOLIDATED SUMMARY OF OPERATIONS

### 1979 Compared with 1978

| | Net Sales | | | Operating Profits | | |
|---|---|---|---|---|---|---|
| | 1979 | 1978 | Percent Change | 1979 | 1978 | Percent Change |
| | (dollars in thousands) | | | | | |
| Steel | $ 472,530 | 436,735 | + 8% | $ 52,736 | 59,468 | - 11% |
| Coal | 10,302 | 11,223 | - 8% | 2,185 | 5,096 | - 57% |
| Other segments | 51,790 | 40,275 | +29% | 4,467 | 1,769 | +153% |
| Consolidated | $ 534,622 | 488,233 | +10% | $ 59,388 | 66,333 | - 10% |

The increase in steel sales was caused primarily by higher industry prices on steel products coupled with improvements in product mix, partially offset by a 5.2% decrease in Sharon's steel product shipments. The decrease in steel operating profits was caused by the decreased shipments as well as by higher operating costs resulting from higher labor costs, increased maintenance and repair costs and inflationary pressures on material and energy costs. The decreases in coal sales and operating profits were primarily the result of lower average selling prices and higher operating costs, partially offset by a 7.7% increase in coal shipments. The increase in other segments' sales and operating profits was caused primarily by a 35% increase in welded stainless steel pipe and tubing shipments coupled with higher selling prices for these products.

| Nonoperating items | 1979 | 1978 |
|---|---|---|
| | (in thousands) | |
| Nonoperating revenues | $( 49,242) | ( 4,795) |
| General corporate expenses | 16,062 | 13,143 |
| Debt costs | 14,901 | 4,561 |
| Nonoperating expenses, net | $( 18,279) | 12,909 |

The $44,447,000 increase in nonoperating revenues in 1979 resulted primarily from a $29,170,000 increase in gains on sales of equity securities (including $23,797,000 from the tender of Reliance Electric Company common stock, acquired in 1979 at a cost of $21.4 million, and $5,050,000 from the sale of Studebaker-Worthington, Inc. common stock, acquired in 1979 at a cost of $6.4 million), increased dividend and interest income on short-term marketable securities and from $5,535,000 of pretax income from UV's operations and investment income for the period November 27, 1979 to December 31, 1979. The $2,919,000 increase in general corporate expenses was caused primarily by increased employment costs (including a $1,000,000 increase in the provision for management incentive compensation) and a $1,129,000 increase in net management services charges from DWG Corporation (an affiliated company under common control with Sharon). The $10,340,000 increase in debt costs resulted from increased short-term and long-term debt (including $6,156,000 from the $48 million of short-term debt borrowed in February 1979 to purchase additional common stock of UV Industries, Inc. and $3,957,000 from the Interim Note issued in November 1979 to purchase the net assets of UV) and from increases in the prime rate.

The decrease in the effective income tax rate (42.4% in 1979 compared with 45.3% in 1978) was caused by a 2% decrease in the federal tax rate and to increased permanent tax deductions relative to pretax earnings.

The $21,644,000 increase in net earnings in 1979 resulted from the foregoing and from a $5,133,000 increase in income on Sharon's investment in UV Industries, Inc.

Overall steel demand declined in the last half of 1979 as a result of uncertain economic conditions and the decrease in automotive demand. Sharon's shipments of steel products in the fourth quarter of 1979 decreased approximately 19% compared with the fourth quarter of 1978 and decreased approximately 13% compared with the third quarter of 1979. The decrease in steel shipments resulted in a decrease in net sales ($122,528,000 in the fourth quarter of 1979 compared with $131,720,000 in the fourth of 1978 and $141,476,000 in the third quarter of 1979) and a decrease in consolidated operating profits ($2,532,000 in the fourth quarter in 1979 compared with $19,477,000 in the fourth quarter of 1978 and $18,368,000 in the third quarter of 1979).

1978 Compared with 1977

| | Net Sales | | | Operating Profits | | |
|---|---|---|---|---|---|---|
| | 1978 | 1977 | Percent Change | 1978 | 1977 | Percent Change |
| | (dollars in thousands) | | | | | |
| Steel | $ 436,735 | 359,333 | +22% | $ 59,468 | 22,283 | +167% |
| Coal | 11,223 | 17,230 | -35% | 5,096 | 8,384 | - 39% |
| Other segments | 40,275 | 37,812 | + 7% | 1,769 | 2,562 | - 31% |
| Consolidated | $ 488,233 | 414,375 | +18% | $ 66,333 | 33,229 | +100% |

The increases in steel sales and steel operating profits were caused primarily by higher industry prices on steel products coupled with a 9.5% increase in Sharon's steel product shipments resulting from improved overall steel demand; the increase in steel operating profits was partially offset by increases in operating costs resulting from higher labor costs, increased maintenance and repair costs and inflationary pressures on material and energy costs. The decreases in coal sales and coal operating profits were primarily the result of a 33% decrease in shipments, principally caused by the lengthy coal strike that lasted from December 1977 through late March 1978, and of slightly lower coal selling prices. The increase in other segments' dollar sales in 1978 was caused primarily by higher selling prices and increased shipments of steel strapping, partially offset by a decrease in shipments of welded stainless steel pipe and tubing. The decrease in other segments' operating profits was caused primarily by the decreased shipments and higher manufacturing costs for welded stainless steel pipe and tubing, partially offset by improvements in steel strapping.

| Nonoperating items | 1978 | 1977 |
|---|---|---|
| | (in thousands) | |
| Nonoperating revenues | $( 4,795) | ( 3,977) |
| General corporate expenses | 13,143 | 12,736 |
| Debt costs | 4,561 | 4,382 |
| Nonoperating expenses, net | $ 12,909 | 13,141 |

The $818,000 increase in nonoperating revenues resulted primarily from increased interest and dividend income and from $418,000 of repayments to be made by certain officers and directors of Sharon, partially offset by increased losses on retirement of properties. The $407,000 increase in general corporate expenses was caused primarily by increased employment costs, partially offset by decreased professional fees. The $179,000 increase in debt costs was due to increased long-term debt and increases in the prime rate, partially offset by the elimination of short-term borrowings.

The increase in the effective tax rate to 45.3% from 42.8% was caused primarily by increased pretax earnings relative to permanent tax deductions, partially offset by a $1,410,000 increase in investment tax credits.

Prior Years

The 13% increase in sales in 1977 was caused primarily by higher prices on steel products coupled with improvements in product mix, partially offset by a 2.8% decrease in steel shipments. The 51% increase in net earnings in 1977 reflected the improved steel operations and the $5,283,000 increase in equity in net earnings of UV Industries, Inc. resulting from Sharon's increased investment in UV (a 22% average holding compared with 9% reflected in the 1976 earnings contribution), partially offset by the increase in nonoperating expenses and the higher effective tax rate.

The 38% increase in sales in 1976 was caused primarily by a 48% increase in shipments of steel products from the depressed level of 1975; the improvement in steel demand reflected the economic recovery that started late in 1975. The 69% increase in net earnings in 1976 resulted from the improved steel operations, from increased coal operations (reflecting the first full year of coal sales) and from $3,047,000 of equity in net earnings of UV Industries, Inc., partially offset by increases in manufacturing costs and by $1,011,000 of expenses, net of taxes, relating to Sharon's proposed exchange offer for common stock of Foremost-McKesson, Inc.

Additional Information Relating to 1975 and 1974

In connection with litigation between Sharon and Foremost-McKesson, Inc. (Foremost) in the Federal District Court for the Northern District of California (the Court), a preliminary injunction entered in September 1977 prohibits Sharon from making any further acquisitions of Foremost securities or attempting to gain control of Foremost until Sharon has made certain corrections and disclosures to its financial statements for 1974 and 1975 and for the first quarter of 1976. In May 1977 Sharon restated its financial statements for 1974 and 1975 in its Annual Report on Form 10-K and its Annual Report to shareholders for 1976, and those restatements were in partial compliance with the requirements of the preliminary injunction.

In order to effect full compliance with the preliminary injunction, Sharon agreed with the Court to make the disclosures set forth below with respect to the six accounting issues addressed by the preliminary injunction (which also relate to NVF Company in most instances). In addition, Sharon has included its views concerning each of the issues. Three of the issues, items 1 through 3 below, were restated by Sharon in May 1977, as explained in note 2 to the consolidated financial statements included in Sharon's Annual Report on Form 10-K and its Annual Report to Shareholders for 1976. The remaining three issues, items 4 through 6 below, are not restated because it would be improper to do so; however, the following disclosures are being made.

1. The preliminary injunction stated that: "The approximately $4,737,000 of Sharon's reported pretax earnings for 1975, and approximately $4,074,000 of those of NVF, [which] resulted not from operations but from changes in Sharon's LIFO accounting procedures by means of which Sharon revalued certain of its iron ores".

In 1975 Sharon received and used for the first time a blend of iron ores known as "TPV", which consisted of a new ore from the Tilden venture and two other ores that had been used by Sharon in 1974 and prior years. TPV was treated as a new item for last-in, first-out (LIFO) inventory accounting purposes in 1975. In some respects that treatment was inconsistent with Sharon's past practices respecting similar blends of iron ore. In May 1977, Sharon restated its 1975 financial statements to treat only the Tilden portion of the TPV blended ore as a new LIFO item, which resulted in a $4,929,000 decrease in pretax earnings for 1975.

2. The preliminary injunction stated that: "The premature year-end recognition of profit on shipments of steel to an affiliated company, The Steel Corporation of Texas, [which] resulted in inflating reported pretax earnings for 1975 by approximately $1,044,000".

Sharon, an 86%-owned subsidiary of NVF, sells steel and other products to The Steel Corporation of Texas (SCOT), a 51%-owned subsidiary of NVF, for SCOT's steel service center and distribution warehouses located in the southwestern United States. Such sales are made in the ordinary course of business at list prices less a distributor discount. Sharon's income on these sales is recognized when the products are shipped to SCOT, and Sharon charges interest to SCOT on open accounts receivable. When Sharon's financial statements are consolidated with NVF and subsidiaries (including SCOT), Sharon's profit on sales to SCOT not realized through sales by SCOT to third parties is eliminated from NVF's earnings. In addition, SCOT acts as a sales representative for Sharon's products in the southern and western United States, and receives normal sales commissions from Sharon for such services.

Sharon and its independent accountants believe that Sharon has properly accounted for its sales to SCOT in accordance with generally accepted accounting principles. In May 1977, however, Sharon restated its 1975 financial statements with respect to certain shipments of steel to SCOT in late 1975 because the Court found that such shipments to SCOT were "in excess of SCOT's current needs or ability to transship in its normal stream." This restatement of the sales to SCOT, amounting to $1,357,000 out of the total sales to SCOT in 1975 of $28,233,000, resulted in a $476,000 reduction in pretax earnings for 1975.

3. The preliminary injunction stated that: "The Sharon incorrect application of Sharon's LIFO accounting method in classifying and valuing quantities of purchased stainless steel, purchased steel scrap, and iron ore, [which] increased Sharon's 1975 reported pretax earnings by approximately $4,314,000, and NVF's by approximately $3,710,000".

Sharon's LIFO inventories for 1974 and 1975 incorrectly included certain stainless steel of a division which values inventories using the first-in, first-out (FIFO) valuation method. Also, certain purchases of steel scrap in late 1975 were misclassified in Sharon's LIFO inventory, and Sharon's accounting policy was not consistently applied with respect to the LIFO treatment of a new iron ore first purchased in 1974. In May 1977 Sharon restated its financial statements for

1974 and 1975 to properly account for these items, which resulted in a $3,640,000 increase in pretax earnings for 1974 and a $4,282,000 decrease in pretax earnings for 1975.

4. The preliminary injunction stated that: "The approximately $4,428,000 of Sharon's reported pretax earnings for 1975, and approximately $3,808,000 of those of NVF, [which] resulted not from operations but from management of Sharon's inventory levels so as to increase the levels of certain items and decrease the levels of others".

Management of inventories can affect earnings because of the effect resulting from the LIFO accounting impact of changes in inventory levels. Sharon monitors and controls its inventory levels in order to achieve a number of business objectives, one of which is to reduce the fluctuations in year-to-year earnings that would result from uncontrolled increases or decreases in inventory levels. Because of the many factors involved in decisions to purchase, manufacture, consume or sell inventories, Sharon does not believe it is possible to state what its 1975 earnings would have been if inventory management had not been one of its business objectives in 1975. The preliminary injunction, however, as set forth above, estimated that the effect of Sharon's inventory management in 1975 was to increase reported pretax earnings in 1975 by approximately $4.4 million.

5. The preliminary injunction stated that: "The inclusion in reported pretax earnings for 1975 of approximately $965,000 for Sharon and $830,000 for NVF, [which] resulted from the recovery and inclusion in inventory of quantities of Sharon iron ore previously written off as unusable".

The iron ore in question had been purchased in previous years but, because it was at the bottom of a large pile of ore at Sharon's steelmaking plant (and indeed was largely below ground level because of the weight of ore on top of it), the iron ore was regarded as unrecoverable and had been written off in previous years. In 1975, however, Sharon stopped stockpiling ore at its steelmaking plant and used up its ore stockpile. This ore at the bottom of the pile was then bulldozed up and used in the blast furnaces, even though it was of inferior quality. No cost for this ore was charged to operations in 1975 because the cost associated with this one time nonrecurring item already had been absorbed in earlier years. If the original cost of this ore had been charged to operations in 1975, the preliminary injunction estimated that Sharon's pretax earnings in 1975 would have been reduced by approximately $965,000.

6. The preliminary injunction stated that: "Sharon's error in first quarter 1976 in incorrectly applying its LIFO accounting method to the increase in its LIFO inventory reserve requirement [which] failed to charge approximately $10 million to the cost of sales, by means of which Sharon reported pretax profits of approximately $5,652,000 instead of a loss of approximately $5,278,000 actually sustained during that quarter, and resulting also in NVF's reporting for the same quarter pretax profits of approximately $5,079,000 instead of a loss of approximately $4,321,000".

In its application of LIFO inventory accounting to interim periods within a year, Sharon follows the practice of estimating year-end inventory levels and ratably accruing the resulting LIFO effect during each quarter of the year. Sharon's independent accountants have confirmed that this practice is in accordance with gererally accepted accounting principles. The preliminary injunction, however, directed Sharon to disclose that for the first quarter of 1976, pretax

earnings ($6.1 million as reported) would have been eliminated and a pretax loss of $4.8 million would have resulted if Sharon had reflected in its reported results for that quarter the full LIFO effect of changes in inventory levels during that quarter.

The decrease in first quarter 1976 pretax earnings contemplated by the preliminary injunction, amounting to approximately $10.9 million, would be completely offset by increases in the pretax earnings for the other three quarters, leaving full-year 1976 pretax earnings unchanged. Approximately $9.8 million of this unrealized LIFO expense from the first quarter of 1976 would have been returned to income in the fourth quarter of 1976.

## ITEM 3. PROPERTIES

Information pertaining to Sharon's operating facilities is included under Item 1 "Business". Sharon's corporate headquarters building, consisting of 65,000 sq. ft. of office space and located in Hubbard Township, Ohio, is leased from a Sharon pension trust under a 30-year lease expiring in 1997. Except as noted above and in Item 1, all of Sharon's properties are owned by it. Management believes that Sharon's properties are generally well-maintained and in good operating condition and are adequate for present and anticipated use.

## ITEM 4. PARENTS AND SUBSIDIARIES

| | State Or Other Jurisdiction of Incorporation or Organization | Percentage of Voting Securities Owned at December 31, 1979 |
|---|---|---|
| Parent of Sharon (1) | | |
| NVF Company | Delaware | 86% |
| Subsidiaries of Sharon * | | |
| Carpentertown Coal & Coke Company | Pennsylvania | 100% |
| Maccomber Incorporated (Inactive) | Ohio | 100% |
| Sharon Building and Land Corporation | Delaware | 100% |
| Sharonsteel Products Company | Pennsylvania | 100% |
| Union Steel Corporation | Delaware | 100% |
| Summit Systems, Inc. | Delaware | 100% |
| Alaska Gold Company | Delaware | 85% |
| Arava Exploration Company | Colorado | 100% |
| Kennet Company Limited | Bermuda | 100% |
| Mueller Brass Co. | Michigan | 100% |
| Mueller Industrial Realty Co. | Michigan | 100% |
| Streamline Copper & Brass Ltd. | Dominion of Canada | 100% |
| United States Fuel Company | Nevada | 100% |
| Ussram Exploration Company | Maine | 100% |
| U.S.S. Lead Refinery, Inc. | Maine | 100% |
| United States Smelting Refining and Mining Company | Delaware | 100% |
| Utah Railway Company | Utah | 100% |
| Washington Mining Company | Maine | 100% |

| | | |
|---|---|---|
| White Knob Mining Company | Idaho | 100% |
| King Coal Company (subsidiary of United States Fuel Company) * | Utah | 100% |
| Itawamba Industrial Gas Co. Inc. (subsidiary of Mueller Brass) * | Mississippi | 100% |

(1) At February 29, 1980 Security Management Corp. was the owner of record of 12,390,472 shares of NVF common stock. All of the stock of Security Management Corp. is owned by Mr. Victor Posner (Chairman of the Board of Security Management Corp., NVF and Sharon), a foundation created by Mr. Victor Posner and trusts created for the benefit of Mr. Victor Posner and his children (including his son, Steven Posner, who is a director and officer of NVF and Sharon). In addition, Mr. Victor Posner individually owns 10,991,243 shares of NVF common stock (including shares held under NVF's Stock Savings Plan and Employees' Thrift Plan), 4,994,103 shares of NVF common stock subscribed under an installment purchase agreement, and options to purchase 2,101,354 shares of NVF common stock under NVF's Stock Option Plan. All shareholdings in NVF set forth herein have been adjusted for aggregate stock distributions declared through March 1980.

At February 29, 1980 Mr. Victor Posner and Security Management Corp. owned an aggregate of approximately 39.8% (39.3% fully diluted) of the common stock of NVF on a fully exercised basis. This assumes that the shares subscribed for under the installment purchase agreement are fully issued and that the stock options are fully exercised. The common stock ownership of Mr. Victor Posner and Security Management Corp. represented approximately 32.8% of NVF's outstanding common stock at February 29, 1980.

## ITEM 5. LEGAL PROCEEDINGS

In February 1975 Howell Industries, Inc. (Howell) filed suit against Sharon in the United States District Court for the Eastern District of Michigan. In its original four-count complaint Howell alleged that during 1973 and 1974 Sharon breached a contract for the sale of steel to Howell. The present and future damages sought by Howell in its original complaint were $12,766,000. Sharon has countersued Howell for breach of the same contract, claiming present and future damages of approximately $8,200,000. In 1976 Howell filed an amended complaint, and further amendments to the complaint were filed in 1977. These amendments added three additional counts, one of which alleges violation of the federal antitrust laws under the Robinson-Patman Act and seeks treble damages in a total amount of $9,000,000, and the other two counts seek an additional $1 million in damages for breach of contract. Discovery relative to all claims by Howell is presently in progress, and the case is not expected to be tried in 1980. Sharon intends to contest vigorously the allegations of all counts under Howell's complaint. It is the present view of Sharon, based on the opinion of counsel for Sharon in this matter as to the limit of the potential exposure under the original complaint referred to above, that the final outcome of the claims presented in the original complaint will not have a material adverse effect on Sharon's consolidated financial position. With regard to the amendments to the original complaint, such counsel has not yet had an opportunity to complete discovery of the facts to an extent sufficient to arrive at an opinion as to the potential exposure of Sharon thereunder, although such counsel has expressed doubt that the customer can establish "competitive injury" as required under the Robinson-Patman Act. Based on the foregoing, it is the present view of Sharon that the final outcome of this suit will not have a material adverse effect on Sharon's consolidated financial position.

In April 1979, at the insistence of the trustees under the indentures for certain of UV's debt issues, UV and each of such trustees executed a document entitled "Agreement for Treatment of Certain Obligations of UV" dated as of April 27, 1979 (the UV Debt Agreement), which has become the subject of most of the litigation described below. Under the terms of the UV Debt Agreement, on April 30, 1979 UV deposited $155 million in cash or permitted interest-bearing investments (valued at cost to UV) in separate accounts (the "Accounts") with a number of banks. The UV Debt Agreement states that UV is required to maintain the Accounts so long as UV has outstanding certain issues of indebtedness, including UV's 5-3/8% Subordinated Debentures Due 1979-1995 (the 5-3/8% Debentures), 9-1/4% Senior Subordinated Notes Due 1987 (the 9-1/4% Notes) and 8-7/8% Sinking Fund Debentures Due 1982-1997 (the 8-7/8% Debentures) (collectively, the UV Debentures and Notes), and so long as UV is also guarantor of certain lease obligations of Mueller Brass Co., including the 6-1/4% Industrial Development Revenue Bonds (Mueller Brass Co. Project), Series A, issued by the City of Port Huron (the 6-1/4% Bonds). The UV Debt Agreement additionally states that the amounts maintained in the Accounts may be reduced by the principal amount of any UV Debentures and Notes or lease obligations of Mueller surrendered to the respective trustees for cancellation and retirement, and that the UV Debt Agreement may be terminated when all of such indebtedness has been paid.

On December 18 and 19, 1979 a putative class action was commenced against UV and Sharon, respectively, in the Supreme Court of New York on behalf of all holders of the UV Debentures and Notes. On March 21, 1980 plaintiff in this action served an amended complaint. In this complaint the plaintiff no longer purports to sue on behalf of the holders of the 8-7/8% Debentures but does purport to sue on behalf of the holders of UV common stock. The amended complaint alleges that the sale of UV's assets to Sharon was illegal and ultra vires, that it was wrongfully completed without shareholder authorization or, alternatively, that if such authorization was obtained, it was obtained fraudulently. The amended complaint further alleges violations of Maine law and the provisions of the indentures with respect to the 5-3/8% Debentures and the 9-1/4% Notes that allegedly resulted from UV's entering upon a process of liquidation and dissolution and making a distribution in partial liquidation to shareholders pursuant thereto without making payment of the entire principal and interest on the 5-3/8% Debentures and the 9-1/4% Notes to the owners thereof and from UV's transferring to Sharon its obligations with respect to the 5-3/8% Debentures and the 9-1/4% Notes. The amended complaint seeks a declaratory judgment that the sale of UV's assets to Sharon was illegal and ultra vires or, alternatively, that shareholder authorization for such sale was fraudulently obtained, an order enjoining UV and Sharon from completing the liquidation of UV, transferring any assets of UV, and completing the sale to Sharon, an order rescinding the sale of UV's assets to Sharon; alternatively, a declaration that UV had no right to make an initial liquidating dividend of $18 per share of UV common stock in April 1979 or any other liquidating dividend without first making payment to the holders of the 5-3/8% Debentures and 9-1/4% Notes; alternatively, an order requiring UV and Sharon to pay the principal amount of the 5-3/8% Debentures and 9-1/4% Notes plus interest at market rates from the date of the $18 per share distribution; and damages in an unspecified amount.

On December 24, 1979 The Chase Manhattan Bank, N.A. (Chase), as trustee for the 5-3/8% Debentures and the 6-1/4% Bonds, United States Trust Company of New York (U.S. Trust), as trustee for the 9-1/4% Notes, and Manufacturers Hanover Trust Company (Manufacturers Hanover), as trustee for the 8-7/8% Debentures, each gave notice to UV alleging that certain events has

occurred under the respective indentures for each of these debt issues by reason of the sale of its assets to Sharon which, if unremedied within time periods of from 30 to 90 days, would allegedly result in events of default under such indentures and entitle the trustees or stated percentages of the holders of such debt issues to accelerate the maturities thereof. On December 24, 1979 Chase also commenced an action against Sharon and UV in the Supreme Court of New York with respect to the 5-3/8% Debentures and 6-1/4% Bonds alleging violations of the provisions of the UV Debt Agreement that allegedly resulted from UV's failure to redeem these debt issues or to cause the satisfaction and discharge of the respective indentures for these debt issues or to come forward with a proposal to do so. The complaint also alleges violations of the provisions of the respective indentures under which this debt was issued and violations of Maine law that allegedly resulted from the payment of UV's initial liquidating distribution in April 1979. The complaint seeks to have these debt issues redeemed at the redemption prices specified in the respective indentures, the establishment of a trust for all assets and moneys received by UV in the course of its liquidation pending such redemption, specific performance of the UV Debt Agreement and the establishment of a trust for the assets acquired by Sharon from UV. On December 24, 1979 U.S. Trust also commenced an action against Sharon and UV in the Supreme Court of New York with respect to the 9-1/4% Notes essentially making the same allegations and seeking the same relief as in the Chase action described above. Sharon and UV have moved to dismiss or stay each of the above-mentioned proceedings in the Supreme Court of New York on the grounds that the issues would be more appropriately resolved in the suit described below that is proceeding in the U.S. District Court for the Southern District of New York. On March 21, 1980 Manufacturers Hanover also commenced an action against Sharon and UV in the Supreme Court of New York with respect to the 8-7/8% Debentures. This action makes essentially the same allegations and seeks essentially the same relief as in the Chase action described above.

On December 24, 1979 Sharon filed an action against Chase, U.S. Trust and Manufacturers Hanover in the United States District Court for the Southern District of New York with respect to the UV Debentures and Notes alleging that the UV Debt Agreement is of no force and effect and is unenforceable against Sharon or UV because the defendants coerced UV into executing such Agreement, such Agreement was an improper attempt to amend and supplement the respective indentures for the UV Debentures and Notes in contravention of such indentures and not in conformity with the Trust Indenture Act of 1939, such Agreement lacks consideration given by the defendants and such Agreement was not intended to apply to a successor corporation who is not engaged in a plan of liquidation and who has assumed the obligations under the UV Debentures and Notes. The complaint alleges that each of the indentures provides for the assumption of UV's respective obligations by a successor corporation which purchases all or substantially all the property of UV and that such succession shall be evidenced by supplemental indentures which Sharon has delivered to each of the defendants who have wrongfully refused to execute them. On January 18, 1980 Sharon amended its action to include essentially the same allegations with respect to the 6-1/4% Bonds that were made concerning the Debentures and Notes and to also allege that the defendants have been engaged in unlawful agreements, combinations and conspiracies with respect to the matters described above, among others, in restraint of interstate commerce in the provision of credit, in violation of the Sherman Act. The amended complaint seeks an order declaring the UV Debt Agreement of no force and effect and unenforceable against Sharon or UV, permitting the withdrawal of the $155 million from the Accounts, ordering each of the defendants to execute and deliver to Sharon the respective supplemental indentures, declaring that Sharon recover

the damages (and on the antitrust claim, treble the damages) determined to have been sustained by it as a result of defendants' unlawful conduct and ordering that a permanent injunction be issued enjoining the defendants from further violations of the antitrust laws.

On January 31, 1980 Manufacturers Hanover served an answer denying the substantive allegations of Sharon's amended complaint and asserting counterclaims against Sharon and, on March 3, 1980, served a third-party complaint against UV with respect to the 8-7/8% Debentures, with such counterclaims and third-party complaint containing substantially the same allegations and claims for relief as the actions filed by Chase and U.S. Trust against Sharon and UV. On February 15, 1980 a group of institutional investors claiming to own approximately 70% of the outstanding 8-7/8% Debentures moved for leave to intervene in the lawsuit to assert claims against Sharon and UV on behalf of all the holders of these Debentures. On March 12, 1980 their motion was granted. The intervenors' complaint seeks essentially the same declaratory, injunctive and other relief sought by Manufacturers Hanover in its counterclaims and third-party complaint, except that it does not assert claims or seek relief with respect to the UV Debt Agreement. On March 21, 1980 the intervenors moved for summary judgment.

On February 7, 1980 Chase moved (and U.S. Trust subsequently joined in such motion) to dismiss Sharon's amended complaint on the grounds that it fails to state a claim upon which relief can be granted and that UV is an indispensible party whose inclusion in the action would oust the court of jurisdiction. That motion is still pending.

On February 18, 1980 Chase moved (and U.S. Trust and Manufacturers Hanover subsequently joined in such motion) for a temporary restraining order and preliminary injunction directing Sharon to hold in trust all assets acquired from UV for the benefit of holders of UV's public indebtedness and prohibiting Sharon from: withdrawing any funds held by depositary banks under the UV Debt Agreement; conveying, transferring or otherwise disposing of any other assets or property acquired from UV other than in the ordinary course of business; and failing to maintain all assets and properties acquired from UV in any manner other than that specified in the agreement under which Sharon purchased UV's assets. On February 20, 1980 Sharon filed both its opposition to this motion for injunctive relief and a cross-application for an order directing Chase to permit Sharon to withdraw $24,491,100 from the $155,000,000 in the Accounts being maintained under the UV Debt Agreement . This sum was sought on the ground that even if the UV Debt Agreement were valid, it would not warrant the holding of more than $130,508,900, which was the principal amount outstanding at December 31, 1979. On March 12, 1980 the Court denied the defendants' motion for injunctive relief and denied Sharon's cross-application as well.

Securities and Exchange Commission Private Investigation

On January 22, 1980 the Securities and Exchange Commission (SEC) issued an investigative order (the Order) in the matter of Sharon, NVF Company, Pennsylvania Engineering Corporation (PECOR) and Victor Posner, directing that a private investigation be made under the federal securities laws. The Order provides in pertinent part as follows:

"A. Members of the staff of the Commission have reported information to the Commission which tends to show that:

1. During the period May 1, 1979 to the present, certain persons purchased shares of common stock of NVF and Sharon on the basis of material, non-public information concerning, among other things, Sharon's ownership of other securities.

2. During the period January 1, 1978 to the present, Sharon, NVF, PECOR, their officers, directors and employees, and other persons, in filings with the Commission, and otherwise, have made false or misleading statements or have omitted to state material facts necessary, in order to make the statements made, in light of the circumstances under which they were made, not misleading, including, among other things:

a. Transactions, arrangements or understandings between Sharon and its affiliates;
b. Arrangements, understandings or intentions with respect to the acquisition of securities of other issuers;
c. Intended use of proceeds of public offerings;
d. The impact of environmental regulations;
e. The interest of management in certain transactions; and
f. Investment holdings and activities.

* * *

B. The Commission, has considered the staff's report, and has deemed such acts and practices described therein, if true, to be in possible violation of Section 17(a) of the Securities Act of 1933, and Sections 7,10(b), 13(a), and 14(a) of the Exchange Act of 1934, and Rules 10b-5, 13a-1, 14a-3 and 14a-9 and Regulations U and X thereunder.

C. Members of the staff have reported information to the Commission concerning investment activities of Sharon and [NVF and PECOR]. Such investment activities raise questions as to (1) the status of Sharon and [NVF and PECOR] under the Investment Company Act of 1940; and (2) whether the Commission should prescribe additional rules or regulations regarding the disclosure of investment activities of companies that are not registered as investment companies with the Commission.

In light of the matters set forth above, the Commission finds it necessary and appropriate and hereby

ORDERS, pursuant to the provisions of Sections 8(e) and 20(a) of the Securities Act of 1933, Section 21(a) of the Securities Exchange Act of 1934, and Section 42(a) of the Investment Company Act of 1940, that a private examination and investigation be made to determine whether the aforesaid persons or any other persons have engaged or are about to engage in the aforesaid acts and practices or acts and practices of similar purport or object, and to determine the matters set forth in Paragraph II C above, ..."

Representatives of Sharon met with representatives of the staff of the SEC's Enforcement Division (the Staff) promptly after receipt of the Order in an attempt to ascertain from the Staff the specific respects in which the Staff believed Sharon's previous filings with the SEC may have misstated or omitted to state material facts in possible violation of the acts and rules referred to in the Order. In that meeting the Staff's representatives said they would not provide Sharon any specific information regarding any such possible misstatements or omissions. Subsequent to that meeting, the Staff issued two subpoenas for documentary information, with which Sharon is complying, and has taken oral testimony of certain individuals, including certain officers and directors of Sharon and NVF.

Sharon was informed in March 1980 that the United States Attorney for the Southern District of New York is presently conducting a grand jury investigation of potential criminal tax violations in connection with Sharon, NVF, certain officers of Sharon and NVF, and certain affiliated companies. Sharon has been unable to determine the scope of the grand jury investigation.

Sharon is involved in other litigation as either plaintiff or defendant as a result of claims that arise in the ordinary course of its business. Sharon does not believe any of this other litigation will have a material adverse effect on its consolidated financial position. With respect to environmental proceedings, see Item 1 "Environmental Matters".

## ITEM 6. INCREASES AND DECREASES IN OUTSTANDING SECURITIES AND INDEBTEDNESS

### A. EQUITY SECURITIES

Common Stock, $1 Par Value

| | | |
|---|---|---|
| Shares outstanding at December 31, 1978 | 7,474,599 | |
| Shares issued under two-for-one stock split-up distributed July 10, 1979 (a) | 29,898,396 | |
| Purchase of treasury shares | ( 5,800) | |
| Shares outstanding at December 31, 1979, net | 37,367,195 | (b) |
| Shares to be issued under two-for-one stock split-up declared in January 1980 | 37,367,195 | (c) |
| Shares outstanding per the balance sheet, net | 74,734,390 | (c) |

(a) Under the Securities Act of 1933, stock dividends and stock splits are exempt from registration.
(b) Not adjusted for subsequent stock distributions.
(c) Not adjusted for the effect of the 10% stock distribution declared in March 1980.

### B. INDEBTEDNESS

| | |
|---|---|
| Long-term debt outstanding at December 31, 1978 | $ 52,462,000 |
| Additions to long-term debt in 1979: | |
| Interim note issued on November 26, 1979 in connection with the acquisition of the net assets of UV Industries, Inc. | 517,754,000 |
| Sharon's beneficial interest in the interim note | ( 116,385,000) |
| 14-1/4% subordinated sinking fund debentures due 1999 (1) | 60,000,000 |
| Debt of UV Industries, Inc. assumed by Sharon | 131,446,000 |
| Other | 2,495,000 |
| Repayments of long-term debt | ( 8,737,000) |
| Long-term debt outstanding at December 31, 1979 | $639,035,000 |

Changes in long-term debt during the first three quarters of 1979 were previously disclosed in Sharon's Form 10-Qs for the first three quarters of 1979. Changes in the fourth quarter of 1979 were as follows:

| | |
|---|---|
| Long-term debt outstanding at September 30, 1979 | $ 47,900,000 |
| Additions to long-term debt: | |
| Interim note | 517,754,000 |
| Sharon's beneficial interest in the interim note | ( 116,385,000) |
| 14-1/4% subordinated sinking fund debentures due 1999 (1) | 60,000,000 |
| Debt of UV Industries, Inc. assumed by Sharon | 131,446,000 |
| Other | 247,000 |
| Repayments of long-term debt: | ( 1,927,000) |
| Long-term debt outstanding at December 31, 1979 | $639,035,000 |

(1) Registered under the Securities Act of 1933.

In February 1979 Sharon borrowed $48 million under two $24 million short-term notes at 120% of prime, payable on demand, for the purpose of acquiring additional common stock of UV Industries, Inc. In June 1979 the interest rate on these short-term notes was renegotiated to 115% of prime.

In October 1979 Sharon issued $60 million principal amount of 14-1/4% Subordinated Sinking Fund Debentures Due 1999 at an offering price of 95-1/4%. The issue was underwritten by a syndicate represented by Paine, Webber, Jackson & Curtis Incorporated. The proceeds from the issuance of the Debentures, amounting to $55,650,000 after underwriters' discounts, were added to Sharon's working capital, and were subsequently used primarily for investments in equity securities. Interest on the Debentures is payable on April 15 and October 15, commencing April 15, 1980. The Debentures are redeemable at their face amount through the operation of a sinking fund commencing October 15, 1989 in an annual amount of $4,500,000 calculated to retire 75% of the Debentures prior to maturity. On and after October 15, 1984 the Debentures are redeemable at Sharon's option, in whole at any time or in part from time to time, at an initial redemption price of 105%, declining thereafter to 100% on and after October 15, 1989.

On November 26, 1979 Sharon and UV Industries, Inc. (UV) entered into an agreement pursuant to which Sharon acquired all the assets of UV in consideration of an Interim Note (which matures on September 30, 1980) in the amount of $517,754,000 and the assumption by Sharon of all of UV's liabilities (except for certain tax liabilities) existing on such date. By the terms of the agreement, UV will exchange the Interim Note for $106,596,000 in cash and $411,158,000 aggregate principal amount of Sharon's Subordinated Sinking Fund Debentures Due 2000, bearing interest at 15-1/2% per annum for the first two years and 13-1/2 per annum thereafter, provided Sharon's registration statement covering the Debentures is effective by September 30, 1980. On February 7, 1980 Sharon filed a registration statement with the Securities and Exchange Commission to register the Debentures under the Securities Act of 1933, but such registration statement has not yet become effective. If Sharon's registration statement is not effective by September 30, 1980, the Interim Note will be payable in cash. Sharon believes the registration statement covering the Debentures will be effective prior to September 30, 1980, although there can be no certainty of this. The Interim Note bears interest from November 26, 1979 at the rate of 10% per annum through March 15, 1980, at the rate of 15% per annum thereafter through June 30, 1980, and thereafter at the rate of 13-1/2% per annum. In furtherance of UV's Plan of Liquidation and Dissolution, following the exchange the UV Liquidating Trust will distribute all such cash and Debentures to the holders of beneficial interests in the UV Liquidating Trust in the ratio of $7 in cash and $27

principal amount of Debentures for each of the 15,228,057 outstanding units of beneficial interest in the UV Liquidating Trust, including the 3,423,094 units held by Sharon.

At December 31, 1979, the UV long-term debt assumed by Sharon in the above-mentioned transaction consisted of $66,775,000 principal amount of 8-7/8% sinking fund debentures due 1997, $16,035,000 principal amount of 9-1/4% senior subordinated notes due 1987, $14,219,000 principal amount of 5-3/8% subordinated sinking fund debentures due 1995 (all registered under the Securities Act of 1933) and various other debt issues consisting primarily of industrial and pollution control revenue bonds totaling $34,417,000. See Item 5 "Legal Proceedings" for information concerning legal actions instituted with respect to certain of the UV debt issues assumed by Sharon.

## ITEM 7. CHANGES IN SECURITIES AND CHANGES IN SECURITY FOR REGISTERED SECURITIES

None

## ITEM 8. DEFAULTS ON SENIOR SECURITIES

None - See Item 5 "Legal Proceedings" with respect to default allegations made by the trustees under certain of the UV debt issues assumed by Sharon.

## ITEM 9. APPROXIMATE NUMBER OF EQUITY SECURITY HOLDERS AT DECEMBER 31, 1979

| | |
|---|---|
| Common Stock, $1 Par Value | 2,339 |

## ITEM 10. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

At Sharon's Annual Meeting of Stockholders on December 19, 1979, the stockholders voted on a proposal that Sharon's Articles of Incorporation be amended to increase the number of authorized shares of common stock to 100,000,000 shares. The stockholders approved this proposal by a vote of 35,566,057 shares in favor of the proposal and 324,104 shares opposed.

## ITEM 11. INDEMNIFICATION OF DIRECTORS AND OFFICERS

There has been no change in the information previously suppplied by Sharon with respect to this Item from that set forth in Sharon's Annual Report on Form 10-K filed with the Commission for the year ended December 31, 1978.

## ITEM 12. FINANCIAL STATEMENTS AND EXHIBITS FILED

### (A) FINANCIAL STATEMENTS AND EXHIBITS

An index to financial statements is included with the financial statements presented elsewhere herein

The financial statements of the parent company have been omitted since Sharon is primarily an operating company and the combined total of outside indebtedness and minority interest of the subsidiaries included in the consolidated financial statements is not significant in relation to consolidated assets. All other schedules are omitted because either they are not applicable or the required information is shown in the financial statements or notes thereto. Financial statements of Burnup & Sims Inc., an investment accounted for using the equity method, have been omitted because such investment does not constitute a "significant subsidiary".

EXHIBITS

1. Indenture dated as of October 15, 1979 between Sharon and Mellon Bank, N.A., as trustee, relating to Sharon's $60 million principal amount of Subordinated Sinking Fund Debentures Due 1999, incorporated herein by reference to Sharon's Registration Statement on Form S-7 (No. 2-65316), Exhibit 2.2.
2. Agreement for purchase of assets between Sharon and UV Industries, Inc. dated as of November 26, 1979, incorporated herein by reference to Sharon's Form 8-K for November 1979, Exhibit A.

(B) REPORTS ON FORM 8-K

During the three months ended December 31, 1979 Sharon filed the following Form 8-K report: Dated December 11, 1979 with respect to "Item 2 - Acquisition or Disposition of Assets".

## PART II

Items 13 through 15 of this report will be filed by amendment hereto, or by the filing of a definitive proxy statement pursuant to Regulation 14-A, on or before April 29, 1980.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

SHARON STEEL CORPORATION

Dated: March 28, 1980

By: _____
W. N. Merchant
Vice President - Finance

Price Waterhouse & Co.

600 GRANT STREET
PITTSBURGH, PENNSYLVANIA 15219
412-355-6000

March 28, 1980

To the Board of Directors and
Stockholders of
Sharon Steel Corporation

We have examined the financial statements listed in the accompanying index of Sharon Steel Corporation and its subsidiaries as of December 31, 1979 and 1978 and for the years then ended. Our examinations were made in accordance with generally accepted auditing standards and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances. We did not examine the 1978 financial statements of UV Industries, Inc., an investment accounted for under the equity method, which investment and equity earnings represented 13% of consolidated total assets and 21% of consolidated net earnings for 1978. These statements were examined by other independent accountants whose report thereon has been furnished to us, and our opinion expressed herein, insofar as it relates to the amounts included for UV Industries, Inc. in 1978, is based solely upon the report of the other independent accountants.

In our opinion, based upon our examinations and the report of other independent accountants in 1978, the financial statements examined by us present fairly the financial position of Sharon Steel Corporation and its subsidiaries at December 31, 1979 and 1978 and the results of their operations and the changes in their financial position for the years then ended in conformity with generally accepted accounting principles consistently applied.

PRICE WATERHOUSE & CO.

SHARON STEEL CORPORATION AND SUBSIDIARIES

## INDEX TO FINANCIAL STATEMENTS

**CBI**

**HAS BEEN REDACTED**

**FOUR PAGES**

## Note 1 - Summary of Significant Accounting Policies

### Principles of Consolidation

The consolidated financial statements include the accounts of Sharon and its subsidiaries. All significant intercompany accounts and transactions have been eliminated in consolidation. The financial statements have been reclassified, where necessary, to conform to the presentation used in 1979.

In general, Sharon's investments in unconsolidated companies are accounted for using the equity method if Sharon holds 20% or more of the investee's voting securities and has the ability to exercise significant influence over the investee or if Sharon holds less than 20% of the investee's voting securities but exercises significant influence over the investee. The cost method is used if neither of the foregoing conditions exists.

### Inventories

The majority of Sharon's inventories are valued at cost as determined by the last-in first-out (LIFO) method that, in the aggregate, is less than market. The remaining inventories are valued at the lower of average cost or market on a first-in first-out (FIFO) basis. Inventory costs include materials, labor costs and manufacturing overhead excluding depreciation.

### Depreciation and Amortization

In general, depreciation and amortization of buildings, machinery and equipment is provided on the straight-line method over the estimated useful lives of depreciable properties, principally 20 years. Depreciation and depletion for mineral properties acquired from UV Industries, Inc. (see note 2) is computed generally using the units of production method.

### Retirement and Disposal of Properties

The cost of properties retired or otherwise disposed of is eliminated from the accounts. When less than complete units of depreciable property are retired, the cost (less salvage) is charged to accumulated depreciation. When complete units of depreciable property are retired or disposed of, the net gain or loss is recognized in other income.

### Maintenance and Repairs

Routine maintenance, repairs and replacements are charged to operations. Expenditures that materially increase values, change capacities or extend useful lives are capitalized. Capitalized renewals or replacements are charged to the property accounts, in which event the properties that were renewed or replaced are removed from the property accounts.

### Income Taxes

Net taxable income of Sharon and its subsidiaries is included in the consolidated federal income tax return of its parent, NVF Company. Taxes have been provided, and paid to NVF, as if Sharon and its subsidiaries were to file a separate consolidated return.

Note 1 - Summary of Significant Accounting Policies (continued)

Income Taxes (continued)

Deferred taxes are provided to recognize the tax effect of timing differences between the recognition of income and expenses for tax and financial statement purposes. Investment tax credits are accounted for by the flow-through method, which recognizes the benefit in the year in which the credit is taken on the federal income tax return.

Retirement and Pension Plans

Sharon and its subsidiaries have noncontributory pension plans covering substantially all employees. Pension costs are actuarially determined using the entry age normal method, recognizing normal costs and amortizing prior service costs over 30 to 40-year periods. Except as noted below, Sharon's policy is to fund pension costs accrued.

Liabilities for unfunded vested pension benefits assumed by Sharon in its acquisition of the net assets of UV Industries, Inc. (see note 2) have been recorded net of tax in other noncurrent liabilities. These amounts will be funded in accordance with normal actuarial computations under the plans.

Income Recognition

Revenue from the sale of products is recognized upon passage of title to the customer, which in most cases coincides with shipment of the related products.

Note 2 - Acquisition of the Net Assets of UV Industries, Inc.

Sharon began accounting for its investment in UV on the equity method in 1976 when Sharon's investment reached 20% of UV's voting securities in the fourth quarter of 1976. As a result of the approval of UV's plan of liquidation described below, in the first quarter of 1979 Sharon discontinued use of the equity method of accounting for its investment in UV.

At a special stockholders' meeting held on March 26, 1979 UV's stockholders approved the sale of UV's wholly owned subsidiary, Federal Pacific Electric Company, to Reliance Electric Company for $345 million in cash, and approved a Plan of Liquidation and Distribution under which UV will distribute by March 1980 all of its net assets, including the proceeds from the sale of Federal Pacific. The sale of Federal Pacific was completed on March 29, 1979. On October 2, 1979 UV sold its oil and gas properties to Tenneco Oil Company for $134,453,000.

On April 30, 1979 Sharon received an initial liquidating dividend of $18 per share, amounting to $61,616,000 to Sharon, of which $19,277,000 ($12,853,000 net of taxes, or $.16 per share) was recorded as earnings in the second quarter of 1979. Sharon accounted for its gain on the partial liquidation of its investment in UV on a pro rata basis

Note 2 - Acquisition of the Net Assets of UV Industries, Inc. (continued)

On November 26, 1979 Sharon and UV Industries, Inc. entered into an agreement wherein Sharon acquired all of the assets of UV in consideration of an Interim Note (which matures on September 30, 1980) in the amount of $517,754,000 and the assumption by Sharon of all of UV's liabilities, except for certain tax liabilities as described below, existing on such date (see note 13 concerning legal actions involving certain of the UV debt issues assumed by Sharon). As part of the agreement, Sharon is not permitted to dispose of any of the assets acquired from UV, including cash investments and marketable securities, until the Interim Note is exchanged as explained below.

Sharon did not assume UV's tax liability, if any, attributable to any failure on UV's part to satisfy the requirements of Section 337 of the Internal Revenue Code in connection with UV's liquidation. Sharon did, however, agree to indemnify UV against any tax liability for failure to satisfy the requirements of Section 337 if the failure resulted solely from Sharon's purchase of UV's net assets and a purchase of UV's net assets by any party other than Sharon would have satisfied the requirements of Section 337. Sharon has been advised by its tax counsel that, assuming UV's Plan of Liquidation otherwise meets the requirements of Section 337 and is carried out in accordance with the provisions of Section 337, no liability should be incurred by Sharon.

By the terms of the agreement, UV will exchange the Interim Note for $106,596,000 in cash and $411,158,000 aggregate principal amount of Sharon's Subordinated Sinking Fund Debentures Due 2000, provided Sharon's registration statement covering the Debentures is effective by September 30, 1980. On February 7, 1980 Sharon filed a registration statement with the Securities and Exchange Commission to register the Debentures under the Securities Act of 1933, but such registration statement has not yet become effective. If Sharon's registration statement is not effective by September 30, 1980, the Interim Note will be payable in cash. Sharon believes the registration statement covering the Debentures will be effective prior to September 30, 1980, although there can be no certainty of this. In furtherance of UV's Plan of Liquidation and Dissolution, following the exchange the UV Liquidating Trust will distribute all such cash and Debentures to the holders of beneficial interest in the UV Liquidating Trust in the ratio of $7 in cash and $27 principal amount of Debentures for each of the 15,228,057 units of benefical interest in the UV Liquidating Trust, including the 3,423,094 units owned by Sharon. See note 10 for additional information concerning the Interim Note, the Debentures to be issued and the UV debt assumed by Sharon.

UV announced that, pursuant to its Plan of Liquidation and Dissolution, on March 24, 1980 UV established a Liquidating Trust and transferred the Interim Note to the trust. On such date the New York Stock Exchange delisted and ceased trading in the UV common stock, and UV stockholders became entitled to one unit of beneficial interest in the UV Liquidating Trust for each share of UV common stock held. The units of beneficial interest are not now transferable, although UV has stated they will be transferable if UV receives a favorable tax ruling from the Internal Revenue Service that the transferability of the units will not adversely affect its Plan of Liquidation and Dissolution under Section 337 of the Internal Revenue Code.

Note 2 - Acquisition of the Net Assets of UV Industries, Inc. (continued)

The businesses acquired from UV are engaged in natural resource operations (consisting principally of mining and milling of copper ore, coal mining, secondary lead refining and placer gold mining) and in the fabrication of copper and brass.

The acquisition of UV's net assets has been recorded as a purchase transaction in accordance with the provisions of Accounting Principles Board Opinion No. 16 "Business Combinations", using audited data from UV as of November 26, 1979 and making adjustments to estimated fair values of assets acquired and liabilities assumed. In order to determine the cost to Sharon of the net assets acquired, Sharon has obtained an estimate of the market value of the Debentures to be issued in exchange for the Interim Note as if the Debentures had been issued on November 26, 1979. Such market value has been estimated to be 88% of the face amount on that date. Sharon presently owns 3,423,094 units of beneficial interest in the UV Liquidating Trust and, accordingly, Sharon will receive from UV $23,962,000 in cash and $92,423,000 principal amount of Debentures when UV makes a liquidating distribution of the cash and Debentures received from Sharon in accordance with UV's Plan of Liquidation and Dissolution.

The fair value of the liquidating distribution to be received from UV is expected to be in excess of the carrying value of Sharon's beneficial interest in the UV Liquidating Trust, and such excess has been applied to reduce Sharon's cost of purchasing UV's net assets. Sharon is considering, but has no present intention of, selling all or part of its interest in the UV Liquidating Trust prior to the delivery of the Debentures to UV and, alternatively, selling all or part of the Debentures that it will receive as a stockholder of UV.

Based upon preliminary estimates of the fair value of UV's properties, Sharon believes that the fair value of UV's net assets is in excess of the purchase price paid by Sharon. Therefore, the difference between the fair value of UV's net assets other than properties and the purchase price paid by Sharon has been allocated to the properties acquired from UV. Sharon cannot determine the tax basis of the assets acquired from UV until the appraisal of UV's properties has been completed, but Sharon does not believe that there will be any tax basis goodwill. The fair value amounts recorded in 1979 will be subject to adjustment in 1980 to reflect additional information concerning the values of the UV assets acquired and liabilities assumed, the value of the consideration paid by Sharon, or other factors.

Included in Sharon's consolidated balance sheet at December 31, 1979 were the following assets acquired and liabilities assumed from UV Industries, Inc. (in thousands of dollars):

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Note 3 - Marketable Securities (continued)

In the first quarter of 1980, through March 21, Sharon had $962,000 of realized net gains on sales of equity securities held at December 31, 1979. At March 21, 1980 unrealized gains and losses on marketable equity securities held at December 31, 1979 aggregated $229,000 and $7,789,000, respectively.

Realized net gains on sales of marketable equity securities, based on average cost of the securities sold, aggregated $29,526,000 in 1979 (including $23,797,000 from the tender of Reliance Electric Company common stock, acquired in 1979 at a cost of $21,426,000, and $5,050,000 from the sale of Studebaker-Worthington, Inc. common stock, acquired in 1979 at a cost of $6,406,000) and $356,000 in 1978.

Sharon's income on marketable securities investments (including noncurrent marketable securities) and short-term cash investments included dividend income of $6,057,000 in 1979 ($1,552,000 in 1978) and interest income of $4,728,000 in 1979 ($1,907,000 in 1978). Such amounts are included under the caption "Other income, net".

Note 4 - Inventories

| | 1979 | 1978 | 1977 |
|---|---|---|---|
| | (thousands of dollars) | | |
| Raw materials and supplies | $ 68,558 | 59,870 | 53,272 |
| Work in process and finished goods | 87,293 | 71,267 | 53,642 |
| Reserve to adjust FIFO inventories to LIFO value | ( 73,577) | ( 55,213) | ( 46,427) |
| Inventories acquired from UV (note 2): | | | |
| Raw materials | 36,228 | - | - |
| Work in process and finished goods | 68,169 | - | - |
| | $ 186,671 | 75,924 | 60,487 |

It is not practicable to segregate work-in-process and finished goods inventories. Inventories used to determine cost of goods sold in 1979 did not include the $104,397,000 of inventories acquired from UV Industries, Inc.

The application of Accounting Principles Board Opinion No. 16 to the valuation of LIFO inventories of subsidiaries acquired from UV Industries, Inc. resulted in the valuation of these inventories being in excess of the federal income tax basis of such inventories by approximately $44,698,000 at December 31, 1979, and resulted in 1979 net income for financial reporting purposes being approximately $81,000 lower than income for federal income tax purposes.

Note 5 - Investments in Joint Ventures

Sharon has a 5% interest in the Tilden Mining Company (a joint venture), an integrated iron ore mine and pellet producing facility which has supplied approximately 20% of Sharon's annual iron ore requirements. The Tilden facilities have been expanded and the expansion, which began operation in November 1979, will approximately double Sharon's supply of iron ore from Tilden. Tilden (including the expansion project) was financed primarily through loans guaran-

Note 5 - Investments in Joint Ventures (continued)

teed by each of the participants to the extent of its ownership interest. At December 31, 1979 and 1978 the portion of the Tilden loans guaranteed by Sharon was $24,553,000 and $22,868,000, respectively.

Sharon also has a 15.6% interest in the Pioneer Pellet Plant Venture (a joint venture) and in the Negaunee Mine Company (which provides iron ore to Pioneer). Over the past five years Negaunee/Pioneer has supplied approximately 20% of Sharon's annual iron ore requirements. The Negaunee/Pioneer facilities were shut down in July 1979, and provisions for shutdown costs (which were not significant to Sharon) have been accrued by Negaunee/Pioneer as part of the cost of iron ore. As a result of provisions for shutdown costs, at December 31, 1979 and 1978 Sharon's investment in the Negaunee/Pioneer venture was in a deficit position, aggregating $1,820,000 and $1,366,000, respectively. Such amounts are included in Sharon's balance sheets under the caption "Other noncurrent liabilities".

Note 6 - Investments in Affiliates, at Equity

UV Industries, Inc.

Investments in affiliates, at equity, at December 31, 1978 included $50,244,000 representing the carrying value of Sharon's investment in common stock of UV Industries, Inc. (see note 2). On a fully diluted basis, Sharon's ownership of UV common stock at December 31, 1978 would have been reduced from approximately 20.7% to approximately 15.1%, and Sharon's net earnings for 1978 would have been reduced by approximately $1,915,000 ($.02 per share).

Burnup & Sims Inc.

From 1975 through 1979 Sharon purchased 2,397,590 shares of common stock of Burnup & Sims Inc. representing approximately 28.6% of Burnup's outstanding voting securities at December 31, 1979. Sharon began accounting for its investment in Burnup using the equity method in the fourth quarter of 1979, the year in which Sharon's investment reached 20% of Burnup's outstanding voting securities. At December 31, 1979 Sharon's investment in Burnup's common stock had a market value of approximately $23,676,000 and a carrying value of $14,271,000, and at December 31, 1978 had a market value of $5,259,000 and a cost of $6,079,000. Sharon's equity in net earnings of Burnup, net of tax, amounted to $1,023,000 in 1979; the effect of adopting the equity method of accounting for Sharon's investment in Burnup was not significant to prior periods.

Note 7 - Noncurrent Marketable Securities

During 1975 through 1979 Sharon purchased 1,381,700 shares of common stock of Foremost-McKesson, Inc. and 73,900 Series A preferred shares convertible into an additional 120,087 common shares (representing on a converted basis approximately 9.5% of Foremost's outstanding voting securities). At December 31, 1979 and 1978 Sharon's investment in Foremost securities had a market value of approximately $38,683,000 and $21,664,000, respectively, and a cost of approximately $28,679,000 and $18,500,000, respectively.

Note 8 - Properties

| | 1979 | 1978 |
|---|---|---|
| | (thousands of dollars) | |
| Land and land improvements | $ 4,161 | 4,076 |
| Buildings, machinery and equipment | 296,672 | 279,900 |
| Buildings, machinery and equipment under capitalized leases | 3,654 | 3,559 |
| Properties acquired from UV (note 2) | 240,400 | - |
| Construction in progress | 20,595 | 11,147 |
| Total properties at cost | $ 565,482 | 298,682 |

Amortization of properties under capitalized leases is included with depreciation expense. At December 31, 1979 and 1978 the accumulated amortization of properties under capitalized leases was $1,173,000 and $960,000, respectively. See note 11 for other information concerning capitalized leases. In 1979 Sharon adopted the provisions of Statement of Financial Accounting Standards No. 34 "Capitalization of Interest Cost". In accordance with that statement, in 1979 Sharon capitalized $2,247,000 of debt costs ($1,213,000 net of tax, or $.01 per share) out of total 1979 debt costs of $17,148,000.

Note 9 - Taxes on Income

Deferred income taxes result from timing differences in the recognition of expenses for tax and financial statement purposes. The major components of the deferred tax provisions in 1979 and 1978 were as follows:

| | 1979 | 1978 |
|---|---|---|
| | (thousands of dollars) | |
| Excess of tax over book depreciation | $ 1,503 | 1,044 |
| Joint venture timing items, net | 2,225 | 896 |
| Interest capitalized during construction | 1,029 | - |
| Other, net | 317 | ( 344) |
| Deferred tax provision | $ 5,074 | 1,596 |

The difference between reported tax expense and a computed tax based on book earnings at the federal income tax rate for the two years ended December 31, 1979 is reconciled as follows:

| | 1979 | 1978 |
|---|---|---|
| | (thousands of dollars) | |
| Book earnings before taxes | $ 77,667 | 53,424 |
| Federal income tax rate | 46% | 48% |
| Computed expected tax | 35,727 | 25,644 |
| Increase (decrease) in federal taxes resulting from: | | |
| Investment tax credits | ( 2,249) | ( 1,842) |
| Nontaxable investment income | ( 1,902) | ( 701) |
| Deduction for percentage depletion | ( 826) | ( 809) |
| State and foreign income taxes | ( 1,400) | ( 1,846) |
| Other, net | 547 | ( 65) |
| Provision for federal income taxes | 29,897 | 20,381 |
| Provision for state and foreign income taxes | 3,043 | 3,804 |
| Provision for taxes on income | $ 32,940 | 24,185 |

Note 9 - Taxes on Income (continued)

The consolidated federal income tax returns of NVF for the years 1969 (that included Sharon for the ten months ended December 31, 1969) through 1974 have been examined by the Internal Revenue Service and substantial deficiencies were asserted as to Sharon, principally relating to the deductibility of supplemental unemployment benefit accruals. In December 1979 the Internal Revenue Service accepted Sharon's position that accruals for supplemental unemployment benefits were deductible. Management believes that adequate provision has been made for all tax liabilities and interest thereon that may arise when all of NVF's open tax years are settled (including years 1975 through 1979, which have not yet been examined).

In connection with Sharon's acquisition of the net assets of UV Industries, Inc., Sharon assumed UV's tax liabilities for all open tax years except as explained in note 2. UV's federal income tax returns for years 1974 through 1979 have not yet been closed by the Internal Revenue Service, but management believes that adequate provision has been made for all tax liabilities that may arise when UV's open tax years are settled.

Sharon was informed in March 1980 that the United States Attorney for the Southern District of New York is presently conducting a grand jury investigation of potential criminal tax violations in connection with Sharon, NVF, certain officers of Sharon and NVF, and certain affiliated companies. Sharon has been unable to determine the scope of the grand jury investigation.

Note 10 - Notes Payable and Long-Term Debt

Sharon has short-term lines of credit with a group of banks totaling $25 million. No borrowings were made under these lines of credit during 1978 or 1979. Borrowings under the lines of credit are with 90-day notes at prime, and must be repaid for 30 days once each year.

In February 1979 Sharon borrowed $48 million under two $24 million notes at 120% of prime, payable on demand, for the purpose of acquiring additional common stock of UV Industries, Inc. In June 1979 the interest rate on these short-term notes was renegotiated to 115% of prime.

At December 31, 1979 and 19[illegible] long term debt consisted of the following:

| | 1979 | 1978 |
|---|---|---|
| | (thousands of dollars) | |
| Interim note issued on November 26, 1979 in connection with the acquisition of UV's net assets, due September 30, 1980 | $ 517,754 | - |
| Sharon's beneficial interest in the interim note | ( 116,385) | - |
| Term note, interest at 1/2% over prime, payable $1,500,000 quarterly through April 1982 | 15,500 | 21,700 |
| 10-1/2% secured equipment loan, payable in quarterly installments, including principal and interest, of $580,000 through March 1986 and a final payment of $3,309,000 in June 1986 | 12,224 | 13,196 |

## Note 10 - Notes Payable and Long-Term Debt (continued)

| | 1979 | 1978 |
|---|---|---|
| | (thousands of dollars) | |
| 6-1/4% environmental control facility financing, payable $800,000 annually beginning in August 1984 | 8,000 | 8,000 |
| Environmental control facilities financing, at an average of 6.8% (6.3% in 1978), due monthly or quarterly through 1987 | 4,523 | 5,073 |
| 5-3/8% notes, due $565,000 annually through 1982, $255,000 in 1983 and $400,000 in 1984 | 2,350 | 2,915 |
| 6-3/4% industrial development loan due quarterly through 1988 | 2,486 | - |
| 14-1/4% subordinated sinking fund debentures, due 1999 | 60,000 | - |
| Other | 1,137 | 1,578 |
| Debt of UV Industries, Inc. and subsidiaries assumed by Sharon: | | |
| 5-3/8% subordinated sinking fund debentures, due 1995 | 14,219 | - |
| 8-7/8% sinking fund debentures, due 1997 | 66,775 | - |
| 9-1/4% senior subordinated notes, due 1987 | 15,035 | - |
| 6-1/4% industrial development revenue bonds, due 1980-1993 | 17,380 | - |
| 6-1/4% industrial development revenue bonds, due 1980-1993 | 10,270 | - |
| 7%-8-1/8% pollution control revenue bonds, due 1981-2001 | 5,000 | - |
| Other | 1,767 | - |
| | 639,035 | 52,462 |
| Unamortized deferred debt discount: | | |
| Interim note | ( 38,248) | - |
| 14-1/4% subordinated sinking fund debentures, due 1999 | ( 4,880) | - |
| Imputed debt discount on debt of UV Industries, Inc. assumed by Sharon | ( 15,157) | - |
| | ( 58,285) | - |
| | 580,750 | 52,462 |
| Current portion of long-term debt, including $82,635,000 in 1979 relating to the interim note | ( 94,001) | ( 8,730) |
| | $ 486,749 | 43,732 |

The minimum principal payments on long-term debt for the five years succeeding December 31, 1979 are as follows: $94,001,000 in 1980; $12,074,000 in 1981; $8,871,000 in 1982; $6,709,000 in 1983; and $10,859,000 in 1984. The foregoing amounts include the following minimum principal payments on the UV debt issues assumed by Sharon: $2,046,000 in 1980; $2,565,000 in 1981; $2,665,000 in 1982; $3,741,000 in 1983; and $7,488,000 in 1984. See note 13 concerning legal actions involving certain of the UV debt issues assumed by Sharon.

Note 10 - Notes Payable and Long-Term Debt (continued)

In August 1978 Sharon borrowed $8 million at 6-1/4% per annum to finance environmental control facility improvements. The principal amount of the loan is payable in ten equal annual installments of $800,000 beginning in August 1984. The proceeds of the financing have been deposited in escrow for disbursement as qualified expenditures are made, and are included in Sharon's balance sheet as a noncurrent asset under the caption "Funds restricted for construction".

In October 1979 Sharon issued $60 million principal amount of 14-1/4% Subordinated Sinking Fund Debentures Due 1999 at an offering price of 95-1/4%. The proceeds from the issuance of the Debentures, amounting to $55,650,000 after underwriters' discounts, were added to Sharon's working capital. Interest is payable on April 15 and October 15, commencing April 15, 1980. The Debentures are redeemable at their principal amount through the operation of a sinking fund commencing October 15, 1989, in an annual amount of $4,500,000 calculated to retire 75% of the Debentures prior to maturity. After October 15, 1984 the Debentures are redeemable at Sharon's option, in whole or in part, at an initial redemption price of 105%, declining 1% each year thereafter to 100% on and after October 15, 1989. Amortization of deferred debt discount, amounting to $20,000 in 1979, is on the "interest" method.

As explained in note 2, in November 1979 Sharon acquired all the assets of UV in consideration of $517,754,000 and the assumption of all of UV's liabilities (except for certain tax liabilities). Sharon paid the $517,754,000 to UV by the delivery of an Interim Note, which matures on September 30, 1980. By the terms of the purchase agreement, UV will exchange the Interim Note for $106,596,000 in cash and $411,158,000 aggregate principal amount of Subordinated Sinking Fund Debentures Due 2000 (bearing interest at 15-1/2% per annum for the first two years and 13-1/2% thereafter) twenty days after the effective date of Sharon's registration statement covering the Debentures, provided such registration statement is effective by September 30, 1980. The Interim Note bears interest from November 26, 1979 (until exchanged for cash and Debentures) at the rate of 10% per annum through March 15, 1980, at the rate of 15% per annum thereafter through June 30, 1980, and thereafter at the rate of 13-1/2% per annum. By virtue of Sharon's ownership of 3,423,094 units of beneficial interest in the UV Liquidating Trust (see note 2), Sharon will receive approximately $23,962,000 in cash and $92,423,000 principal amount of Debentures from UV as a liquidating distribution in furtherance of UV's Plan of Liquidation and Dissolution. Sharon has reflected as deferred debt discount on the Interim Note the difference between the estimated market value at November 26, 1979 and the principal amount of the Debentures to be issued (exclusive of the amount of Debentures to be distributed to Sharon). Included in the current portion of long-term debt is $82,634,000 representing the current portion of the Interim Note.

The indenture for the UV 5-3/8% subordinated sinking fund debentures assumed by Sharon requires an annual sinking fund payment of $910,000 from 1980 through 1994. In 1979 UV purchased $361,000 of the 5-3/8% debentures in the open market, and such amount will be applied against the 1980 sinking fund requirement.

The indenture for the UV 8-7/8% sinking fund debentures assumed by Sharon requires an annual sinking fund payment of $4,198,000 from 1982 through

Note 10 - Notes Payable and Long-Term Debt (continued)

1996 and provides Sharon the noncumulative right to double any annual sinking fund payment. During 1979 UV purchased $8,225,000 of the 8-7/8% debentures on the open market and surrendered them to the trustee for cancellation. Such amount will be applied to eliminate the sinking fund requirement for 1982 and to reduce the 1983 requirement by $3,627,000. The 8-7/8% debentures are redeemable at any time at Sharon's option at rates decreasing 1/2% annually from 107.375% of face value in April 1980 to 100% in April 1992, except that no redemption may be made prior to April 15, 1987, directly or indirectly, from or in anticipation of money borrowed at an effective interest cost of less than 8.9% per annum.

The indenture for the UV 9-1/4% senior subordinated notes assumed by Sharon prohibits redemption prior to April 15, 1983. Thereafter the notes are redeemable at the option of Sharon at their principal amount.

Sharon has imputed deferred debt discount (at an assumed rate of 15%) on the UV debt assumed by Sharon. Amortization of the imputed deferred debt discount, amounting to $82,000 for the month of December 1979, is being accounted for using the "interest" method.

Compensating balances, based on average daily bank balances, are required to be maintained under informal arrangements in connection with the $25 million lines of credit (at 10% of the aggregate lines plus 10% of the notes outstanding under the lines) and in connection with the five-year term loan (at 15% of the outstanding loan). Sharon's compensating balance requirements totaled $4,825,000 and $5,755,000 at December 31, 1979 and 1978, respectively.

Other compensating balances required to be maintained under existing borrowing arrangements are not material and do not have a significant impact on the cost of financing.

Note 11 - Lease Commitments

Leases classified as capital leases include Sharon's corporate headquarters building (under a 30-year lease with a Sharon pension trust expiring in 1997 with two ten-year renewal options, at a fixed monthly rental payment), and leases covering certain material handling equipment, transportation vehicles and office equipment. Leases classified as operating leases include leases covering data processing equipment, certain sales office facilities, office copying equipment and certain transportation vehicles.

Leasing transactions with related parties include certain transportation vehicles and space leased from affiliated entities. Aggregate rental payments under leases with related parties were $353,000 in 1979 and $168,000 in 1978.

Rental expense under all operating leases was $1,139,000 in 1979 and $843,000 in 1978. The future minimum lease payments for the five years succeeding December 31, 1979 and in the aggregate thereafter under capital leases and under operating leases with an initial noncancelable term in excess of one year are as follows:

Note 11 - Lease Commitments (continued)

| | Capital Leases | Operating Leases |
|---|---|---|
| | (thousands of dollars) | |
| 1980 | $ 509 | 798 |
| 1981 | 422 | 705 |
| 1982 | 263 | 658 |
| 1983 | 158 | 616 |
| 1984 | 158 | 431 |
| Aggregate later years | 3,762 | 1,588 |
| Total minimum lease payments | 5,302 | 4,796 |
| Less interest portion of capital leases | ( 2,749) | |
| Present value of minimum capital lease payments | 2,553 | |
| Less current portion | ( 300) | |
| Noncurrent lease commitments | $ 2,253 | |

Note 12 - Stockholders' Equity

Approximately 86% of Sharon's common stock is owned by NVF Company.

In June 1979 the Board of Directors declared a five-for-one stock split-up, which was distributed on July 10, 1979. At the Annual Meeting of Stockholders on December 19, 1979, the stockholders approved an increase in Sharon's authorized common shares to 100,000,000 shares. On January 11, 1980 the Board of Directors declared a 2-for-1 stock split-up, distributable March 3, 1980 to stockholders of record on January 25, 1980 and increased Sharon's annual cash dividend to $.30 per share, payable quarterly, on the split shares. On March 7, 1980 Sharon declared a 10% stock distribution, payable April 3, 1980 to stockholders of record on March 17, 1980. Sharon will account for the 10% stock distribution in the first quarter of 1980 by charging $55,776,000 against retained earnings, of which amount $48,301,000 will be credited to capital in excess of par value.

All per share data have been adjusted for the aggregate effect of the stock distributions referred to above. In addition, the financial statements at December 31, 1979 have been retroactively adjusted for the effect of the two-for-one stock split-up declared in January 1980.

On December 20, 1979 Sharon announced a program to purchase on the open market up to a maximum of 875,000 shares (1,925,000 shares as adjusted for subsequent stock distributions) of its common stock. Through December 31, 1979 Sharon had purchased 5,800 of its common shares (12,760 shares as adjusted for subsequent stock distributions) for an aggregate cost of $71,000.

By the terms of Sharon's 5-3/8% notes, there were no retained earnings (as defined) available for declaration of cash dividends at December 31, 1979 and 1978. Sharon obtained waivers of applicable dividend restrictions for the cash dividends paid in 1979 and 1978. Other Sharon debt issues restrict the payment of cash dividends to a lesser extent.

Note 13 - Legal Matters

In 1975 a suit was filed against Sharon by a customer alleging breach of contract by Sharon. The suit seeks termination of the contract (which by its terms extends to March 1983) and damages for the alleged breach and future damages in the amount of $12,766,000. In 1976 and 1977 amendments to the complaint were filed alleging further breach of contract and violation of the antitrust laws of the United States under the Robinson-Patman Act. The additional damages sought by the customer are $1 million under the claims for breach of contract and $9 million under the antitrust claim. Sharon has countersued the customer for breach of contract, claiming present and future damages of $8,200,000. It is the present view of Sharon, based on the opinion of legal counsel for Sharon in this matter, that the final outcome of the claims presented in the original complaint will not have a material adverse effect on Sharon's consolidated financial position. With regard to the amendments to the original complaint, filed in 1976 and 1977, legal counsel has not yet had an opportunity to complete discovery of the facts relating to said claims to arrive at an opinion as to the potential exposure of Sharon thereunder, although legal counsel has expressed doubt that the customer can establish "competitive injury" as required under the Robinson-Patman Act. Based on the foregoing, it is the present view of Sharon that the final outcome of this suit will not have a material adverse effect on Sharon's consolidated financial financial position.

In December 1979 Sharon commenced actions against three institutions serving as trustees under indentures of UV's 5-3/8% subordinated debentures, UV's 8 7/8% debentures and UV's 9-1/4% senior subordinated notes seeking, among other things, to require each of the trustees to execute supplemental indentures to evidence the succession of Sharon to UV's obligations under the various indentures and to permit the withdrawal of $155,000,000 of cash and cash equivalents presently restricted in special accounts for payment of the outstanding long-term indebtedness of UV assumed by Sharon. In January 1980 Sharon amended its actions to include substantially the same allegations with respect to the 6-1/4% industrial development revenue bonds of Mueller Brass Co. In December 1979 the trustees for certain of UV's debt issues gave notice to UV that the sale of its assets to Sharon constituted a default event which could result in acceleration of the maturities of such debt. These same trustees have commenced actions or counterclaims against Sharon and UV seeking, among other things, to require the redemption of an aggregate of approximately $114,409,000 (at December 31, 1979) principal amount of UV's long-term indebtedness assumed by Sharon at redemption prices specified in the respective indentures, the establishment of a trust for all assets received by UV in the course of its liquidation pending such redemption, the establishment of a trust for the UV assets acquired by Sharon, and the payment of the UV debt issues assumed by Sharon from the funds held in the special accounts. Also, in December 1979 a putative class action was commenced on behalf of the holders of certain UV debt issues against Sharon and UV seeking a declaratory judgment regarding the relative rights and obligations of the parties and an order requiring the payment of such UV debt issues.

On January 22, 1980 the Securities and Exchange Commission (SEC) issued an order in the matter of Sharon, NVF Company, Pennsylvania Engineering Corporation and Victor Posner, directing that a private investigation be made under the federal securities laws concerning, as it relates to Sharon and NVF:

Note 13 - Legal Matters (continued)

(1) whether "certain persons" purchased shares of common stock of Sharon and NVF subsequent to May 1, 1979 on the basis of material nonpublic information; and (2) whether filings made with the SEC subsequent to January 1, 1978 contained false or misleading statements or omitted to state material facts concerning, among other things, transactions between Sharon and its affiliates, arrangements with respect to the acquisition of securities of other issuers, the intended use of proceeds of a public offering, the impact of environmental regulations, the interest of management in certain transactions, and investment holdings and activities. Further, the order raised questions as to the status of Sharon and NVF under the Investment Company Act of 1940, and whether the SEC should prescribe additional disclosure rules regarding the investment activities of companies that are not registered as investment companies under that Act.

In February 1979 the Environmental Protection Agency (EPA) filed a complaint against Sharon alleging violations of federal air quality standards at Sharon's Fairmont Coke Works, seeking a shutdown of the coke plant and a civil penalty of $25,000 per day for each day from August 7, 1977 through May 31, 1979 that it is determined Sharon was in violation of the Federal Clean Air Act. Sharon's coke oven battery was closed on May 31, 1979, and the closing satisfied both a March 1979 consent order with the West Virginia Air Pollution Control Commission and a partial consent decree entered with the EPA in May 1979. Notwithstanding the closing of the Fairmont Coke Works, state and federal environmental authorities have informed Sharon that it will have to take actions to prevent any continuing discharges from the ponds and fills at the Fairmont Coke Works. Sharon is unable to estimate the cost of any such actions until the nature and scope of any prevention measures have been determined.

In February 1980 the EPA filed a complaint against Sharon alleging violations of the Federal Clean Air Act at Sharon's Fairmont coke oven battery dating back to 1975, and violations of the Federal Clean Water Act at the coke plant dating back to 1978. The complaint seeks a permanent injunction against the discharge of pollutants from the Fairmont Coke Works and maximum allowable civil penalties for each day that it is determined Sharon was in violation of the Federal Clean Air Act or the Federal Clean Water Act.

In February 1979 the Pennsylvania Department of Environmental Resources (DER) filed a complaint against Sharon alleging violations of water quality standards and seeking an order requiring Sharon to install water treatment facilities at the plant. In December 1979 the court signed a consent decree settling this litigation and establishing schedules for the installation of water treatment facilities. In June 1979 the DER filed a complaint against Sharon with the Pennsylvania Environmental Hearing Board (EHB) regarding the discharge of industrial waste at Sharon's steelmaking plant and seeking maximum allowable civil penalties for alleged violations going back to 1971. Although Sharon and the DER are not currently engaged in settlement discussions, Sharon has been negotiating with the DER in an effort to resolve the penalty action filed by the DER. A comprehensive calculation of all possible penalties at their absolute maximum amounts dating back to 1971 for these alleged violations could total $194 million through June 6, 1979 if Sharon is found to be in violation as alleged, and $10,000 per day for each of the 18 alleged violations for each day subsequent to



2

Note 13 - Legal Matters (continued)

to June 6, 1979 that Sharon is found to be in violation. However, based on negotiations with the DER as to both the injunctive and penalty actions, Sharon believes that it can settle this proceeding, and it is the present view of Sharon, a view that legal counsel has advised Sharon is a reasonable view, that Sharon's liability, if any, under a settlement will not have a material adverse effect on Sharon's consolidated financial position.

On August 30, 1979 the EPA brought an action against Sharon alleging that Sharon is in violation of the Federal Clean Air Act and the Pennsylvania Implementation Plan with respect to air emissions from the basic oxygen furnace shop and the electric arc furnace shop at Sharon's steelmaking plant. The complaint seeks to enjoin the operation of the basic oxygen furnace shop except in accordance with the Federal Clean Air Act and also seeks civil penalties of $25,000 for each day since August 7, 1977 that it is determined Sharon was in violation of the applicable emission limitations. Sharon has begun negotiations with the EPA in an effort to resolve this matter.

In June 1978 the DER filed with the EHB a complaint against Sharon seeking civil penalties not to exceed $10,000 for the first day of violation, plus up to $2,500 for each day of continued violation from October 26, 1972 until Sharon controls fugitive air emissions from its hot metal transfer station at the basic oxygen furnace shop. On November 19, 1979 the EHB approved a consent adjudication between the DER and Sharon that requires Sharon to install and begin operation of approve control equipment by September 1, 1980 and to pay a civil penalty of $80,000.

Sharon is involved in a continuing program of installing environmental control equipment at its steelmaking and other facilities to meet the requirements of applicable environmental quality regulations. Federal and state authorities have alleged that Sharon has violated certain aspects of the environmental regulations, and Sharon is involved in negotiations to resolve these matters. The total future cost of compliance with environmental regulations, or penalties that could be paid in connection with alleged violations of environmental regulations, cannot presently be determined. Sharon estimates that it will spend approximately $18 million on environmental control equipment in 1980 and approximately $12 million during the three-year period 1981 through 1983.

Note 14 - Transactions with Related Parties

Sharon sells steel and other products to The Steel Corporation of Texas (SCOT), a 51%-owned subsidiary of NVF Company, and SCOT resells such steel through its steel service center and distribution warehouses located in the southwestern United States. Sharon's sales to SCOT are made in the ordinary course of business at list prices less a distributor discount. Sharon's income on these sales is recognized when the products are shipped to SCOT, and Sharon charges interest to SCOT on open accounts receivable. When Sharon's financial statements are consolidated with NVF Company and subsidiaries (including SCOT), the Sharon profit on sales to SCOT not realized through sales by SCOT to third parties is eliminated from NVF's earnings; the inventory profit so eliminated has not changed significantly from 1976 through 1979. In addition

Note 14 - Transactions with Related Parties (continued)

SCOT acts as a sales representative for Sharon products in the southern and western United States, and receives normal sales commissions from Sharon for such services. Following is a summary of Sharon's transactions with SCOT for the two years ended December 31, 1979:

| | 1979 | 1978 |
|---|---|---|
| | (thousands of dollars) | |
| Net sales | $ 26,619 | 26,228 |
| Distributor discounts | 1,551 | 1,472 |
| Interest income (at an average rate of 12.1% in 1979 and 8.6% in 1978) | 470 | 775 |
| Commissions paid | 1,242 | 1,043 |
| Receivables at year end: | | |
| Trade (at 12.5% in 1979 and 9.8% in 1978) | $ 12,336 | 14,523 |
| Interest | 102 | 1,151 |
| | $ 12,438 | 15,674 |

In June 1979 Sharon settled a dispute with SCOT concerning the interest charged by Sharon to SCOT in 1974, and in connection with the settlement Sharon returned such interest to SCOT (amounting to $562,000, which was charged to other income, net). As part of the settlement, SCOT agreed to pay to Sharon $1,072,000 of interest receivable that was not in dispute but had not been paid by SCOT pending resolution of the dispute over 1974 interest. In July 1979 SCOT's $5 million line of credit was terminated, and repayment of the $5 million then outstanding was accomplished by short-term funds advanced by NVF Company at 2-1/2% over prime (but not to exceed 17.6%).

DWG Corporation (an affiliated company under common control with NVF Company) performs substantial management services for Sharon, and Sharon also provides limited administrative services to DWG. The result of these services was a net charge to Sharon by DWG of $1,235,000 in 1979 and $106,000 in 1978. Sharon purchases steel mill engineering and construction services from Pennsylvania Engineering Corporation (an affiliated company under common control with NVF) for capital projects and for major maintenance projects; these purchases amounted to $8,519,000 in 1979 and $3,452,000 in 1978. Other transactions with affiliated companies are incidental to Sharon's business and are not significant.

Note 15 - Industry Segments

Sharon's principal business is the production and sale of basic steel mill products. Sharon's principal steel mill products are hot and cold flat rolled steels in carbon and alloy grades, carbon and alloy steels used by the forging industry, and coated flat rolled steels. Sharon is also engaged in the mining and sale of coal and in the production and sale of welded stainless steel pipe and tubing and steel strapping. By virtue of its purchase of the assets of UV on November 26, 1979, Sharon is now also engaged in natural resource operations (consisting principally of mining and milling of copper ore, coal mining,

**CBI**

**HAS BEEN REDACTED**

Note 18 - Quarterly Information (Unaudited)

Net earnings in the second quarter of 1979 included $12,853,000 ($.16 per share) representing Sharon's gain on partial liquidation of its investment in UV Industries, Inc. See Note 2.

Net earnings in the third quarter of 1979 included $12,850,000 ($.16 per share) resulting from the tender of Sharon's holdings of 628,100 shares of Reliance Electric Company common stock to Exxon Corporation and $2,727,000 ($.03 per share) from the sale of Sharon's holdings of 235,800 shares of Studebaker-Worthington, Inc. common stock.

## SUPPLEMENTARY INFORMATION ON CHANGING PRICES

(Unaudited)

The following supplementary information concerning the impact of inflation on Sharon's financial statements is being presented in accordance with the requirements of Statement of Financial Accounting Standards No. 33 "Financial Reporting and Changing Prices" (SFAS No. 33), issued by the Financial Accounting Standards Board (FASB) in September 1979. The information contained herein is experimental in nature, and the methodologies used to prepare the data have not been sufficiently standardized to necessarily allow meaningful comparisons between companies.

Over the past ten years, general inflation and the consequent erosion of the purchasing power of the dollar have become increasingly significant factors in the United States economy. Traditional financial statements have not been designed to provide information concerning the impact of inflation on business, and after extensive study the FASB has determined that selected financial information should be presented on an inflation-adjusted basis for an experimental period. Capital intensive industries with long-lived assets, such as the steel industry, are acutely affected by the impact of inflation, but management has not concluded that this experimental data is necessarily representative of the true impact of inflation to Sharon.

The FASB experiment attempts to measure the effects of inflation in two different ways:

1. Constant Dollars--In a period of inflation, there is a decline in the amount of goods and services one dollar will buy (the purchasing power of the dollar). Because traditional financial statements present information for dollars expended in different periods, the comparison of such dollars can be misleading. One method of measuring the impact of inflation, therefore, is to adjust all dollars to a common index level (constant dollars), which is accomplished in the accompanying data by application of the U. S. Government Consumer Price Index for All Urban Consumers.

2. Current Costs--It is also recognized that in a period of inflation the prices of most goods and services increase at differing rates, and that a single index such as the Consumer Price Index is not necessarily representative of these differences for any specific company. The current cost method attempts to measure the impact of inflation on a specific company by estimating the change in prices of the specific goods and services used by that company.

The mathematical difference between the results of the two methods is intended to indicate the effects of inflation on a particular company either in excess of or less than the general rate of inflation. Sharon has elected to present the following data in accordance with the partial restatement provisions of SFAS No. 33 by making adjustments only to inventories, cost of goods sold, properties (net of accumulated depreciation) and depreciation expense. These are the areas that are the most affected by inflation, and management believes that adjustment of other accounts would not materially change the results.

(Unaudited)

## METHODS OF COMPUTATION

Constant dollar values were determined in accordance with procedures specified in SFAS No. 33 by adjusting all dollars to average 1979 dollars using the Consumer Price Index for All Urban Consumers. Current cost information was developed using the following methods:

a. Inventories and cost of goods sold: The current cost basis of inventories was computed generally by adjusting first-in first-out (FIFO) inventories for the effects of increases in standard cost rates. The current cost basis of cost of sales, which excludes depreciation and amortization, has been based upon the current cost inventories at the end of each year, adjusted for the LIFO effects of inventory changes during the year.

b. Properties: The most significant portion of properties were valued by applying specialized indices of construction and equipment costs, and in some cases these indices were further refined for the geographical area involved. Sharon has utilized these indices for other purposes for many years, and has found them to be reasonably accurate representations of current costs for plant and equipment. Some relatively standard machinery and equipment items were valued using current purchase prices. In a few instances, the appraisal method was utilized when the other two methods were not believed to yield satisfactory results.

c. Land: No real current cost can be determined for land unless the land is actually sold. For purposes of this supplementary information, land was valued based on the best estimate of what similar property in the area is selling for when acquired for similar use. The FASB has not yet established rules for measuring current cost of income-producing real estate properties, unprocessed natural resource properties, and related depreciation, amortization, and depletion expense. Therefore, these items are included in current cost at their historical cost/constant dollar amounts in accordance with the provisions of SFAS No. 33.

d. Depreciation expense has been computed by the same methods and depreciable lives as have been used in the historical cost financial statements.

## INCOME TAX EXPENSE

The FASB has determined that it is not appropriate to adjust the provision for income taxes for the change in pretax earnings determined under the constant dollar and current cost computations, presumably because such changes are not allowable for income tax purposes. As a result, the effective tax rate for 1979 rises from 42.4% on a historical cost basis to 49.0% on a constant dollar basis and to 88.9% on a current cost basis.

**CBI**

**HAS BEEN REDACTED**

**SIX PAGES**

Exhibit 6

# ASSIGNMENT

THIS ASSIGNMENT made, executed and delivered as of March 24, 1980, by UV INDUSTRIES, INC., a Maine corporation ("UV") to David Finkelstein, Admiral Arthur R. Gralla, Martin Horwitz, Edwin Jacobson, Theodore W. Kheel, and Paul Kolton, Trustees under the UV Industries, Inc. Liquidating Trust ("TRUSTEES").

W I T N E S S E T H:

WHEREAS, UV and the TRUSTEES are parties to a certain UV Industries, Inc. Liquidating Trust Agreement dated ("Agreement of Trust") providing for, among other things, the transfer and assignment to the TRUSTEES of all of UV's right, title and interest in and to all assets it presently owns or subsequently acquires, holds, or otherwise possesses any interest in, in trust for purposes set forth in the Agreement of Trust; and

WHEREAS, UV entered into an Agreement for Purchase of Assets dated as of November 26, 1979 ("Purchase Agreement"), with Sharon Steel Corporation ("Sharon") pursuant to which Sharon acquired on that date all the assets, properties and rights of UV in consideration of $517,753,938 and the assumption of substantially all of UV's debts, obligations, contracts and liabilities existing on such date, except for certain tax liabilities, if any, and paid such $517,753,938 by the delivery to UV of an Interim Note in that amount; and

WHEREAS, the parties now desire to carry out the intent and purpose of the Agreement of Trust by execution and delivery to the

TRUSTEES of this instrument evidencing the vesting in the TRUSTEES all of the assets, properties and rights of UV of every name, nature and description;

NOW, THEREFORE, in consideration of the premises and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, UV by this Assignment does hereby grant, release, assign, transfer, convey and deliver unto the TRUSTEES all of UV's right, title and interest in and to all assets it presently owns or subsequently acquires, holds, or otherwise possesses any interest in, together with the appurtenances and all the estates and rights of UV in and to such assets, in trust for the uses and purposes set forth in the Agreement of Trust. The assets so granted, released, assigned, transferred, conveyed and delivered hereby being, without limiting the generality of the foregoing, more particularly described as follows:

1. All claims, demands, judgments, rights, choses in action, notes, equities, securities, accounts receivable, bills and notes receivable, interest receivable, chattel mortgages, security agreements, commercial paper, credits, bank accounts, cash on hand in banks, accrued interest, memberships in clubs and cooperatives, debts, bills, discounts and deferred items, books of account, including without limiting the generality of the foregoing the aforementioned Interim Note together with all interest accrued thereon;

2. All rights and interests of UV in, to and under all contracts and agreements of every nature and description between

it and any other party or parties, and in, to and under any other contracts and agreements of every nature and description which have been acquired by it by assignment or in any other manner or under which it is entitled to benefits, including without limiting the generality of the foregoing the aforementioned Purchase Agreement;

3. All other assets, properties and rights of UV of every type and description, real, personal and mixed, tangible and intangible, existing on the date hereof or hereafter acquired, including without limitation contingent and unknown interests, claims, rights and properties, whether or not specifically mentioned or described herein and whatever may be the nature or location of said assets, properties or business.

TO HAVE AND TO HOLD the assets hereby assigned, transferred and conveyed unto the TRUSTEES in trust for the purposes set forth in the Agreement of Trust.

AND UV hereby constitutes and appoints the TRUSTEES the true and lawful attorneys of UV, with full power of substitution for UV and in its name and stead or otherwise, by and on behalf and for the benefit of the beneficiaries under the Agreement of Trust, to demand and receive from time to time any and all of the assets, and to give receipts and releases for and in respect of the same and any part thereof, and from time to time to institute and prosecute in the name of UV, as the successor to UV, or otherwise any and all proceedings at law, in equity or otherwise which the TRUSTEES may deem proper in order to collect, assert or enforce any claim, right or title of any kind in or to the assets, and to

defend or compromise any and all actions, suits or proceedings in respect of any of the assets and to do all such acts and things in relation thereto as the TRUSTEES shall deem desirable; UV hereby declaring that the appointment made and the powers hereby granted are coupled with an interest and are and shall be irrevocable by UV in any manner or for any reason and shall survive the dissolution of UV.

This Assignment and the covenants and agreements herein contained shall be binding upon UV and shall inure to the TRUSTEES for the benefit of the beneficiaries under the Agreement of Trust.

IN WITNESS WHEREOF, UV has caused this Assignment to be executed in its corporate name and under its corporate seal, as of the day, month and year above written.

UV INDUSTRIES, INC.

By Martin Horwitz

[Corporate Seal]

ATTEST:

Exhibit 7

117252 U 993204

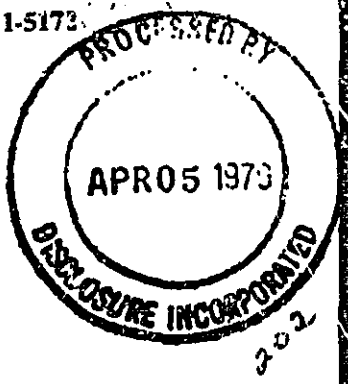
# SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D. C. 20549

# FORM 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF
THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 1978 Commission file number 1-5173




# UV INDUSTRIES, INC.

(Exact name of registrant as specified in its charter)

| Maine | 04-2380295 |
|---|---|
| (State or other jurisdiction of incorporation or organization) | (I. R. S. Employer Identification No.) |
| 437 Madison Avenue<br>New York, New York | 10022 |
| (Address of principal executive offices) | (Zip code) |

Registrant's telephone number, including area code 212-754-0666

Securities registered pursuant to Section 12(b) of the Act:

| Title of each class | Name of each exchange on which registered |
|---|---|
| Common Stock ($1 par value) | New York Stock Exchange, Inc.<br>Boston Stock Exchange, Inc.<br>Pacific Stock Exchange, Inc. |
| Warrants to Purchase shares of Common Stock ($1 par value) | American Stock Exchange, Inc.<br>Pacific Stock Exchange, Inc. |
| Preferred Stock, $5.50 cumulative ($5 par value) | New York Stock Exchange, Inc.<br>Boston Stock Exchange, Inc. |
| Preferred Stock, $1.265 Convertible ($5 Par Value) | New York Stock Exchange, Inc.<br>Boston Stock Exchange, Inc.<br>Pacific Stock Exchange, Inc. |
| 5¾% convertible subordinated debentures, due February 1, 1993 | New York Stock Exchange, Inc<br>Boston Stock Exchange, Inc. |
| 5⅜% subordinated debentures, due November 15, 1995 | New York Stock Exchange, Inc.<br>Boston Stock Exchange, Inc. |
| 9¼% senior subordinated notes, due April 15, 1987 | New York Stock Exchange, Inc. |
| 8⅞% debentures, due April 15, 1997 | New York Stock Exchange, Inc. |

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to the filing requirements for the past 90 days.

Yes ✓ No ___

Indicate the number of shares outstanding of each of the issuer's classes of common stock as of the close of the period covered by this report:

| Class | Outstanding at December 31, 1978 |
|---|---|
| Common Stock ($1 par value) | 9,898,598 shares |

# PART I

## Item 1. *Description of Business and Properties*

### General development of business

The Company, incorporated in Maine in 1965, is the successor by merger to United States Smelting Refining and Mining Company, which was incorporated in 1906. Its present name was adopted in 1972. As used herein, the terms "UV" and the "Company" refer, unless the context otherwise requires, to UV Industries, Inc. and its subsidiaries.

UV has substantially expanded and broadened its operations since the mid-1960's. Prior to that time, the primary business of the Company's predecessor, United States Smelting Refining and Mining Company, was lead-zinc mining, smelting and refining and, to a lesser extent, oil and gas exploration and production, coal mining, and the mining of placer gold. Since 1964 UV has redirected its traditional emphasis on mining activities by expansion into the manufacture and sale of electrical control, distribution and tranmission equipment, which now accounts for the major portion of the Company's operating revenues and profit, and into the fabrication of copper and brass, utilizing copper mined by the Company.

In 1964, the Company expanded its natural resources activities by commencing the development and mining of copper ore in New Mexico. In 1965, UV acquired Mueller Brass Co., a copper and brass fabricator substantially larger than the rest of the Company as it was then constituted. UV's first mill for the processing of copper ore was completed in 1967 as part of a program to make copper available to Mueller in order to reduce its dependency on outside sources. In 1973, in conjunction with a capital expansion program which substantially increased Mueller's production capacity, a second processing mill was completed, more than doubling the Company's total copper ore milling capacity. The most significant change in UV's business occurred through the acquisition of Federal Pacific Electric Company in the years 1969-1972, whereby the Company entered the electrical equipment and electronic component industries. The national energy shortage and the heightened concern with air quality in recent years has increased the demand for steam coal with a low sulphur content and a high BTU rating; in recent years the Company's coal mining subsidiary, United States Fuel Company, has substantially increased its coal production capacity to a current level of approximately 1,100,000 tons per year.

*On March 26, 1979, at a Special Meeting of Stockholders, the stockholders of the Company voted to dissolve the Company by approving and adopting a Plan of Liquidation and Dissolution. In addition, at the Special Meeting the stockholders approved the sale of all of the outstanding capital stock of the Company's wholly-owned subsidiary, Federal Pacific Electric Company. (See "Item 10. Submission of Matters to a Vote of Security Holders" below and Notes 2 and 3 to the Financial Statements.)*

The Company currently operates within the following industry segments:

1. *Electrical Equipment and Electronic Components.* Through its wholly-owned subsidiary, Federal Pacific Electric Company ("Federal"), UV designs, manufactures and markets, primarily in the United States and Canada, electrical control, distribution and transmission equipment. This equipment consists of Stab-lok circuit breakers and other standard low voltage equipment sold to distributors and contractors for use in residential and other types of buildings; panelboards, switchboards and other specially designed low voltage equipment utilized in industrial, commercial and institutional facilities; and power equipment, including large transformers and switchgear, which is sold primarily to utilities and industrial users. In addition, the Company produces a broad line of capacitors and other electronic components, sold both to original equipment manufacturers and through distributors for replacement and repair use.

2. *Natural Resources.* The Company mines and mills copper ore in New Mexico which, after smelting and refining by others, is utilized in the Company's copper fabricating operation. UV also mines low sulphur steam coal in Utah, a significant portion of which is sold under long-term contract to a public utility. UV produces oil and gas from properties in the United States and, to a minor extent, Canada dredges placer gold in Alaska, and engages in the exploration and development of mineral resources on both Company-owned and leased properties.

3. *Copper and Brass Fabrication.* Through its wholly-owned subsidiary, Mueller Brass Co. ("Mueller"), UV fabricates copper and brass products, including brass rod and forgings and other industrial products sold chiefly to manufacturers, and Streamline™ tube, wrought fittings and other standard products sold principally to plumbing/heating and refrigeration/air conditioning jobbers.

**FINANCIAL INFORMATION ABOUT INDUSTRY SEGMENTS**

| | Year ended December 31, | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 1974 | | 1975 | | 1976 | | 1977 | | 1978 | |
| | (000's omitted) | | | | | | | | | |
| | $ | % | $ | % | $ | % | $ | % | $ | % |
| Operating Revenues: | | | | | | | | | | |
| Electrical equipment and electronic components: | | | | | | | | | | |
| Standard and specially designed low voltage equipment | 140,800 | 29 | 141,200 | 33 | 159,000 | 31 | 173,200 | 29 | 196,300 | 33 |
| Power equipment | 76,800 | 16 | 104,300 | 24 | 113,300 | 22 | 116,700 | 20 | 110,600 | 18 |
| Electronic components | 38,500 | 8 | 31,200 | 7 | 47,000 | 9 | 46,900 | 8 | 52,100 | 9 |
| | 256,100 | 53 | 276,700 | 64 | 319,300 | 62 | 336,800 | 57 | 359,000 | 60 |
| Natural resources: | | | | | | | | | | |
| Unaffiliated customers | 31,000 | 6 | 32,700 | 8 | 37,400 | 7 | 52,400 | 9 | 41,700 | 7 |
| Copper and brass fabrication segment(a) | 30,600 | 6 | 22,500 | 5 | 32,800 | 6 | 26,500 | 4 | 19,800 | 3 |
| | 61,600 | 12 | 55,200 | 13 | 70,200 | 13 | 78,900 | 13 | 61,500 | 10 |
| Copper and brass fabricated products: | | | | | | | | | | |
| Industrial | 110,000 | 23 | 60,200 | 14 | 84,700 | 17 | 96,900 | 17 | 98,600 | 16 |
| Standard | 88,100 | 18 | 58,900 | 14 | 76,200 | 14 | 99,900 | 17 | 102,400 | 17 |
| | 198,100 | 41 | 119,100 | 28 | 160,900 | 31 | 196,800 | 34 | 201,000 | 33 |
| Intersegment eliminations | (30,600) | (6) | (22,500) | (5) | (32,800) | (6) | (26,500) | (4) | (19,800) | (3) |
| Total operating revenues | 485,200 | 100 | 428,500 | 100 | 517,600 | 100 | 586,000 | 100 | 601,700 | 100 |
| Operating profit: | | | | | | | | | | |
| Electrical equipment and electronic components(b) | 32,500 | 45 | 42,400 | 68 | 51,500 | 68 | 50,900 | 58 | 57,600 | 81 |
| Natural resources | 23,400 | 32 | 13,800 | 22 | 18,000 | 23 | 20,000 | 23 | (3,500) | (4) |
| Copper and brass fabricated products(c) | 16,800 | 23 | 6,200 | 10 | 6,900 | 9 | 16,400 | 19 | 16,600 | 23 |
| Total operating profit | 72,700 | 100 | 62,400 | 100 | 76,400 | 100 | 87,300 | 100 | 70,700 | 100 |
| Identifiable assets: | | | | | | | | | | |
| Electrical equipment and electronic components | 216,600 | 48 | 212,300 | 48 | 230,200 | 47 | 240,500 | 42 | 269,300 | 44 |
| Natural resources | 118,500 | 26 | 124,200 | 27 | 135,600 | 28 | 145,200 | 26 | 130,700 | 21 |
| Copper and brass fabricated products | 102,300 | 23 | 98,600 | 22 | 105,200 | 22 | 110,700 | 19 | 110,400 | 18 |
| Other corporate assets(d) | 12,300 | 3 | 11,600 | 3 | 17,200 | 3 | 73,700 | 13 | 105,700 | 17 |
| Total identifiable assets | 449,700 | 100 | 446,700 | 100 | 488,200 | 100 | 570,100 | 100 | 616,100 | 100 |

Notes:

(a) Intersegment sales to the copper and brass fabrication segment consist principally of refined copper. These sales are accounted for at the published average copper industry's producer price during the month in which refined copper shipments are made

(b) Includes net foreign currency translation losses of $1,240,000 in 1976, $4,108,000 in 1977 and $3,008,000 in 1978.

(c) Includes foreign currency translation losses of $11,000 in 1976, $198,000 in 1977 and $187,000 in 1978.

(d) Consist principally of cash, time deposits, certificates of deposit, marketable equity securities and investment in affiliate.

**Narrative description of businesses**

**Electrical Equipment and Electronic Components**

UV is engaged, through Federal, in the design, manufacture and sale of electrical control, distribution and transmission equipment, including standard and specially designed low voltage equipment and power equipment, and, to a lesser extent, electronic components. These products consist of the following:

*Standard and specially designed low voltage equipment.* Standard low voltage equipment includes Stab-lok™ circuit breakers for residential use and various types and combinations of other circuit breakers, fusible entrance equipment, enclosures, panelboards, fuses, safety switches and electrical heating equipment. Specially designed low voltage equipment includes panelboards, switchboards, substations, bus duct, industrial circuit breakers, motor starters and control equipment. Both standard and specially designed low voltage equipment are used in all types of buildings and facilities using electrical energy, including industrial plants, research laboratories, schools, hospitals and commercial buildings.

*Power equipment.* Power equipment includes both liquid filled and dry type power and distribution transformers, in addition to low and medium voltage assembled switchgear. Transformers are used to change A.C. voltages and currents upward or downward as required by users. Liquid filled transformers range in capacity from 10 kilovolt amperes ("KVA") to 400,000 KVA at voltages from 5,000 to 500,000 volts; dry type transformers vary in size from 3 KVA through 10,000 KVA at voltages from 208 to 34,500 volts. Federal manufactures a wide range of assembled switchgear used in the control and distribution of electricity. The manufacture of transformers and switchgear requires lead times of up to one year between the receipt of an order and the date of shipment.

*Electronic components.* Electronic components, produced by Federal's subsidiary Cornell-Dubilier Electric Corporation, include a broad line of capacitors, which differ widely in size, design and electrical characteristics, for use in industrial, commercial, communication, and computer applications and in specialized power control systems. These products also include electromechanical components and assemblies, principally relays and electrically operated television and two-way amateur radio communication antenna rotors for industrial, residential and commercial use, and filter subsystems for power, communication, computer and low power control systems.

Electrical control, distribution and transmission equipment is marketed throughout the United States and in Canada, Federal's most significant foreign market. Low voltage equipment is principally sold to independent electrical distributors and contractors, while power equipment is sold principally to electric power utilities and large industrial users. Electronic components are purchased by original equipment manufacturers and distributors who resell principally for replacement use. Federal distributes low voltage products and electronic components primarily through its own sales force. Power equipment and electronic components are sold through both the Company's own sales force and independent commission agents. No material portion of Federal's business is dependent upon a single customer or small group of customers.

Federal competes with a large number of firms, some of which have greater resources than Federal. Federal maintains its competitive position in both the electrical equipment and electronic component markets by emphasizing quality, service, warranty, product availability and price. Federal's competitive position differs among classes of products, but the exact position within each class is not readily determinable.

Federal's backlog of orders as of December 31, 1978 amounted to approximately $164,000,000, compared to a backlog of $149,000,000 as of December 31, 1977, the bulk of which called for shipment within the subsequent twelve months. The backlog figures do not include any amounts for standard low voltage equipment, which is mass produced and stocked in regional warehouses where orders are filled from available stock.

There are some seasonal aspects within Federal's industry segments; but the seasonal patterns are varied enough so that in total they are offsetting.

Federal purchases its basic raw materials, consisting principally of steel, copper, aluminum, aluminum foil, kraft paper, plastics and oils, waxes, chemicals, molding powder and a limited amount of parts and components from outside vendors. These raw materials are available from a number of sources; therefore, Federal is not dependent upon any single source of supply for any item.

While Federal holds a number of patents, it believes that its business generally would not be materially affected by the expiration of any patent or patent license agreement. Some of Federal's products are covered, as to one or more features, by patents owned by or licensed to it.

Federal has several well-known trademarks, including "Stab-lok™" circuit breakers for residential use.

Federal does not have a separate product research and development department nor does it employ any professional personnel on a full-time basis in research activities. The research and development which is conducted by Federal is performed by professional engineers within operating divisions as part of the ongoing process of manufacturing and solving of customer problems. Accordingly, Federal does not account separately for research and development.

The principal properties owned and leased by Federal are as follows:

| Location | Approximate Floor Space (Sq. ft.) | Principal Product | Owned or Leased | Lease Expiration |
|---|---|---|---|---|
| New Bedford, Massachusetts... | 414,000 | Electronic components | Owned | |
| Newark, New Jersey..... | 303,000 | Switchgear, enclosures and specially designed low voltage equipment | Owned | |
| Sanford, North Carolina..... | 292,000 | Electronic components | Leased | March 31, 1983 |
| Albermarle, North Carolina.... | 265,000 | Standard low voltage equipment | Leased | January 31, 1991 |
| Des Plaines, Illinois..... | 228,000 | Transformers and fuses | Owned | |
| San Jose, California..... | 188,000 | Transformers | Owned | |
| Vidalia, Georgia..... | 175,000 | Enclosures for circuit breakers and switchgear | Leased | October 1, 1991 |
| Winnipeg, Manitoba, Canada. | 173,000 | Transformers | Owned | |
| Edgefield, South Carolina..... | 146,000 | Electric heat equipment | Owned | |
| Toronto, Ontario, Canada ..... | 143,000 | Standard low voltage equipment | Owned | |
| Fuquay Varina, North Carolina ..... | 140,000 | Electronic components | Leased | August 31, 1987 |
| Taipei, Taiwan ..... | 113,000 | Electronic components | Owned | |
| Fort Mill, South Carolina..... | 105,000 | Standard low voltage equipment (warehouse only) | Owned | |

In addition Federal owns or leases office space and plant and regional warehouse facilities at 42 other locations totalling approximately 1,390,000 square feet of floor space, approximately 49% of which is owned. All of Federal's facilities are adequately maintained for their present and anticipated use.

## Natural Resources

The Company's principal natural resource operations are mining and milling of copper ore, coal mining, oil and gas production and placer gold mining.

*Copper.* UV's Continental Mine in southwestern New Mexico is near the towns of Bayard and Fierro. The properties on which the mine is located are in highly mineralized areas contiguous to operations of the Kennecott Copper Company and Asarco Incorporated. The Company has approximately 9,300 acres, of which 8,150 are owned and 1,150 are leased. The Company mines from two principal mineralized areas, connected by a 3,500 ft. cross-cut on the 1,300 ft level. The main underground working levels range from 600 feet to 1,300 feet below the surface. The upper portion of the southwestern mineralized area is being mined by open pit methods. The underground mining rate presently averages approximately 2,500 to 3,000 tons of copper sulfide ore per day, while the open pit method yields about 5,000 tons per day.

The Company owns and operates two mills at the mine which process ore into copper concentrate through a process of crushing, grinding and flotation. The first mill has a rated capacity of 3,000 tons of ore per day based on a 24 hour 3 shift work day. The second mill has a rated capacity of 5,000 tons of ore per day based on a 24 hour 3 shift work day. In 1977 the first mill produced 45,698 tons of copper concentrate and the second mill produced 40,373 tons. The concentrate produced by each mill averaged approximately 25% copper, yielding a total of 20,769 tons of copper returned to the Company. In 1978, the first mill produced 11,143 tons of copper concentrate and the second mill produced 9,936 tons. The concentrate produced by each mill averaged approximately 25% copper, yielding a total of 5,147 tons of copper returned to the Company. During 1977 and 1978 the Company spent approximately $3,190,000 and $1,138,000, respectively, in development at the Continental Mine. In April 1978, the operations at the Continental Mine were interrupted by a strike. On January 10, 1979, a settlement with the union was reached.

The following table reflects ore milled and grade together with per ton average mine and mill cost and average net settlement for the five years ended December 31, 1978:

| | Average Mineral Content | | | | | | |
|---|---|---|---|---|---|---|---|
| | Tons Ore Milled | Copper % | Gold Ozs. Per Ton | Silver Ozs. Per Ton | Zinc % | Avg. Mine & Mill Cost Per Ton(1) | Avg. Net Settlement Per Ton(2) |
| Continental Mill #1 | | | | | | | |
| 1974— | | | | | | | |
| Underground | 577,837 | 1.97 | | | | $11.14 | $22.13 |
| Open Pit | 307,646 | 0.87 | | | | 5.13 | 9.81 |
| | 885,483 | 1.60 | 0.008 | 0.16 | 0.38 | 9.05 | 17.85 |
| 1975(3)— | | | | | | | |
| Underground | 498,787 | 1.87 | | | | 13.54 | 16.77 |
| Open Pit | 148,417 | 0.91 | | | | 6.10 | 8.16 |
| | 647,204 | 1.65 | 0.008 | 0.18 | 0.36 | 11.83 | 14.80 |
| 1976— | | | | | | | |
| Underground | 662,041 | 1.66 | | | | 13.55 | 15.76 |
| Open Pit | 284,048 | 0.92 | | | | 5.38 | 8.73 |
| | 946,089 | 1.44 | 0.007 | 0.15 | 0.42 | 11.09 | 13.65 |
| 1977— | | | | | | | |
| Underground | 663,634 | 1.66 | | | | 16.41 | 12.93 |
| Open Pit | 235,447 | 0.82 | | | | 8.09 | 6.33 |
| | 899,051 | 1.44 | 0.007 | 0.15 | 0.51 | 14.23 | 11.20 |
| 1978(4)— | | | | | | | |
| Underground | 161,218 | 1.74 | | | | 18.09 | 12.76 |
| Open Pit | 65,229 | 0.60 | | | | 7.73 | 4.38 |
| | 226,447 | 1.42 | 0.008 | 0.16 | 0.50 | 15.11 | 10.35 |

AVERAGE MINERAL CONTENT (Continued)

| | Tons Ore Milled | Copper % | Gold Ozs. Per Ton | Silver Ozs. Per Ton | Zinc % | Avg. Mine & Mill Cost Per Ton(1) | Avg. Net Settlement Per Ton(2) |
|---|---|---|---|---|---|---|---|
| Continental Mill #2 | | | | | | | |
| 1974— | | | | | | | |
| Underground | 123,231 | 1.95 | | | | $10.16 | $21.01 |
| Open Pit | 1,306,834 | 0.75 | | | | 3.36 | 8.08 |
| | 1,430,065 | 0.86 | 0.004 | 0.09 | 0.17 | 3.95 | 9.20 |
| 1975(3)— | | | | | | | |
| Open Pit | 996,806 | 0.85 | 0.005 | 0.10 | 0.16 | 4.25 | 7.36 |
| 1976— | | | | | | | |
| Underground | 5,663 | 1.63 | | | | 12.38 | 14.62 |
| Open Pit | 1,475,806 | 0.81 | | | | 3.81 | 7.23 |
| | 1,481,469 | 0.81 | 0.004 | 0.09 | 0.26 | 3.84 | 7.26 |
| 1977— | | | | | | | |
| Open Pit | 1,452,122 | 0.80 | 0.004 | 0.09 | 0.44 | 4.40 | 5.79 |
| 1978(4)— | | | | | | | |
| Open Pit | 358,778 | 0.77 | 0.005 | 0.09 | 0.50 | 5.20 | 5.45 |

(1) Average mine and mill cost includes amortization of deferred development and deferred stripping expense per ton of ore mined of $.96 in 1974; $.83 in 1975; $.75 in 1976; $.81 in 1977, and $.76 in 1978. The tabulated costs per ton do not include any charges for depreciation, depletion and amortization which, per ton of ore milled, amounted to $.93 in 1974; $.93 in 1975; $.92 in 1976; $.95 in 1977, and $.96 in 1978.

(2) Average net settlements represent values per ton and are based on settlement terms used in smelting the copper concentrate, and are net of smelting and refining charges.

(3) Operations were affected by a twelve-week strike.

(4) Operations were affected by a strike which commenced April 1, 1978 and was settled on January 10, 1979.

As of December 31, 1978, UV's estimated copper ore reserves, determined by drilling and development, consisted of 17.3 million tons of underground reserves in place, with an average copper assay of 1.91%, and 17.7 million tons of open pit reserves, with an average copper assay of .86%. The overall open pit waste to ore ratio is estimated at 2.1 to 1. Under the room and pillar mining method currently being used underground, a portion of the ore in place cannot be recovered. However, the Company presently estimates that net recoverable underground copper ore reserves will be approximately 15.1 million tons. The Continental Mine is relatively new and the reported reserves are based upon the drilling program conducted to date which defined reserves primarily to an area approximately 400 ft. below the 1,300 ft. level, presently the bottom level of the mine. The Company believes that there are areas of additional copper mineralization at depths below and adjacent to the existing known ore reserves.

The Company's copper concentrate is processed principally by Asarco Incorporated ("Asarco") at its smelters at El Paso, Texas and Hayden, Arizona and its refinery at Amarillo, Texas under contracts extending through February 28, 1982. Under the contracts the Company pays processing charges and the refined copper is returned to UV. The entire output of copper returned from concentrate production from the Company's copper operation is currently sold to the Company's copper and brass fabricated products segment at the prevailing producers' prices.

Approximately 350,000 long tons of magnetite iron concentrate are produced annually as a by-product of the Company's copper ore milling operation. Presently, except for a small quantity of sales, this material is being stockpiled at the mill sites. At December 31, 1978, the stockpile contained approximately 2,007,000 long tons of magnetite iron concentrate with an average iron content of 63%.

*Coal.* The United States Fuel Company ("U.S. Fuel"), a wholly-owned subsidiary of the Company, owns or leases coal rights in some 20,000 acres in Carbon and Emery Counties in Utah. The deposits at this property are of high quality steam coal, which are estimated to have an average sulphur content of less than 0.65% and an average rating in excess of 11,500 BTU's per pound. The sulphur content meets existing Federal and state air pollution standards for sulphur dioxide emissions currently applicable to coal burning utilities in those areas where U.S. Fuel markets its coal.

The following table reflects coal production and average selling price for the five years ended December 31, 1978:

| | Tons Produced | Average Selling Price Per Ton |
|---|---|---|
| 1974 | 537,524 | $11 |
| 1975 | 529,228 | $18 |
| 1976 | 614,790 | $20 |
| 1977(1) | 821,969 | $21 |
| 1978(1) | 670,021 | $23 |

(1) Production for 1977 and 1978 was affected by the nationwide coal strike which began on December 7, 1977 and ended March 26, 1978.

Prior to 1976, U.S. Fuel sold its coal principally to distributors, dealers and brokers on a spot basis and to small industrial users on a term basis. Pursuant to a contract expiring December 31, 1994 U.S. Fuel has agreed to supply coal to Nevada Power Company ("Nevada Power") at the rate of 400,000 tons per year commencing July 1, 1976. The contract contains price escalation provisions and provides Nevada Power with the right to increase or decrease the amount of coal so purchased by not more than 50,000 tons per year. Nevada Power did not exercise this right for an additional 50,000 tons for 1978 and for 1979 it has exercised its right to decrease its purchases by 50,000 tons. U.S. Fuel has not yet concluded an agreement in principle with Nevada Power for the utility to purchase 280,000 additional tons per year from 1980 through 1989. This additional tonnage will be reduced to 200,000 tons from 1990 through 1994. During 1977 and 1978 approximately 50% and 57%, respectively, of all production was under long-term contracts with Nevada Power and other customers.

U.S. Fuel coal property, a portion of which is presently under production consists of multi-seam coal deposits which underlie 7,334 acres, of which 2,460 are owned and 1,369 are leased, in a northern section, and 1,395 are owned and 2,110 are leased, in a southern section. Based upon information and data supplied by U.S. Fuel, it has been estimated by Paul Weir Company Incorporated, an independent firm of mining engineers retained by U.S. Fuel, that the northern section of U.S. Fuel's properties contained in place at November 26, 1976 reserves totaling 54 million tons of coal, of which 27 million tons are recoverable on the basis of the room and pillar mining method currently being used by U.S. Fuel. Coal production since that date aggregated approximately 1.6 million tons, reducing the reserves to approximately 51.0 million tons in place and approximately 25.4 million tons recoverable as of December 31, 1978. The Company's estimates are substantially in accord with those of Paul Weir Company Incorporated. U.S. Fuel is currently evaluating the use of the longwall method for underground extraction as an alternative mining method. It believes that the longwall method, if feasible, would, with additional capital expenditure, increase recoverable reserves in the northern section. The present annual capacity is 1,100,000 tons. Coal seams in the northern section of the mine extend into the southern section where a drilling program has been conducted. In 1978 John T. Boyd Company, mining and geological engineers, completed a coal reserve and mining feasibility study on the southern section. They estimated the southern section to have 42 million tons of recoverable coal using the longwall method of extraction. It is currently estimated that initial production from the southern section could be achieved within a 2 year period after mine development and site preparation commences; however the scheduling of this work will be related to the Company's requirements for increased production and will require substantial capital investments.

The Company is continuing negotiations with Nevada Electric Company, a subsidiary of Nevada Power, involving a possible joint venture arrangement to develop, extract and market the coal deposits contained on properties leased by Nevada Electric Company which are adjacent to the southern section of U.S. Fuel's property. Such a joint venture might involve significant capital expenditures on the part of U.S. Fuel.

As a result of the Company's efforts to sell its coal production directly to utilities and industrial users, it is competing with major coal producers having resources and production capabilities substantially larger than those possessed by U.S. Fuel. Although the Company is not one of the major producers of coal, it

believes that the low sulphur content and high BTU rating of its coal, as well as the desirable mining conditions, place it in a relatively favorable competitive position.

*Oil and Gas.* The Company has been involved in oil and gas development and production since 1947. The Company's oil and gas properties consist of both working and royalty interests. As a working interest owner, UV pays its proportionate part of the expenses incurred in the development and operation of its leasehold properties. The Company's royalty interests (including mineral interests, overriding royalty interests, and production payment arrangements) entitle it to a portion of the proceeds from the production attributed to these interests, without obligation for any cost of development and operation. All of UV's crude oil and gas production is sold at the well head to certain refinery and pipeline companies. The Company's oil and gas properties are located primarily in the Permian Basin area of West Texas, the Powder River Basin in Wyoming, and the Williston Basin in Montana and North Dakota, as well as in Canada.

During 1977 and 1978 the Company spent approximately $2.8 million and $3.2 million, respectively, on drilling and other exploration and development activities. In addition to the use of the Company's own drilling funds, the Company engages in active drilling programs involving farm-outs on its own acreage wherein third parties put up the drilling funds to earn an undivided interest in acreage. During 1977 and 1978 such funds amounted to approximately $4,000,000 and $7,100,000, respectively. UV has a continuous program for the acquisition, exploration and development of working and royalty interest properties.

Information concerning net production of oil and gas for the five years ended December 31, 1978, is set forth in the following table:

NET OIL AND GAS PRODUCTION FOR EACH OF THE YEARS INDICATED

| | Oil (Barrels) | | | | |
|---|---|---|---|---|---|
| | 1974 | 1975 | 1976 | 1977 | 1978 |
| United States | | | | | |
| Working Interests | 825,959 | 572,014 | 533,119 | 413,563 | 423,025 |
| Royalty Interests | 175,979 | 170,259 | 171,144 | 163,208 | 167,107 |
| Overriding Royalty Interests | 46,574 | 43,032 | 33,322 | 32,499 | 27,888 |
| Production Payments | — | 243 | 75 | 86 | 65 |
| TOTAL | 1,048,512 | 785,548 | 737,660 | 609,356 | 618,085 |
| Canada | | | | | |
| Royalty Interests | 104,665 | 86,040 | 72,975 | 91,271 | 86,592 |
| Company Total | 1,153,177 | 871,588 | 810,635 | 700,627 | 704,677 |

| | Gas—Per Thousand Cubic Feet (MCF) | | | | |
|---|---|---|---|---|---|
| | 1974 | 1975 | 1976 | 1977 | 1978 |
| United States | | | | | |
| Working Interests | 1,270,068 | 1,568,310 | 1,075,604 | 965,912 | 930,051 |
| Royalty Interests | 514,518 | 505,235 | 478,674 | 354,049 | 349,033 |
| Overriding Royalty Interests | 632,046 | 595,079 | 470,889 | 326,277 | 266,226 |
| Production Payments | 71,904 | 240,271 | 153,505 | 237,428 | 108,282 |
| TOTAL | 2,488,536 | 2,908,895 | 2,178,672 | 1,883,666 | 1,653,592 |
| Canada | | | | | |
| Royalty Interests | 39,000 | 25,000 | 24,000 | 24,000 | 24,000 |
| Company Total | 2,527,536 | 2,933,895 | 2,202,672 | 1,907,666 | 1,677,592 |

| | 1977 | 1978 |
|---|---|---|
| Average realized prices: | | |
| Crude oil, condensate and natural gas liquids (dollar per barrel) | $9.87 | $10.54 |
| Natural gas (dollar per thousand cubic feet) | $1.05 | $ 1.18 |

At December 31, 1978, UV had 481 gross (117 net) producing oil wells and 31 gross (21 net) gas wells, principally located on 87,478 gross (69,566 net) leasehold acres and 102,701 gross (17,159 net) mineral and royalty acres.

Mr. B. W. Allen, Independent Petroleum Engineer, has calculated that at December 31, 1978, UV had total estimated proven reserves of approximately 6.8 million barrels of oil and approximately 29.2 million MCF of gas, consisting of approximately 2.0 million barrels of oil and approximately 7.6 million MCF of gas on royalty interest properties and approximately 4.8 million barrels of oil and approximately 21.6 million MCF of gas on working interest properties. More than 90% of the Company's estimated proven reserves of oil and gas were proven developed reserves, as opposed to proven undeveloped reserves. It is currently believed that the Company will produce approximately 0.8 million barrels of oil and 2.0 million MCF of gas from these reserves in 1979. At this time, no effort has been made to define amounts which may be recoverable through a secondary recovery program.

As of December 31, 1978, UV held working interests and mineral and royalty interests in approximately 2,156,752 gross undeveloped acres located in the United States. Of this amount, there are 562,108 gross (514,204 net) leasehold acres located primarily in Wyoming, Montana, Utah, Colorado and Texas. Of the balance, 1,594,644 gross (399,192 net) mineral and royalty acres, approximately one-half of these acres are located in North Dakota and the remainder is located primarily in Texas, Montana, South Dakota and New Mexico. In Canada the Company has approximately 42,000 net mineral acres and 142,200 net royalty acres located in Saskatchewan.

The Company is currently drilling and operating four oil and gas wells and participating in six additional wells.

The Company has not filed any oil or natural gas reserve information with any Federal government authority or agency within the past twelve months.

In connection with its efforts to acquire interest in additional oil and gas properties, the Company encounters intense competition from large international companies and numerous small to medium size independent operators.

*Gold.* Through its 85% owned subsidiary Alaska Gold Company ("Alaska Gold") the Company mines placer gold. Placer gold consists of gold particles accumulated or concentrated in sand and gravel.

Alaska Gold's properties include patented and unpatented mining claims covering approximately 17,500 acres in the Nome district in Alaska. Current estimated gold reserves (commercially mineable gold deposits under existing conditions of gold prices and production costs) at Nome totaled approximately 1,164,400 troy ounces, contained in approximately 123,346,000 cubic yards of dredgeable gravel within an area of approximately 1,280 acres.

In addition to the Nome property, Alaska Gold owns or controls approximately 11,600 acres in the Fairbanks district, on which there is located gravel containing gold deposits; however any decision to mine this property would depend upon cost, environmental and other conditions. Alaska Gold also owns an additional 2,600 acres of property in or close to Fairbanks, which it believes is suitable for sale to residential, industrial or commercial users.

Alaska Gold, using funds advanced by the Company at its effective interest rate, commenced gold dredging operations in Nome and Hogatza, Alaska in the 1975 season. Dredging operations at Hogatza were suspended at the close of the 1975 season, because of reduced yields and limited reserves.

During 1975, placer gold mining operations involved the dredging of 1,414,923 cubic yards of gravel (740,391 at Nome and 674,532 at Hogatza), and the production of 11,156 troy ounces of gold, (7,796 at

Nome and 3,360 at Hogatza), at a production cost of $108.52 and $110.26 per troy ounce, respectively, for gold produced at Nome and Hogatza. During 1976, 1,194,620 cubic yards of gravel were dredged (all at Nome), yielding 14,320 troy ounces of gold, at a production cost of $110.40 per troy ounce. As a result of the decreasing price of gold, Alaska Gold decided not to sell any gold in 1975 and 1976. At December 31, 1976, 26,769 troy ounces of gold were being held in inventory. In 1977 the Company produced 11,563 ounces of gold at a production cost of $181.52 per ounce and sold 38,515 ounces of gold at an average price of $151.58 per ounce, which represented the Company's 1977 production and inventory together with royalty ounces received in kind from leased properties. In 1978 the Company produced 11,295 ounces of gold at a production cost of $338.38 per ounce and sold its production at an average price of $225.92 per ounce.

*Other Natural Resource Operations.* The Company has interests in various other mining properties and other operations, including the Washington Mining Company, Richmond-Eureka Mining Company, the Ophir Mine in Utah, U.S.S. Lead Refinery, and the Utah Railway Company. During 1978, none of these properties or operations were material to the Company's business, earnings, or assets. Exploration expenditures on new and existing prospects in 1978, all of which were made in Utah, Nevada, Arizona, California and New Mexico, amounted to $1,386,000 as compared to $733,000 in 1977.

**Copper and Brass Fabrication**

UV is engaged, through Mueller Brass Co., in the fabrication of copper and brass at plants in Port Huron and Marysville, Michigan, Fulton, Mississippi, and Hartsville and Covington, Tennessee. Mueller's products are classifiable into two main groups, industrial products and standard products.

*Industrial Products.* Industrial products include brass rod, forgings, screw machine products, impact extrusions and specialty tube. These products are sold directly by Mueller's sales force chiefly to other manufacturers and to a lesser extent to distributors.

*Standard Products.* Standard products include Streamline™ tube, wrought and cast fittings, refrigeration, plumbing and heating assemblies, and fabricated tube. These products are sold directly by Mueller's sales force principally to plumbing/heating and air conditioning/refrigeration jobbers and, to a lesser extent, to manufacturers. Streamline Copper & Brass Ltd., a wholly-owned subsidiary of UV, distributes Mueller's products in Canada to the refrigeration and air conditioning industries, and manufactures Streamline™ wrought copper solder type fittings for sale in Canada.

A major portion of Mueller's requirements for fabricating copper is normally obtained from the Company's own copper mining operation with additional amounts of copper obtained by purchase from other copper producers and dealers. In 1977, approximately 43% of Mueller's raw copper requirements were obtained from the Company's copper operations, as compared to 69% in 1976. The lower percentage of Mueller's copper requirements supplied by the Company during 1977 resulted in large part from the shutdown of Asarco, the Company's outside smelter and refiner, during the industry wide copper strike in 1977. During 1978 approximately 41% of Mueller's raw copper requirements were obtained from the Company. However, approximately 26% of the requirements were supplied from the Company's 1977 production which had been stockpiled at the Company's copper mine or at refineries as a result of the industry-wide strike referred to above. The balance of 1978 requirements obtained from the Company were considerably less than normal due to the strike at the copper mine which commenced in April 1978 and was settled in January 1979. Copper and other raw materials used in the brass fabrication operation and the production of standard and special purpose alloys, including zinc, tin and lead, are obtained by purchasing scrap material from various producers and dealers. Raw materials used in the fabrication of aluminum products are purchased in the open market.

Mueller's backlog of orders as of December 31, 1978 amounted to approximately $27,800,000 compared to $27,100,000 as of December 31, 1977, the bulk of which called for shipment within the subsequent twelve months. The backlog consists principally of industrial products orders. Standard products such as valves, fittings and tubing are stocked in regional warehouses and made available to customers from available stock. No material portion of Mueller's business is dependent upon a single customer or a small group of customers.

Mueller manufactures and markets several of its standard products under the Streamline™ name, but it does not hold any patents, licenses, franchises or concessions which are material to its business.

Mueller is part of the nonferrous metal working and fabricating industry which, in the aggregate, produces a vast number of different products. The variety and composition of Mueller's products is such that, while it is in competition with many other companies with respect to most of its products, its competitive position differs from product to product and is not readily determinable. Mueller is a major fabricator of copper tube, brass rod and forgings. Some of the firms with which Mueller competes are affiliates of the major copper producers.

The principal properties owned and leased by Mueller for manufacturing purposes and their approximate square footage are as follows:

| Location | Floor Space (Sq. Ft.) | Principal Product | Owned or Leased |
|---|---|---|---|
| Port Huron, Michigan | 1,064,000 | Industrial | (1) |
| Fulton, Mississippi | 320,000 | Standard | (2) |
| Covington, Tennessee | 135,000 | Standard | Owned |
| Marysville, Michigan | 98,000 | Industrial | Owned |
| Hartsville, Tennessee | 74,000 | Standard | Owned |

(1) Approximately 26 of 103 acres of land and approximately 524,000 square feet of floor space has been conveyed to the City of Port Huron and leased back by Mueller in connection with the City of Port Huron, Michigan Industrial Development Revenue Bonds issued in 1968 in an aggregate principal amount of $22,000,000. The lease expires December 1, 1993, at which time Mueller has the right to purchase the facility for a nominal amount. To cover the cost of air and water pollution control equipment additional Industrial Development Revenue Bonds were issued in 1975 in an aggregate principal amount of $1,000,000 and in 1976 Pollution Control Revenue Bonds were issued in an aggregate principal amount of $5,000,000.

(2) This facility has been conveyed to the County of Itawamba, Mississippi, and leased back by Mueller, in connection with Industrial Revenue Bonds issued in 1968 by the County of Itawamba in the aggregate principal amount of $13,000,000. The lease expires December 1, 1993, at which time Mueller has the right to purchase the facility for a nominal amount.

UV has unconditionally guaranteed the performance of all of Mueller's obligations under both of the leases referred to in Notes 1 and 2. In addition to the above properties, Mueller leases approximately 360,000 square feet of warehouse space. All of Mueller's facilities are adequately maintained for present and anticipated use.

## Foreign Operations

Substantially all of the Company's operations outside of the United States are conducted through Federal and its subsidiaries, principally in Canada. Other foreign operations, the largest of which is in Mexico, are not material. Financial information about domestic and foreign operations is as follows:

| | Year ended December 31, | | | | |
|---|---|---|---|---|---|
| | 1974 | 1975 | 1976 | 1977 | 1978 |
| | | | (000's omitted) | | |
| Revenues: | | | | | |
| United States: | | | | | |
| Unaffiliated customers | $399,600 | $316,900 | $395,700 | $471,300 | $491,200 |
| Foreign affiliates (principally Canadian)(a) | 6,300 | 4,700 | 5,800 | 5,600 | 5,900 |
| | 405,900 | 321,600 | 401,500 | 476,900 | 497,100 |
| Canada: | | | | | |
| Unaffiliated customers | 71,800 | 92,900 | 102,700 | 100,000 | 90,000 |
| Affiliated customers (principally U.S.)(a) | 4,200 | 2,900 | 2,500 | 2,500 | 3,900 |
| | 76,000 | 95,800 | 105,200 | 102,500 | 93,900 |
| Other foreign countries: | | | | | |
| Unaffiliated customers | 13,800 | 18,700 | 19,200 | 14,700 | 20,500 |
| Affiliated customers(a) | | | | 300 | 200 |
| | 13,800 | 18,700 | 19,200 | 15,000 | 20,700 |
| Eliminations | (10,500) | (7,600) | (8,300) | (8,400) | (10,000) |
| | $485,200 | $428,500 | $517,600 | $586,000 | $601,700 |
| Operating profit: | | | | | |
| United States | $ 59,500 | $41,100 | $ 58,500 | $ 76,600 | $ 59,700 |
| Canada(b) | 10,500 | 17,400 | 16,300 | 9,400 | 7,500 |
| Other foreign countries(c) | 2,700 | 3,900 | 1,600 | 1,300 | 3,500 |
| | $ 72,700 | $ 62,400 | $ 76,400 | $ 87,300 | $ 70,700 |
| Identifiable assets: | | | | | |
| United States | $389,000 | $375,500 | $412,200 | $495,100 | $535,000 |
| Canada | 52,200 | 60,200 | 63,900 | 61,900 | 64,500 |
| Other foreign countries | 11,700 | 14,000 | 14,300 | 15,600 | 18,700 |
| Eliminations | (3,200) | (3,000) | (2,200) | (2,500) | (2,100) |
| | $449,700 | $446,700 | $488,200 | $570,100 | $616,100 |

NOTES:

(a) Sales between geographic areas are accounted for at prices comparable to normal unaffiliated sales.

(b) Includes net foreign currency translation gains (losses) of $644,000 in 1976, ($3,407,000) in 1977 and ($3,090,000) in 1978.

(c) Includes net foreign currency translation losses of $1,895,000 in 1976, $899,000 in 1977 and $105,000 in 1978.

The Company's business in Canada, conducted through a 59% owned subsidiary (the "Canadian Subsidiary") of Federal, is subject to regulation under the Canadian Foreign Investment Review Act ("FIRA"). Under sales of a specified percentage of the shares of the Canadian Subsidiary owned by Federal or any of the Canadian Subsidiary's operations to those who are not Canadian citizens or residents would be subject to review by the Foreign Investment Review Agency (the "Agency"), as would certain expansions of the Canadian Subsidiary's business. The Company presently has no plans which would involve the disposition of Federal's interest in the Canadian Subsidiary or the sale or expansion of its business in a way which would require approval of the Agency.

**Environmental and Safety Matters**

Legislation and implementing regulations adopted or proposed by the Federal Environmental Protection Agency and by comparable agencies in various states affect directly and indirectly a portion of the Company's operations, and have increased the operating expenses of certain of its facilities. The Company believes it is in material compliance with applicable environmental laws and regulations and is not aware of any ecological problems at any of its operations which are material to its business. The Company cannot predict what effect, if any, the requirements of any future Federal and state regulation in this field will have. The Company's mining operations are subject to numerous governmental laws and regulations, including the Federal Coal Mine Health and Safety Act of 1969 and state and local laws concerning safety.

As discussed under "Narrative description of business—Natural Resources—Copper", the Company's copper concentrate is treated by Asarco. The concentrate is currently being treated at two of Asarco's smelters. Under the terms of the contract between the Company and Asarco, the Company (in common with other users of one of Asarco's smelters) had been paying a surcharge related to special capital expenditures related to compliance with prevailing federal, state and local air pollution regulations. This additional charge was terminated by Asarco in May 1975. However, if pollution standards should be changed, it could require additional major capital expenditures by Asarco for the control of smelter emissions, which in turn could result in surcharges being reinstated or possibly the shutdown of the smelter with the resulting need for the Company to seek other smelting facilities.

**Energy Matters**

Mueller's operations require significant amounts of natural gas, the cost of which has increased significantly in recent years, and which has been subject to the threat of possible shortage. During 1975, Mueller's Port Huron, Michigan and Fulton, Mississippi plants felt the continuing pressure of the nationwide natural gas shortage as reflected in curtailments by pipeline suppliers, but production was not affected. In order to provide natural gas for its Port Huron and Fulton plants, Mueller has purchased portions of the production of nearby natural gas fields, which Mueller believes will provide it with a significant portion of its near-term natural gas requirements.

**Employee Relations**

As of December 31, 1978, the Company had approximately 13,800 employees, including 9,300 in the United States. Approximately 83% of the Company's United States production employees were represented by labor unions.

The Company considers its current labor relations to be satisfactory.

## Item 2. *Summary of Operations*

### UV INDUSTRIES, INC. AND SUBSIDIARIES

#### CONSOLIDATED STATEMENT OF INCOME

| | Year ended December 31, | | | | |
|---|---|---|---|---|---|
| | 1974 | 1975 | 1976 | 1977 | 1978 |
| | (000's omitted except per share data) | | | | |
| Operating revenues: | | | | | |
| Net sales | $474,497 | $419,368 | $510,771 | $575,664 | $593,992 |
| Royalties and other revenues | 10,718 | 9,085 | 6,838 | 10,338 | 7,666 |
| | 485,215 | 428,453 | 517,609 | 586,002 | 601,658 |
| Operating expenses: | | | | | |
| Cost of sales | 366,040 | 320,095 | 386,957 | 435,891 | 462,627 |
| Selling general and administrative | 46,448 | 45,994 | 53,041 | 58,491 | 65,141 |
| Foreign currency translation losses, net | | | 1,251 | 4,306 | 3,195 |
| | 412,488 | 366,089 | 441,249 | 498,688 | 530,963 |
| Operating income | 72,727 | 62,364 | 76,360 | 87,314 | 70,695 |
| Gain on disposal of investment in affiliate (Note 6) | | | | | 22,602 |
| Equity in net income of affiliate | | | | 2,315 | 2,301 |
| Interest expense | (13,171) | (12,198) | (10,468) | (14,695) | (16,823) |
| Other income and (expense), net | (1,302) | (1,605) | (107) | (616) | (2,230) |
| Income before provision for income taxes and minority interests in net income of consolidated subsidiaries | 58,254 | 48,561 | 65,785 | 74,318 | 76,545 |
| Provision for income taxes(a) | 26,227 | 19,936 | 27,657 | 34,495 | 32,985 |
| Income before minority interests in net income of consolidated subsidiaries | 32,027 | 28,625 | 38,128 | 39,823 | 43,560 |
| Minority interests in net income of consolidated subsidiaries | 2,423 | 4,249 | 3,240 | 1,663 | 1,019 |
| Net income(a) | 29,604 | 24,376 | 34,888 | 38,160 | 42,541 |
| Dividend requirements on Preferred Stock | 1,263 | 1,123 | 1,041 | 898 | 807 |
| Income applicable to Common Stock | $ 28,341 | $ 23,253 | $ 33,847 | $ 37,262 | $ 41,734 |
| Earnings per share data (a) and (b): | | | | | |
| Primary | $3.51 | $2.72 | $3.80 | $4.04 | $4.55 |
| Fully diluted | $2.29 | $1.91 | $2.59 | $2.86 | $3.29 |
| Cash dividends declared | $ .50 | $ .50 | $.625 | $1.00 | $1.00 |
| Weighted average number of shares outstanding: | | | | | |
| Primary | 8,071 | 8,538 | 8,911 | 9,216 | 9,177 |
| Fully diluted | 14,711 | 14,779 | 14,510 | 14,150 | 13,579 |

## NOTES TO CONSOLIDATED STATEMENT OF INCOME

(a) In 1975 Statement No. 9 of the Financial Accounting Standards Board was issued which required the Company to change its accounting to provide deferred income taxes on intangible drilling costs. In applying this Statement the Company adopted the provisions which provided for the retroactive restatement of the prior period financial statements. The effect of this change was to decrease net income and primary and fully diluted earnings per share for the two years ended December 31, 1975 as follows:

| | | Earnings Per Share | |
|---|---|---|---|
| | Net Income | Primary | Fully Diluted |
| 1974 | $ 680,000 | $.08 | $.05 |
| 1975 | $ 413,000 | $.05 | $.03 |

Provisions for Federal income taxes reflect the benefits resulting from the deduction for tax purposes of additional depletion. Investment tax credits used to reduce the provisions for Federal income taxes were approximately: 1974, $566,000; 1975, $1,464,000; 1976, $1,198,000; 1977, $1,263,000; 1978, $1,165,000.

For further information with respect to provision for income taxes, see Note 13 of the Notes to Financial Statements.

(b) Primary earnings per share were computed based on the weighted average number of shares of Common Stock outstanding during each period adjusted for the 2-for-1 stock split in June, 1977.

Fully diluted earnings per share were computed, as required, on the assumption that convertible debentures, convertible preferred stock, stock options and warrants were converted or exercised at the beginning of the year or the time of their issuance and that average outstanding Common Stock was adjusted accordingly. It was assumed that the proceeds from the exercise of stock options and warrants were used to repurchase 20% of the Company's outstanding Common Stock. Any remaining proceeds were assumed to have been used first to retire outstanding debt and then to invest in commercial paper.

In late December 1978 and through March 26, 1979, 5,953,000 shares of Common Stock were issued upon the exercise of warrants and stock options, the conversion of 5¼% convertible subordinated debentures and $1.265 New Preferred Stock. If these shares had been outstanding on January 1, 1978, primary earnings per share for the year ended December 31, 1978 would have decreased by $1.18 to $3.37, assuming that the proceeds from the exercise of warrants and stock options were used to repurchase 20% of the Company's outstanding Common Stock and the remaining proceeds were used to retire outstanding debt and then to invest in commercial paper.

## MANAGEMENT'S DISCUSSION AND ANALYSIS OF THE CONSOLIDATED STATEMENT OF INCOME

**(All percentages represent changes from the prior period)**

### 1978 vs. 1977

Operating revenues increased a total of $15,700,000 or 3% for all business segments. Electrical equipment and electronic component revenues increased $22,200,000 or 6%; natural resource revenues decreased $10,700,000 or 20% (after eliminating intersegment revenues) and copper and brass fabrication revenues increased $4,200,000 or 2%. The increase in the electrical equipment and electronic components segment occurred in standard and specially designed low voltage equipment ($23,100,000 or 13%) and electronic components ($5,200,000 or 11%) partially offset by a decrease in power equipment ($6,100,000 or 5%). Geographically within the electrical equipment and electronic components segment revenues increased in the United States (12%) and in other foreign operations (38%) due to a combination of improved prices and volume increases while Canadian revenues decreased (10%) due primarily to a lower average foreign exchange rate and lower volume which was caused partially by labor strikes at two plants. Revenue decreases in the natural resources segment were due principally to decreased coal sales as a result of the nationwide coal strike during the first quarter and rail car shortages throughout the year. Revenues also decreased due to lower gold sales. Revenue increases in the copper and brass fabrication occurred in both industrial and standard products which increased $1,700,000 (2%) and $2,500,000 (3%) due principally to increased prices.

Operating expenses increased a total of $32,275,000 or 6% for all business segments. Cost of sales of the electrical equipment and electronic components segment increased by $11,646,000 or 5% due principally to increased volume and also to increased costs of raw materials, parts, wages and overhead costs. The increase in costs was not proportionate to the increase in revenues due to a more favorable sales product mix. Cost of sales of the natural resource segment increased $12,757,000 or 42% due principally to increased copper costs attributable to shutdown expenses of approximately $4,000,000 incurred as a result of a strike at the copper mine, which commenced in April 1978 and was not settled until January 1979. Other cost increases were due to increased exploration expenses and to higher costs incurred in the coal and lead recycling operations. Costs of sales for the copper and brass fabrication segment increased $2,333,000 or 1%. Selling, general and administrative expenses increased $6,650,000 or 11% of which $4,900,000 occurred in the electrical equipment and electronic components segment and $1,700,000 in the copper and brass fabrication segment. These increases were due principally to volume and inflationary cost increases. Foreign currency translation losses which occurred, substantially all of which in the electrical equipment and electronic segment, decreased $1,100,000 due principally to a stabilizing of the exchange rate of the Mexican peso.

The gain on disposal of investment in affiliate represents the sale and exchange of 1,285,400 shares of Globe-Union, Inc. Common Stock for $40,000,000 in cash and 380,438 shares of common stock of Johnson Controls, Inc.

Interest expense increased due to the $100,000,000 public debt offering issued in April 1977.

Other income and expense, net, increased principally due to a provision for unrealized losses of $1,037,000 on marketable equity securities.

The effective income tax rate, which declined 3.3 percentage points, is affected by foreign currency translation losses (from which there are minimal tax benefits), equity in net income of affiliate (which is taxed only at the intercorporate dividend rate) and the less than normal tax rate applicable to the gain on the sale and exchange of Globe-Union, Inc. holdings. After giving effect to these items the effective tax rate did not change significantly.

### 1977 vs. 1976

Operating revenues increased a total of $68,400,000 or 13% for all business segments. Electrical equipment and electronic component revenues increased $17,500,000 or 5%; natural resources revenues

increased $15,000,000 or 40% (after eliminating intersegment revenues) and copper and brass fabrication revenues increased $35,900,000 or 22%. The increase in the electrical equipment and electronic components occurred in the standard and specially designed low voltage equipment ($14,200,000 or 9%) and power equipment ($3,400,000 or 3%) lines. These increases were due principally to volume increases in the U.S. and Canada and moderate price increases principally in the U.S. and Mexico. Domestic revenues of the electrical equipment and electronic component segment increased $25,000,000 or 12% while foreign revenues declined $7,500,000. The decline in foreign sales was due principally to lower average currency exchange rates used in converting foreign sales to equivalent U.S. dollars. Revenue increases in the natural resource segment were due principally to coal operations which increased $5,055,000 or 39%, due principally to volume resulting from a long-term contract with a public utility entered into in late 1976 and $5,838,000 of revenue from the sale of 38,515 ounces of gold. There were no gold sales during 1976. Also contributing to increased natural resource revenues was an increase in railroad revenues of $2,149,000 resulting from increased coal shipments. Revenue increases in the copper and brass fabricating segment occurred in both industrial and standard products which increased $12,200,000 (14%) and $23,700,000 (31%) respectively. Industrial products revenue increases were due to volume whereas standard products benefited from improved selling prices and volume increases.

Operating expenses increased a total of $57,439,000 or 13% for all business segments. Cost of sales of the electrical equipment and electronic component segment increased by $13,174,000 or 6% due to higher volume and higher material, wage and overhead costs. Natural resource costs increased $6,479,000 due principally to higher volume of coal sales and the cost of gold sold during 1977. Copper and brass fabrication costs increased $22,774,000 or 16% due principally to higher volume. Selling, general and administrative expenses increased $5,450,000, or 10%, of which $3,300,000 occurred in the copper and brass fabrication segment and $1,800,000 in the electrical and electronic segment. These increases were principally in selling expenses and were due principally to increased distribution expenses associated with higher sales volume. Also included in operating expenses are foreign currency translation losses which increased $3,055,000. Of this increase $2,868,000 occurred in the electrical equipment and electronic segment due principally to the decline of the Canadian dollar against the U.S. dollar.

The equity in net income of affiliate is attributable to a 20.5% investment made in Globe-Union, Inc. during 1977.

Interest expense increased due to a $100,000,000 public debt offering issued in April 1977, which increase was partially offset by the use of $41,830,000 of proceeds to reduce bank borrowings.

Other income and expense, net, increased due to higher corporate administrative expenses, smaller gains on repurchase of debentures offset substantially by interest earned on proceeds remaining from the $100,000,000 public debt offering.

The effective income tax rate increased by 4.4 percentage points due principally to the fact that no tax benefit was obtained for a substantial portion of foreign currency translation losses and a reduction in the benefit derived from percentage depletion allowances. The increase in effective rate caused by the above items was partially offset by the effect of providing taxes at the intercorporate dividend rate on the equity in the net income of an affiliate.

Minority interests in net income of consolidated subsidiaries declined due to reduced earnings of foreign subsidiaries which resulted principally from greater foreign currency translation losses.

**Item 3.** ***Properties***

Reference is made to Item 1 above for information included therein.

## Item 4. *Parents and Subsidiaries*

| No. | Name of Company | State or Other Jurisdiction Under the Laws of Which Organized | Stock Ownership: Owned, by Corporation Number | Stock Ownership: Percentage of Voting Securities Owned |
|---|---|---|---|---|
| | Registrant: | | | |
| 1 | UV Industries, Inc.(a) | Maine | There is no parent of the registrant | |
| | Consolidated subsidiaries(b): | | | |
| 2 | Alaska Gold Company(c) | Delaware | 1 | 85 |
| 3 | Arava Exploration Company | Colorado | 1 | 100 |
| 4 | Kennet Company Limited | Bermuda | 1 | 100 |
| 5 | Mueller Brass Co. | Michigan | 1 | 100 |
| 6 | Itawamba Industrial Gas Co. Inc. | Mississippi | 5 | 100 |
| 7 | Mueller Industrial Realty Co. | Michigan | 1 | 100 |
| 8 | Streamline Copper & Brass Ltd | Dominion of Canada | 1 | 100 |
| 9 | U.S.S. Lead Refinery Inc. | Maine | 1 | 100 |
| 10 | Ussram Exploration Company | Maine | 1 | 100 |
| 11 | Utah Railway Company | Utah | 1 | 100 |
| 12 | Washington Mining Company | Maine | 1 | 100 |
| 13 | White Knob Mining Company | Idaho | 1 | 100 |
| 14 | United States Fuel Company | Nevada | 1 | 100 |
| 15 | King Coal Company | Utah | 14 | 100 |
| 16 | United States Smelting Refining and Mining Company | Delaware | 1 | 100 |
| 17 | Federal Pacific Electric Company | Delaware | 1 | 100 |
| 18 | Federal Pacific Electric de Mexico, S.A. de C.V. | Mexico | 17 | 81 |
| 19 | Federal Pacific Electric GESMBH, Austria | Austria | 17 | 100 |
| 20 | FPE-Cornell-Dubilier Electric GmbH | Germany | 17 | 100 |
| 21 | Cornell-Dubilier Electric Corporation | Delaware | 17 | 100 |
| 22 | Cornell-Dubilier Electronics (Taiwan) | Republic of China | 21 | 100 |
| 23 | Cornell-Dubilier Electronics (Canada) Limited | Ontario, Canada | 21 | 100 |
| 24 | Federal Pioneer Limited | Manitoba, Canada | 17 | 59 |
| 25 | La Compagnie Electrique Pioneer de Quebec, Inc. | Quebec, Canada | 24 | 100 |
| 26 | Federal Pioneer Eastech Limited | Nova Scotia, Canada | 24 | 100 |
| 27 | Federal Electric (Holdings) Limited | England | 24 | 97½ |
| 28 | FPE South Africa (Proprietary) Limited | South Africa | 27 | 75 |

(a) Separate financial statements filed.

(b) Subsidiaries included in consolidated financial statements.

(c) Financial Statements of this subsidiary are set forth under Item 13 of 1978 Annual Reports on Form 10-K filed separately with the Securities and Exchange Commission by this subsidiary.

The above list does not include subsidiaries which are omitted because, considered in the aggregate they would not constitute a significant subsidiary.

Item 5. *Pending Legal Proceedings*

**Pending Litigation Concerning Sharon's Stock Purchases and the Voting of its Shares**

On the morning of March 26, 1979, at the request of Sharon Steel Corporation the Maine Superior Court issued an order staying enforcement of a finding, made earlier that day, by the Superintendent of the Maine Bureau of Banking (the "Bureau of Banking") after a hearing held on March 22, that Sharon's purchase of 1,370,300 shares of UV common stock on March 7, 1979, had violated the provisions of the Maine Takeover Bid Disclosure Law (the "Maine Takeover Law"). UV has not appealed this ruling, concerning which further adjudication is pending in the Superior Court. The hearing before the Bureau of Banking had been held pursuant to a Cease and Desist Order issued to Sharon by the Superintendent of the Bureau of Banking on March 12, 1979, prohibiting the consummation of the March 7 purchase by Sharon pending the hearing, which order was modified by a Stay Order issued by the Superintendent on March 14, 1979, allowing Sharon to consummate the March 7 transaction pending the hearing.

The issuance of the Superintendent's March 14 Stay Order followed a ruling on March 13, 1979, after a hearing on UV's motion for a preliminary injunction, by the United States District Court for the District of Maine (the "USDC for Maine") finding that Sharon's March 7 purchase did not violate the Maine Takeover Law. UV's motion for a preliminary injunction in the USDC for Maine was made in an action that UV had filed in the Maine Superior Court on February 25, 1979, which Sharon removed to the USDC for Maine. That action sought a preliminary injunction to prevent Sharon from consummating an executory contract entered into by Sharon on February 22, 1979, to purchase approximately 1.3 million shares of UV Common Stock. On February 28, 1979, the USDC for Maine had issued such a preliminary injunction on the grounds that the February 22 purchase violated the Maine Takeover Law. The February 28 USDC for Maine ruling restrained Sharon from completing the February 22 transaction until further order of the Court and further enjoined Sharon from purchasing by any other means the shares that were the subject of the February 22 transaction. The March 13 ruling by the USDC for Maine also held that the March 7 purchase did not violate the February 28 preliminary injunction.

Also on March 26 the Maine Superior Court refused to issue an order compelling the record holders, as of the February 28 record date for the special UV stockholders' meeting held on March 26, of the shares purchased by Sharon in the March 7 transaction to grant Sharon proxies in order to allow Sharon to vote the shares so purchased at the March 26 meeting.

On March 23 in an action filed by Sharon against the record holders as of February 28 of the UV shares that Sharon purchased on March 7, the Supreme Court of the State of New York had also refused to issue an order compelling such record holders to grant Sharon such proxies. Sharon has appealed the New York Supreme Court ruling. UV has intervened as a defendant in that action.

On February 28, 1979, the Supreme Court of the State of New York, in an action filed by UV against Sharon, NVF Company, and certain members of Sharon's Board of Directors, issued an order vacating a temporary restraining order issued on February 23, which enjoined the completion of Sharon's February 22 purchase of UV stock on the grounds, *inter alia,* that such purchase violated the provisions of the New York Security Takeover Disclosure Act. UV has filed notice of its intention to appeal this ruling to the Supreme Court of New York, Appellate Division.

On February 23, 1979, Martin Horwitz and Edwin Jacobson Chairman of the Board and President, respectively, of the Company, filed a class action lawsuit on their individual behalf as stockholders and on behalf of all other similarly situated stockholders in the Supreme Court of New York alleging that Sharon, Victor Posner and their affiliates, NVF Company and Securities Management Corp., have entered into an illegal scheme and conspiracy to block the proposed liquidation of UV, and thereby to deprive other stockholders and UV of the benefits to be derived from it. Messrs. Horwitz and Jacobson seek damages on behalf of the stockholders in the class in the amount of $120,000,000.

On February 23, 1979, UV filed an action in the United States District Court for the Southern District of New York against the above named defendants and certain of their affiliates, seeking injunctive relief and damages, and alleging that the defendants' purchases of UV securities are part of an undisclosed scheme to block the proposed liquidation and to take control of UV in violation of the Securities Exchange Act of 1934, the Investment Company Act of 1940 and common law. UV filed an amended and supplemental complaint in such action on March 8, 1979.

On March 8, 1979, Sharon filed a suit in the United States District Court for the Southern District of New York against UV, Martin Horwitz and Edwin Jacobson, alleging that the defendants had violated certain provisions of the

federal securities laws and had breached their fiduciary duties to the UV stockholders. The lawsuit alleges, among other things, that certain misleading statements and material omissions were made in the proxy statement sent to UV's shareholders in connection with the special shareholders' meeting held on March 26. On March 16, 1979, Sharon filed an amended complaint against UV, asserting that the supplemental proxy materials mailed to UV shareholders on March 6, containing the third proposal submitted to shareholders at the March 26 special meeting relating to the approval of the sale of substantially all of UV's assets and property, were also false and misleading, and asserting certain violations of Maine corporate law by UV with respect to the nature of the third proposal and the manner of its submission, including the failure to set a new record date for the March 26 meeting upon the submission of the third proposal. As relief Sharon's amended complaint sought, among other things, to enjoin UV from the further solicitation of proxies, and from voting proxies already solicited, for the March 26 meeting until UV made the disclosure sought in the amended complaint; to postpone both the March 26 meeting and the record date for the meeting; and a requirement that proposed amendments to UV's proxy materials be submitted to the court for approval. Sharon did not seek to obtain any preliminary injunction in this suit prior to the March 26 stockholders' meeting.

**Item 6.** ***Increases and Decreases in Outstanding Securities***

| | Shares of $1.265 Convertible Preferred | Shares of $5.50 Cumulative Preferred | Shares of $1.00 Par Common | 5½% Convertible Subordinated Debentures (FPE) | Stock Options | 5¼% Convertible Subordinated Debentures | 5¼% Subordinated Debentures | 8¼% Debentures | 9¼% Senior Subordinated Notes |
|---|---|---|---|---|---|---|---|---|---|
| Outstanding, December 31, 1977 | 115,461 | 123,509 | 9,049,856 | $1,056,000 | 197,962 | $49,612,000 | $16,062,900 | $75,000,000 | $25,000,000 |
| Preferred shares tendered for conversion into Common from January 19, 1978 to December 29, 1978 | (14,160) | | 33,504 | | | | | | |
| Purchased for treasury from January 25, 1978 to December 20, 1978 | | (4,000) | | | | | | | |
| Purchased for treasury from January 31, 1978 to December 29, 1978 and subsequently surrendered to the Trustee for cancellation | | | | | | (2,330,000) | (844,000) | | |
| Issued upon exercise of stock options during the year | | | 58,212 | | (58,212) | | | | |
| Options expired during the year | | | | | (3,150) | | | | |
| Issued upon conversion of Federal Pacific Electric Company 5½% Debentures | | | 77,420 | (728,000) | | | | | |
| Issued upon conversion of 5¼% Debentures | | | 17,639 | | | (396,000) | | | |
| Issued upon exercise of warrants | | | 661,967 | | | | | | |
| Outstanding, December 31, 1978 | 101,301 | 119,509 | 9,898,598 | $ 328,000 | 136,600 | $46,886,000 | $15,218,900 | $75,000,000 | $25,000,000 |

**Item 7.** ***Changes in Securities and Changes in Security for Registered Securities***

None.

**Item 8.** ***Defaults upon Senior Securities***

None.

**Item 9.** ***Approximate Number of Equity Security Holders***

| (1) Title of Class | (2) Number of Record Holders* |
|---|---|
| Common Stock ($1 par value) | 9,524 |
| Warrants to purchase shares of Common Stock ($1 par value) | 3,772 |
| Preferred Stock, $5.50 cumulative ($5 par value) | 2,428 |
| New Preferred Stock $1.265 convertible ($5 par value) | 827 |
| 5¼% convertible subordinated debentures | 2,362 |
| 5½% convertible subordinated debentures (Federal Pacific Electric Company) | 54 |

* As of December 29, 1978 except for New Preferred Stock which is as of January 15, 1979.

**Item 10.** ***Submission of Matters to a Vote of Security Holders***

A Special Meeting of Stockholders of the Company was held on March 26, 1979, at which the following matters were voted upon and approved:

1. To consider the advisability of dissolving the Company by acting upon a proposal to approve and adopt a Plan of Liquidation and Dissolution attached as Annex I to the Proxy Statement dated February 20, 1979 (the "Proxy Statement") whereby, within a twelve-month period from the date of stockholder approval, the assets of the Company will be sold (or distributed to stockholders or to a liquidating trust on behalf of stockholders), and the proceeds of any such sales, including the proceeds of the sale of shares of the Company's wholly-owned subsidiary, Federal Pacific Electric Company ("Federal"), after paying or providing for claims, liabilities and other obligations, will be distributed to the Company's stockholders, and the Company will thereafter be dissolved (10,965,128 votes in favor of the proposal and 2,199,525 votes against).

2. To consider and act upon a proposal to approve the sale of all of the outstanding capital stock of Federal to New REC, Inc., a wholly-owned subsidiary of Reliance Electric Company, pursuant to a Stock Purchase Agreement attached as Annex II to the Proxy Statement (11,010,208 votes in favor of the proposal and 2,160,879 votes against).

3. To consider and act upon an alternative proposal to approve the sale of substantially all of the Company's property and assets upon such terms and conditions and for such consideration as the Board of Directors of the Company may fix (10,248,574 votes in favor of the proposal and 2,228,258 votes against).

Further information with respect to the matters voted upon at the Special Meeting is incorporated herein by reference to the Registrant's Proxy Statement dated February 20, 1979 and Supplemental Proxy Statement dated March 6, 1979 (Commission File No. 1-5172).

**Item 11.** ***Executive Officers of the Registrant***

| Name | Age (at 12-31-78) | | Date first elected to present office |
|---|---|---|---|
| Martin Horwitz[1] | 58 | Chairman of the Board and Chief Executive Officer and Director | 1976 |
| Edwin Jacobson | 49 | President and Director | 1976 |
| William P. Ahern | 43 | Vice President—Finance and Director | 1976 |
| Louis Aprea | 41 | Group Senior Vice President—Natural Resources | 1976 |
| Alexander T. Forrest | 60 | Vice President—Engineering | 1974 |
| James R. Pennington | 51 | Vice President—Natural Resources | 1976 |
| William R. Kastelic | 52 | Vice President—Mining and Oil Operations | 1974 |
| Robert C. Weagel | 60 | Vice President—Southwestern Mining Operations | 1969 |
| Kenneth A. Leach | 50 | Vice President—Corporate Comptroller | 1977 |
| Seymour Horwitz[1] | 61 | Secretary and Assistant Treasurer | 1972 |
| Clarence E. Brunner | 49 | Treasurer and Assistant Secretary | 1972 |

[1]Messrs. Martin and Seymour Horwitz are brothers.

The principal occupations of the Executive Officers of the Registrant during the last five years were as follows:

Mr. Martin Horwitz has been Chairman of the Board and Chief Executive Officer since June 1976 and previously served as President and Chief Executive Officer and as Chairman of the Board and General Counsel. He has been a Director since 1964.

Mr. Jacobson has been President since June 1976 and previously served as Executive Vice President and Vice President—Manufacturing. He has been a Director since 1970.

Mr. Ahern has been Vice President—Finance since June 1976 and, previously served as Vice President—Administration. He has been a Director since 1972.

Mr. Aprea has been Group Senior Vice-President Natural Resources since March 1976. He previously had been Senior Vice-President Finance and Assistant to Chairman of I.T.T. Levitt & Sons from 1971-1975.

Mr. Forrest has been Vice President—Engineering since March 1974. Previously he had the same title at Mueller Brass Co.

Mr. Pennington was appointed Vice President—Natural Resources in April 1976. He previously served as Director of Mineral Development with Allied Chemical Corporation.

Mr. Kastelic has been Vice President—Mining and Oil Operations since May 1974. From 1971 to July 1973 he served as Assistant to the Vice President of Mining and Oil Operations and from July 1973 to May 1974 he served as Vice President—Metal Mining Operations.

Mr. Weagel has been Vice President—Southwestern Mining Operations for the last five years.

Mr. Leach has been Vice President—Corporate Comptroller since June 1977. From March 1974 to June 1977 he served as Corporate Comptroller.

Mr. Seymour Horwitz has been Secretary since June 1972. Previously he had been an Assistant Secretary and Assistant Treasurer.

Mr. Brunner was employed by UV in 1970 in a financial capacity and has been Treasurer since 1972.

**Item 12.** ***Indemnification of Directors and Officers***

Information with respect to the indemnification of the Company's Directors, officers, agents and employees is incorporated by reference to the registrant's Annual Report on Form 10-K (Commission file number 1-5172) for the year ended December 31, 1976.

**Item 13.** ***Financial Statements and Exhibits***

**(a) Financial statements and supporting schedules, as indexed on page F-1.**

**(b) Exhibits.**

1. —Schedule setting forth the computation of fully diluted per share earnings for the years 1974-1978.
2. —Proxy Statement dated February 20, 1979.
3. —Supplemental Proxy Statement dated March 6, 1979.

## PART II

Items 14 to 18, inclusive, are not restated or answered since within 120 days of the close of the fiscal year, registrant will file with the Commission a definitive proxy statement pursuant to regulation 14A.

## SIGNATURES

**Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.**

UV INDUSTRIES, INC.

By WILLIAM P. AHERN

**William P. Ahern**
**Vice President—Finance**

Date: April 2, 1979

## UV INDUSTRIES, INC.

### INDEX TO FINANCIAL STATEMENTS AND SCHEDULES

### for the years ended December 31, 1978 and 1977



Schedules other than those listed above are omitted since they are either not applicable or are not required.

Financial statements of unconsolidated subsidiaries are omitted because, considered in the aggregate, they would not constitute a significant subsidiary.

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## REPORT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS

To the Stockholders,
UV INDUSTRIES, INC.

We have examined the balance sheets of UV Industries, Inc., and the consolidated balance sheets of that Company and Subsidiaries as of December 31, 1978 and 1977 and the related statements of income and retained earnings, changes in stockholders' equity and changes in financial position and the supporting schedules for the years then ended. Our examinations were made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

The accompanying consolidated financial statements have been prepared on a going concern basis which contemplates the realization of assets and the payment of liabilities in the regular and ordinary course of business, and do purport to represent the amounts which would be realized upon liquidation, or other disposition of the Company's assets. At a Special Meeting on March 26, 1979 the stockholders of the Company approved a Plan of Liquidation and Dissolution (the "Plan") which is discussed further in Note 2 together with related litigation between the Company and a Stockholder. The Plan provides that within a twelve-month period from the date of stockholder approval, the assets of the Company will be sold (or distributed to stockholders or to a liquidating trust on behalf of stockholders), and the proceeds of any such sales, including the proceeds of the sale of shares of the Company's wholly-owned subsidiary, Federal Pacific Electric Company (See Note 3) after paying or providing for claims, liabilities and other obligations, will be distributed to the Company's stockholders, and the Company will thereafter be dissolved.

In our opinion, subject to the effect, if any, on the financial statements of the matter discussed in the previous paragraph, the aforementioned financial statements (pages F-4 to F-32, inclusive) present fairly the financial position of UV Industries, Inc. and the consolidated financial position of that Company and Subsidiaries at December 31, 1978 and 1977 and the results of their operations and changes in their financial position for the years then ended, and the accompanying supporting schedules (pages F-33 to F-45, inclusive) present fairly the information required to be included therein, all in conformity with generally accepted accounting principles consistently applied during the period.

COOPERS & LYBRAND

1251 Avenue of the Americas
New York, N. Y.
March 26, 1979

## UV INDUSTRIES, INC. AND SUBSIDIARIES

### CONSOLIDATED BALANCE SHEETS

### ASSETS

| | December 31, | |
|---|---|---|
| | 1978 | 1977 |
| | (000's omitted) | |
| Current assets: | | |
| Cash (Note 10) | $ 39,505 | $ 30,845 |
| Time deposits and certificates of deposit | 59,225 | 40,409 |
| Marketable equity securities (Note 5) | 27,728 | |
| Accounts receivable, trade, less allowance for doubtful accounts, $3,025,000 at December 31, 1978 and $2,636,000 at December 31, 1977(Schedule XII) | 107,293 | 87,771 |
| Other accounts and notes receivable | 2,724 | 1,329 |
| Inventories (Notes 1b and 4) | 145,398 | 155,518 |
| Prepaid expenses and other current assets | 4,406 | 4,145 |
| Total current assets | 386,279 | 320,017 |
| Marketable equity securities (Note 5) | | 3,495 |
| Investment in affiliate (Notes 1a, 6 and Schedule III) | | 25,191 |
| Properties, plants and equipment, at cost (Notes 1d, 7 and Schedule V) | 328,820 | 309,814 |
| Less, Accumulated depreciation, depletion and amortization (Notes 1d, 7 and Schedule VI) | 148,387 | 138,084 |
| | 180,433 | 171,730 |
| Cost in excess of net assets of a business acquired (Notes 1c, 8 and Schedule VII) | 24,335 | 24,527 |
| Deferred charges and other assets (Notes 1e, f, g and 9) | 25,111 | 25,155 |
| | $616,158 | $570,115 |

See notes to financial statements.

## UV INDUSTRIES, INC. AND SUBSIDIARIES

### CONSOLIDATED BALANCE SHEETS

### LIABILITIES

| | December 31, | |
|---|---|---|
| | 1978 | 1977 |
| | (000's omitted) | |
| Current liabilities: | | |
| Notes payable to banks (Note 10) | $ 2,043 | $ 3,133 |
| Accounts payable | 23,505 | 24,172 |
| Accrued expenses: | | |
| Salaries, wages and other compensation | 10,962 | 9,899 |
| Taxes, other than federal income taxes | 3,349 | 3,136 |
| Interest | 4,093 | 3,806 |
| Other | 8,709 | 5,513 |
| Income taxes payable | 10,950 | 11,391 |
| Dividends payable | 2,639 | 2,432 |
| Current instalments on long-term debt (Notes 1g and 10) | 3,978 | 3,479 |
| Other current liabilities | 1,043 | 3,193 |
| Total current liabilities | 71,271 | 70,154 |
| Long-term debt, less current instalments (Notes 1g, 10 and Schedule IX) | 205,505 | 212,377 |
| Deferred income taxes (Note 13) | 28,957 | 28,130 |
| Other long-term liabilities and deferred credits | 6,010 | 3,918 |
| Minority interests in consolidated subsidiaries | 20,438 | 19,825 |

### STOCKHOLDERS' EQUITY

| | | |
|---|---|---|
| Preferred Stock, par value $5 per share, 500,000 shares authorized, issuable in series: $5.50 Cumulative Preferred Stock; 178,759 shares issued; $17,875,900 liquidating value ($100 per share), less $5,925,000 attributable to treasury shares (Note 11 and Schedule XIII) | 894 | 894 |
| New Preferred Stock, par value $5 per share, 1,000,000 shares authorized, issuable in series: $1.265 convertible series; issued 1978, 101,301 shares; issued 1977, 115,461 shares; liquidating value ($23 per share) $2,329,923 (Note 11 and Schedule XIII) | 506 | 577 |
| Common Stock, par value $1 per share, 25,000,000 shares authorized; issued 1978, 11,338,614 shares; issued 1977, 10,489,872 (Notes 11, 12 and Schedule XIII) | 11,339 | 10,490 |
| Additional paid-in capital | 108,790 | 94,259 |
| Retained earnings, as annexed (Note 10) | 185,127 | 152,755 |
| Unrealized loss on marketable equity securities (Note 5) | | (838) |
| | 306,656 | 258,137 |
| Less, Treasury stock, at cost (Note 11) | 22,679 | 22,426 |
| Total stockholders' equity | 283,977 | 235,711 |
| | $616,158 | $570,115 |

See notes to financial statements.

## UV INDUSTRIES, INC. AND SUBSIDIARIES

### CONSOLIDATED STATEMENTS OF INCOME AND RETAINED EARNINGS

| | Year ended December 31, | |
|---|---|---|
| | 1978 | 1977 |
| | (000's omitted) | |
| Operating revenues: | | |
| Net sales | $593,992 | $575,664 |
| Royalties and other revenues | 7,666 | 10,338 |
| | 601,658 | 586,002 |
| Operating expenses: | | |
| Cost of sales (Note 4) | 462,627 | 435,891 |
| Selling, general and administrative | 65,141 | 58,491 |
| Foreign currency translation losses, net | 3,195 | 4,306 |
| | 530,963 | 498,688 |
| Operating income | 70,695 | 87,314 |
| Gain on disposal of investment in affiliate (Note 6) | 22,602 | |
| Equity in net income of affiliate (Note 1a, 6 and Schedule III) | 2,301 | 2,315 |
| Interest expense | (16,823) | (14,695) |
| Other income and (expense), net | (2,230) | (616) |
| Income before provision for income taxes and minority interests in net income of consolidated subsidiaries | 76,545 | 74,318 |
| Provision for income taxes (Note 13) | 32,985 | 34,495 |
| Income before minority interests in net income of consolidated subsidiaries | 43,560 | 39,823 |
| Minority interests in net income of consolidated subsidiaries | 1,019 | 1,663 |
| Net income | 42,541 | 38,160 |
| Retained earnings, beginning of year | 152,755 | 124,782 |
| | 195,296 | 162,942 |
| Deduct cash dividends declared: | | |
| Preferred Stock $5.50 per share | 670 | 704 |
| New Preferred Stock $1.265 per share | 138 | 203 |
| Common Stock $1.00 per share | 9,361 | 9,280 |
| | 10,169 | 10,187 |
| Retained earnings, end of year | $185,127 | $152,755 |
| Earnings per share (Note 15): | | |
| Primary | $4.55 | $4.04 |
| Fully diluted | $3.29 | $2.86 |

See notes to financial statements.

## UV INDUSTRIES, INC. AND SUBSIDIARIES

### CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY

### For the years ended December 31, 1978 and 1977

| | $1.265 New Preferred Stock | | Common Stock | | Additional Paid-In Capital | Retained Earnings | Unrealized Loss on Marketable Equity Securities | Treasury Stock |
|---|---|---|---|---|---|---|---|---|
| | Shares | Amount | Shares | Amount | | | | |
| | | | | | (000's omitted) | | | |
| YEAR ENDED DECEMBER 31, 1977: | | | | | | | | |
| Balance at December 31, 1976 | 204 | $1,019 | 5,040 | $ 5,040 | $97,360 | $124,782 | ($946) | $12,593 |
| Conversion of $1.265 New Preferred Stock to Common Stock | (88) | (442) | 135 | 135 | 304 | | | |
| Conversion of 5½% convertible subordinated debentures to Common Stock | | | 78 | 78 | 1,032 | | | |
| Conversion of 5¼% convertible subordinated debentures to Common Stock | | | 2 | 2 | 42 | | | |
| Exercise of stock options | | | 48 | 48 | 703 | | | |
| Exercise of warrants | | | | | 5 | | | |
| Par Value of Common Stock issued in 2-for-1 stock split | | | 5,187 | 5,187 | (5,187) | | | |
| Cost of 450,000 shares of Common Stock and 12,000 shares of $5.50 Preferred Stock acquired for the treasury | | | | | | | | 9,833 |
| Provision for the year | | | | | | | 108 | |
| Net Income | | | | | | 38,160 | | |
| Cash dividends declared—Common, $5.50 Preferred and $1.265 New Preferred Stock | | | | | | (10,187) | | |
| Balance at December 31, 1977 | 116 | 577 | 10,490 | 10,490 | 94,259 | 152,755 | (838) | 22,426 |
| YEAR ENDED DECEMBER 31, 1978: | | | | | | | | |
| Conversion of $1.265 New Preferred Stock to Common Stock | (15) | (71) | 34 | 34 | 37 | | | |
| Conversion of 5½% convertible subordinated debentures to Common Stock | | | 77 | 77 | 651 | | | |
| Conversion of 5¼% convertible subordinated debentures to Common Stock | | | 18 | 18 | 378 | | | |
| Exercise of stock options | | | 53 | 58 | 452 | | | |
| Exercise of warrants | | | 662 | 662 | 13,013 | | | |
| Cost of 4,000 shares of $5.50 Preferred Stock acquired for the treasury | | | | | | | | 253 |
| Provision for the year | | | | | | | 838 | |
| Net Income | | | | | | 42,541 | | |
| Cash dividends declared—Common, $5.50 Preferred and $1.265 New Preferred Stock | | | | | | (10,169) | | |
| Balance at December 31, 1978 | 101 | $ 506 | 11,339 | $11,339 | $108,790 | $185,127 | ($ 0 ) | $22,679 |

There were no changes in the $5.50 Cumulative Preferred Stock during the two years ended December 31, 1978. Such shares (178,759) have an aggregate par value of $893,795.

See notes to financial statements.

## UV INDUSTRIES, INC. AND SUBSIDIARIES

### CONSOLIDATED STATEMENTS OF CHANGES IN FINANCIAL POSITION

| | Year ended December 31, | |
|---|---|---|
| | 1978 | 1977 |
| | (000's omitted) | |
| **SOURCE OF WORKING CAPITAL:** | | |
| Net income | $ 42,541 | $ 38,160 |
| Elements not requiring working capital: | | |
| Minority interests in net income of consolidated subsidiaries | 1,019 | 1,663 |
| Depreciation, depletion and amortization (Notes 1d, 7 and Schedule VI) | 10,848 | 12,094 |
| Provision for deferred income taxes (Note 13) | 851 | 5,431 |
| Amortization of deferred charges and cost in excess of net assets of a business acquired (Notes 1c, e, f, g and 9) | 4,554 | 3,509 |
| Equity in net income of affiliate (net of $964,000 and $514,000 of dividends received, respectively) (Notes 1a, 6 and Schedule III) | (1,337) | (1,801) |
| Other non-cash items | | (1,746) |
| Working capital provided from operations | 58,476 | 57,310 |
| Disposal of investment in affiliate | 26,528 | |
| Issuance of long-term debt (Notes 1g and 10) | | 100,000 |
| Issuance of Common Stock upon conversion of debentures and warrants (Notes 10 and 11) | 14,799 | 1,159 |
| Reclassification of noncurrent marketable equity securities to current (Note 5) | 4,333 | |
| Issuance of Common Stock upon the exercise of employee stock options (Notes 11 and 12) | 510 | 751 |
| Disposal of properties, plants and equipment (Notes 1d, 7 and Schedule V and VI) | 479 | 308 |
| Other, net | 1,314 | 1,139 |
| | 106,439 | 160,667 |
| **USE OF WORKING CAPITAL:** | | |
| Investment in affiliate (Notes 1a, 6 and Schedule III) | | 23,390 |
| Decrease in minority interests in consolidated subsidiaries | 406 | 748 |
| Reduction of long-term debt (Notes 1g and 10) | 6,872 | 7,888 |
| Purchase of treasury stock (Notes 10 and 11) | 253 | 9,833 |
| Cash dividends | 10,169 | 10,187 |
| Additions to properties, plants and equipment (Notes 1d, 7 and Schedule V) | 20,458 | 18,890 |
| Expenditures for mine development (Notes 1e and 9) | 3,136 | 4,986 |
| Expenditures in connection with issuance of long-term debt (Notes 1g and 10) | | 1,884 |
| | 41,294 | 77,806 |
| **INCREASE IN WORKING CAPITAL** | $ 65,145 | $ 82,861 |
| Components of increase (decrease) in working capital: | | |
| Cash, time deposits, and certificates of deposit | $ 27,476 | $ 42,233 |
| Marketable equity securities | 27,728 | |
| Receivables | 20,917 | (6) |
| Inventories | (10,120) | 4,493 |
| Notes payable to banks | 1,090 | 36,745 |
| Accounts payable and accrued expenses | (4,092) | (2,215) |
| Income taxes payable | 441 | 1,942 |
| Other | 1,705 | (331) |
| | $ 65,145 | $ 82,861 |

See notes to financial statements.

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## UV INDUSTRIES, INC.

### BALANCE SHEETS

### ASSETS

| | December 31, | |
|---|---|---|
| | 1978 | 1977 |
| | (000's omitted) | |
| Current assets: | | |
| Cash (Note 10) | $ 20,702 | $ 11,212 |
| Time deposits and certificates of deposit | 45,500 | 31,500 |
| Marketable equity securities (Note 5) | 27,728 | |
| Accounts receivable, trade, less allowance for doubtful accounts, $874,000 at December 31, 1978 and 1977 (Schedule XII) | 1,237 | 1,508 |
| Other accounts and notes receivable | 1,271 | 857 |
| Inventories (Notes 1b and 4) | 7,902 | 20,536 |
| Due from subsidiaries | 5,318 | 4,357 |
| Prepaid expenses and other current assets | 707 | 726 |
| Total current assets | 116,365 | 70,696 |
| Investments and advances: | | |
| Investments in subsidiaries, at cost (Note 3 and Schedule III) | 125,161 | 124,433 |
| Notes receivable from subsidiaries (Schedule IV) | 21,326 | 16,893 |
| Investment in affiliate (Notes 1a, 6 and Schedule III) | | 25,191 |
| Marketable equity securities (Note 5) | | 3,495 |
| | 146,487 | 170,012 |
| Properties, plants and equipment, at cost (Notes 1d, 7 and Schedule V) | 92,141 | 88,822 |
| Less, Accumulated depreciation, depletion and amortization (Notes 1d, 7 and Schedule VI) | 31,532 | 29,241 |
| | 60,609 | 59,581 |
| Deferred charges and other assets (Notes 1e, g and 9) | 14,585 | 13,819 |
| | $332,046 | $314,108 |

See notes to financial statements.

This statement should be read in conjunction with consolidated financial statements.

## UV INDUSTRIES, INC.

### BALANCE SHEETS

### LIABILITIES

| | December 31, 1978 | December 31, 1977 |
|---|---|---|
| | (000's omitted) | |
| Current liabilities: | | |
| Notes payable to banks (Note 10) | $ | $ 375 |
| Accounts payable | 2,251 | 5,686 |
| Accrued expenses: | | |
| Salaries, wages and other compensation | 661 | 587 |
| Taxes, other than income taxes | 480 | 657 |
| Interest | 3,370 | 3,168 |
| Other | 1,213 | 307 |
| Income taxes payable | 8,658 | 3,947 |
| Dividends payable | 2,639 | 2,432 |
| Current instalments on long-term debt (Notes 1g and 10) | 857 | 573 |
| Due to subsidiaries | 34,659 | 27,816 |
| Other current liabilities | 399 | 2,593 |
| Total current liabilities | 55,187 | 48,141 |
| Long-term debt, less current instalments (Notes 1g, 10 and Schedule IX) | 161,248 | 165,162 |
| Deferred income taxes (Note 13) | 9,134 | 9,031 |
| Other long-term liabilities and deferred credits | 1,343 | 1,312 |

### STOCKHOLDERS' EQUITY

| | | |
|---|---|---|
| Preferred Stock, par value $5 per share, 500,000 shares authorized, issuable in series: $5.50 Cumulative Preferred Stock; 178,759 shares issued; $17,875,900 liquidating value ($100 per share), less $5,925,000 attributable to treasury shares (Note 11 and Schedule XIII) | 894 | 894 |
| New Preferred Stock, par value $5 per share, 1,000,000 shares authorized, issuable in series: $1.265 convertible series; issued 1978, 101,301 shares; issued 1977, 115,461 shares; liquidating value ($23 per share) $2,329,923 (Note 11 and Schedule XIII) | 506 | 577 |
| Common Stock, par value $1 per share, 25,000,000 shares authorized; issued 1978, 11,338,614 shares; issued 1977, 10,489,872 (Notes 11, 12 and Schedule XIII) | 11,339 | 10,490 |
| Additional paid-in capital | 108,790 | 94,259 |
| Retained earnings, as annexed (Note 10) | 6,284 | 7,566 |
| Unrealized loss on marketable equity securities (Note 5) | | (838) |
| | 127,813 | 112,948 |
| Less, Treasury stock, at cost (Note 11) | 22,679 | 22,426 |
| Total stockholders' equity | 105,134 | 90,522 |
| | $332,046 | $314,108 |

See notes to financial statements.

This statement should be read in conjunction with consolidated financial statements.

## UV INDUSTRIES, INC.

### STATEMENTS OF INCOME AND RETAINED EARNINGS

| | Year Ended December 31, | |
|---|---|---|
| | 1978 | 1977 |
| | (000's omitted) | |
| Operating revenues: | | |
| Net sales to customers | $ 6,055 | $ 7,192 |
| Net sales to subsidiaries | 19,739 | 26,366 |
| Royalties and other revenues | 4,013 | 6,564 |
| | 29,807 | 40,122 |
| Operating expenses: | | |
| Cost of sales (Note 4) | 33,066 | 33,245 |
| General and administrative | 178 | 333 |
| | 33,244 | 33,578 |
| Operating income | (3,437) | 6,544 |
| Gain on disposal of investment in affiliate (Note 6) | 22,602 | |
| Equity in net income of affiliate (Notes 1a, 6 and Schedule III) | 2,301 | 2,315 |
| Interest expense | (13,249) | (10,818) |
| Other income and (expense), net | (2,110) | (607) |
| Other income and (expense), net (from subsidiaries, including in 1978, dividends of $790,000) | 1,577 | 594 |
| Income before provision for income taxes | 7,684 | (1,972) |
| Income tax credits (Note 13) | (1,203) | (3,073) |
| Net income | 8,887 | 1,101 |
| Retained earnings, beginning of year | 7,566 | 16,652 |
| Deduct cash dividends declared: | | |
| Preferred stock ($5.50 per share) | 670 | 704 |
| New Preferred stock ($1.265 per share) | 138 | 203 |
| Common stock ($1.00 per share) | 9,361 | 9,280 |
| | 10,169 | 10,187 |
| Retained earnings, end of year | $ 6,284 | $ 7,566 |

See notes to financial statements.

This statement should be read in conjunction with consolidated financial statements.

## UV INDUSTRIES, INC.

### STATEMENTS OF CHANGES IN FINANCIAL POSITION

| | Year Ended December 31, | |
|---|---|---|
| | 1978 | 1977 |
| | (000's omitted) | |
| SOURCE OF WORKING CAPITAL: | | |
| Net income | $ 8,887 | $ 1,101 |
| Elements not requiring working capital: | | |
| Depreciation, depletion and amortization (Notes 1d, 7 and Schedule VI) | 2,364 | 4,020 |
| Provision for deferred income taxes (Note 13) | 476 | 1,980 |
| Amortization of deferred charges (Notes 1e, g and 9) | 1,420 | 2,338 |
| Equity in net income of affiliate (net of $964,000 and $514,000 of dividends received, respectively) (Notes 1a, 6 and Schedule III) | (1,337) | (1,801) |
| Other non-cash items | | (1,210) |
| Working capital provided from operations | 11,810 | 6,428 |
| Disposal of investment in affiliate | 26,528 | |
| Issuance of long-term debt (Notes 1g and 10) | | 100,000 |
| Issuance of Common Stock upon the exercise of employee stock options (Notes 11 and 12) | 510 | 751 |
| Reclassification of noncurrent marketable equity securities to current (Note 5) | 4,333 | |
| Issuance of Common Stock upon the conversion of debentures of a subsidiary and warrants (Notes 10 and 11) | 14,799 | 1,159 |
| Disposal of properties, plants and equipment (Notes 1d, 7 and Schedules V and VI) | 184 | 393 |
| | 58,164 | 108,731 |
| USE OF WORKING CAPITAL: | | |
| Investment in affiliate and marketable equity securities (Notes 1a, 6 and Schedule III) | | 23,390 |
| Increase (decrease) in notes receivable from subsidiaries (Schedule IV) | 4,433 | (1,091) |
| Reduction of Long-term debt (Notes 1g and 10) | 3,854 | 3,854 |
| Additions to properties, plants and equipment (Notes 1d, 7 and Schedule V) | 3,576 | 3,931 |
| Purchase of treasury stock (Note 11) | 253 | 9,833 |
| Cash dividends (Note 10) | 10,169 | 10,187 |
| Increase in investment in subsidiaries | 728 | 1,110 |
| Expenditures for mine development (Notes 1e and 9) | 1,138 | 3,250 |
| Expenditures in connection with issuance of long-term debt (Notes 1g and 10) | | 1,884 |
| Other, net | 1,390 | 86 |
| | 25,541 | 56,434 |
| INCREASE (DECREASE) IN WORKING CAPITAL | $32,623 | $52,297 |
| Components of increase (decrease) in working capital: | | |
| Cash, time deposits and certificates of deposit | $23,490 | $29,385 |
| Marketable equity securities | 27,728 | |
| Receivables | 143 | 195 |
| Inventories | (12,634) | 4,009 |
| Due from subsidiaries | 961 | 447 |
| Notes payable to banks | 375 | 26,913 |
| Accounts payable and accrued expenses | 2,430 | (4,687) |
| Income taxes payable | (4,711) | 4,350 |
| Due to subsidiaries | (6,843) | (8,583) |
| Other | 1,684 | 268 |
| | $32,623 | $52,297 |

See notes to financial statements.

This statement should be read in conjunction with consolidated financial statements.

1. SUMMARY OF ACCOUNTING POLICIES:

a. *Principles of Consolidation:*

The accompanying consolidated financial statements include the accounts of the Company and its majority-owned subsidiaries except certain minor companies, which considered in the aggregate, would not constitute a significant subsidiary. Investments in affiliated companies, more than 20% owned, are accounted for under the equity method.

b. *Inventories:*

Inventories are carried at the lower of cost or market. Fabricated brass, copper and aluminum products are principally at last-in, first-out (LIFO). Electrical equipment products are principally at first-in, first-out (FIFO). All other inventories are principally at average cost. Cost includes materials, labor and plant overhead where applicable.

c. *Cost in excess of net assets of a business acquired:*

In conformity with Opinion No. 17 of the Accounting Principles Board, the cost in excess of net assets of a business acquired after October 31, 1970 is being amortized over a period of forty years. Such excess cost in connection with investments made prior to October 31, 1970 ($18,212,000) is not being amortized because management considers this to represent intangible assets of continuing value over an indefinite period which under generally accepted accounting principles is not required to be amortized.

d. *Properties, Plants and Equipment:*

The provisions for depreciation, depletion and amortization are computed at rates appropriate for the various properties. Depreciation, depletion and amortization for mining and oil and gas operations is computed generally using the unit of production method. All other operations principally use the straight line method of depreciation based upon the estimated lives of specific classes or groups of depreciable assets.

In view of the variety of properties and the wide range of depreciation rates applicable thereto, it is not considered practicable to set forth herein the rates or range of rates used in computing the provision for depreciation.

Maintenance and minor repairs and renewals are charged to operations as incurred; major repairs and renewals are charged to deferred accounts to be written off against future operations; betterments are capitalized as plant additions. Upon retirement or sale, the cost of the assets disposed of and the related accumulated depreciation, depletion or amortization are removed from the accounts, and any resulting gain or loss is credited or charged to operations. For oil and gas properties, where a composite depletion rate is used, the gain or loss is credited or charged to the related reserve.

e. *Mine Exploration and Development Costs:*

Expenditures related to exploration for new mining properties are charged to income as incurred. Expenditures relating to the development of ore in mining properties are deferred and amortized on the unit of production basis over the estimated ore reserves benefited.

f. *Preoperating and Start-up Costs:*

Preoperating and start-up costs relating to new plant facilities are deferred and amortized on the unit of production method but not to exceed ten years from the end of the start-up period.

g. *Debt Issuance Expense:*

Unamortized debt issuance expenses are being amortized over the lives of the related debt issues.

h. *Pension Plans:*

Pensions are provided by the Company under a combination of insured contributory and trusteed noncontributory plans for eligible employees of the Company meeting certain service and age requirements and are based generally on the length of service and earnings patterns preceding retirement. Other employees are covered by collective bargaining agreements under which payments are made to union welfare, trusts or similar funds. Actuarially computed pension costs, including provision for amortization of prior service cost over thirty to forty years, are funded and charged to earnings each year.

2. PLAN OF LIQUIDATION AND DISSOLUTION

On March 26, 1979, the stockholders of the Company approved a Plan of Liquidation and Dissolution (the "Plan") of the Company. The Plan provides that, as promptly as feasible after the approval by the Company's stockholders, the Company shall dispose of all its assets and that it shall be completely liquidated within one year from the date on which the Plan is adopted. Such disposal will be accomplished by distributing to stockholders the proceeds of the sale of its assets, including the proceeds of the sale of Federal Pacific Electric Company (see Note 3) as well as shares of any subsidiaries which have not been sold, after paying or providing for claims, liabilities and other obligations of the Company. The Company intends that its liquidation be in conformity with Section 337 of the Internal Revenue Code of 1954, as amended. The Company anticipates that it will be able to sell or distribute substantially all of its assets within the one-year period. To the extent it is unable to do so, the Company anticipates that, prior to the expiration of that period, it will distribute its assets in trust to one or more liquidating Trustees for the pro-rata benefit of the Company's stockholders.

Uncertainties as to the net realizable value of assets and the ultimate amount of liabilities make it impracticable to predict the aggregate net amounts ultimately distributable to stockholders.

In addition to the approval of the Plan, the stockholders approved an alternative proposal (the Proposal) to sell substantially all of the Company's assets, distribute the proceeds from such sales to stockholders and continue to operate the remaining assets as an on-going business. The objective of the Proposal was to provide an alternative to the Plan.

In connection with the above, a stockholder, Sharon Steel Corporation, has commenced litigation which, among other things, challenges various aspects relating to the holding of the Special Meeting at which the Plan and the Proposal were presented and to the vote taken at the meeting.

See Item 5—Pending Legal Proceedings for further information with respect to the above mentioned litigation.

3. SALE OF FEDERAL PACIFIC ELECTRIC COMPANY

On March 26, 1979, the stockholders of the Company approved the sale of all of the outstanding capital stock of the Company's wholly-owned subsidiary, Federal Pacific Electric Company ("Federal"), to New REC, Inc., pursuant to a Stock Purchase Agreement dated December 18, 1978 by and among the Company, New REC, Inc., and Reliance Electric Company, New REC's parent. The aggregate purchase price for the stock will be $345,000,000. In addition to the approval of this sale, the stockholders approved a Plan of Liquidation and Dissolution (the "Plan").

Upon implementation of the Plan the Company will realize a gain of approximately $145,000,000 or $9.55 per share. Should the Plan, for any reason, not be implemented the Company will realize a gain of approximately $103,000,000 or $6.79 per share, net of estimated income taxes of approximately $42,000,000. Such estimated income taxes represent the liability of the Company in connection with the sale of Federal, if the Company is not liquidated in accordance with Section 337 of the Internal Revenue Code of 1954, as amended.

The above gain on the sale of Federal represents the excess of proceeds over the net assets of Federal at December 31, 1978. The per share amounts above are based upon the number of common shares outstanding at December 31, 1978 adjusted for the 5,293,131 shares issued subsequent to December 31,

1978 for the exercise of warrants and options, conversion of the $1.265 New Preferred Stock and the 5¾% convertible subordinated debentures.

The business of Federal consists of the entire electrical and electronic segment of the Company's operations.

The net assets of Federal at December 31, 1978 comprise:

| | (000's omitted) |
|---|---|
| Current Assets | $201,091 |
| Current Liabilities | $ 34,934 |
| Total Assets | $245,376 |
| Total Liabilities | 70,379 |
| Net Assets | $174,997 |

The results of operations of Federal for the year ended December 31, 1978 were as follows:

| Operating Revenues: | (000's omitted) |
|---|---|
| Net sales | $357,038 |
| Royalties and other revenues | 2,065 |
| | 359,103 |
| Operating expenses: | |
| Cost of sales | 255,167 |
| Selling, general and administrative | 43,025 |
| Foreign currency translation losses, net | 3,008 |
| | 301,200 |
| Operating income | 57,903 |
| Interest expense. | (1,144) |
| Income before provision for income taxes and minority interests in net income of consolidated subsidiaries | 56,759 |
| Provision for income taxes | 29,302 |
| Income before minority interests in net income of consolidated subsidiaries | 27,457 |
| Minority interests in net income of consolidated subsidiaries | 1,454 |
| Net income | $ 26,003 |
| Earnings per share:* | |
| Primary | $2.83 |
| Fully diluted | $1.91 |

* Based upon the shares used to compute the consolidated per share data.

4. INVENTORIES:

| | The Company and Subsidiaries | | | The Company (Separately) | | |
|---|---|---|---|---|---|---|
| | December 31, | | | December 31, | | |
| | 1978 | 1977 | 1976 | 1978 | 1977 | 1976 |
| | (000's omitted) | | | | | |
| Finished goods | $ 40,627 | $ 39,210 | $ 38,721 | | | |
| Work in process | 40,936 | 38,027 | 44,250 | | | |
| Raw materials and supplies | 60,367 | 61,636 | 54,832 | $ 5,532 | $ 5,579 | $ 6,163 |
| Ores, concentrates, metals and other inventories | 4,068 | 16,645 | 13,222 | 2,370 | 14,957 | 10,364 |
| | $145,398 | $155,518 | $151,025 | $ 7,902 | $20,536 | $16,527 |

Inventories carried at last-in, first-out amounted to $24,861,000 and $30,689,000 at December 31, 1978 and 1977, respectively. Replacement cost of inventory carried at last-in, first-out exceeded the carrying value by $26,623,000 and $21,936,000 at December 31, 1978 and 1977, respectively.

Inventories used in the determination of cost of sales were as follows:

| | The Company and Subsidiaries | The Company (Separately) |
|---|---|---|
| | (000's omitted) | |
| December 31, 1976 | $137,842 | $10,364 |
| December 31, 1977 | $141,368 | $12,657 |
| December 31, 1978 | $130,949 | $ 370 |

5. MARKETABLE EQUITY SECURITIES:

The portfolio of marketable equity securities is carried at the lower of cost or market. Comparative cost and market values of the portfolio were as follows:

| | Cost | Market | Unrealized Gain (loss) |
|---|---|---|---|
| | | (000's omitted) | |
| December 31, 1977: | | | |
| Noncurrent | $ 4,333 | $ 3,495 | ($ 838) |
| December 31, 1978: | | | |
| Current | | | |
| Johnson Controls, Inc., Common Stock | $11,030 | $11,288 | $ 258 |
| GAF Corp., Common Stock | 8,952 | 7,385 | (1,567) |
| Other marketable equity securities | 8,783 | 9,055 | 272 |
| | $28,765 | $27,728 | ($1,037) |

To reduce the carrying value of the current marketable equity securities to market, a valuation allowance in the amount of $1,037,000 was established with a corresponding charge to income at December 31, 1978.

Pursuant to the terms of a 1976 agreement, the Company has an option, in May 1979, to sell its holdings of Phoenix Steel Corporation Common Shares at an aggregate price of $3,030,000. The Company's holdings of 600,000 shares, which represent 6.5% of the outstanding shares of Phoenix, were included in the noncurrent portfolio at December 31, 1977 at a value of $2,689,000 which approximated their cost and represented the present value of the option price. At December 31, 1978 the holdings in Phoenix are included in the current portfolio and are valued at the aggregate option price.

6. INVESTMENT IN AFFILIATE:

During 1977 the Company acquired 1,285,400 shares of Globe-Union Inc. ("Globe") Common Stock at an aggregate cost of $23,390,000. The investment represented a 20.5% ownership in Globe and was accounted for under the equity method of accounting.

At December 31, 1977 the carrying value of the investment, adjusted for dividends received of $514,000 and equity in net income of $2,315,000, exceeded the Company's proportionate share in Globe's net assets by approximately $3,000,000. The Company's equity income in Globe was accounted for on a step-by-step basis to reflect the acquisition of the shares at various dates throughout 1977. The market value of the Company's investment was $32,100,000 at December 31, 1977 or approximately $6,900,000 in excess of the carrying value.

During the year ended December 31, 1978 the Company sold 1,000,000 shares of its holdings in Globe to Johnson Controls, Inc. ("Johnson") for $40,000,000 pursuant to an Option Agreement dated May 26, 1978, as amended June 23, 1978, between the Company and Johnson. In addition, pursuant to terms of a merger agreement between Johnson and Globe which was approved by their respective shareholders on September 26, 1978, the Company exchanged its remaining 285,400 shares of Globe for 380,438 shares of Johnson Common Stock valued at $9,130,000. The Company's carrying value of its investment in Globe at the time of the sale and exchange of shares amounted to $26,528,000 further adjusted for dividends received of $964,000 and equity in net income of $2,301,000 for the year ended December 31, 1978. As a result of the sale and exchange the Company recorded a net gain of $13,832,000, net of income taxes of $8,770,000.

7. PROPERTIES, PLANTS AND EQUIPMENT:

The major classification of properties, plants and equipment were as follows:

| | The Company and Subsidiaries | | The Company (Separately) | |
|---|---|---|---|---|
| | December 31, | | December 31, | |
| | 1978 | 1977 | 1978 | 1977 |
| | (000's omitted) | | | |
| Depreciable properties: | | | | |
| Mill buildings and equipment | $ 34,374 | $ 34,305 | $32,694 | $32,706 |
| Mine buildings and equipment and oil and gas equipment | 66,848 | 63,753 | 24,951 | 23,968 |
| Manufacturing machinery and equipment* | 113,933 | 104,972 | | |
| Rolling stock, equipment and other depreciable railway property | 3,521 | 3,526 | | |
| Manufacturing buildings and land improvements* | 52,234 | 50,362 | | |
| Construction in progress | 4,135 | 2,228 | 21 | 132 |
| Other | 303 | 163 | 131 | 117 |
| | 275,348 | 259,309 | 57,797 | 56,923 |
| Depletable mining properties and oil and gas interests | 31,159 | 30,613 | 19,724 | 19,227 |
| Amortizable oil and gas well intangible drilling costs | 14,468 | 12,323 | 14,271 | 12,323 |
| Land | 3,257 | 3,184 | 349 | 349 |
| Other | 4,588 | 4,385 | | |
| | 328,820 | 309,814 | 92,141 | 88,822 |
| Less: Accumulated depreciation | 128,608 | 119,404 | 19,901 | 18,719 |
| Accumulated depletion and amortization | 19,779 | 18,680 | 11,631 | 10,522 |
| | 148,387 | 138,084 | 31,532 | 29,241 |
| | $180,433 | $171,730 | $60,609 | $59,581 |

* Includes an aggregate of $39,946,000 pledged against certain lease obligations.

8. COST IN EXCESS OF NET ASSETS OF A BUSINESS ACQUIRED:

Cost in excess of net assets acquired resulted from the acquisition of Federal Pacific Electric Company in 1972. Approximately $7,000,000 was acquired subsequent to October 31, 1970, and is being amortized over a forty year period.

9. DEFERRED CHARGES AND OTHER ASSETS:

| | The Company and Subsidiaries | | The Company (Separately) | |
|---|---|---|---|---|
| | December 31, | | December 31, | |
| | 1978 | 1977 | 1978 | 1977 |
| | (000's omitted) | | | |
| Unamortized debt issuance expenses | $ 3,530 | $ 3,967 | $ 2,339 | $ 2,549 |
| Mine development | 12,884 | 12,856 | 8,451 | 8,525 |
| Preoperating and start-up costs of new plant facilities | 2,024 | 3,573 | | |
| Other | 6,673 | 4,759 | 3,795 | 2,745 |
| | $25,111 | $ 25,155 | $ 14,585 | $ 13,819 |

10. NOTES PAYABLE TO BANKS AND LONG-TERM DEBT:

| | The Company and Subsidiaries | | The Company (Separately) | |
|---|---|---|---|---|
| | December 31, | | December 31, | |
| | 1978 | 1977 | 1978 | 1977 |
| | (000's omitted) | | | |
| 9¼% senior subordinated notes, due 1987 | $ 25,000 | $ 25,000 | $ 25,000 | $ 25,000 |
| 8⅞% debentures, due 1982-1997 | 75,000 | 75,000 | 75,000 | 75,000 |
| 7%-8¼% pollution control revenue bonds, due 1981-2001 | 5,000 | 5,000 | | |
| 5¾% convertible subordinated debentures, due 1979-1993—convertible at $22.45 per share | 46,886 | 49,612 | 46,886 | 49,612 |
| 5½% convertible subordinated debentures, due 1987—convertible at $9.40 per share | 328 | 1,056 | | |
| 5⅜% subordinated debentures, due 1979-1995 | 15,219 | 16,063 | 15,219 | 16,063 |
| 5¼%-6½% notes, due 1979-1981 | 3,875 | 4,975 | | |
| Lease obligations: | | | | |
| 5⅞% industrial development bonds, due 1979-1991 | 2,420 | 2,535 | | |
| 6¼% industrial development revenue bonds, due 1979-1993 | 18,160 | 18,895 | | |
| 6¼% industrial revenue bonds, due 1979-1993 | 10,675 | 11,165 | | |
| Other lease obligations | 1,073 | 1,229 | | |
| Other | 5,847 | 5,326 | | |
| | 209,483 | 215,856 | 162,105 | 165,675 |
| Less, portion included in current liabilities | 3,978 | 3,479 | 857 | 573 |
| | $205,505 | $212,377 | $161,248 | $165,102 |

Aggregate payments on long-term debt for the five succeeding years are approximately:

| | The Company and Subsidiaries | The Company (Separately) |
|---|---|---|
| | (000's omitted) | |
| 1979 | $ 3,978 | $ 857 |
| 1980 | $ 8,166 | $4,243 |
| 1981 | $ 7,458 | $4,243 |
| 1982 | $11,130 | [illegible] |
| 1983 | $11,253 | [illegible] |

In April 1977 the Company, in a public offering, issued $25,000,000 9¼% senior subordinated notes and $75,000,000 8⅞% debentures. The indenture for the 9¼% senior subordinated notes prohibits redemption prior to April 15, 1983. Thereafter the notes are redeemable at the option of the Company at their principal amount. The indenture for the 8⅞% debentures requires an annual sinking fund payment of $4,598,000 from 1982 through 1996 and provides the Company the non-cumulative right to double any annual sinking fund payment. The debentures are redeemable at any time at the Company's option at rates ranging from 108.375% of face value in 1978 decreasing annually to 100% in 1992 except that no such redemption may be made prior to April 15, 1987, directly or indirectly, from or in anticipation of money borrowed at an effective interest cost of less than 8.9% per annum.

The indenture for the 5¾% subordinated debentures requires an annual sinking fund payment of $910,000 from 1978 through 1994. At December 31, 1978 the Company had purchased $271,000 of debentures to be applied against the 1979 requirements.

The indenture for the 5¾% convertible subordinated debentures requires an annual sinking fund payment of $3,333,000 from 1979 through 1993. At December 31, 1978, the Company had through purchases and conversions a total of $3,115,000 to be applied against its 1979 requirement.

On January 17, 1979, the Board of Directors voted to redeem, on February 28, 1979, all of the Company's outstanding 5¾% convertible subordinated debentures.

On December 1, 1978, the Company refinanced its revolving credit agreement by entering into a new revolving credit agreement with several banks. Under the terms of the agreement, the banks had a commitment, up to December 1, 1985, to lend the Company up to $90,000,000, subject to quarterly mandatory reductions and expirations of $7,500,000 commencing March 1, 1983. Effective January 19, 1979 the Company cancelled this agreement, retaining $[illegible],000,000 of short-term lines of credit.

Under certain of the Company's debt agreements there are restrictions as to the payment of dividends and the repurchase of stock. Under the most restrictive agreement payments of cash dividends and repurchase of stock cannot exceed, subsequent to December 31, 1976, the sum of $25,000,000, consolidated net income, the aggregate net cash proceeds received by the Company from the issuance or sale of shares of any class of the Company's capital stock, and the aggregate principal amount of funded debt converted into shares of the Company's capital stock. At December 31, 1978 the amounts unrestricted as to payments of dividends and repurchase of stock amounted to approximately $92,000,000.

In connection with its bank loans, the Company has informal arrangements with banks to maintain compensating balances. Withdrawal by the Company of these compensating balances is not legally restricted. Under the most common arrangement the Company is expected to maintain an average balance of 10% of the banks' commitments and 10% of the outstanding loan. Compensating balances at December 31, 1978 amounted to approximately $6,800,000.

The following information pertains to short-term bank loans for the Company and Subsidiaries for 1978:

| | The Company and Subsidiaries | The Company (Separately) |
|---|---|---|
| Average interest rates at end of year | 12.3% | |
| Maximum amount of short-term borrowings outstanding at any month end during the year | $3,700,000 | $ 370,000 |
| Average aggregate short-term borrowings outstanding during the year | $3,200,000 | $ 360,000 |
| Average interest rate on average aggregate short-term borrowings outstanding during the year | 10.4% | 10.5% |
| Unused lines of credit available at end of year | $98,000,000 | $58,000,000 |

11. CAPITAL STOCK:

The $5.50 Cumulative Preferred Stock is redeemable, at the option of the Company, at $100 per share.

The $1.265 New Preferred Stock is redeemable, at the option of the Company, at $23 per share. Each share of the $1.265 New Preferred Stock is convertible into 2.368 shares of Common Stock.

On January 17, 1979, the Board of Directors voted to redeem, on February 28, 1979, all of the Company's outstanding $1.265 New Preferred Stock.

Shares of Common Stock were reserved at December 31, 1978 for the following:

| | |
|---|---|
| Exercise of 2,912,272 outstanding warrants, expiring on January 15, 1979, entitling the holders to purchase 1.065 shares at $20.655 per share | 3,101,919 |
| Conversion of 5½% convertible subordinated debentures | 34,889 |
| Conversion of 5¾% convertible subordinated debentures (See Note 10) | 2,088,928 |
| Conversion of $1.265 New Preferred Stock | 239,881 |
| Stock options | 536,600 |
| | 6,002,217 |

Through March 26, 1979, 5,293,131 shares of Common Stock were issued for the exercise of warrants and stock options, and conversions of the $1.265 New Preferred Stock and the 5¾% convertible subordinated debentures.

Treasury stock consisted of the following:

| | December 31, 1978 | | December 31, 1977 | |
|---|---|---|---|---|
| | Shares | Cost | Shares | Cost |
| | | (000's omitted) | | (000's omitted) |
| Common Stock | 1,440,016 | $18,840 | 1,440,016 | $18,840 |
| $5.50 Cumulative Preferred Stock | 59,250 | 3,839 | 55,250 | 3,586 |
| | | $22,679 | | $22,426 |

12. STOCK OPTION PLANS:

Under the Company's qualified Incentive Stock Option Plan of 1966, options to purchase Common Stock were granted to key employees at amounts not less than the market price at the date of grant. Options were granted for five-year periods and were exercisable when granted. No additional options may be granted under the Plan.

Information with respect to options granted under the Plan is as follows:

| | Number of Shares | Option Price | | Market Value | |
|---|---|---|---|---|---|
| | | Per Share | Total (000's omitted) | Per Share | Total (000's omitted) |
| Shares under option: | | | | | |
| Granted in 1974 | 136,600 | $11.25 to $14.1459 | $1,928 | $11.25 to $14.1459 | $1,928(a) |
| Options exercised during: | | | | | |
| 1977 | 80,668 | $8.27 to $11.50 | $ 751 | $16.6875 to $23.1875 | $1,485(b) |
| 1978 | 58,212 | $8.27 to $11.50 | $ 510 | $18.625 to $22.625 | $1,155(b) |

(a) At the dates options were granted.

(b) At the dates options were exercised.

No charges were made to income in connection with the Plan.

On May 18, 1977 the stockholders approved the Incentive Stock Plan of 1977 under which key employees may be paid compensation through the award of shares of Common Stock, the grant of non-qualified options or the grant of stock appreciation rights. The maximum number of shares which may be utilized under this Plan is 400,000. As of December 31, 1978 no awards had been made under the Plan.

13. PROVISION FOR INCOME TAXES:

Provision for income taxes comprise the following:

| | Year ended December 31, | |
|---|---|---|
| | 1978 | 1977 |
| | (000's omitted) | |
| The Company and Subsidiaries: | | |
| U. S. Federal: | | |
| Currently payable: | | |
| Before investment tax credit | $24,812 | $21,869 |
| Investment tax credit | (1,165) | (1,263) |
| Net | 23,647 | 20,606 |
| Deferred | 322 | 5,122 |
| | 23,969 | 25,728 |
| Foreign: | | |
| Currently payable | 5,211 | 5,745 |
| Deferred | 529 | 309 |
| | 5,740 | 6,054 |
| State | 3,276 | 2,713 |
| | $32,985 | $34,495 |
| The Company (Separately): | | |
| U. S. Federal: | | |
| Currently payable: | | |
| Before investment tax credit | ($ 1,698) | ($ 4,845) |
| Investment tax credit | (101) | (258) |
| Net | (1,799) | (5,103) |
| Deferred | 476 | 1,980 |
| | (1,323) | (3,123) |
| State | 120 | 50 |
| | ($ 1,203) | ($ 3,073) |

Investment tax credits allowable for tax purposes are accounted for as a reduction in the current provision for income taxes.

Deferred U.S. Federal tax expense results from timing differences in the recognition of income and expense for tax and financial statement purposes. The sources and tax effects of these differences are:

| | Year ended December 31, | |
|---|---|---|
| | 1978 | 1977 |
| | (000's omitted) | |
| Excess of tax over book depreciation | $1,940 | $1,973 |
| Changes in non-deductible book reserves | (490) | 1,364 |
| Start-up costs expensed for tax purposes and amortized for books | (393) | (272) |
| Mine development costs amortized for books and deducted for tax purposes when incurred | 85 | 1,224 |
| Intangible drilling costs of oil and gas wells amortized for books and deducted for tax purposes when incurred | 768 | 590 |
| Unrealized loss on marketable equity securities | (498) | |
| Provision for prior year tax deficiency | (606) | |
| Other | (484) | 243 |
| | $ 322 | $5,122 |

Total tax expense differs from the amount which would be provided by applying the U. S. Federal income tax rate of 48% to income before tax. The reasons for this difference (expressed as a percentage of pretax income) are as follows:

| | Year ended December 31, | |
|---|---|---|
| | 1978 | 1977 |
| Computed "expected" tax expense | 48.0% | 48.0% |
| Gain on disposal of investment in affiliate | (2.7) | |
| Effect of percentage depletion | (.8) | (1.4) |
| Investment tax credit | (1.5) | (1.7) |
| Effect of foreign translation losses | 2.0 | 3.0 |
| Effect of equity in net income of affiliate | (1.5) | (1.3) |
| Foreign tax rate vs effective tax rate | (1.2) | (1.9) |
| State and local income taxes, net of federal income tax | 2.2 | 2.0 |
| Other | (1.4) | (.3) |
| Effective tax rate | 43.1% | 46.4% |

It is the Company's intention to permanently reinvest substantially all of the undistributed earnings of its foreign subsidiaries, and accordingly, no provision has been made for United States income taxes thereon. Undistributed foreign earnings amounted to $29,230,000 and $28,380,000 at December 31, 1978 and 1977, respectively.

The unusual relationship between income before taxes and provision for income taxes for the Company (Separately) is attributable to capital gains benefit applicable to gain on disposal of investment in affiliate and dividends received deduction for 1978 and capital gains benefit and intercorporate dividend rate on equity in income of affiliate for 1977.

14. PENSION PLANS:

Aggregate pension expense amounted to approximately:

| | Year ended December 31, | |
|---|---|---|
| | 1978 | 1977 |
| Company and Subsidiaries | $5,900,000 | $5,300,000 |
| Company (Separately) | $ 524,000 | $ 614,000 |

The aggregate unfunded prior service costs of the plans at December 31, 1978 approximated $37,000,000 for the Company and Subsidiaries and $713,000 for the Company (Separately).

The actuarially computed value of vested benefits for certain of the plans as of the date of the latest actuarial valuation exceeded the total of the pension plans' net assets by approximately $27,000,000 for the Company and Subsidiaries and $590,000 for the Company (Separately).

15. EARNINGS PER SHARE:

Primary earnings per share were computed, after preferred dividend requirements, based on the weighted average number of shares of Common Stock outstanding during the period.

Fully diluted earnings per share were computed on the assumption that convertible debentures, convertible preferred stock, options and warrants were converted or exercised at the beginning of the year or at the time of their issuance and that average outstanding Common Stock was adjusted accordingly. It was assumed that the proceeds from the exercise of stock options and warrants were used to repurchase 20% of the Company's outstanding Common Stock. Any remaining proceeds were assumed to have been used first to retire outstanding debt and then to invest in commercial paper.

In late December 1978 and through March 26, 1979, 5,953,000 shares of Common Stock were issued upon the exercise of warrants and stock options, the conversion of 5¾% convertible subordinated debentures and $1.265 New Preferred Stock. If these shares had been outstanding on January 1, 1978, primary earnings per share for the year ended December 31, 1978 would have decreased by $1.18 to $3.37, assuming that the proceeds from the exercise of warrants and stock options were used to repurchase 20% of the Company's outstanding Common Stock and the remaining proceeds were used to retire outstanding debt and then to invest in commerical paper.

16. LEASE COMMITMENTS:

In connection with its operations the Company has entered into operating leases for equipment and facilities at certain of its manufacturing and office facilities. Rental expense was $6,635,000 and $5,596,000 for the years 1978 and 1977 respectively. At December 31, 1978 minimum commitments under all noncancellable leases were as follows:

| | |
|---|---|
| 1979 | $ 2,269,000 |
| 1980 | 1,916,000 |
| 1981 | 1,577,000 |
| 1982 | 1,467,000 |
| 1983 | 1,120,000 |
| Later years | 8,411,000 |
| | $16,760,000 |

**CBI**

**HAS BEEN REDACTED**

18. BUSINESS SEGMENTS AND GEOGRAPHIC OPERATIONS:

The Company operates in three business segments—electrical equipment and electronic components; natural resources; and copper and brass fabrication. Operations in the electrical equipment and electronics component segment involve the production and sale, principally in the United States and Canada, of electrical control, distribution and transmission equipment and electronic capacitors and other electronic components (see Note 3). Operations in the natural resource segment involve the mining and milling of copper ore, mining of low sulphur coal, production of oil and gas, lead recycling, gold placer mining and the exploration and development of mineral resources, all principally within the United States. Operations in the copper and brass fabrication segment involve fabrication and sale, principally within the United States of brass rod and forgings and copper tube and wrought fittings. Financial information with respect to the Company's business segments and geographic operations is as follows:

| | Year Ended December 31, | |
|---|---|---|
| | 1978 | 1977 |
| | (000's omitted) | |
| **Business Segments:** | | |
| Operating Revenues: | | |
| Electrical and electronic | $359,013 | $336,834 |
| Natural resources: | | |
| Unaffiliated customers | 41,658 | 52,395 |
| Intersegment sales | 19,788 | 26,477 |
| | 61,446 | 78,872 |
| Copper and brass fabrication | 200,987 | 196,773 |
| Eliminate intersegment sales | (19,788) | (26,477) |
| | $601,658 | $586,002 |
| Revenues of electrical and electronic and copper and brass fabrication segments are all from unaffiliated customers. Intersegment sales of the natural resource segment consist principally of sales of refined copper to the copper and brass fabrication segment. These sales are accounted for at the published average copper industry's producers price during the month in which shipments are made. | | |
| Operating profit: | | |
| Electrical and electronic* | $ 57,637 | $ 50,890 |
| Natural resources | (3,563) | 19,978 |
| Copper and brass fabrication* | 16,621 | 16,446 |
| | $ 70,695 | $ 87,314 |
| *Including foreign currency translation losses for: | | |
| Electrical and electronic | $ 3,008 | $ 4,108 |
| Copper and brass fabrication | 187 | 198 |
| | $ 3,195 | $ 4,306 |

| | Year Ended December 31, | |
|---|---|---|
| | 1978 | 1977 |
| Identifiable assets: | | |
| Electrical and electronic | $269,309 | $240,461 |
| Natural resources | 130,742 | 145,222 |
| Copper and brass fabrication | 110,432 | 110,730 |
| Corporate assets* | 105,675 | 73,702 |
| | $616,158 | $570,115 |
| *Consist principally of cash, short term investments, marketable equity securities and, for 1977, investment in affiliate. | | |
| Capital expenditures: | | |
| Electrical and electronic | $ 7,811 | $ 5,558 |
| Natural resources | 8,572 | 8,488 |
| Copper and brass fabrication | 4,075 | 4,844 |
| | $ 20,458 | $ 18,890 |
| Depreciation, depletion and amortization: | | |
| Electrical and electronic | $ 4,706 | $ 4,582 |
| Natural resources | 3,211 | 4,722 |
| Copper and brass fabrication | 2,931 | 2,790 |
| | $ 10,848 | $ 12,094 |
| **Geographic Operations:** | | |
| Operating Revenues: | | |
| United States | | |
| Unaffiliated customers | $491,177 | $471,322 |
| Foreign affiliates (principally Canadian)* | 5,963 | 5,649 |
| | 497,140 | 476,971 |
| Canada | | |
| Unaffiliated customers | 90,005 | 100,028 |
| Affiliated customers (principally U.S.)* | 3,925 | 2,527 |
| | 93,930 | 102,555 |
| Other foreign countries: | | |
| Unaffiliated customers | 20,476 | 14,652 |
| Affiliated customers* | 171 | 317 |
| | 20,647 | 14,969 |
| Eliminations | (10,059) | (8,493) |
| | $601,658 | $586,002 |
| *Sales between geographic areas are accounted for at prices comparable to normal unaffiliated sales. | | |

| | Year Ended December 31, 1978 | 1977 |
|---|---|---|
| Operating profit: | | |
| United States | $ 59,673 | $ 76,557 |
| Canada* | 7,543 | 9,458 |
| Other foreign countries* | 3,479 | 1,299 |
| | $ 70,695 | $ 87,314 |
| *Includes foreign currency translation losses for: | | |
| Canada | $ 3,090 | $ 3,407 |
| Other foreign countries | 105 | 899 |
| | $ 3,195 | $ 4,306 |
| Identifiable assets: | | |
| United States | $535,110 | $495,136 |
| Canada | 64,493 | 61,908 |
| Other foreign countries | 18,663 | 15,611 |
| Eliminations | (2,108) | (2,540) |
| | $616,158 | $570,115 |

19. UNAUDITED INTERIM RESULTS OF OPERATIONS:

The unaudited results of operations for interim periods are summarized below:

| | Three months ended March 31, 1978 | June 30, 1978 | September 30, 1978 | December 31, 1978 |
|---|---|---|---|---|
| | (000's omitted except per share amounts) | | | |
| Net Sales | $140,335 | $155,314 | $146,247 | $152,096 |
| Gross Profits | $ 29,086 | $ 36,281 | $ 32,341 | $ 33,657 |
| Net Income | $ 5,656 | $ 10,256 | $ 19,866(a) | $ 6,763 |
| Net income per share: | | | | |
| Primary | $0.60 | $1.10 | $2.14 | $0.71 |
| Fully diluted | $0.45 | $0.79 | $1.49 | $0.54 |

(a) Includes net income on disposal of investment in affiliate of $13,832,000.

| | Three months ended March 31, 1977 | June 30, 1977 | September 30, 1977 | December 31, 1977 |
|---|---|---|---|---|
| | (000's omitted except per share amounts) | | | |
| Net Sales | $145,857 | $152,142 | $139,205 | $138,460 |
| Gross Profit | $ 34,344 | $ 37,271 | $ 33,524 | $ 34,634 |
| Net Income | $ 8,891 | $ 10,427 | $ 8,653 | $ 10,189 |
| Net income per share: | | | | |
| Primary | $0.94 | $1.10 | $0.90 | $1.11 |
| Fully diluted | $0.67 | $0.77 | $0.64 | $0.78 |

20. UNAUDITED CURRENT REPLACEMENT COST INFORMATION:

The replacement cost data presented below is furnished pursuant to Rule 3-17 of Regulation S-X, which was announced in the Securities and Exchange Commission's ("SEC") Accounting Series Release No. 190. In that Release, the SEC cautioned investors and analysts against "simplistic use" of replacement cost information. In issuing that warning, the SEC stated:

> "...(The Commission) intentionally determined not to require the disclosure of the effect on net income of calculating cost of sales and depreciation on a current replacement cost basis, both because there are substantial theoretical problems in determining an income effect and because it did not believe that users should be encouraged to convert the data into a single revised net income figure. The data are not designed to be a simple road map to the determination of 'true income'. In addition, investors must understand that due to the subjective judgments and the many different specific factual circumstances involved, the data will not be fully comparable among companies and will be subject to errors of estimation."

The replacement cost data is based on the hypothetical assumption that the Company would replace its inventory and productive capacity on December 31, 1978 and December 31, 1977 at then existing costs. This assumption requires management to contemplate many actions and make subjective judgments which would not be deemed necessary in the normal course of its current operations. Accordingly, the information should not be interpreted to indicate that the Company actually has present plans to replace its productive capacity or that actual replacement would or could take place in the manner assumed in producing the required information. In the normal course of business, the Company will replace its productive capacity over an extended period of time at costs which may differ significantly from those referred to herein. Decisions concerning replacement would be made in the light of economic, regulatory and competitive conditions existing on the dates such determinations are actually made and could differ substantially from the assumptions on which the data included herein are based.

The replacement cost data presented herein are not necessarily representative of the "current value" at which the assets could be sold. Therefore, the difference between the replacement cost and the historical cost of inventory and productive capacity does not represent additional book value but instead may indicate additional funds which might be required to replace existing capacity. The funds for the eventual replacement of the Company's productive capacity may be provided not only by earnings retained after payment of dividends but also by investment tax credits, debt, or issues of equity securities.

The replacement cost data presented below does not reflect all of the effects of inflation and other economic factors on the Company's current costs of operating the business. Rule 3-17 does not require consideration of these effects on assets and liabilities other than inventories and productive capacity. The Company has not attempted to quantify the total impact of inflation and changes in general economic factors that could affect its business.

The replacement cost data required by Rule 3-17 is presented below, subject to the above comments:

| | 1978 | | 1977 | |
|---|---|---|---|---|
| | Replacement Cost | Historical Cost | Replacement Cost | Historical Cost |
| | (000's omitted) | | | |
| Inventories | $173,309 | $142,996 | $178,592 | $153,121 |
| Properties, plant and equipment— | | | | |
| Manufacturing machinery and equipment | $221,674 | $108 268 | $194,576 | $ 98,742 |
| Manufacturing buildings | 92,342 | 49,034 | 84,790 | 47,605 |
| Mill buildings and equipment | 70,044 | 32,278 | 65,171 | 32,209 |
| Mine buildings and equipment | 56,100 | 23,965 | 50,687 | 22,362 |
| Rolling stock, equipment and other railway properties | 28,693 | 4,275 | 25,998 | 4,168 |
| | 468,853 | 217,820 | 421,222 | 205,086 |
| Less, accumulated depreciation | 242,587 | 100,774 | 206,398 | 91,262 |
| | $226,266 | $117,046 | $214,824 | $113,824 |
| Cost of products sold (exclusive of depreciation and depletion) | $450,181 | $443,602 | $422,845 | $419,988 |
| Depreciation: | | | | |
| Included in cost of products sold | $ 13,797 | $ 7,862 | $ 15,400 | $ 8,837 |
| Included in selling, general and administrative expenses | 1,169 | 762 | 1,021 | 698 |
| | $ 14,966 | $ 8,624 | $ 16,421 | $ 9,535 |

The basic replacement cost data presented above does not reflect any operating cost savings which the Company believes may result from the replacement of existing assets with assets of improved technology.

If the Company's productive capacity were to be replaced in a manner assumed in the calculation of replacement cost of existing productive capacity, the Company believes certain costs other than depreciation (e.g., direct labor costs, repairs and maintenance, utilities), particularly those related to the Company's copper and brass fabrication business, might be improved. Although these expected cost changes cannot be quantified with any great precision, the current level of operating costs other than depreciation would be reduced as a result of the technological improvements assumed in the hypothetical replacement. It should also be noted that no attempt was made to re-engineer the Company's productive capacity. Actual future replacements would, in many instances, contemplate improved and more efficient manufacturing techniques and therefore could result in additional cost savings.

Further, the above replacement cost information standing alone does not recognize the customary relationships between cost changes and changes in selling prices. The Company has been able, over the past several years, consistent with competitive and regulatory conditions, to adjust selling prices in relation to cost changes. Although there is no assurance that it will be able to do so in the future, the Company presently intends to modify its selling prices to recognize future cost changes.

The following reconciles the comparable related historical cost amounts included in the consolidated balance sheets and income statements for the years 1978 and 1977, with the historical amounts for which replacement cost data have and have not been provided. The totals are the same as the "Historical Cost" shown above.

| | Inventories | Property Plant and Equipment | Accumulated Depreciation | Cost of Products Sold(a) | Depreciation and Depletion |
|---|---|---|---|---|---|
| | | | (000's omitted) | | |
| 1978: | | | | | |
| Totals as shown in the accompanying consolidated financial statements | $145,398 | $328,820 | $148,387 | $451,779 | $10,848(b) |
| Less, amounts for which replacement cost data have not been provided: | | | | | |
| Depletable mining properties | | 31,099 | 7,168 | | 107 |
| Oil and gas producing assets | | 29,928 | 12,881 | | 1,389 |
| Assets not currently expected to be replaced. | 2,402 | 36,304 | 27,564 | 8,177 | 228 |
| Land, land improvements, track structures and construction in progress, at cost | | 13,669 | | | |
| Historical amounts for which replacement cost data have been replaced | $142,996 | $217,820 | $100,774 | $443,602 | $ 8,624 |
| 1977: | | | | | |
| Totals as shown in the accompanying consolidated financial statements | $155,518 | $309,814 | $138,084 | $424,630 | $12,094(b) |
| Less amounts for which replacement cost data have not been provided: | | | | | |
| Depletable mining properties | | 24,353 | 7,695 | | 486 |
| Oil and gas producing assets | | 32,955 | 10,529 | | 1,764 |
| Assets not currently expected to be replaced. | 2,397 | 35,980 | 28,598 | 4,642 | 309 |
| Land, land improvements, track structures and construction in progress, at cost | | 11,440 | | | |
| Historical amounts for which replacement cost data have been replaced | $153,121 | $205,086 | $ 91,262 | $419,988 | $ 9,535 |

(a) Exclusive of depreciation and depletion.

(b) Includes depreciation charged to administrative expenses of $803,000 in 1978 and $833,000 in 1977.

The methods used in determining current replacement cost are as follows:

Inventories—Raw materials were estimated on the basis of a combination of cost indices applied, where appropriate, to historical or standard costs and the use of most recent purchase prices. Finished goods and work in process have been estimated on the basis of a combination of standard costs adjusted to reflect current material, labor and overhead variances and historical costs adjusted to current labor and overhead experience, including adjustments to reflect depreciation on a current replacement cost basis.

Buildings—Current replacement cost was estimated as appropriate by the use of current published construction costs per square foot for equivalent floor space, independent studies and appraisals utilizing local building cost indices and quoted construction costs. Where used, the independent studies contemplated current construction techniques and building design to accommodate current productive capacity.

Machinery and equipment—Where practicable current replacement cost was estimated by reference to current quoted prices or estimates of current market prices; however, current replacement cost was estimated primarily by the use of cost indices applied to historical costs. In one division a 44% sample was taken to determine current quoted market prices and the data relevant to this sample was processed through a least squares model to determine correlation and percent variability explained. Confidence

limits were established and internal computed factors developed. These internal computed factors were then applied to the original cost of all machinery and equipment by year of acquisition to compute replacement cost. In addition, where a recent appraisal was made, cost indices were applied to appraised values.

Cost of products sold—Current replacement cost of sales was estimated by adjusting historical costs for the approximate time lag between acquisition of inventory and its subsequent conversion into sales revenue.

Depreciation—Estimated on the basis of a straight-line depreciation of the replacement cost of productive capacity using the same estimates of useful lives and salvage values utilized in preparing the historical cost financial statements. Average replacement cost of productive capacity at the end of the year, exclusive of 1978 and 1977 additions, was used in determining the basis upon which depreciation expense was computed. Depreciation expense for current year additions is stated at historical cost.

All replacement cost amounts related to foreign assets, cost of products sold and depreciation expense have been initially calculated in the relevant foreign currency and then translated to U.S. dollars using year end rates of exchange for assets and yearly average rates of exchange for cost of products sold and depreciation expense.

UV INDUSTRIES, INC.

SCHEDULE III— INVESTMENTS IN, EQUITY IN EARNINGS OF, AND DIVIDENDS RECEIVED FROM AFFILIATES AND OTHER PERSONS

for the year ended December 31, 1978

| Col. A | Col. B | | Col. C | | Col. D | | Col. E | | Col. F |
|---|---|---|---|---|---|---|---|---|---|
| | Balance at Beginning of Period | | Additions | | Deductions | | Balance at End of Period | | |
| Name of Issuer and Title of Issue(1) | Number of Shares | Amount in Dollars | Equity Taken Up in Earnings (Losses) of Affiliates and Other Persons for the Period | Other | Distribution of Earnings by Persons in Which Earnings (Losses) Were Taken Up | Other | Number of Shares | Amount in Dollars | Dividends Received During the Period From Investments Not Accounted for by the Equity Method |
| | | | | (000's omitted except for shares) | | | | | |
| The Company (Separately): | | | | | | | | | |
| Consolidated subsidiaries(2): | | | | | | | | | |
| Mueller Brass Co. | 100 | $ 23,580 | | | | | 100 | $ 23,580 | |
| Federal Pacific Electric Company | 100 | 87,715 | | $ 728(3) | | | 100 | 88,443 | |
| Mueller Industrial Realty Co. | 10,000 | 166 | | | | | 10,000 | 166 | |
| United States Fuel Company | 640,000 | 5,399 | | | | | 640,000 | 5,399 | |
| United States Smelting Refining and Mining Company | 1 | | | | | | 1 | | |
| U. S. S. Lead Refinery, Inc. | 10,000 | 341 | | | | | 10,000 | 341 | |
| Ussram Exploration Company | 1,000 | 100 | | | | | 1,000 | 100 | |
| Utah Railway Company | 30,652 | 2,065 | | | | | 30,652 | 2,065 | |
| Streamline Copper & Brass Ltd. | 2,500 | 250 | | | | | 2,500 | 250 | |
| Washington Mining Company | 800 | 67 | | | | | 800 | 67 | $ 790 |
| White Knob Mining Company | 127,500 | 25 | | | | | 127,500 | 25 | |
| Arawa Exploration Company | 50,000 | 12 | | | | | 50,000 | 12 | |
| Alaska Gold Company | 4,250,000 | 4,588 | | | | | 4,250,000 | 4,588 | |
| Kennet Company Limited | 125,000 | 125 | | | | | 125,000 | 125 | |
| | | $124,433 | | $ 728 | | | | $125,161 | $ 790 |
| The Company and subsidiaries: | | | | | | | | | |
| Investment in affiliate: | | | | | | | | | |
| Globe-Union Inc. | 1,285,400 | $ 25,191 | $2,301 | | $964 | $ 26,528(4) | | | |
| Other security investments | | | | | | | | | $ 549 |

NOTES:

(1) All common stock.

(2) All 100% owned at December 31, 1978 except Alaska Gold Company which is 85% owned.

(3) Represents conversion of 5½% convertible subordinated debentures of Federal Pacific Electric Company into Common Stock of the Company.

(4) Represents sale and exchange of investment in affiliate (see Note 6 to financial statements).

## UV INDUSTRIES, INC.

### SCHEDULE III— INVESTMENTS IN, EQUITY IN EARNINGS OF, AND DIVIDENDS RECEIVED FROM AFFILIATES AND OTHER PERSONS

for the year ended December 31, 1977

| Col. A | Col. B | | Col. C | | Col. D | | Col. E | | Col. F |
|---|---|---|---|---|---|---|---|---|---|
| | Balance at Beginning of Period | | Additions | | Deductions | | Balance at End of Period | | |
| Name of Issuer and Title of Issue(1) | Number of Shares | Amount in Dollars | Equity Taken Up in Earnings (Losses) of Affiliates and Other Persons for the Period | Other | Distributions of Earnings by Persons in Which Earnings (Losses) Were Taken Up | Other | Number of Shares | Amount in Dollars | Dividends Received During the Period From Investments Not Accounted for by the Equity Method |
| | | | | (000's omitted except for shares) | | | | | |
| The Company (Separately): | | | | | | | | | |
| Consolidated subsidiaries(2): | | | | | | | | | |
| Mueller Brass Co. | 100 | $ 23,580 | | | | | 100 | $ 23,580 | |
| Federal Pacific Electric Company | 100 | 86,605 | | $ 1,110(3) | | | 100 | 87,715 | |
| Mueller Industrial Realty Co. | 10,000 | 166 | | | | | 10,000 | 166 | |
| United States Fuel Company | 640,000 | 5,399 | | | | | 640,000 | 5,399 | |
| United States Smelting Refining and Mining Company | | | | | | | 1 | | |
| U. S. S. Lead Refinery, Inc. | 10,000 | 341 | | | | | 10,000 | 341 | |
| Ussram Exploration Company | 1,000 | 100 | | | | | 1,000 | 100 | |
| Utah Railway Company | 30,652 | 2,065 | | | | | 30,652 | 2,065 | |
| Streamline Copper & Brass Ltd. | 2,500 | 250 | | | | | 2,500 | 250 | |
| Washington Mining Company | 800 | 67 | | | | | 800 | 67 | |
| White Knob Mining Company | 127,500 | 25 | | | | | 127,500 | 25 | |
| Arava Exploration Company | 50,000 | 12 | | | | | 50,000 | 12 | |
| Alaska Gold Company | 4,250,000 | 4,588 | | | | | 4,250,000 | 4,588 | |
| Kennet Company Limited | 125,000 | 125 | | | | | 125,000 | 125 | |
| | | $123,323 | | $ 1,110 | | | | $124,433 | |
| The Company and subsidiaries: | | | | | | | | | |
| Investment in affiliate: | | | | | | | | | |
| Globe-Union Inc. | | | $2,315 | $23,390(4) | $514 | | 1,285,400 | $ 25,791 | |
| Other security investments | | | | | | | | | $ 53 |

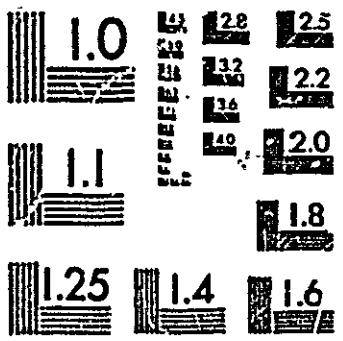
NOTES:

(1) All common stock.

(2) All 100% owned at December 31, 1977 except Alaska Gold Company which is 8.8% owned.

(3) Represents conversion of 5½% convertible subordinated debentures of Federal Pacific Electric Company into Common Stock of the Company.

(4) Represents acquisition of 1,285,400 shares representing a 20.5% ownership.




MICROCOPY RESOLUTION TEST CHART
NATIONAL BUREAU OF STANDARDS-1963-A

## UV INDUSTRIES, INC.

### SCHEDULE IV—INDEBTEDNESS OF AFFILIATES AND OTHER PERSONS—NOT CURRENT

### for the year ended December 31, 1978

| COL. A | COL. B | COL. C |
|---|---|---|
| Name of Person | Balance at Beginning of Period | Balance at End of Period |
| | (000's omitted) | |
| The Company (Separately): | | |
| Utah Railway Company | $ 3,000 | $ 3,000 |
| Alaska Gold Company | 13,893 | 18,326(1) |
| | $16,893 | $21,326 |

NOTE:

(1) Represents amount loaned to Alaska Gold Company by the Registrant for purposes of working capital, capital expenditures and costs of operations.

SCHEDULE V

## UV INDUSTRIES, INC.

### SCHEDULE V—PROPERTIES, PLANTS AND EQUIPMENT

### for the year ended December 31, 1978

| Col. A | Col. B | Col. C | Col. D | Col. E | Col. F |
|---|---|---|---|---|---|
| Description | Balance at Beginning of Period | Additions at Cost | Retirements | Other Changes | Balance at End of Period |
| | | | (000's omitted) | | |
| The Company (Separately): | | | | | |
| Depletable mining properties and oil and gas interests | $ 19,227 | $ 694 | $ 197 | | $ 19,724 |
| Depreciable properties: | | | | | |
| Mill buildings and equipment | 32,706 | | 12 | | 32,694 |
| Mine buildings and equipment and oil and gas equipment | 23,968 | 899 | 48 | $ 132 (2) | 24,951 |
| Construction in progress | 132 | 21 | | (132)(2) | 21 |
| Other | 117 | 14 | | | 131 |
| | 56,923 | 934 | 60 | | 57,797 |
| Amortizaable properties: | | | | | |
| Oil and gas well intangible drilling costs | 12,323 | 1,948 | | | 14,271 |
| Land | 349 | | | | 349 |
| | $ 88,822 | $ 3,576 | $ 257 | | $ 92,141 |
| The Company and Subsidiaries: | | | | | |
| Depletable mining properties and oil and gas interests | $ 30,613 | $ 781 | $ 235 | | $ 31,159 |
| Depreciable properties: | | | | | |
| Mill buildings and equipment | 34,305 | 82 | 13 | | 34,374 |
| Mine buildings and equipment and oil and gas equipment | 63,753 | 3,100 | 137 | $ 132 (2) | 66,848 |
| Manufacturing machinery and equipment | 104,972 | 6,653 | 678 | (210)(1)<br>3,196 (2) | 113,933 |
| Rolling stock, equipment and other depreciable railway property | 3,526 | 7 | 12 | | 3,521 |
| Manufacturing buildings and land improvements | 50,362 | 1,186 | 24 | (54)(1)<br>764 (2) | 52,234 |
| Construction in progress | 2,228 | 5,999 | | (4,092)(2) | 4,135 |
| Other | 163 | 140 | | | 303 |
| | 259,309 | 17,167 | 864 | (264) | 275,348 |
| Amortizable properties: | | | | | |
| Oil and gas well intangible drilling costs | 12,323 | 2,145 | | | 14,468 |
| Other | 2 | | 2 | | |
| | 12,325 | 2,145 | 2 | | 14,468 |
| Land | 3,184 | 143 | 70 | | 3,257 |
| Other railway property | 4,383 | 222 | 17 | | 4,588 |
| | $309,814 | $20,458 | $1,188 | ($ 264) | $328,820 |

NOTES:

(1) Write off of fully depreciated assets.

(2) Transfer between classifications.

## UV INDUSTRIES, INC.

### SCHEDULE V—PROPERTIES, PLANTS AND EQUIPMENT

### for the year ended December 31, 1977

| Col. A | Col. B | Col. C | Col. D | Col. E | Col. F |
|---|---|---|---|---|---|
| Description | Balance at Beginning of Period | Additions at Cost | Retirements | Other Changes | Balance at End of Period |
| | | | (000's omitted) | | |
| The Company (Separately): | | | | | |
| Depletable mining properties and oil and gas interests | $ 19,129 | $ 453 | $ 92 | ($ 263)(2) | $ 19,227 |
| Depreciable properties: | | | | | |
| Mill buildings and equipment | 32,360 | 228 | | 118 (2) | 32,706 |
| Mine buildings and equipment and oil and gas equipment | 22,345 | 1,055 | 486 | 1,054 (2) | 23,968 |
| Construction in progress | 626 | 633 | 46 | (1,081)(2) | 132 |
| Other | 100 | 17 | | | 117 |
| | 55,431 | 1,933 | 532 | 91 | 56,923 |
| Amortizable properties: | | | | | |
| Oil and gas well intangible drilling costs | 10,659 | 1,545 | 53 | 172 (2) | 12,323 |
| Land | 349 | | | | 349 |
| | $ 85,568 | $ 3,931 | $ 677 | | $ 88,822 |
| The Company and Subsidiaries: | | | | | |
| Depletable mining properties and oil and gas interests | $ 30,467 | $ 505 | $ 96 | ($ 263)(2) | $ 30,613 |
| Depreciable properties: | | | | | |
| Mill buildings and equipment | 33,604 | 583 | | 118 (2) | 34,305 |
| Mine buildings and equipment and oil and gas equipment | 57,526 | 5,914 | 1,125 | 1,438 (2) | 63,753 |
| Manufacturing machinery and equipment | 98,187 | 8,069 | 269 | (1,015)(1) | 104,972 |
| Rolling stock, equipment and other depreciable railway property | 3,476 | 50 | | | 3,526 |
| Manufacturing buildings and land improvements | 49,222 | 1,154 | 14 | | 50,362 |
| Construction in progress | 2,832 | 907 | 46 | (1,465)(2) | 2,228 |
| Other | 146 | 17 | | | 163 |
| | 244,993 | 16,694 | 1,454 | (924) | 259,309 |
| Amortizable properties: | | | | | |
| Oil and gas well intangible drilling costs | 10,659 | 1,545 | 53 | 172 (2) | 12,323 |
| Other | 2 | | | | 2 |
| | 10,661 | 1,545 | 53 | 172 | 12,325 |
| Land | 3,088 | 146 | 50 | | 3,184 |
| Other railway property | 4,383 | | | | 4,383 |
| | $293,592 | $18,390 | $1,653 | ($1,015) | $309,814 |

NOTES:

(1) Write off of fully depreciated assets.

(2) Transfer between classifications.

## UV INDUSTRIES, INC.

### SCHEDULE VI—ACCUMULATED DEPRECIATION, DEPLETION AND AMORTIZATION OF PROPERTIES, PLANTS AND EQUIPMENT

for the year ended December 31, 1978

| Col. A | Col. B | Col. C | | Col. D | Col. E | Col. F |
|---|---|---|---|---|---|---|
| | | Additions | | | | |
| Description | Balance at Beginning of Period | Charged to Costs and Expenses | Charged to Other Accounts | Retirements | Other Changes | Balance at Close of Period |
| | | | (000's omitted) | | | |
| The Company (Separately): | | | | | | |
| Depletable properties: | | | | | | |
| Mining properties and oil and gas interests | $ 7,164 | $ 431 | | $ 54 | | $ 7,541 |
| Depreciable properties: | | | | | | |
| Mill buildings and equipment | 13,400 | 479 | | 19 | | 13,860 |
| Mine buildings and equipment and oil and gas equipment | 5,222 | 709 | | | | 5,931 |
| Other | 97 | 13 | | | | 110 |
| | 18,719 | 1,201 | | 19 | | 19,901 |
| Amortizable properties: | | | | | | |
| Oil and gas well intangible drilling costs | 3,358 | 732 | | | | 4,090 |
| | $ 29,241 | $ 2,364 | | $ 73 | | $ 31,532 |
| The Company and Subsidiaries: | | | | | | |
| Depletable properties: | | | | | | |
| Mining properties and oil and gas interests | $ 15,322 | $ 454 | | $ 92 | | $ 15,684 |
| Depreciable properties: | | | | | | |
| Mill buildings and equipment | 13,619 | 603 | | 19 | | 14,203 |
| Mine buildings and equipment and oil and gas equipment | 26,277 | 1,393 | $428 | 14 | | 28,084 |
| Manufacturing machinery and equipment | 58,241 | 5,913 | | 537 | ($210)(1)<br>(43)(2) | 63,364 |
| Rolling stock, equipment and other depreciable railway property | 2,617 | 54 | | 23 | | 2,648 |
| Manufacturing buildings and land improvements | 18,509 | 1,636 | | 24 | (54)(1)<br>43 (2) | 20,110 |
| Other | 141 | 58 | | | | 199 |
| | 119,404 | 9,657 | 428 | 617 | (264) | 128,608 |
| Amortizable properties: | | | | | | |
| Oil and gas well intangible drilling costs | 3,358 | 737 | | | | 4,095 |
| | $138,084 | $10,848 | $428 | $ 709 | ($264) | $148,387 |

NOTE:

(1) Write off of fully depreciated assets.

(2) Transfer between classifications.

SCHEDULE VI

## UV INDUSTRIES, INC.

### SCHEDULE VI—ACCUMULATED DEPRECIATION, DEPLETION AND AMORTIZATION OF PROPERTIES, PLANTS AND EQUIPMENT

for the year ended December 31, 1977

| Col. A | Col. B | Col. C | | Col. D | Col. E | Col. F |
|---|---|---|---|---|---|---|
| | | Additions | | | | |
| Description | Balance at Beginning of Period | Charged to Costs and Expenses | Charged to Other Accounts | Retirements | Other Changes | Balance at Close of Period |
| | | | (000's omitted) | | | |
| The Company (Separately): | | | | | | |
| Depletable properties: | | | | | | |
| Mining properties and oil and gas interests | $ 6,562 | $ 674 | | $ 72 | | $ 7,164 |
| Depreciable properties: | | | | | | |
| Mill buildings and equipment | 11,676 | 1,884 | | 160 | | 13,400 |
| Mine buildings and equipment and oil and gas equipment | 4,450 | 772 | | | | 5,222 |
| Other | 87 | 10 | | | | 97 |
| | $ 16,213 | 2,666 | | 160 | | 18,719 |
| Amortizable properties: | | | | | | |
| Oil and gas well intangible drilling costs | 2,730 | 680 | | 52 | | 3,358 |
| | $ 25,505 | $ 4,020 | | $ 284 | | $ 29,241 |
| The Company and Subsidiaries: | | | | | | |
| Depletable properties: | | | | | | |
| Mining properties and oil and gas interests | $ 14,692 | $ 704 | | $ 74 | | $ 15,322 |
| Depreciable properties: | | | | | | |
| Mill buildings and equipment | 11,786 | 1,993 | | 160 | | 13,619 |
| Mine buildings and equipment and oil and gas equipment | 25,188 | 1,380 | $349 | 640 | | 26,277 |
| Manufacturing machinery and equipment | 54,015 | 5,649 | | 408 | ($1,015)(1) | 58,241 |
| Rolling stock, equipment and other depreciable railway property | 2,568 | 49 | | | | 2,617 |
| Manufacturing buildings and land improvements | 16,891 | 1,629 | | 11 | | 18,509 |
| Other | 131 | 10 | | | | 141 |
| | 110,579 | 10,710 | 349 | 1,219 | (1,015) | 119,404 |
| Amortizable properties: | | | | | | |
| Oil and gas well intangible drilling costs | 2,730 | 680 | | 52 | | 3,358 |
| | $128,001 | $12,094 | $349 | $1,345 | ($1,015) | $138,084 |

NOTE:

(1) Write off of fully depreciated assets.

SCHEDULE VII

## UV INDUSTRIES, INC.

### SCHEDULE VII—INTANGIBLE ASSETS

for the year ended December 31, 1978

| COL. A | COL. B | COL. C | COL. D | COL. F |
|---|---|---|---|---|
| Description | Balance at Beginning of Period | Additions at Cost | Deductions Charged to Costs and Expenses | Balance at Close of Period |
| | | (000's omitted) | | |
| The Company and Subsidiaries: | | | | |
| Part A | | | | |
| Cost in excess of net assets of a business acquired ..... | $24,527 | | $192(1) | $24,335 |
| Part B—None in excess of 5% of total assets. | | | | |

NOTE:

(1) Represents amortization credited directly to the account (see Note 1c to financial statements).

SCHEDULE VII

## UV INDUSTRIES, INC.

### SCHEDULE VII—INTANGIBLE ASSETS

### for the year ended December 31, 1977

| COL. A | COL. B | COL. C | COL. D | COL. F |
|---|---|---|---|---|
| Description | Balance at Beginning of Period | Additions at Cost | Deductions Charged to Costs and Expenses | Balance at Close of Period |
| | | (000's omitted) | | |
| The Company and Subsidiaries: | | | | |
| Part A | | | | |
| Cost in excess of net assets of a business acquired | $24,717 | | $190(1) | $24,527 |
| Part B—None in excess of 5% of total assets. | | | | |

NOTE:

(1) Represents amortization credited directly to the account (see Note 1c to financial statements).

# UV INDUSTRIES, INC.

## SCHEDULE IX—BONDS, MORTGAGES AND SIMILAR DEBT

## December 31, 1978

| Col. A | Col. B | Col. C | Col. D | | Col. E |
|---|---|---|---|---|---|
| | | | Amount Included in Col. C Which Is | | |
| Name of Issuer and Title of Each Issue | Amount Authorized by Indenture | Amount Issued and Not Retired or Cancelled | Held by or for Account of Issuer Thereof | Not Held by or for Account of Issuer Thereof | Amount Included under Caption "Bonds, Mortgages and Similar Debt" in Related Balance Sheet |
| | | (000's omitted) | | | |
| The Company (Separately): | | | | | |
| UV Industries, Inc.: | | | | | |
| 5⅜% subordinated debentures, due 1979-1995 | $23,397 | $15,219 | | $15,219 | $ 15,219 |
| 5¼% convertible subordinated debentures, due 1979-1993 | 60,000 | 46,886 | | 46,886 | 46,886 |
| 9¼% senior subordinated notes, due 1987 | 25,000 | 25,000 | | 25,000 | 25,000 |
| 8⅛% debentures, due 1982-1997 | 75,000 | 75,000 | | 75,000 | 75,000 |
| | | | | | 162,105 |
| Less, portion included in current liabilities | | | | | 857 |
| | | | | | $161,248 |
| The Company and Subsidiaries: | | | | | |
| UV Industries, Inc.: | | | | | |
| 5⅜% subordinated debentures, due 1979-1995 | 23,397 | 15,219 | | 15,219 | $ 15,219 |
| 5¼% convertible subordinated debentures, due 1979-1993 | 60,000 | 46,886 | | 46,886 | 46,886 |
| 9¼% senior subordinated notes, due 1987 | 25,000 | 25,000 | | 25,000 | 25,000 |
| 8⅛% debentures, due 1982-1997 | 75,000 | 75,000 | | 75,000 | 75,000 |
| Federal Pacific Electric Company: | | | | | |
| 5¼%-6½% notes payable, due 1979-1991 | 10,700 | 3,875 | | 3,875 | 3,875 |
| 5½% convertible subordinated debentures, due 1987 | 10,000 | 328 | | 328 | 328 |
| 5⅜% lease obligations, due 1979-1991 | 3,500 | 2,420 | | 2,420 | 2,420 |
| 5⅜%-6% mortgage loans, due 1979-1981 | 1,220 | 263 | | 263 | 263 |
| Capitalized leases | 313 | 198 | | 198 | 198 |
| Federal Pioneer Limited: | | | | | |
| 6¾% sinking fund debentures, due 1979-1987 | 3,627 | 2,711 | | 2,711 | 2,711 |
| 6¼%-10% mortgage loan, due 1979-1990 | 883 | 686 | | 686 | 686 |
| Federal Electric (Holdings) Limited: | | | | | |
| 11¼% bank loan, due 1979-1985 | 1,182 | 1,182 | | 1,182 | 1,182 |
| Mueller Brass Co.: | | | | | |
| 6¼% industrial development revenue bonds, due 1979-1993(1) | 22,000 | 18,160 | | 18,160 | 18,160 |
| 6¼% industrial revenue bonds, due 1979-1993(1) | 13,000 | 10,675 | | 10,675 | 10,675 |
| 7½% bonds payable, due 1979-1990(1) | 1,000 | 875 | | 875 | 875 |
| 7%-8⅛% pollution control revenue bonds payable, due 1981-2001(1) | 5,000 | 5,000 | | 5,000 | 5,000 |
| 5¼%-5¾% industrial revenue bonds payable, due 1979-1987 | 1,700 | 1,005 | | 1,005 | 1,005 |
| | | | | | 209,483 |
| Less, portion included in current liabilities | | | | | 3,978 |
| | | | | | $205,505 |

NOTES:

(1) Guaranteed as to principal and interest by the parent company.

(2) Columns F, G and H have been omitted since the answers with respect to each issue would be "None".

## UV INDUSTRIES, INC.

### SCHEDULE XII—VALUATION AND QUALIFYING ACCOUNTS AND RESERVES

### for the year ended December 31, 1978

| Col. A | Col. B | Col. C | Col. D | Col. E |
|---|---|---|---|---|
| | | Additions | | |
| Description | Balance at Beginning of Period | Charged to Costs and Expenses | Deductions | Balance at End of Period |
| | | (000's omitted) | | |
| The Company (Separately): | | | | |
| Allowance for doubtful accounts | $ 874 | | | $ 874 |
| The Company and Subsidiaries: | | | | |
| Allowance for doubtful accounts | $2,636 | $2,420 | $2,031(1) | $3,025 |

NOTE:

(1) Doubtful accounts written off, net of recoveries.

## UV INDUSTRIES, INC.

### SCHEDULE XII—VALUATION AND QUALIFYING ACCOUNTS AND RESERVES

### for the year ended December 31, 1977

| Col. A | Col. B | Col. C | Col. D | Col. E |
|---|---|---|---|---|
| | | Additions | | |
| Description | Balance at Beginning of Period | Charged to Costs and Expenses | Deductions | Balance at End of Period |
| | | (000's omitted) | | |
| The Company (Separately): | | | | |
| Allowance for doubtful accounts | $ 874 | | | $ 874 |
| The Company and Subsidiaries: | | | | |
| Allowance for doubtful accounts | $2,563 | $ 788 | $715(1) | $2,636 |

NOTE

(1) Doubtful accounts written off, net of recoveries.

UV INDUSTRIES, INC.

SCHEDULE XIII – CAPITAL SHARES

December 31, 1970

| Col. A | Col. B | Col. C | Col. D | | Col. E | | Col. F | | Col. G | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | Number of Shares Included in Col. C Which Are | | Shares Issued or Outstanding, as Shown in the Included in Related Balance Sheet under Caption "Capital Shares" | | Number of Shares Held by Affiliates for which Statements Are Filed Herewith | | Number of Shares Reserved for Options, Warrants, Conversions and Other Rights | |
| Description | Number of Shares Authorized By Charter | Number of Shares Issued and Not Retired or Canceled | Held by or for Account of Issuer Thereof | Not Held by or for Account of Issuer Thereof | Number | Amount at Which Shown | Persons Included in Consolidated Statements | Others | Directors, Officers and Employees | Others |
| | | | | | | ($000's omitted) | | | | |
| The Company (Separately) | | | | | | | | | | |
| UV Industries, Inc.: | | | | | | | | | | |
| Preferred Stock, par value $5 per share, $5.50 Cumulative Preferred | 500,000 | 178,759 | 59,250 | 119,509 | 178,759 | $ 894 | None | None | None | None |
| New Preferred Stock, par value $5 per share, $1.265 Convertible series | 1,000,000 | 101,301 | None | 101,301 | 101,301 | $ 506 | None | None | None | None |
| Common Stock, par value $1 per share | 25,000,000 | 11,338,614 | 1,440,016 | 9,898,598 | 11,338,614 | $11,339 | None | None | 536,600 | 5,465,617 |
| The Company and Subsidiaries: | | | | | | | | | | |
| UV Industries, Inc.: | | | | | | | | | | |
| Preferred Stock, par value $5 per share, $5.50 Cumulative Preferred | 500,000 | 178,759 | 59,250 | 119,509 | 178,759 | $ 894 | None | None | None | None |
| New Preferred Stock, par value $5 per share, $1.265 Convertible series | 1,000,000 | 101,301 | None | 101,301 | 101,301 | $ 506 | None | None | None | None |
| Common Stock, par value $1 per share | 25,000,000 | 11,338,614 | 1,440,016 | 9,898,598 | 11,338,614 | $11,339 | None | None | 536,600 | 5,465,617 |
| Consolidated subsidiaries (minority interest): | | | | | | | | | | |
| Alaska Gold Company: | | | | | | | | | | |
| Common Stock, $.10 par value | 10,000,000 | 5,000,000 | None | 5,000,000 | 750,000 | $ 75 | 4,250,000 | None | None | None |
| Cornell-Dubilier Electric Corp.: | | | | | | | | | | |
| Common Stock, $1 par value | 1,000,000 | 515,375 | None | 515,375 | 2,232 | 2 | 513,137 | None | None | None |
| Federal Pioneer Limited: | | | | | | | | | | |
| 5½% cumulative convertible first preference shares Series A (redeemable), $46.50 par value | 120,904 | 904 | None | 904 | 904 | 42 | None | None | None | None |
| Preferred shares of subsidiary | 2,500 | 950 | None | 950 | 950 | 9 | None | None | None | None |
| Class A shares without nominal or par value | 3,427,584 | 1,203,903 | None | 1,203,903 | 497,354 | 3,831 | 706,549 | None | None | 22,508 |
| Class B shares without nominal or par value | 1,444,400 | 22,508 | None | 22,508 | 22,508 | None | 22,508 | None | None | None |
| Federal Pacific Electric de Mexico, S.A. de C.V.: | | | | | | | | | | |
| Nominative shares of 1's (00 each | 50,000 | 50,000 | None | 50,000 | 9,582 | 77 | 40,418 | None | None | None |
| Federal Electric (Holdings) Limited | 10,000 | 10,000 | None | 10,000 | 250 | None | 9,750 | None | None | None |
| FPE South Africa (Pty.) Limited | 200,000 | 80,000 | None | 80,000 | 20,000 | None | 60,000 | None | None | None |
| | | | | | | $ 4,036(1) | | | | |

Note:

(1) Included in "Minority Interest in Consolidated Subsidiaries" on related balance sheet

EXHIBIT 1

## UV INDUSTRIES, INC.

### STATEMENT SETTING FORTH THE COMPUTATION OF PER SHARE EARNINGS FULLY DILUTED BASIS

| | Year ended December 31 | | | | |
|---|---|---|---|---|---|
| | 1978 | 1977 | 1976 | 1975 | 1974 |
| | (000's omitted) | | | | |
| Net income | $42,541 | $38,160 | $34,888 | $24,376 | $29,604(a) |
| Dividend requirements on $5.50 Cumulative Preferred Stock | (670) | (704) | (745) | (763) | (812) |
| Dividend requirements on $1.265 New Preferred Stock | (137) | (194) | (296) | (360) | (451) |
| Applicable to common stock | 41,734 | 37,262 | 33,847 | 23,253 | 28,341 |
| Adjustments: | | | | | |
| Dilutive effect of Federal Pacific Electric Company Canadian subsidiaries | | | (381) | (215) | (123) |
| Interest on 5¾% convertible debentures, net of federal income taxes | 1,448 | 1,500 | 1,632 | 1,790 | 1,794 |
| Interest on 5½% convertible debentures, net of federal income taxes | 12 | 38 | 83 | 138 | 196 |
| Expenses written off re 5¾% debentures, and Federal Pacific Electric Company Long-Term Debt, net of federal income taxes | 107 | 87 | 151 | 66 | 31 |
| Interest savings and interest earned on proceeds from options and warrants (see annexed): | | | | | |
| Interest on short-term debt retired, net of federal income taxes | 130 | 117 | 575 | 1,084 | 1,241 |
| Interest on long-term debt retired, net of federal income taxes | 884 | 957 | 412 | 756 | 485 |
| Interest on bank loans, net of federal income taxes | | | 984 | 1,056 | 1,230 |
| Interest on invested proceeds from exercise of options and warrants, net of federal income taxes | 204 | 310 | | | |
| Conversion of $1.265 New Preferred Stock | 137 | 194 | 296 | 360 | 451 |
| Total | 2,922 | 3,203 | 3,752 | 5,045 | 5,305 |
| Adjusted net income | $44,656 | $40,465 | $37,599 | $28,298 | $33,646 |
| Fully diluted per adjusted number of shares outstanding | $ 3.29 | $2.86 | $2.59 | $1.91 | $2.29 |

(a) Restated to give effect to the adoption in 1975 of Statement No. 9 of the Financial Accounting Standards Board relating to income taxes on intangible drilling costs.

# UV INDUSTRIES, INC.

## STATEMENT SETTING FORTH THE COMPUTATION OF PER SHARE EARNINGS FULLY DILUTED BASIS—(Continued)

| | Year ended December 31 | | | | |
|---|---|---|---|---|---|
| | 1978 | 1977 | 1976 | 1975 | 1974 |
| | (000's omitted) | | | | |
| Adjusted number of shares outstanding(1): | | | | | |
| Weighted average of shares outstanding | 9,177 | 9,216 | 8,911 | 8,538 | 8,071 |
| Shares issuable on conversion of 5¾% debentures | 2,157 | 2,233 | 2,429 | 2,685 | 2,673 |
| Shares issuable on conversion of 5½% debentures | 57 | 156 | 355 | 538 | 730 |
| Shares issuable on exercise of warrants | 3,758 | 3,764 | 3,764 | 3,692 | 3,534 |
| Shares issuable on exercise of options | 152 | 275 | 312 | 401 | 489 |
| Shares issuable on conversion of $1.265 New Preferred Stock | 258 | 366 | 557 | 688 | 849 |
| Shares assumed repurchased with portion of proceeds from exercise of warrants and options (limited to 20% outstanding shares) | (1,980) | (1,810) | (1,818) | (1,743) | (1,635) |
| Total | 13,579 | 14,150 | 14,510 | 14,779 | 14,711 |
| Proceeds and assumed use as follows: | | | | | |
| Proceeds from stock options | $ 1,928 | $ 2,464 | $ 3,215 | $ 3,769 | $ 5,180 |
| Proceeds from warrants | 77,622 | 77,745 | 77,750 | 77,750 | 77,750 |
| Total | $79,550 | $80,209 | $80,965 | $81,519 | $82,930 |
| Assumed use: | | | | | |
| Purchase of outstanding shares | $44,791 | $36,525 | $28,634 | $18,346 | $19,389 |
| Short-term debt Federal Pacific Electric Company | 2,043 | 2,758 | 12,590 | 13,648 | 27,273 |
| Long-term debt Federal Pacific Electric Company | 6,586 | 8,056 | 10,939 | 13,450 | 15,108 |
| Repayment of bank loans | | | 27,288 | 25,000 | 21,160 |
| Retire 5¼% notes | | | | 1,050 | |
| Retire long-term debt of Mueller Brass Co | 5,875 | 5,920 | | | |
| Retire 5¾% subordinated debentures | 15,219 | 16,063 | 1,514 | 10,025 | |
| Invested in commercial paper | 5,036 | 10,887 | | | |
| Total | $79,550 | $80,209 | $80,965 | $81,519 | $82,930 |

(1) Adjusted for the 2-for-1 stock split in June, 1977

UV INDUSTRIES, INC.
437 Madison Avenue, New York, N. Y. 10022

February 20, 1979

Dear Stockholder:

You are cordially invited to attend a Special Meeting of Stockholders of UV Industries, Inc. ("UV") to be held at 2 p.m. on March 26, 1979 in Ground Floor Auditorium, Room "A," at Chase Manhattan Bank, 1 Chase Manhattan Plaza, New York, New York.

At this important meeting you are being asked to consider and approve (i) the sale of the stock of Federal Pacific Electric Company ("Federal"), all of which is owned by UV, to a subsidiary of Reliance Electric Company for a maximum of $345,000,000 in cash; and (ii) the adoption of a Plan of Liquidation and Dissolution whereby, within a twelve-month period from the date of stockholder approval, the assets of UV will be sold (or distributed to stockholders or to a liquidating trust on behalf of stockholders), and the proceeds of any such sales, including the proceeds of the sale of shares of Federal, after paying or providing for claims, liabilities and other obligations, will be distributed to UV's stockholders.

Your Board of Directors has determined that the sale of Federal for a maximum of $345,000,000 is in the best interest of UV and its stockholders. In making this determination, consideration was given to, among other things, generally depressed stock market prices and the favorable relationship between the proposed price for Federal and the total market value of the Company's Common Stock prior to the announcement of the sale ($19¾ per share, closing sale price on December 15, 1978). It was noted that the economy in general is subject to the uncertainties of continuing inflation and the possibility of a recession. Your Board of Directors had also been concerned with the possibility of purchases of UV securities being made in the open market by an outside entity or group at the then prevailing prices, which in the judgment of the Board did not reflect the values inherent in the assets of the Company. In addition, E. F. Hutton & Company Inc., investment bankers consulted by UV in connection with the sale, have advised that, in their opinion, the terms of the sale are fair and reasonable to UV and its shareholders. Under the circumstances, and after considering other alternatives, it was decided to accept the offer to purchase UV's stock interest in Federal for a maximum of $345,000,000 cash, subject to ultimate approval of the stockholders.

With the sale of Federal, the recent exercise of UV's warrants and the anticipated conversion of convertible securities into Common Stock, the balance sheet of UV will be substantially improved. However, earnings from operations will be adversely affected by the elimination of Federal's profits. Such loss would, at least initially, be only partially offset by the investment in short-term government securities of the cash received from the sale of Federal. The alternative to liquidation of UV would be to make investments with a view toward a major acquisition. Based upon UV's past performance in making acquisitions, the prospect of utilizing the proceeds of the sale of Federal for that purpose presents interesting possibilities. On the other hand, there are risks inherent in any acquisition program.

Given, among other factors, the present status of the economy, the speculation among economists and others as to the possibility of a recession in 1979, the uncertainties of an acquisition program, the relationship of the cash position after the sale of Federal and potential asset value of the remaining assets to the recent market value of UV and the Federal income tax to be paid upon the gain from the sale of Federal if the proposed Plan of Liquidation and Dissolution is not adopted, it has been concluded by the Board that it is in the best interest of all stockholders to adopt the Plan of Liquidation and Dissolution.

In liquidating, UV intends to comply with Section 337 of the Internal Revenue Code, which would require a distribution of the cash and assets to or for the benefit of its stockholders, as hereinafter more fully explained, within a period of twelve months following stockholder approval. By complying with Section 337, the Company seeks to apply the applicable non-recognition of gain provisions of the Internal

Revenue Code, which could result in a tax savings of approximately $42,000,000. There could also be a tax savings to the extent that other assets were to be sold at a price above their tax basis. There could also be non-recognition of any losses sustained during this period.

Accordingly, prior to approving the sale of Federal, UV stockholders will be asked to approve the Plan of Liquidation and Dissolution whereby, within a twelve-month period from the date of stockholder approval, (i) the remaining assets of UV will be sold, if possible, upon such terms and conditions as the Board of Directors shall deem in UV's best interest, for cash or securities of other companies or a combination thereof and (ii) the proceeds of any such sales together with the proceeds of the sale of Federal, after paying or providing for claims, obligations and liabilities, will be distributed to UV stockholders. Any assets not sold will be distributed to stockholders or to a liquidating trust on behalf of stockholders.

Assuming a quorum is present at the meeting, a majority of the votes cast at the meeting is required to approve the proposal to sell Federal. The proposed Plan of Liquidation and Dissolution requires the vote of two-thirds of the outstanding stock entitled to vote thereon and would, if approved by such vote, be implemented only if Federal is sold. If the Plan of Liquidation and Dissolution is approved by stockholders but Federal is not sold, the Plan of Liquidation and Dissolution will not be implemented and will be abandoned. If the sale of Federal is approved, it will be made whether or not the Plan of Liquidation and Dissolution is approved.

We recommend to you that the proposed Plan of Liquidation and Dissolution and sale be approved. Accordingly, whether or not you are personally able to attend the meeting, you are urged to vote FOR the Plan of Liquidation and Dissolution and FOR the sale of Federal by signing, dating and mailing the enclosed proxy promptly.

Very truly yours,

MARTIN HORWITZ
*Chairman of the Board*

UV INDUSTRIES, INC.

437 Madison Avenue, New York, N. Y. 10022

# Notice of Special Meeting of Stockholders

*To the Stockholders:*

A Special Meeting of Stockholders of UV Industries, Inc. (the "Company") will be held at Chase Manhattan Bank, 1 Chase Manhattan Plaza, New York, New York, Ground Floor Auditorium, Room "A," on Monday, the 26th day of March, 1979, at two o'clock in the afternoon, Eastern Standard Time:

1. To consider the advisability of dissolving the Company by acting upon a proposal to approve and adopt a Plan of Liquidation and Dissolution attached hereto as Annex I whereby, within a twelve-month period from the date of stockholder approval, the assets of the Company will be sold (or distributed to stockholders or to a liquidating trust on behalf of stockholders), and the proceeds of any such sales, including the proceeds of the sale of shares of the Company's wholly-owned subsidiary, Federal Pacific Electric Company ("Federal"), after paying or providing for claims, liabilities and other obligations, will be distributed to the Company's stockholders, and the Company will thereafter be dissolved.

2. To consider and act upon a proposal to approve the sale of all of the outstanding capital stock of Federal to New REC, Inc., a wholly-owned subsidiary of Reliance Electric Company pursuant to a Stock Purchase Agreement attached hereto as Annex II.

3. To transact any and all other business that may properly come before the meeting and any adjournments thereof, in connection with the foregoing matters or otherwise.

Stock transfer books will not be closed for the meeting, but only stockholders of record at the close of business on February 28, 1979 will be entitled to notice of, or to vote at, the meeting, the record date above stated having been fixed by the Directors in conformity with the Company's by-laws.

By order of the Board of Directors,

SEYMOUR HORWITZ,
*Secretary*

February 20, 1979

**To insure proper representation at the meeting, it is important, however small your holdings, that you fill out, date, sign and return the enclosed proxy promptly, if you cannot attend the meeting. A self-addressed return envelope requiring no postage if mailed in the United States is enclosed for your convenience. If you later find that you can be present at the meeting or for any other reason desire to revoke your proxy, you may do so at any time before voting.**

## SUMMARY

The following is a summary of information contained elsewhere in this Proxy Statement under the same captions. Reference is made to those captions for a more complete description of the matters summarized below.

## THE PROPOSED SALE OF FEDERAL

### The Stock Purchase Agreement

The Board of Directors of UV Industries, Inc. (the "Company") unanimously recommends that the stockholders approve the proposed sale (the "Sale") of all of the outstanding capital stock (the "Stock") of its wholly-owned subsidiary, Federal Pacific Electric Company, a Delaware corporation ("Federal"), to New REC, Inc., a Delaware corporation ("New REC"), pursuant to a Stock Purchase Agreement dated December 18, 1978 (the "Stock Purchase Agreement") by and among the Company, New REC and New REC's parent, Reliance Electric Company, a Delaware corporation ("Reliance").

The aggregate purchase price for the Stock is a maximum of $345,000,000, to be paid in cash. If Federal's Net Pre-Tax Earnings (as defined) are less than $50,000,000, the purchase price will be equal to 6.9 times Federal's Net Pre-Tax Earnings, but in no event will the purchase price be less than $325,000,000. "Net Pre-Tax Earnings" means the income of Federal and its consolidated subsidiaries, before minority interests, provisions for income taxes and foreign currency exchange gains and losses, for the year ended December 31, 1978.

For the years ended 1977 and 1976, Federal provided 42% and 47%, respectively, of the Company's identifiable assets, and contributed 58% and 68%, respectively, of its operating profit. If the Company's stockholders approve the Sale of Federal without approving the Plan of Liquidation and Dissolution described below, the Company will realize a gain of approximately $110,000,000 over the book value of Federal at September 30, 1978, net of estimated income taxes of approximately $42,000,000. If the Company's stockholders also approve the Plan of Liquidation and Dissolution and such liquidation is completed within one year from the date of the adoption of the Plan of Liquidation and Dissolution, then the Company could realize a nontaxable gain of approximately $152,000,000 over the book value of Federal at September 30, 1978.

The closing (the "Closing") is to take place on a mutually acceptable date (the "Closing Date") not later than the third business day after approval of the Sale by the Company's stockholders, although the Closing Date may be extended for up to sixty days if certain conditions are not satisfied or waived. If stockholder approval is given at the special meeting of the stockholders and all conditions of the parties' obligations are satisfied (or are duly waived), the Closing will occur no later than March 29, 1979.

The respective obligations of each party to consummate the Sale are subject to certain conditions, any of which may be waived by the party entitled to the benefit of the particular condition. The conditions to each party's obligations are: the Company shall have duly obtained stockholder approval of the Sale; all waiting periods required by the Hart-Scott-Rodino Antitrust Improvements Act of 1976 with respect to the consummation of the Sale shall have expired; there shall not be in effect any injunction, decree or similar order of any United States court having jurisdiction over the Company, New REC, Reliance or Federal which prohibits the consummation of the Sale; and certain representations and warranties of each party shall continue to be true and correct, as evidenced by an officer's certificate to be delivered at the Closing.

### Reasons for Sale

The Company's Board of Directors has determined that the Sale is in the best interest of the Company and the stockholders. In making this determination, consideration was given to, among other things, generally depressed stock market prices and the favorable relationship between the proposed price for

Federal and the total market value of the Company's Common Stock prior to the announcement of the Sale ($19⅜ per share, closing sale price on December 15, 1978). It was also noted that the economy in general is subject to the uncertainties of continuing inflation and the possibility of a recession. The Board of Directors had also been concerned with the possibility of purchases of the Company's securities being made in the open market by an outside entity or group at the then prevailing prices, which in the judgment of the Board did not reflect the values inherent in the assets of the Company. In addition, E. F. Hutton & Company Inc. ("E. F. Hutton"), investment bankers consulted by the Company in connection with the Sale, have advised that, in their opinion (a copy of which is attached as Annex III to this Proxy Statement), the terms of the Sale are fair and reasonable to the Company and its stockholders. Under the circumstances, and after considering other alternatives, it was decided to accept the offer to purchase the Company's stock interest in Federal for $345,000,000, subject to ultimate approval of the stockholders.

**Determination of Price**

The sale price of Federal was arrived at as a result of arms'-length negotiations between the principals of Reliance and the principals of the Company. The Company's awareness of the marketplace and the advice received from E. F. Hutton also were factors used in determining the selling price. E. F. Hutton rendered to the Board of Directors its opinion that the price is fair and reasonable to the Company and its stockholders.

**Use of Proceeds**

If the Plan of Liquidation and Dissolution described below is not adopted and consummated, the estimated $303,000,000 of net proceeds (after provision for estimated Federal income taxes in the amount of $42,000,000) will be used for general corporate purposes, which are undetermined at this time, but which will include the acquisition of or investment in other companies. Until utilized, it is contemplated that such balance of the net proceeds may be invested in equity securities and interest-bearing obligations.

**Meeting**

A meeting of the stockholders of the Company will be held at 2 p.m. on March 26, 1979 at Ground Floor Auditorium, Room "A," at Chase Manhattan Bank, 1 Chase Manhattan Plaza, New York, New York (the "Meeting"). The holders of the Company's Common Stock and $5.50 Cumulative Preferred Stock will be entitled to one vote for each share held of record (see "Voting Rights; Proxy Solicitation"). The record date is February 28, 1979. The Company's stockholders will vote on a proposal to approve the Sale of all of the outstanding capital stock of Federal pursuant to the Stock Purchase Agreement (see Annex II).

**Vote Required**

The Stock Purchase Agreement requires that the stockholders approve the Sale. If a quorum is present at the Meeting, the favorable vote of a majority of the votes cast by the holders of shares of Common Stock and the $5.50 Cumulative Preferred Stock (voting together as a single class) will constitute approval of the Sale. See "Voting Rights; Proxy Solicitation" for information about Sharon Steel Corporation, which has stated that it is the beneficial owner of 2,052,794 shares of the Company's Common Stock and intends to make further limited purchases.

**Federal Income Tax Consequences**

If the Plan of Liquidation and Dissolution described below is *not* adopted and consummated, tax counsel has advised that the Sale will be a taxable transaction and the Company will recognize long-term capital gain in an amount equal to the excess of the amount realized from the Sale over the Company's adjusted basis for the stock sold. The Sale will of itself have no tax consequences to the stockholders of the Company.

## THE PROPOSED PLAN OF LIQUIDATION AND DISSOLUTION

### Reasons For the Plan

At the Meeting, stockholders will vote upon a proposal to approve a Plan of Liquidation and Dissolution of the Company (the "Plan"). A copy of the Plan is attached as Annex I to this Proxy Statement. Once the decision to dispose of Federal had been made, the Company considered various alternatives, including the possibilities of mergers and acquisitions. Considering, among other things, uncertainties in the economy, the risks inherent in an acquisition program and the Federal income tax which would have to be paid by the Company upon the gain from the Sale of Federal unless the Company is liquidated, the Board of Directors has determined that a plan of liquidation and distribution of the Company's assets should be recommended to stockholders. The Board of Directors expects that by adopting the Plan in anticipation of the Sale of Federal, stockholders of the Company will receive significantly greater value than the trading values of the Company's Common Stock generally prevailing prior to the Board's public announcement on December 18, 1978 that it had agreed to sell Federal and was considering a liquidation. Such range of trading values from September 1, 1978 through December 15, 1978 was $17 to $22⅞. Subsequent to the Board's December 18, 1978 announcement, the range of trading values through February 14, 1979 was $21¼ to $32⅞. (See "Market Prices of UV Voting Stock.")

If the Plan is approved by stockholders but Federal is not sold, the Plan will not be implemented and will be abandoned.

### Description of the Plan

The Plan provides that, as promptly as feasible after its approval by the Company's stockholders, the Company shall dispose of all of its assets and that it shall be completely liquidated within one year from the date on which the Plan is adopted. Such disposal will be accomplished by distributing to stockholders the proceeds of the sale of its assets including the proceeds of the Sale of Federal as well as shares of any subsidiaries which have not been sold. The sales price for any asset sold will be determined through arms'-length bargaining. Where appropriate, the Company will use investment bankers or other experts to weigh the adequacy of any offer or proposed transaction, including an evaluation of whether a particular offer appears to be the best available. The Plan further provides that liquidating distributions shall be made to the Company's stockholders, pro rata, at such time or times as determined by the Board of Directors of the Company. The Plan requires, however, that at all times there be retained an amount of cash and other assets which the Board deems necessary to pay, or provide for the payment of, all of the liabilities and claims (including contingent liabilities) and all of the expenses and other obligations of the Company.

### Liquidating Trust—Assets not Sold or Distributed in Kind to Stockholders

The Company intends that its liquidation be in conformity with Section 337 of the Internal Revenue Code of 1954, as amended. (See "Federal Income Tax Consequences" below.) To satisfy the requirements of Section 337, all assets of the Company (except for an amount reasonably required to pay or provide for payment of all obligations, claims and liabilities and all expenses of the Company) must be distributed within one year from the date the Plan is approved by the Company's stockholders. The Company anticipates that it will be able to sell or distribute substantially all of its assets within that one-year period. To the extent it is unable to do so, the Company anticipates that, prior to the expiration of that period, it will distribute its remaining assets to one or more liquidating trustees for the pro rata benefit of the Company's stockholders. A copy of the Liquidating Trust Agreement is attached hereto as Exhibit 1 to Annex I.

### Distributions

The Board has not established any firm timetable for distributions to stockholders if the Plan is

approved. However, the Board has stated its intention to declare an initial liquidating distribution of $18 per share of Common Stock or an aggregate of approximately $274,572,000, after giving effect to the conversion of all the Company's convertible securities into shares of Common Stock and the exercise of all options to purchase Common Stock. It is probable that stock of one or more of the Company's subsidiaries will be distributed directly to stockholders as part of the Plan.

**Special Bonuses**

In the course of the liquidation process, key management and other necessary administrative personnel may look for alternative opportunities. In order to provide incentives and a continuity of necessary services, a fund of $2,500,000 has been established to provide future awards to those persons who, in the judgment of the Board of Directors, have contributed to the goal of obtaining maximum consideration for the Company's assets. In addition, certain contractual arrangements with officers must be provided for in the event the Company is liquidated in accordance with the Plan. (See "Management.")

**$5.50 Cumulative Preferred Stock**

The holders of $5.50 Cumulative Preferred Stock will be entitled to receive, upon liquidation, a cash payment of $100 per share before any distributions are made to the holders of the Company's Common Stock.

**Federal Income Tax Consequences**

If the liquidation of the Company is completed within one year from the date of adoption of the Plan, no gain or loss will be recognized by the Company upon the sale of any of its assets pursuant to the Plan, including the Federal shares, following adoption of the Plan, except that the Company may incur tax liability, which it believes will not be significant, as a result of the recapture of investment tax credits, intangible drilling costs, mining exploration expenditures and depreciation with respect to directly-held assets and realization of income in connection with items which the Company has deducted with tax benefit in prior years. A stockholder will recognize gain or loss with respect to each block of shares (group of shares purchased in the same transaction) of the Company's stock held by him, measured by the difference between the stockholder's cost or other basis in that block of shares and the total amount of all liquidating distributions made with respect to the block of shares. Such gain or loss will be capital gain or loss if the Company's stock is held as a capital asset by the stockholder.

**Vote Required to Approve Plan**

The affirmative vote of the holders of two-thirds of the outstanding shares of Common Stock and $5.50 Cumulative Preferred Stock of the Company, voting together as a single class, is required to adopt the Plan. See "Voting Rights; Proxy Solicitation" for information about Sharon Steel Corporation, which has stated that it is the beneficial owner of 2,052,794 shares of the Company's Common Stock and intends to make further limited purchases.

**Rights of Dissenting Stockholders**

Pursuant to Section 908 of the Maine Business Corporation Act (the "Act"), if the Plan is approved by the stockholders, any stockholder who objects to the Plan shall have the right to dissent therefrom and to be paid the fair value of his shares, provided he complies with the requirements of Section 909 of the Act. A copy of Sections 908 and 909 of the Act is attached as Annex V.

UV INDUSTRIES, INC.

PROXY STATEMENT

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UV INDUSTRIES, INC.
437 Madison Avenue, New York, N. Y. 10022

*Proxy Statement*

## GENERAL

The proxy enclosed with the Notice of Special Meeting is solicited by the Management, by order of the Board of Directors of UV Industries, Inc. (hereinafter referred to as "UV" or the "Company"), for use at the Special Meeting of the Company to be held on March 26, 1979 and at any adjournment or adjournments thereof (the "Meeting").

## THE PROPOSED SALE OF FEDERAL

The Company has agreed to sell (the "Sale") all of the outstanding capital stock (the "Stock") of its wholly-owned subsidiary, Federal Pacific Electric Company, a Delaware corporation ("Federal"), to New REC, Inc., a Delaware corporation ("New REC"), pursuant to a Stock Purchase Agreement (the "Stock Purchase Agreement") dated December 18, 1978 by and among the Company, New REC and New REC's parent, Reliance Electric Company, a Delaware corporation ("Reliance").

### The Stock Purchase Agreement

The principal terms of the Stock Purchase Agreement are described below. The summary is not complete and is qualified in its entirety by reference to the copy of the Stock Purchase Agreement attached as Annex II to this Proxy Statement.

*Purchase Price.* The aggregate purchase price for the Stock is a maximum of $345,000,000, to be paid in cash. If Federal's Net Pre-Tax Earnings (as defined below) are less than $50,000,000, the purchase price will be equal to 6.9 times Federal's Net Pre-Tax Earnings, but in no event will the purchase price be less than $325,000,000. "Net Pre-Tax Earnings" means the income of Federal and its consolidated subsidiaries, before minority interests, provisions for income taxes and foreign currency exchange gains and losses, for the year ended December 31, 1978, computed in accordance with generally accepted accounting principles on a basis consistent with that applied in preparing the financial statements in Federal's Annual Report on Form 10-K for the year ended December 31, 1977. Federal's Net Pre-Tax Earnings shall be determined based upon the financial statements of Federal and its consolidated subsidiaries as certified by Federal's independent certified public accountants, Coopers & Lybrand (the "1978 Financial Statements").

Although the 1978 Financial Statements are not yet available, on an unaudited basis Federal's Net Pre-Tax Earnings for the year ended December 31, 1978 exceeded $50,000,000. On the basis of such unaudited Net Pre-Tax Earnings, the purchase price for the Stock will be $345,000,000.

For the years ended 1977 and 1976, Federal provided 42% and 47%, respectively, of the Company's identifiable assets, and contributed 58% and 68%, respectively, of its operating profit. If the Company's stockholders approve the sale of Federal without approving the Plan of Liquidation and Dissolution described below, the Company will realize a gain of approximately $110,000,000 over the book value of Federal at September 30, 1978, net of estimated income taxes of approximately $42,000,000. If the

Company's stockholders also approve the Plan of Liquidation and Dissolution and such liquidation is completed within one year from the date of the adoption of the Plan of Liquidation and Dissolution, then the Company could realize a nontaxable gain of approximately $152,000,000 over the book value of Federal at September 30, 1978.

If the purchase price has not been finally determined by the Closing Date (as defined below) for the reason that the 1978 Financial Statements are not yet available and if all other conditions of closing have been satisfied (or waived), the Closing (as defined below) shall be consummated with the payment by New REC to the Company of $325,000,000 and the deposit by New REC of $20,000,000 in an interest-bearing escrow account at Chase Manhattan Bank, N.A., or any other banking institution mutually agreed upon. Upon the delivery by New REC to said bank, as escrow agent, and to Reliance of a manually executed copy of the 1978 Financial Statements, with a request that said bank determine the purchase price, said bank shall determine the purchase price in accordance with the foregoing formula and, after five days prior notice of the purchase price to both Reliance and the Company, said bank shall pay the Company such additional amount (if any) as is owed to it (together with the interest accrued on said additional amount) and shall pay New REC all amounts (if any) remaining in the escrow account (including all other accrued interest).

*Availability of Funds.* The Stock Purchase Agreement provides that Reliance have available at the Closing (as defined below) funds, which, in the aggregate, are sufficient in amount to pay the purchase price.

*Closing.* The closing (the "Closing") is to take place on a mutually acceptable date (the "Closing Date") not later than the third business day after approval of the Sale by the Company's stockholders, although the Closing Date may be extended for up to sixty days if certain conditions are not satisfied or waived. If stockholder approval is given at the Meeting and other conditions of the parties' obligations are satisfied (or are duly waived), the Closing will occur no later than March 29, 1979.

*Conditions of Closing.* The respective obligations of each party to consummate the Sale are subject to certain conditions, any of which may be waived by the party entitled to the benefit of the particular condition. The conditions to each party's obligations are: the Company shall have duly obtained stockholder approval of the Sale; all waiting periods required by the Hart-Scott-Rodino Antitrust Improvements Act of 1976 with respect to the consummation of the Sale shall have expired; there shall not be in effect any injunction, decree or similar order of any United States court having jurisdiction over the Company, New REC, Reliance or Federal which prohibits the consummation of the Sale; and certain representations and warranties of each party shall continue to be true and correct, as evidenced by an officer's certificate to be delivered at the Closing. The Company and Reliance have filed materials required by the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and all waiting periods have expired.

*Certain Covenants.* The Company makes certain covenants, including, but not limited to, covenants that prior to the Closing Date: the Company shall use its best efforts to cause Federal and each of its subsidiaries to preserve intact its business organization and to preserve the goodwill of its suppliers, customers and others having business relations with it; the Company shall use its best efforts to cause Federal and its subsidiaries to conduct their business only in the usual and ordinary course, diligently and in a manner consistent with past practices; the Company shall use its best efforts to cause Federal and each of its subsidiaries to obtain appropriate consents in writing in order that the Sale shall not result in any default, termination, amendment or modification with respect to any material agreement, contract, commitment or instrument to which Federal or any of its subsidiaries is a party or by which Federal, any of its subsidiaries or any of their respective assets is bound.

*Assignment.* No party shall assign the Stock Purchase Agreement without the prior written consent of the other parties, provided that New REC may make such an assignment to any wholly-owned subsidiary of Reliance if prior thereto Reliance has delivered to the Company its unconditional written guarantee that the assignee will perform all of its assumed obligations to the Company.

*Employment Agreements.* Reliance and the Company understand that on or before the Closing Date Federal may enter into five-year employment contracts with Messrs. Harry E. Knudson and Harold E.

Young, President and Vice President-Finance and Treasurer, respectively, of Federal, which contracts shall provide employment on terms substantially equivalent to those currently in effect for such individuals, including compensation at levels not in excess of that to which such individuals are presently entitled and shall only contain customary provisions for contracts of this type.

### Reasons for Sale

The Company's Board of Directors has determined that the Sale is in the best interest of the Company and the stockholders. In making this determination, consideration was given to, among other things, generally depressed stock market prices and the favorable relationship between the proposed price for Federal and the total market value of the Company's Common Stock prior to the announcement of the Sale (19¾ per share, closing sale price on December 15, 1978) at which the Company's Common Stock was selling prior to the announcement of the Sale. It was also noted that the economy in general is subject to the uncertainties of continuing inflation and the possibility of a recession. The Board of Directors had also been concerned with the possibility of purchases of the Company's securities being made in the open market by an outside entity or group at the then prevailing prices, which in the judgment of the Board did not reflect the values inherent in the assets of the Company. In addition, E. F. Hutton & Company Inc. ("E. F. Hutton"), investment bankers consulted by the Company in connection with the Sale, have advised that, in their opinion (a copy of which is attached as Annex III to this Proxy Statement), the terms of the Sale are fair and reasonable to the Company and its stockholders. Under the circumstances, and after considering other alternatives, it was decided to accept the offer to purchase the Company's stock interest in Federal for $345,000,000, subject to ultimate approval of the stockholders.

### Determination of Price

The sale price of Federal was arrived at as a result of arms'-length negotiations between the principals of Reliance and the principals of the Company. The Company's awareness of the marketplace and the advice received from E. F. Hutton also were factors used in determining the selling price. E. F. Hutton rendered to the Board of Directors its opinion that the price is fair and reasonable to the Company and its stockholders. E. F. Hutton's fee for its time and expenses in performing the review upon which its opinion is based is $200,000. The Company has agreed to indemnify E. F. Hutton against certain liabilities and expenses in connection with rendering the requested opinion (except liabilities arising out of bad faith or negligence of E. F. Hutton).

### Use of Proceeds

If the Plan of Liquidation and Dissolution described herein is not approved and consummated, the estimated $303,000,000 of net proceeds (after provision for estimated Federal income taxes in the amount of $42,000,000) will be used for general corporate purposes, which are undetermined at this time, but which will include the acquisition of or investment in other companies. Until utilized, it is contemplated that such balance of the net proceeds may be invested in equity securities and interest-bearing obligations. As long as Reliance is the direct or indirect owner of a majority of Federal's stock, the Company has agreed at the request of Reliance that, for a period of ten years, beginning with the Closing, it will not acquire any direct or indirect interest in Federal including, without limitation, the acquisition of any minority interest in the capital stock of a Federal subsidiary or any equity security issued by Reliance.

### Vote Required

The Stock Purchase Agreement requires that the stockholders approve the Sale. If holders of a majority of the outstanding Common Stock and $5.50 Cumulative Preferred Stock (taken together as a single class) are present at the Meeting, in person or by proxy, the favorable vote of a majority of the votes cast by such holders of shares (voting together as a single class) will constitute approval of the Sale. See "Voting Rights; Proxy Solicitation" for information about Sharon Steel Corporation, which has stated that it is the beneficial owner of 2,052,794 shares of the Company's Common Stock and intends to make further limited purchases.

### No Stockholder Appraisal Rights With Respect to Sale

No stockholder of the Company has any right of appraisal or similar dissenters' rights under Maine law, the jurisdiction of the Company's incorporation, with respect to the Sale.

### Federal Income Tax Consequences of Sale

The Company has been advised by Messrs. Skadden, Arps, Slate, Meagher & Flom, tax counsel, that in the event that the Plan of Liquidation and Dissolution which is being recommended to stockholders is adopted and consummated, no tax liability will be incurred by the Company as the result of the Sale. (See "The Proposed Plan of Liquidation and Dissolution—Federal Income Tax Consequences" below.) If, however, the Plan is not so adopted and consummated, counsel has advised that the Sale will be a taxable transaction and the Company will recognize long-term gain in an amount equal to the excess of the amount realized from the Sale over the Company's adjusted basis for the stock sold. The Sale will of itself have no tax consequences to the stockholders of the Company.

### Termination

The Stock Purchase Agreement may be terminated by mutual consent of the Boards of Directors of UV, New REC and Reliance. It may also be terminated by written notice from Reliance and New REC to UV or by UV to Reliance and New REC (authorized by their respective Boards of Directors) if the Closing is not consummated because of the failure to meet certain specified conditions set forth in the Stock Purchase Agreement (within the time, including any extension, specified therein), or on or before June 30, 1979, whichever is earlier.

## THE PROPOSED PLAN OF LIQUIDATION AND DISSOLUTION

### Reasons for Plan

At the Meeting, stockholders will vote upon a proposal to approve a Plan of Liquidation and Dissolution of the Company (the "Plan"). A copy of the Plan is attached as Annex I to this Proxy Statement. The information set forth below is furnished in connection with that proposal and should be read in conjunction with the description of the business and properties of the Company and the financial statements and related notes included elsewhere in this Proxy Statement.

Once the decision to dispose of Federal had been made, the Company considered various alternatives, including the possibilities of mergers and acquisitions. Considering, among other things, uncertainties in the economy, the risks inherent in an acquisition program and the Federal income tax which would have to be paid by the Company upon the gain from the Sale of Federal unless the Company is liquidated, the Board of Directors has determined that a plan of liquidation and distribution of the Company's assets should be recommended to the stockholders. The Board of Directors expects that by adopting the Plan in anticipation of the Sale of Federal, stockholders of the Company will receive significantly greater value than the trading values of the Company's Common Stock generally prevailing prior to the Board's public announcement on December 18, 1978 that it had agreed to sell Federal and was considering a liquidation. Such range of trading values from September 1, 1978 through December 15, 1978 was $17 to $22⅜. Subsequent to the Board's December 18, 1978 announcement, the range of trading values through February 14, 1979 was $21¼ to $32⅞. (See "Market Prices of UV Voting Stock" below.)

### Description of Plan

The Plan provides that, as promptly as feasible after its approval by the Company's stockholders, the Company shall dispose of all of its assets and that it shall be completely liquidated within one year from the date on which the Plan is adopted. Such disposal will be accomplished by distributing to stockholders the proceeds of the sale of its assets including the proceeds of the Sale of Federal as well as shares of any subsidiaries which have not been sold. The sales price for any asset sold will be determined through arms'-length bargaining. Where appropriate, the Company will use investment bankers or other experts to

weigh the adequacy of any offer or proposed transaction, including an evaluation of whether a particular offer appears to be the best available. No offer to purchase any other subsidiary or other asset has been received at this time.

The Plan further provides that liquidating distributions shall be made to the Company's stockholders, pro rata, at such time or times as determined by the Board of Directors of the Company. The Plan requires, however, that at all times there be retained an amount of cash and other assets which the Board deems necessary to pay, or provide for the payment of, all of the liabilities, claims and other obligations (including contingent liabilities) and all of the expenses of the Company.

Although the actuarially computed value of the vested benefits for certain of the pension plans of UV and its subsidiaries as of the date of the latest actuarial valuation exceeds the total of the pension funds' assets by a significant amount, only a minor portion of the excess (approximately $1,000,000) would have to be provided for in the liquidation.

**Liquidating Trust—Assets not Sold or Distributed in Kind to Stockholders**

The Company intends that its liquidation be in conformity with Section 337 of the Internal Revenue Code of 1954, as amended. (See "Federal Income Tax Consequences" below.) To satisfy the requirements of Section 337, all assets of the Company (except for an amount reasonably required to pay or provide for payment of all claims, liabilities and expenses of the Company) must be distributed within one year from the date the Plan is approved by the Company's stockholders. The Company anticipates that it will be able to sell or distribute substantially all of its assets within that one-year period. To the extent it is unable to do so, the Company anticipates that, prior to the expiration of that period, it will distribute its assets in trust to one or more liquidating Trustees for the pro rata benefit of the Company's stockholders. Those stockholders would thereby become beneficiaries of the UV Industries, Inc. Liquidating Trust (the "Trust") established by the UV Industries, Inc. Liquidating Trust Agreement (the "Liquidating Trust Agreement"). The Trustees will attempt to dispose of the assets which they are holding on behalf of stockholders and to distribute the proceeds from the sale of the assets pro rata to the stockholders as beneficiaries of the Trust. The Trustees may, however, determine to apply proceeds from the sale of assets to the satisfaction of claims and liabilities of the Company if they determine that the assets retained by the Company are inadequate to satisfy those liabilities. After all assets have been disposed of, the Trustees shall make a distribution but may retain out of any such distribution such amounts as they may deem necessary to satisfy claims and liabilities. Under the Liquidating Trust Agreement, the powers, duties and authority of the Trustees include holding title to the assets of the Trust, the disposition or preservation of such assets, the prosecution or collection of any claim or contingent right of the Trust, the collection of proceeds, income and revenue from time to time accruing to or otherwise payable in respect of the assets of the Trust, and the distribution to stockholders of the Company from time to time of the shares or portion of the assets of the Trust to which they are respectively entitled. In the exercise of such powers and the discharge of such duties, the Trustees shall not enter into or engage in any business but will have such incidental and additional powers as they shall deem necessary, appropriate or desirable to effectuate the purposes of the Trust, including (without limitation) the power to:

(i) vote any securities held by the Trust;

(ii) take such action as may be reasonably necessary to conserve and protect the Trust assets, and to temporarily maintain them pending sale or other disposition or distribution to stockholders;

(iii) determine which assets should be sold and which assets should be distributed in kind to stockholders;

(iv) borrow money in such amounts as the Trustees deem advisable for Trust purposes; and

(v) sue for and defend the Trust and settle or compromise claims in favor of and against the assets of the Trust.

Limitations on the right of the Trustees to invest the Trust Estate (as defined in the Liquidating Trust Agreement) as well as additional powers and duties of the Trustees are set forth in the Liquidating Trust

Agreement attached as Exhibit 1 to Annex I. The Trustees shall make an annual report to stockholders of the Company with reasonable promptness after the end of each calendar year. The Trustees are charged with the obligation to use the same degree of care and skill in the discharge of their duties as a prudent man would exercise or use under the same circumstances in the conduct of his own affairs. The Trustees shall not be liable for any error of judgment made in good faith.

The Liquidating Trust Agreement may be amended or terminated by beneficiaries having an aggregate beneficial interest of two-thirds, provided, however, no amendment shall permit the Trustees to engage in certain prohibited activities or affect the beneficiaries' rights to receive their pro rata shares of the Trust assets at the time of distribution.

Unless earlier terminated by the beneficiaries, the Trust will continue until the first to occur of (a) the complete distribution of the Trust's assets or (b) the expiration of three years from the date of its creation. At the end of such three-year period, any remaining assets will be distributed to the stockholders, subject to any remaining claims, liabilities, debts and obligations. If any portion of the Trust's net assets is not duly claimed by a stockholder, such assets will be disposed of in accordance with applicable Maine law. The interest of the stockholders as beneficiaries of the Trust will not be transferable except by will, intestate succession or operation of law. Three Trustees of the Trust will be appointed by the Board of Directors, and may include individuals who are serving as members of the Board of Directors. The stockholders will be notified when the Trustees are appointed. The compensation to be paid to the Trustees will be such reasonable compensation as is negotiated between UV and the Trustees at the time the Trustee is appointed or as may subsequently be approved by beneficiaries having an aggregate beneficial interest of more than fifty percent.

*Management of the Company cannot predict whether it will prove necessary to distribute assets to the Trustees; in the event that such a distribution is made, the possibility exists that the final distribution to stockholders will not be made until much later than one year from the adoption of the Plan.* No modifications in the Plan are contemplated. In the event that any modification appears necessary and will materially and adversely affect the interests of the stockholders, in the judgment of the Board of Directors, such modification will be submitted to the stockholders for their approval. Implementation of the Plan is subject to the Sale of Federal. If the Plan is approved by the stockholders but Federal is not sold, the Plan will be abandoned. If the Plan is implemented and in the event that the Board should subsequently determine that, in its judgment, the abandonment of the Plan would be in the best interests of the stockholders, such action will also be submitted to the stockholders for their approval.

**Distributions**

The Board has not established any firm timetable for distributions to stockholders if the Plan is approved; however, the Board has stated its intention to declare an initial liquidating distribution of $18 per share of Common Stock or an aggregate of approximately $274,572,000, after giving effect to the conversion of all of the Company's convertible securities into shares of Common Stock and the exercise of all options to purchase Common Stock.

Uncertainties as to the net realizable value of assets and the ultimate amount of liabilities make it impracticable to predict the aggregate net amounts ultimately distributable to stockholders. Claims, liabilities and expenses from operations (including operating costs, salaries and miscellaneous office expenses) will continue to arise during the liquidation period, and the Company anticipates that expenses for professional fees and other expenses of liquidation will be substantial. These expenses will reduce the amount of assets available for ultimate distribution to stockholders, and, while the Company does not believe that a reliable estimate of those expenses may be made, management does believe that the liquid assets being retained at the time of the contemplated initial distribution plus amounts which may be received on the sale of other assets will be adequate to provide for the Company's obligations, liabilities and claims (including contingent liabilities) and to make further distributions to stockholders. Management does not know of any material contingent liability.

The Plan gives to the Board of Directors of the Company the power to sell all of the assets of the Company, including the remaining subsidiaries of UV. No sale or agreement to sell any assets of UV has been made except for the Sale of Federal. Any such other sale will only be made after the Board of

Directors has determined that the sale is in the best interest of the stockholders. If, at the time of complete liquidation and dissolution, the stock of certain subsidiaries has not been sold, then such stock would either be distributed in kind directly to the stockholders or transferred to the Trust for subsequent sales. It is possible that prior to distribution to stockholders the stock of one or more subsidiaries that have not been sold may be transferred to one or more other unsold subsidiaries, which may be engaged in a similar business, so that stock of several smaller corporations need not be distributed separately.

It is probable that stock of one or more of the Company's subsidiaries will be distributed directly to stockholders as part of the Plan. Shares of Mueller Brass Co. and United States Fuel Company are being presently considered as possibilities for such a distribution. (See "Business of UV Excluding Federal —Copper and Brass Fabrication" and "Business of UV Excluding Federal—Natural Resources —Coal".) However, no final decisions have been made and it is possible the Company might receive and accept an offer to buy the stock of one or more such subsidiaries prior to making any such distribution.

If shares of a subsidiary are distributed to the stockholders, applicable rules and regulations, including the requirement of the filing of an appropriate registration statement with the Securities and Exchange Commission, will be adhered to so that all stockholders (with the possible exception of affiliates of the Company) will receive shares which will be freely transferable by them thereafter under applicable Federal securities laws. It is anticipated that the stock to be distributed would be registered under Section 12 of the Securities Exchange Act of 1934 and that the corporations issuing such stock would be subject to substantially the same reporting and proxy rules as presently apply to the Company.

As a part of the Plan, any subsidiary not sold may assume any or all remaining liabilities of UV not paid or provided for at the time of liquidation. The assumption of such liabilities might assist in the complete liquidation of UV without the utilization of the Trust.

It is anticipated that some or all of the present Directors and officers of the Company will continue to serve in such capacities following adoption of the Plan. Such Directors and officers remaining in office will receive reasonable compensation for the duties then being performed. It is also anticipated that most of the present Directors and officers of the Company will serve as officers or Directors of the subsidiaries of the Company that are not ultimately sold.

The distributions to the Company's stockholders pursuant to the Plan will be in complete liquidation of the Company. On a date set by the Board of Directors as a record date to determine the stockholders of record to whom distributions will be made, a first liquidating distribution will be made to such stockholders. Additional distributions will be made to stockholders of record on subsequent record dates fixed by the Board. Four days prior to the record date for the initial distribution, the Company's Common Stock will be traded ex-dividend on the New York Stock Exchange. Due bills will be used to insure that the appropriate person receives the distribution, depending on the sale of any Company Common Stock. On the record date, trading of the Company's Common Stock will be suspended and trading will resume after the distribution. Prior to subsequent distributions, the same process will be used until the Company ceases to be an operating entity, at which time delisting from the New York Stock Exchange would occur. Upon the final distribution under the Plan or a final distribution by the Trustees, stockholders may be required to surrender their certificates to the Company or to the Trust for cancellation. Stockholders may be contingently liable to creditors of the Company to the extent of the liquidating distributions they receive if inadequate funds are retained by the Company or by the Trust to satisfy its obligations.

**$5.50 Cumulative Preferred Stock**

The holders of $5.50 Cumulative Preferred Stock will be entitled to receive, upon liquidation, a cash payment of $100 per share before any distributions are made to the holders of the Company's Common Stock.

**Federal Income Tax Consequences**

The Company has been advised by Messrs. Skadden, Arps, Slate, Meagher & Flom, tax counsel, that the liquidation will have the following Federal income tax consequences:

If the liquidation of the Company is completed within one year from the date of adoption of the Plan, no gain or loss will be recognized by the Company upon the sale of any of its assets, including the Federal shares, following adoption of the Plan, except that the Company may incur tax liability, which it believes will not be significant, as a result of the recapture of investment tax credits, intangible drilling costs, mining exploration expenditures, and depreciation with respect to directly held assets and realization of income in connection with items which the Company has deducted with tax benefit in prior years.

If the liquidation of the Company is not completed within one year from the date of adoption of the Plan, the Company will recognize gain or loss on sales of assets which occur following adoption of the Plan measured by the difference between the amount realized from such sales and the adjusted basis of the assets sold. In the case of directly held depreciable assets or real property held for more than one year and used in the Company's operating business, if all sales of such assets result in a net gain, such gain will be a capital gain, except to the extent of items subject to recapture as described above. If all sales of such assets result in a net loss, such loss will be an ordinary loss. It is anticipated that such sales by the Company will result in a net gain. In addition, the sale of certain assets could result in tax liability from recapture of investment tax credits.

A stockholder will recognize gain or loss with respect to each block of shares (group of shares purchased in the same transaction) of the Company's stock held by him, measured by the difference between the stockholder's cost or other basis in that block of shares and the total amount of all liquidating distributions (including the then fair market value of any property distributed to the extent such value can be ascertained at the time of distribution) made with respect to the block of shares. Such gain or loss will be capital gain or loss if the Company's stock is held as a capital asset by the stockholder. The time at which a stockholder will recognize gain or loss, the method for calculating the amount of such gain or loss, and characterization of such gain or loss as short-term or long-term will be as follows:

(i) Gain or loss will be determined separately with respect to each block of shares held by the stockholder.

(ii) Each liquidating distribution will be allocated proportionately to each share of stock held by a stockholder.

(iii) Gain, if any, with respect to each block of shares held by a stockholder will be recognized by the stockholder at the time of the receipt of a distribution, in an amount equal to the excess of (a) the amount of the distribution that is allocable to that block of shares over (b) the stockholder's basis in that block of shares (as reduced by the aggregate amount of the portions of previous liquidating distributions allocable to that block of shares). The assets, if any, distributed by the Company to liquidating trustees which are allocable to each block of shares held by the stockholder will be deemed to be distributed to the stockholder and will be valued for tax purposes at the time those assets are distributed to the liquidating trustees to the extent such value can be ascertained at such time.

(iv) Loss, if any, with respect to each block of shares held by the stockholder will be recognized by the stockholder only at the time all of the Company's assets (other than assets retained for the payment of liabilities and expenses) have been distributed to stockholders or to liquidating trustees.

(v) The holding period for determining whether gain or loss is short-term or long-term will end on the day on which the gain or loss is recognized. Gain or loss will be long-term if the holding period is more than one year.

In the case of a stockholder other than a corporation, 60% of the stockholder's net capital gain (excess of net long-term capital gain over net short-term capital loss), if any, may be deducted from gross income and will constitute an item of tax preference which may be subject to the alternative minimum tax, as added to the Internal Revenue Code by the Revenue Act of 1978. In the case of a stockholder which is a corporation, a portion of any net capital gain subject to tax under the 28% alternative tax on capital gains will constitute an item of tax preference which may be subject to the 15% add-on minimum tax.

A stockholder's allocable portion of any income, gain or loss recognized with respect to any assets held or liabilities assumed or incurred by the liquidating trustees will constitute income, gain or loss of the

stockholder. Stockholders will be advised periodically of the income, gain or loss of the liquidating trust which is attributable to them.

Stockholders should consult their own tax advisers for detailed information concerning the Federal income tax treatment of the proposed liquidation to them, including the treatment of any sale or other disposition of shares before completion of the liquidation of the Company. Stockholders should also consult their own income tax advisers as to the tax consequences of the liquidation to them under state, local and foreign tax laws.

**Rights of Dissenting Stockholders**

Pursuant to Section 908 of the Maine Business Corporation Act (the "Act"), if the Plan is approved by the stockholders, any stockholder who objects to the Plan shall have the right to dissent therefrom and to be paid the fair value of his shares, provided that he complies with the requirements of Section 909 of the Act.

Any stockholder desiring to exercise his right to dissent must comply with each of the following requirements of Section 909: (1) *He must file with the Company a written objection to the adoption of the Plan prior to, or at, the Meeting.* (The mere filing by a stockholder of a proxy or a ballot directing a vote against the approval of the Plan will not be treated by the Company as a written objection to that proposed action within the meaning of Section 909.) (2) He must *not* vote to approve the Plan. (A stockholder who fails to vote does not waive his right to dissent.) (3) He must file with the Company, within 15 days after the Plan is approved by the stockholders, a written demand, which complies with Section 909, for the payment of the fair value of his shares. (4) He must submit the certificate or certificates representing his shares to the Company or its transfer agent within 20 days after the demand referred to in the preceding sentence is filed with the Company. (His certificate or certificates will be returned to him with a notation of his demand.) (5) Unless he elects to accept the offer of settlement which the Company must make pursuant to Section 909, he must file a written demand with the Company within 60 days after the Plan is approved by the stockholders, demanding that the Company bring an action in the Cumberland County Superior Court, Portland, Maine, to have the fair value of his shares determined if no such action has previously been initiated by the Company; and, if the Company fails to bring such an action within 30 days after receipt of his written demand to do so, he must initiate such an action himself within six months after the Plan is approved by the stockholders. (6) He must take all other actions required by Section 909 to preserve his right to dissent and his right to be paid the fair value of his shares in the manner set forth in that Section.

The foregoing summary of the requirements of Sections 908 and 909 is general in form and is qualified in its entirety by reference to the full text of Sections 908 and 909 of the Act which is attached as Annex V to this Proxy Statement.

If the Plan is not approved by the stockholders but the Sale of Federal is approved by the stockholders, then no stockholder will have any rights of dissent or appraisal remedies under Maine law.

**Vote Required to Approve the Plan**

The affirmative vote of the holders of two-thirds of the outstanding shares of Common Stock and $5.50 Cumulative Preferred Stock of the Company, voting together as a single class, is required to adopt the Plan. See "Voting Rights; Proxy Solicitation" for information about Sharon Steel Corporation, which has stated that it is the beneficial owner of 2,052,794 shares of the Company's Common Stock and intends to make further limited purchases.

## CAPITALIZATION

Shown below is the capitalization of UV Industries, Inc. and Subsidiaries as of September 30, 1978, as well as the pro forma capitalization of UV Industries, Inc. and Subsidiaries (excluding Federal) upon consummation of the proposed Sale of Federal Pacific Electric Company as more fully described elsewhere in this Proxy Statement and giving effect to the actual exercise of outstanding warrants to purchase Common Stock, which expired on January 15, 1979, the conversion of all outstanding $1.265 New Preferred Stock, the conversion of all outstanding 5¼% Convertible Subordinated Debentures and the exercise of all outstanding Stock Options.

| Capitalization as of September 30, 1978 | Actual | Pro Forma |
|---|---|---|
| | (000's omitted) | |
| Short-term Debt(1): | | |
| Notes Payable to Banks | $ 3,717 | $ 800 |
| Current Portion of Long-Term Debt | 3,755 | 875 |
| Total Short-Term Debt | $ 7,472 | $ 1,675 |
| Long-Term Debt(1): | | |
| Senior Long-Term Debt | | |
| 5.7%-6¼% lease obligations relating to industrial revenue bonds, due 1978-1993 | $ 28,835 | $ 28,835 |
| 7%-8¼% pollution control revenue bonds, due 1981-2001 | 5,000 | 5,000 |
| 5¼%-6½% notes, due 1978-1981 | 2,775 | -- |
| 5⅛% lease obligations, due 1978-1991 | 2,295 | — |
| 8⅞% debentures, due 1982-1997 | 75,000 | 75,000 |
| Other | 5,279 | 1,740 |
| Total Senior Long-Term Debt | 119,184 | 110,575 |
| Subordinated Long-Term Debt | | |
| 9¼% senior subordinated notes, due April 15, 1987 | 25,000 | 25,000 |
| 5¾% convertible subordinated debentures, due 1979-1993, convertible at $22.45 per share | 46,668 | — |
| 5⅜% subordinated debentures, due 1978-1995 | 15,393 | 15,393 |
| 5½% convertible subordinated debentures, due 1987, convertible at $9.40 per share | 353 | — |
| Total Subordinated Long-Term Debt | 87,414 | 40,393 |
| Total Long-Term Debt | 206,598 | 150,968 |
| Minority Interests In Consolidated Subsidiaries | 20,357 | 405 |
| Stockholders' Equity(2): | | |
| Preferred Stock, $5 par value, 500,000 shares authorized and 178,759 shares issued | 894 | 894 |
| New Preferred Stock, $5 par value, 1,000,000 shares authorized and 102,428 shares issued | 512 | — |
| Common Stock, $1 par value, 25,000,000 shares authorized and 10,671,436 shares issued | 10,671 | 16,694 |
| Additional paid-in capital | 95,753 | 212,526 |
| Retained earnings | 181,035 | 332,610 |
| Treasury stock, at cost (1,440,016 Common, 57,450 $5.50 Cumulative Preferred) | (22,565) | (22,565) |
| Total Stockholders' Equity. | 266,300 | 540,159 |
| Total Capitalization | $493,255 | $691,532 |

(1) See Note 8 of Notes to Financial Statements for information concerning short and long-term debt.

(2) See Notes 8 and 9 of Notes to Financial Statements.

See Note 13 of Notes to Financial Statements for information concerning lease commitments.

## UV INDUSTRIES, INC. AND SUBSIDIARIES

### CONSOLIDATED STATEMENT OF INCOME

The following Consolidated Statement of Income of UV Industries, Inc. and Subsidiaries for the five years ended December 31, 1977, has been examined by Coopers & Lybrand, independent certified public accountants, whose report thereon appears elsewhere herein. The Consolidated Statement of Income for the nine-month periods ended September 30, 1977 and 1978 is unaudited but, in the opinion of management, all adjustments (consisting only of normal recurring adjustments) necessary for a fair presentation of its results of operations have been made. The results for interim periods are not necessarily indicative of results for the full years. This statement should be read in conjunction with the other financial statements and notes thereto of the Company included herein.

The following amounts, except per share data, are expressed in thousands.

| | Year ended December 31, | | | | | Nine months ended September 30, (Unaudited) | |
|---|---|---|---|---|---|---|---|
| | 1973 | 1974 | 1975 | 1976 | 1977 | 1977 | 1978 |
| Operating revenues: | | | | | | | |
| Net sales | $436,830 | $474,497 | $419,368 | $510,771 | $575,664 | $437,204 | $441,896 |
| Royalties and other revenues | 6,407 | 10,718 | 9,085 | 6,838 | 10,338 | 9,393 | 6,013 |
| | 443,237 | 485,215 | 428,453 | 517,609 | 586,002 | 446,597 | 447,909 |
| Operating expenses: | | | | | | | |
| Cost of sales | 347,861 | 366,040 | 320,095 | 386,957 | 435,891 | 332,065 | 344,188 |
| Selling, general and administrative | 41,729 | 46,448 | 45,994 | 53,041 | 58,491 | 43,833 | 46,802 |
| Foreign currency translation losses, net | | | | 1,251 | 4,306 | 3,587 | 2,293 |
| | 389,590 | 412,488 | 366,089 | 441,249 | 498,688 | 379,485 | 393,283 |
| Operating income | 53,647 | 72,727 | 62,364 | 76,360 | 87,314 | 67,112 | 54,626 |
| Gain on disposal of investment in affiliate (Note 4) | | | | | | | 22,602 |
| Equity in net income of affiliate | | | | | 2,315 | | 2,301 |
| Interest expense | (12,069) | (13,171) | (12,198) | (10,468) | (14,695) | (10,467) | (12,441) |
| Other income and (expense), net | (853) | (1,302) | (1,605) | (107) | (616) | (159) | (1,138) |
| Income before provision for income taxes and minority interests in net income of consolidated subsidiaries | 40,725 | 58,254 | 48,561 | 65,785 | 74,318 | 56,486 | 65,950 |
| Provision for income taxes (a) | 18,122 | 26,227 | 19,936 | 27,657 | 34,495 | 27,426 | 29,363 |
| Income before minority interests in net income of consolidated subsidiaries | 22,603 | 32,027 | 28,625 | 38,128 | 39,823 | 29,060 | 36,587 |
| Minority interests in net income of consolidated subsidiaries | 1,593 | 2,423 | 4,249 | 3,240 | 1,663 | 1,089 | 809 |
| Net income (a) | 21,010 | 29,604 | 24,376 | 34,888 | 38,160 | 27,971 | 35,778 |
| Dividend requirements on Preferred Stock | 1,392 | 1,263 | 1,123 | 1,041 | 898 | 691 | 610 |
| Income applicable to Common Stock | $ 19,618 | $ 28,341 | $ 23,253 | $ 33,847 | $ 37,262 | $ 27,280 | $ 35,168 |
| Earnings per share data (a) and (b): | | | | | | | |
| Primary | $2.49 | $3.51 | $2.72 | $3.80 | $4.04 | $2.94 | $3.84 |
| Fully diluted | $1.66 | $2.29 | $1.91 | $2.59 | $2.86 | $2.07 | $2.73 |
| Cash dividends declared | $ .36 | $ .50 | $ .50 | $ .625 | $1.00 | $ .75 | $ .75 |
| Weighted average number of shares outstanding: | | | | | | | |
| Primary | 7,880 | 8,071 | 8,538 | 8,911 | 9,216 | 9,278 | 9,150 |
| Fully diluted | 14,844 | 14,711 | 14,779 | 14,510 | 14,150 | 14,277 | 13,725 |

## NOTES TO CONSOLIDATED STATEMENT OF INCOME

(a) In 1975 Statement No. 9 of the Financial Accounting Standards Board was issued which required the Company to change its accounting to provide deferred income taxes on intangible drilling costs. In applying this Statement the Company adopted the provisions which provided for the retroactive restatement of the prior period financial statements. The effect of this change was to decrease net income and primary and fully diluted earnings per share for the three years ended December 31, 1975 as follows:

| | | Earnings Per Share | |
|---|---|---|---|
| | Net Income | Primary | Fully Diluted |
| 1973 | $1,099,000 | $.14 | $.07 |
| 1974 | $ 680,000 | $.08 | $.05 |
| 1975 | $ 413,000 | $.05 | $.03 |

Provisions for Federal income taxes reflect the benefits resulting from the deduction for tax purposes of additional depletion. Investment tax credits used to reduce the provisions for Federal income taxes were approximately: 1973, $1,676,000; 1974, $566,000; 1975, $1,464,000; 1976, $1,198,000; 1977, $1,263,000, nine months ended September 30, 1977, $748,000; nine months ended September 30, 1978, $563,000.

For further information with respect to provision for income taxes, see Note 11 of the Notes to Financial Statements.

(b) Primary earnings per share were computed based on the weighted average number of shares of Common Stock outstanding during each period adjusted for the 3-for-2 stock split in April, 1974, and the 2-for-1 stock split in June, 1977.

Fully diluted earnings per share were computed, as required, on the assumption that convertible debentures, convertible preferred stock, stock options and warrants were converted or exercised at the beginning of the year or the time of their issuance and that average outstanding Common Stock was adjusted accordingly. It was assumed that the proceeds from the exercise of stock options and warrants were used to repurchase up to 20% of the Company's outstanding Common Stock. Any remaining proceeds were assumed to have been used first to retire outstanding debt and then to invest in commercial paper.

Subsequent to September 30, 1978, 3,556,000 shares of Common Stock were issued upon the exercise of warrants. If these warrants had been exercised on January 1, 1978, primary earnings per share for the nine months ended September 30, 1978 would have decreased by $.54 to $3.30, assuming that the proceeds from the exercise of warrants were used to repurchase 20% of the Company's outstanding Common Stock and the remaining proceeds were used to retire outstanding debt.

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## MANAGEMENT'S DISCUSSION AND ANALYSIS OF THE CONSOLIDATED STATEMENT OF INCOME

**(All percentages represent changes from the prior period)**

**Nine-month period—1978 vs. 1977**

Operating revenues increased by a net amount of $1,312,000 or less than 1% for all business segments. Revenue changes by business segments were as follows: electrical equipment, and electronic components increased $9,887,000 or 4%. Natural resources (after eliminating intersegment copper revenues) decreased $9,936,000 or 25%. Revenue from intersegment copper shipments did not change significantly. The copper mine has been shut down because of a strike since April 1978 but the Company shipped more refined copper in 1978 from copper production accumulated prior to the strike (including a buildup at December 31, 1977 due to the nationwide copper producers strike in 1977). Although more shipments were made during 1978, they were made at depressed price levels. Copper and brass fabrication increased $1,361,000 or 1%. In the electrical equipment and electronics components segment revenue changes by product classes were as follows—low voltage increased 11%; power equipment decreased 10%; and

electronic components increased 10%. Geographically, revenues increased in the United States 10%, decreased 13% in Canada and increased 29% in other foreign operations. The increase in United States revenues was due to volume and some higher prices. The decrease in Canadian revenues was due to a lower average foreign exchange rate and the effect of strikes at two plants. The increase in revenues from other foreign operations was due principally to higher volume and a higher average exchange rate of the British pound sterling. The decrease in natural resource segment revenues was due to a decrease in coal revenues as a result of the nationwide coal strike during the three months ended March 31, 1978 and the absence of gold sales as compared to 1977. As of September 30, 1978, the Company had not sold any of its 1978 gold production. In the copper and brass fabrication segment industrial product revenues decreased 2% and standard product revenues increased 3%. The decrease in industrial revenues was due to lower volume. The increase in standard products was due to higher volume and prices.

Operating expenses increased a total of $13,798,000 or 4% for all business segments. Cost of sales for all business segments increased $12,123,000 or 4%. Cost of sales for the electrical equipment and electronics components segment increased $4,291,000 or 2% due to higher volume and increased cost of materials, parts, wages and overhead. The increase in costs was not proportionate to the increase in revenues due to a more favorable sales product mix. Cost of sales of the natural resource segment increased $7,339,000 or 34% due principally to increased copper costs attributable to a higher volume of intersegment copper shipments in 1978 at higher costs together with six months of shutdown expenses incurred as a result of the strike at the mine. Cost of sales for the copper and brass fabrication segment increased $493,000 or less than 1%. Selling, general and administrative expenses increased in the electrical equipment and electronics component segment and the copper and brass fabrication segment due primarily to inflationary cost increases. Foreign currency translation losses decreased $1,294,000 due principally to a stabilizing of the exchange rate of the Mexican peso.

Operating income decreased $12,486,000 or 19%. The natural resource segment decreased $17,282,000 or 105% due to a decrease in the copper and coal operations. Copper operations decreased due to depressed copper prices and shutdown costs. Coal operations decreased due to a nationwide coal strike during the first quarter of 1978 and railcar shortages which affected deliveries and increased costs. The electrical equipment and electronics component segment increased $5,281,000 or 14% due to increased revenues, favorable sales mix and the reduction in foreign currency translation losses.

Gain on disposal of investment in affiliate represents the gain on the sale and exchange of 1,285,400 shares of Globe-Union Inc. common stock for $40,000,000 in cash and 380,438 shares of common stock of Johnson Controls Inc.

Equity in net income of affiliate represents equity in net income of Globe-Union Inc. for the six months ended June 30, 1978. Equity in net income of Globe-Union Inc. was not recorded until the fourth quarter of 1977 and was discontinued in the third quarter 1978 because of the sale and exchange referred to above.

Interest expense increased as a result of the Company's $100,000,000 long-term public debt offering in April 1977 offset partially by the reduction of interest expense on $41,830,000 of short-term debt retired from proceeds of the public offering.

The effective income tax rate is affected by foreign currency losses (from which there are minimal tax benefits), equity in net income of affiliate (which is taxed only at the intercorporate dividend rate) and the tax provision on the gain on the sale and exchange of Globe-Union Inc. holdings. After giving effect to these items the effective tax rate did not change significantly.

**1977 vs. 1976**

Operating revenues increased a total of $68,400,000 or 13% for all business segments. Electrical equipment and electronic component revenues increased $17,300,000 or 5%; natural resources revenues increased $15,000,000 or 40% (after eliminating intersegment revenues) and copper and brass fabrication revenues increased $35,900,000 or 22%. The increase in the electrical equipment and electronic components occurred in the standard and specially designed low voltage equipment ($14,000,000 or 9%) and power equipment ($3,400,000 or 3%) lines. These increases were due principally to volume increases

in the U.S. and Canada and moderate price increases principally in the U.S. and Mexico. Domestic revenues of the electrical equipment and electronic component segment increased $24,800,000 or 12% while foreign revenues declined $7,500,000. The decline in foreign sales was due principally to lower average currency exchange rates used in converting foreign sales to equivalent U.S. dollars. Revenue increases in the natural resource segment were due principally to coal operations which increased $5,055,000 or 39%, due principally to volume resulting from a long-term contract with a public utility entered into in late 1976 and $5,838,000 of revenue from the sale of 38,515 ounces of gold. There were no gold sales during 1976. Also contributing to increased natural resource revenues was an increase in railroad revenues of $2,149,000 resulting from increased coal shipments Revenue increases in the copper and brass fabricating segment occurred in both industrial and standard products which increased $12,200,000 (14%) and $23,700,000 (31%), respectively. Industrial products revenue increases were due to volume whereas standard products benefited from improved selling prices and volume increases.

Operating expenses increased a total of $57,439,000 or 13% for all business segments. Cost of sales of the electrical equipment and electronic component segment increased by $13,174,000 or 6% due to higher volume and higher material, wage and overhead costs. Natural resource costs increased $6,479,000 due principally to higher volume of coal sales and the cost of gold sold during 1977. Copper and brass fabrication costs increased $22,774,000 or 16% due principally to higher volume. Selling, general and administrative expenses increased $5,450,000, or 10%, of which $3,300,000 occurred in the copper and brass fabrication segment and $1,800,000 in the electrical and electronic segment. These increases were principally in selling expenses and were due principally to increased distribution expenses associated with higher sales volume. Also included in operating expenses are foreign currency translation losses which increased $3,055,000. Of this increase $2,86[illegible]00 occurred in the electrical equipment and electronic segment due principally to the decline of the Canadian dollar against the U.S. dollar.

The equity in net income of affiliate is attributable to a 20.5% investment made in Globe-Union Inc. during 1977.

Interest expense increased due to a $100,000,000 public debt offering issued in April 1977, which increase was partially offset by the use of $41,830,000 of proceeds to reduce bank borrowings.

Other income and expense, net, increased due to higher corporate administrative expenses, smaller gains on repurchase of debentures offset substantially by interest earned on proceeds remaining from the $100,000,000 public debt offering.

The effective income tax rate increased by 4.4 percentage points due principally to the fact that no tax benefit was obtained for a substantial portion of foreign currency translation losses and a reduction in the benefit derived from percentage depletion allowances. The increase in effective rate caused by the above items was partially offset by the effect of providing taxes at the intercorporate dividend rate on the equity in the net income of an affiliate.

Minority interests in net income of consolidated subsidiaries declined due to reduced earnings of foreign subsidiaries which resulted principally from greater foreign currency translation losses.

**1976 vs. 1975**

Operating revenues increased a total of $89,100,000 or 21% for all business segments. Electrical equipment and electronic components increased $42,700,000 or 15% and copper and brass fabrication increased $41,800,000 or 35%. Electrical equipment and electronic components increases occurred in both domestic ($33,200,000 or 19%) and foreign ($9,500,000 or 9%) operations. Increases in low voltage equipment ($17,900,000 or 13%) and electronic components ($15,800,000 or 51%) were due principally to higher volume, whereas the increase in power equipment ($9,000,000 or 9%) resulted from both volume and price improvements. Copper and brass fabrication increases occurred both in industrial products ($24,500,000 or 41%) due principally to increased volume and standard products ($17,300,000 or 29%) due equally to price and volume improvements. In general the increases of both of the above segments were due to increased demand for their products resulting from the general economic improvement. Natural resource revenues also increased, principally in the secondary lead recycling operations ($3,306,000 or 59%) due to higher volume and in coal operations ($2,966,000 or 31%) due largely to price improvements.

Operating expenses increased a total of $75,160,000 or 20% for all business segments. Cost of sales increases of $66,862,000 or 21% occurred principally in copper and brass fabrication ($38,980,000 or 39%) due primarily to increases in sales volume and metal costs, and in electrical equipment and electronic components ($27,617,000 or 14%) due primarily to sales volume increases together with some increased material, wage and overhead costs. Natural resource cost of sales increased $10,874,000 or 27% due principally to increased copper production which increased costs $7,427,000. Copper production was curtailed in 1975 due to a strike. Selling, general and administrative expenses increases of $7,047,000 or 15% occurred principally in electrical equipment and electronic components ($4,823,000 or 15%), primarily as a result of increased distribution and selling expenses associated with increased sales volume and also due to inflationary pressures. Foreign currency losses resulted primarily from the translation and devaluation of the Mexican peso.

Interest expense decreased $1,730,000 or 14%, principally in electrical equipment and electronic components as a result of reduced short-term borrowings and lower short-term interest rates.

Operating income increased $13,996,000 or 22% due to increases in the electrical equipment and electronic segment ($9,100,000 or 21%) resulting from increased volume and further improvement of profit margins and in natural resource operations ($4,200,000 or 30%) which showed improvements in its coal operations due principally to price improvement resulting from a long-term coal contract and in its copper and secondary lead recycling operations due to volume.

Provision for income taxes increased principally because of increased pre-tax income.

Minority interests decreased $1,009,000 or 24% of which $772,000 occurred in electrical equipment and electronic components due equally to foreign earnings decline, largely in Mexico, and a reduction in Canadian minority holdings.

## FEDERAL PACIFIC ELECTRIC COMPANY AND SUBSIDIARIES

### CONSOLIDATED STATEMENT OF INCOME

The following Consolidated Statement of Income of Federal Pacific Electric Company and Subsidiaries, insofar as it relates to the five years ended December 31, 1977, has been examined by Coopers & Lybrand, independent certified public accountants, whose report thereon appears elsewhere herein. The Consolidated Statement of Income for the nine-month periods ended September 30, 1977 and 1978 is unaudited but, in the opinion of management, all adjustments (consisting only of normal recurring adjustments) necessary for a fair presentation of its results of operations have been made. The results for interim periods are not necessarily indicative of results for the full years. This statement should be read in conjunction with the other financial statements and notes thereto of the Company included herein.

The following amounts are expressed in thousands.

| | Year ended December 31 | | | | | Nine months ended September 30 (Unaudited) | |
|---|---|---|---|---|---|---|---|
| | 1973 | 1974 | 1975 | 1976 | 1977 | 1977 | 1978 |
| Operating revenues: | | | | | | | |
| Net sales | $222,127 | $254,356 | $275,604 | $318,906 | $336,185 | $255,004 | $263,672 |
| Royalties and other revenues | 674 | 1,717 | 1,231 | 597 | 649 | 374 | 1,592 |
| | 222,801 | 256,073 | 276,835 | 319,503 | 336,834 | 255,378 | 265,264 |
| Operating expenses: | | | | | | | |
| Cost of sales | 166,818 | 192,594 | 202,730 | 230,347 | 243,521 | 185,643 | 189,934 |
| Selling, general and administrative | 26,972 | 30,774 | 31,454 | 36,295 | 38,139 | 28,476 | 30,087 |
| Foreign currency translation losses, net | | | | 1,240 | 4,109 | 3,442 | 2,145 |
| | 193,790 | 223,368 | 234,184 | 267,882 | 285,769 | 217,561 | 222,166 |
| Operating income | 29,011 | 32,705 | 42,651 | 51,621 | 51,065 | 37,817 | 43,098 |
| Interest expense | (2,763) | (4,241) | (3,636) | (2,195) | (1,551) | (1,186) | (721) |
| Income before provision for income taxes and minority interests in net income of consolidated subsidiaries | 26,248 | 28,464 | 39,015 | 49,426 | 49,514 | 36,631 | 42,377 |
| Provision for income taxes | 12,553 | 13,995 | 18,314 | 23,958 | 26,219 | 19,621 | 22,191 |
| Income before minority interests in net income of consolidated subsidiaries | 13,695 | 14,469 | 20,701 | 25,468 | 23,295 | 17,010 | 20,186 |
| Minority interests in net income of consolidated subsidiaries | 1,593 | 2,423 | 4,231 | 3,459 | 1,661 | 1,055 | 1,014 |
| Net income | $ 12,102 | $ 12,046 | $ 16,470 | $ 22,009 | $ 21,634 | $ 15,955 | $ 19,172 |

## MANAGEMENT'S DISCUSSION AND ANALYSIS OF THE CONSOLIDATED STATEMENT OF INCOME

**(All percentages represent changes from the prior period)**

**Nine-month period—1978 vs. 1977**

Revenues for the first nine months of 1978 were approximately 4% higher than those for the comparable period in 1977. This increase occurred in United States operations which increased approximately 10% and other foreign operations which increased approximately 29%. Revenues in Canadian operations decreased approximately 13% which was due primarily to the lower (7%) average

exchange rate of the Canadian dollar and the loss of production due to labor strikes in two plants. With respect to industry segments, electrical increased approximately 3%; electrical low voltage increased 11%, whereas electrical power equipment decreased approximately 10%. In the electronic industry segment revenues increased approximately 10%. The increases in U.S. operations were due to physical sales volume and some higher prices. In other foreign operations (principally England and Mexico) the increase was due primarily to higher physical sales volume and the higher average exchange rate of the British pound sterling which increased over 10%.

Cost of sales increased approximately 2% in 1978. This increase is not commensurate with the increase in revenues due primarily to a more favorable sales mix.

Offsetting the favorable cost due to sales mix were higher costs due to an increase in physical sales volume, increases in the purchase price of raw materials and parts, increases in salaries and average hourly earnings as well as increases in overhead costs. The increase in overhead costs was offset to some extent by greater absorption from production output which increased approximately 2% in 1978.

Selling, general and administrative increased approximately 6% in 1978 due primarily to inflationary cost increases.

Interest expense was lower in 1978 due primarily to a reduction in short-term borrowings and to a reduction of long-term debt which was due primarily to the conversion of $752,000 principal amount of 5½% convertible subordinated debentures during the past twelve months.

Foreign currency translation losses were lower in the first nine months of 1978 by $1,297,000 when compared with the first nine months of 1977. This reduction of exchange losses was due primarily to a stabilizing of the exchange rate of the Mexican peso and an increase of nearly 13% in the exchange rate of the British pound sterling.

Income taxes did not increase commensurate with the increase in income due to the reduction in foreign translation losses from the translation of foreign currency statements which are not taxable.

Minority interest was slightly lower in 1978 due to the reduction in the earnings of foreign subsidiaries.

Net income was approximately 20% higher in 1978. This increase was due to higher physical sales volume, some moderate price increases, favorable sales mix and the reduction in foreign currency exchange losses. These gains were offset in part by lower average foreign currency exchange rates which reduced revenues in part and to inflationary cost increases.

**1977 vs. 1976**

Revenues for the year 1977 were approximately 5% higher than those for the year 1976. In the United States, revenues increased approximately 11% while revenues declined in Canada approximately 3% and in other foreign operations approximately 22%. The reduction in Canadian revenues was due entirely to a lower average exchange rate for the Canadian dollar (7%) while the reduction in other foreign revenues was due principally to a lower average exchange rate for the Mexican peso (35%). With respect to electrical industry segment, low voltage electrical equipment increased approximately 9% while power equipment increased approximately 3%. Revenues of the electronic industry segment were slightly higher in 1977 than 1976. The revenue amounts in 1977 were record highs in the history of the Company for both industry segments. These revenue increases were due to increased volume in U.S. and Canadian operations and some moderate price increases in both the U.S. and Mexican markets. Selling prices in Canada were somewhat softer due to a weaker market caused by general economic conditions.

Operating expenses increased approximately 6% in 1977 compared to 1976. This increase was due primarily to higher volume, higher purchase prices for raw materials and parts, and increases in salaries and average hourly earnings as well as increases in overhead expenses. The effect of overhead cost increases was offset in part by greater overhead absorption from production output which increased approximately 4%. The increase in operating expenses also included $2,869,000 of higher losses resulting from foreign currency exchange transactions and translation of foreign currency financial statements.

Interest expense was lower in 1977 due to a reduction in the average amount of short-term borrowings as well as a reduction in short-term interest rates. An improvement in collections from customers and improved cash-flow from operations for the year provided additional working capital which permitted the decrease in the average amount of short-term borrowings. In addition, interest on long-term debt was reduced due to the conversion of $1,110,000 principal amount of 5½% convertible subordinated debentures.

Minority interest was lower in 1977 due to reduced earnings of foreign subsidiaries. The principal reason for the reduction of earnings is the loss resulting from foreign currency exchange transactions and translation of foreign currency financial statements.

Provision for income taxes was higher in 1977 on income which was approximately the same as 1976. This was due principally to foreign exchange translation losses which are not tax deductible.

Net income was slightly lower in 1977 due primarily to foreign exchange losses which were almost entirely offset by higher earnings from domestic operations.

**1976 vs. 1975**

Revenues for 1976 were approximately 15% higher than those for the year 1975. This increase occurred in both domestic operations, which increased approximately 20%, and foreign operations which increased approximately 9%. With respect to industry segments, revenues of low voltage electrical equipment increased approximately 13% and power equipment increased approximately 9%. Revenue from the electronic components segment increased approximately 51% in comparison to a depressed market level during 1975. These higher revenues resulted from an increase in physical sales volume in both domestic and foreign operations and improved prices in domestic operations. These increases were offset somewhat by a softening of prices in Canadian operations attributed to the lower demand of a weaker economy due, in part, to the Canadian anti-inflation act.

Operating expenses increased approximately 14% in 1976. This increase in cost is attributed primarily to an increase in physical sales volume and also to increases in the purchase price of raw material and parts, and increases in salaries, average hourly earnings and overhead costs, as well as price reductions for some products of foreign operations. The effect of overhead cost increases was offset to some extent by the greater overhead absorption resulting from production output which increased approximately 14%. Included in this increase in operating expenses is an increase of $1,129,000 due to foreign currency exchange losses from both foreign currency transactions and translation of foreign currency financial statements.

Interest expense was lower in 1976 due to a reduction in the average amount of short-term borrowings as well as a reduction in short-term interest rates. Improvements in collections from customers and improved cash-flow from operations for the year provided additional working capital which permitted the decrease in the average amount of short-term borrowings. A reduction in long-term debt due to the final payment of one note and the conversion of 5½% convertible subordinated debentures also contributed to a reduction in interest expense.

Minority interest reduction in 1976 was due to a decline in foreign earnings which occurred principally in Mexico and a reduction of the minority holdings in the Company's Canadian subsidiary.

Net Income in 1976 increased approximately 34% over 1975. As previously mentioned, this increase was due to a combination of increased physical sales volume in both domestic and foreign operations and improved selling prices in our domestic operations, offset in part by a softening of prices in the Canadian market. These revenue increases were reduced by higher purchase prices for raw materials and parts, higher wages and salaries and increased expenses resulting from inflation and higher sales volume.

## UV INDUSTRIES, INC. AND SUBSIDIARIES

### PRO FORMA CONDENSED BALANCE SHEET (UNAUDITED)

### September 30, 1978

The following unaudited pro forma Condensed Balance Sheet has been prepared to reflect as of September 30, 1978 UV Industries, Inc. and Subsidiaries upon consummation of the proposed Sale of Federal Pacific Electric Company and the approval of the proposed Plan of Liquidation and Dissolution as more fully described elsewhere in this Proxy Statement. The pro forma Condensed Balance Sheet gives effect to (1) the proposed Sale of Federal Pacific Electric Company, (2) the actual exercise of warrants to purchase Common Stock, which expired on January 15, 1979, (3) the conversion of all outstanding $1.265 New Preferred Stock, (4) the conversion of all outstanding 5¾% Convertible Subordinated Debentures, (5) the exercise of all outstanding Stock Options and (6) the investment of the net proceeds in U.S. Government obligations. This unaudited pro forma Condensed Balance Sheet and explanation of pro forma transactions and notes should be read in conjunction with the unaudited pro forma Statement of Income of UV Industries, Inc. and Subsidiaries and the historical financial statements and notes thereto included elsewhere in the Proxy Statement.

#### ASSETS

| | UV Industries, Inc. and Subsidiaries | Pro Forma Adjustments Add (Deduct) Federal Pacific Electric Company (a) | Pro Forma Adjustments Add (Deduct) Other (b) | Pro Forma UV Industries, Inc. and Subsidiaries |
|---|---|---|---|---|
| Current Assets: | | | | |
| Cash, time deposits and certificates of deposit | $ 45,935 | ($22,159)<br>345,000 | $75,393 | $444,169 |
| Marketable equity securities | 2,663 | | | 2,663 |
| Receivable from the sale of investment in affiliate | 39,999 | | | 39,999 |
| Accounts and notes receivable, net | 112,686 | (76,164) | | 36,522 |
| Inventories | 147,673 | (96,024) | | 51,649 |
| Prepaid expenses and other current assets | 4,487 | (1,406) | | 3,081 |
| Total current assets | 353,443 | 149,247 | 75,393 | 578,083 |
| Marketable equity securities | 24,064 | | | 24,064 |
| Properties, plant and equipment, net | 177,616 | (40,406) | | 137,210 |
| Cost in excess of net assets of a business acquired | 24,383 | (407)<br>(23,976) | | |
| Deferred charges and other assets | 27,298 | (951) | (690) | 25,657 |
| | $606,804 | $ 83,507 | $74,703 | $765,014 |

#### LIABILITIES

| | | | | |
|---|---|---|---|---|
| Current liabilities | $ 77,932 | ($35,015) | ($553) | $ 42,364 |
| Long-term debt | 206 598 | (8,962) | (46,668) | 150,968 |
| Deferred income taxes | 30,785 | (4,490) | | 26,295 |
| Other long term liabilities and deferred credits | 4,832 | (9) | | 4,823 |
| Minority interests in consolidated subsidiaries | 20,357 | (19,952) | | 405 |
| Total liabilities | 340,504 | (68,428) | (47,221) | 224,855 |

#### STOCKHOLDERS' EQUITY

| | | | | |
|---|---|---|---|---|
| Preferred stock | 894 | | | 894 |
| New preferred stock | 512 | | (512) | |
| Common stock | 10,671 | | 6,023 | 16,694 |
| Additional paid-in-capital | 95,753 | | 116,773 | 212,526 |
| Retained earnings | 181,035 | 151,935 | (360) | 332,610 |
| | 288,865 | 151,935 | 121,924 | 562,724 |
| Less: Treasury stock, at cost | 22,565 | | | 22,565 |
| Total stockholders' equity | 266,300 | 151,935 | 121,924 | 540,159 |
| Total liabilities and stockholders' equity | $606,804 | $ 83,507 | $74,703 | $765,014 |

See accompanying notes to Pro Forma Condensed Balance Sheet.

## NOTES TO PRO FORMA CONDENSED BALANCE SHEET

(a) To eliminate the assets and liabilities of Federal Pacific Electric Company and to give effect to the proposed Sale as of September 30, 1978. The sale proceeds represent the assumed sales price of $345,000,000. If the Plan of Liquidation and Dissolution is not approved, the estimated income taxes will be approximately $42,000,000.

(b) To reflect the actual exercise of warrants, the conversion of all $1.265 New Preferred Stock, the conversion of all 5¾% Convertible Subordinated Debentures and the exercise of all outstanding Stock Options, as set forth below:

| | Shares | Amount |
|---|---|---|
| Number of shares of Common Stock outstanding at September 30, 1978 | 9,231,000 | |
| Exercise of warrants | 3,556,000 | $73,465,000 |
| Conversion of $1.265 New Preferred Stock | 242,000 | — |
| Conversion of $46,891,000 5¾% Convertible Subordinated Debentures | 2,088,000 | — |
| Exercise of Stock Options | 137,000 | 1,928,000 |
| | 6,023,000 | $75,393,000 |
| Number of shares of Common Stock outstanding at September 30, 1973 (Pro Forma) | 15,254,000 | |

| | |
|---|---|
| Calculation of book value at September 30, 1978: | |
| Historical book value per share of UV Industries, Inc. and Subsidiaries | $27.28 |
| Pro forma adjustments: | |
| Dilution resulting from the exercise of warrants, the conversion of $1.265 New Preferred Stock, the conversion of 5¾% Convertible Subordinated Debentures and the exercise of Stock Options at prices less than book value | (2.62) |
| Gain on proposed Sale of Federal Pacific Electric Company | 9.96 |
| Pro forma book value per share of UV Industries, Inc. and Subsidiaries | $34.62 |

Note: In the event the Plan of Liquidation and Dissolution is not approved, the pro forma book value per share would amount to $31.86.

## UV INDUSTRIES, INC. AND SUBSIDIARIES

### PRO FORMA STATEMENT OF INCOME (UNAUDITED)

**For the year ended December 31, 1977 and the Nine months ended September 30, 1977 and September 30, 1978**

The following unaudited pro forma Statement of Income for the year ended December 31, 1977 and the nine months ended September 30, 1977 and September 30, 1978 has been prepared to adjust the income of UV Industries, Inc. and Subsidiaries to reflect the proposed Sale of Federal Pacific Electric Company as more fully described elsewhere in this Proxy Statement, but not the proposed Plan of Liquidation and Dissolution. The pro forma statement gives effect to the proposed Sale and elimination of the operations of Federal Pacific Electric Company. The Sale proceeds are assumed to be invested in U.S. Government obligations. The statement is based on the assumption that the proposed Sale and investment of the proceeds took place at the beginning of each period presented. This unaudited pro forma Statement of Income should be read in conjunction with the unaudited pro forma Condensed Balance Sheet of UV Industries, Inc. and Subsidiaries and the historical financial statements and notes thereto included elsewhere in this Proxy Statement.

| | Year Ended December 31, 1977 | | | |
|---|---|---|---|---|
| | | Pro Forma Adjustments Add (Deduct) | | |
| | UV Industries, Inc. and Subsidiaries | Federal Pacific Electric Company(a) | Other | Pro Forma UV Industries, Inc. and Subsidiaries |
| Operating revenues: | | | | |
| Net sales | $575,664 | ($336,185) | | $239,479 |
| Royalties and other revenues | 10,338 | (649) | | 9,689 |
| | 586,002 | (336,834) | | 249,168 |
| Operating expenses: | | | | |
| Cost of sales | 435,891 | (243,521) | ($175)(b) | 192,195 |
| Selling, general and administrative | 58,491 | (38,139) | | 20,352 |
| Foreign currency translation losses, net | 4,306 | (4,109) | | 197 |
| | 498,688 | (285,769) | (175) | 212,744 |
| Operating income | 87,314 | (51,065) | 175 | 36,424 |
| Equity in net income of affiliate | 2,315 | | | 2,315 |
| Interest expense | (14,695) | 1,551 | 2,696(d) | (10,448) |
| Other income and (expense), net | (616) | | 35,948(c) | 35,332 |
| Income before provision for income taxes and minority interests in net income of consolidated subsidiaries | 74,318 | (49,514) | 38,819 | 63,623 |
| Provision for income taxes | 34,495 | (26,219) | 18,549(c)(d) | 26,825 |
| Income before minority interests in net income of consolidated subsidiaries | 39,823 | (23,295) | 20,270 | 36,798 |
| Minority interests in net income of consolidated subsidiaries | 1,663 | (1,661) | | 2 |
| Net income | $ 38,160 | ($21,634) | $20,270 | $ 36,796 |
| Earnings per share of common stock: | | | | |
| Primary | $4.04 | | | $2.32(e) |
| Fully diluted | $2.86 | | | $2.30 |

See accompanying notes to Pro Forma Statement of Income.

## UV INDUSTRIES, INC. AND SUBSIDIARIES

### PRO FORMA STATEMENT OF INCOME (UNAUDITED)—(Continued)

| | Nine Months Ended September 30, 1977 | | | |
|---|---|---|---|---|
| | | Pro Forma Adjustments Add (Deduct) | | |
| | UV Industries, Inc. and Subsidiaries | Federal Pacific Electric Company (a) | Other | Pro Forma UV Industries, Inc. and Subsidiaries |
| Operating revenues: | | | | |
| Net sales | $437,204 | ($255,004) | | $182,200 |
| Royalties and other revenues | 9,393 | (374) | | 9,019 |
| | 446,597 | (255,378) | | 191,219 |
| Operating expenses: | | | | |
| Cost of sales | 332,065 | (185,643) | ($131)(b) | 146,291 |
| Selling, general and administrative | 43,833 | (28,476) | | 15,357 |
| Foreign currency translation losses, net | 3,587 | (3,442) | | 145 |
| | 379,485 | (217,561) | (131) | 161,793 |
| Operating income | 67,112 | (37,817) | 131 | 29,426 |
| Interest expense | (10,467) | 1,186 | 2,022(d) | (7,259) |
| Other income and (expense), net | (159) | | 26,961(c) | 26,802 |
| Income before provision for income taxes and minority interests in net income of consolidated subsidiaries | 56,486 | (36,631) | 29,114 | 48,969 |
| Provision for income taxes | 27.426 | (19,621) | 13,911(c)(d) | 21,716 |
| Income before minority interests in net income of consolidated subsidiaries | 29,060 | (17,010) | 15,203 | 27,253 |
| Minority interests in net income of consolidated subsidiaries | 1,089 | (1,055) | | 34 |
| Net income | $ 27,971 | ($15,955) | $15,203 | $ 27,219 |
| Earnings per share of common stock: | | | | |
| Primary | $ 2.94 | | | $ 1.70(e) |
| Fully diluted | $ 2.07 | | | $ 1.69 |

See accompanying notes to Pro Forma Statement of Income.

## UV INDUSTRIES, INC. AND SUBSIDIARIES

### PRO FORMA STATEMENT OF INCOME (UNAUDITED)—(Continued)

| | Nine Months Ended September 30, 1978 | | | |
|---|---|---|---|---|
| | | Pro Forma Adjustments Add (Deduct) | | |
| | UV Industries, Inc. and Subsidiaries | Federal Pacific Electric Company (a) | Other | Pro Forma UV Industries, Inc. and Subsidiaries |
| Operating revenues: | | | | |
| Net sales | $441,896 | ($263,672) | | $178,224 |
| Royalties and other revenues | 6,013 | (1,592) | | 4,421 |
| | 447,909 | (265,264) | | 182,645 |
| Operating expenses: | | | | |
| Cost of sales | 344,188 | (189,934) | ($131)(b) | 154,123 |
| Selling, general and administrative | 46,802 | (30,087) | | 16,715 |
| Foreign currency translation losses, net | 2,293 | (2,145) | | 148 |
| | 393,283 | (222,166) | (131) | 170,986 |
| Operating income | 54,626 | (43,098) | 131 | 11,659 |
| Gain on disposal of investment in affiliate | 22,602 | | | 22,602 |
| Equity in net income of affiliate | 2,301 | | | 2,301 |
| Interest expense | (12,441) | 721 | 2,022(d) | (9,698) |
| Other income and (expense), net | (1,138) | | 26,961(c) | 25,823 |
| Income before provision for income taxes and minority interests in net income of consolidated subsidiaries | 65,950 | (42,377) | 29,114 | 52,687 |
| Provision for income taxes | 29,363 | (22,191) | 13,911(c)(d) | 21,083 |
| Income before minority interests in net income of consolidated subsidiaries | 36,587 | (20,186) | 15,203 | 31,604 |
| Minority interests in net income (loss) of consolidated subsidiaries | 809 | (1,014) | | (205) |
| Net income | $ 35,778 | ($19,172) | $15,203 | $ 31,809 |
| Earnings per share of common stock: | | | | |
| Primary | $3.84 | | | $2.05(e)(f) |
| Fully diluted | $2.73 | | | $2.05(f) |

See accompanying notes to Pro Forma Statement of Income.

### NOTES TO PRO FORMA STATEMENT OF INCOME

(a) To eliminate the results of operations of Federal Pacific Electric Company.

(b) To eliminate the amortization of cost in excess of net assets of a business acquired originating from UV Industries, Inc.'s original purchase of Federal Pacific Electric Company.

(c) To give effect to the interest income (at an assumed rate of 9.5%) and the related income taxes at 48% on the assumed investment of the net proceeds of the proposed Sale amounting to approximately $303,000,000, the actual exercise of outstanding warrants and the assumed exercise of all Stock Options. For each 1% increase or decrease in the interest rate assumed, net income and primary earnings per share will increase or decrease by $1,476,000 and $.10 for the nine-month periods and $1,968,000 and $.13 for the year ended December 31, 1977, respectively.

(d) To eliminate interest expense on 5¾% Convertible Subordinated Debentures assumed to be converted and the related income taxes at 48%.

(e) Earnings per share are based on the average shares outstanding for the period plus the shares issued upon the actual exercise of outstanding warrants, the exercise of all outstanding Stock Options and the conversion of all outstanding 5¾% Convertible Subordinated Debentures and $1.265 New Preferred Stock to Common Stock.

(f) Includes net income on disposal of investment in Globe-Union Inc. of $13,832,000 or $.91 per primary and fully diluted earnings per share.

## BUSINESS OF FEDERAL

### General

Federal is engaged in the design, manufacture and sale of electrical control, distribution and transmission equipment, including standard and specially designed low voltage equipment and power equipment, and, to a lesser extent, electronic components. These products consist of the following:

*Standard and specially designed low voltage equipment.* Standard low voltage equipment includes Stab-lok™ circuit breakers for residential use and various types and combinations of other circuit breakers, fusible entrance equipment, enclosures, panelboards, fuses, safety switches and electrical heating equipment. Specially designed low voltage equipment includes panelboards, switchboards, substations, bus duct, industrial circuit breakers, motor starters and control equipment. Both standard and specially designed low voltage equipment are used in all types of buildings and facilities using electrical energy, including industrial plants, research laboratories, schools, hospitals and commercial buildings.

*Power equipment.* Power equipment includes both liquid filled and dry type power and distribution transformers, in addition to low and medium voltage assembled switchgear. Transformers are used to change A.C. voltages and currents upward or downward as required by users. Liquid filled transformers range in capacity from 10 kilovolt amperes ("KVA") to 400,000 KVA at voltages from 5,000 to 500,000 volts; dry type transformers vary in size from 3 KVA through 10,000 KVA at voltages from 208 to 34,500 volts. Federal manufactures a wide range of assembled switchgear used in the control and distribution of electricity. The manufacture of transformers and switchgear requires lead times of up to one year between the receipt of an order and the date of shipment.

*Electronic components.* Electronic components, produced by Federal's subsidiary, Cornell-Dubilier Electric Corporation, include a broad line of capacitors, which differ widely in size, design and electrical characteristics, for use in industrial, commercial, communication, and computer applications and in specialized power control systems. These products also include electromechanical components and assemblies, principally relays and electrically operated television and two-way amateur radio communication antenna rotors for industrial, residential and commercial use, and filter subsystems for power, communication, computer and low power control systems.

Electrical control, distribution and transmission equipment is marketed throughout the United States and in Canada, Federal's most significant foreign market. Low voltage equipment is principally sold to independent electrical distributors and contractors, while power equipment is sold principally to electric power utilities and large industrial users. Electronic components are purchased by original equipment manufacturers and distributors who resell principally for replacement use. Federal distributes low voltage products and electronic components primarily through its own sales force. Power equipment and electronic components are sold through both Federal's own sales force and independent commission agents. No material portion of Federal's business is dependent upon a single customer or small group of customers.

## Financial Information Relating to Industry Segments

| | Year Ended December 31, | | | | | Nine Months Ended September 30, | |
|---|---|---|---|---|---|---|---|
| | 1973 | 1974 | 1975 | 1976 | 1977 | 1977 | 1978 |
| | (000's omitted) | | | | | | |
| Revenues from unaffiliated customers | | | | | | | |
| Electrical: | | | | | | | |
| Low Voltage | $123,400 | $140,800 | $141,300 | $159,200 | $173,200 | $130,300 | $144,800 |
| Power | 63,000 | 76,800 | 104,300 | 113,300 | 116,700 | 89,900 | 81,200 |
| Total electrical | 186,300 | 217,600 | 245,600 | 272,500 | 289,900 | 220,200 | 226,000 |
| Electronic | 36,500 | 38,400 | 31,200 | 47,000 | 46,900 | 35,200 | 39,300 |
| Intersegment sales | | | | | | | |
| Electrical | | | | 100 | 100 | | 100 |
| Electronic | 1,300 | 1,100 | 1,300 | 3,800 | 3,900 | 3,100 | 2,800 |
| Operating profit | | | | | | | |
| Electrical | 26,600 | 29,100 | 41,700 | 46,700 | 47,000 | 34,900 | 39,100 |
| Electronic | 2,400 | 3,600 | 800 | 4,900 | 4,000 | 2,900 | 4,000 |
| Identifiable assets | | | | | | | |
| Electrical | 139,900 | 164,800 | 164,200 | 176,900 | 185,400 | 182,300 | 205,300 |
| Electronic | 22,600 | 27,200 | 23,700 | 29,000 | 31,000 | 30,200 | 32,200 |

Federal competes with a large number of firms, some of which have greater resources than Federal. Federal maintains its competitive position in both the electrical equipment and electronic component markets by emphasizing quality, service, warranty, product availability and price. Federal's competitive position differs among classes of products, but the exact position within each class is not readily determinable.

Federal's backlog of orders as of September 30, 1978 amounted to approximately $167,000,000, compared to a backlog of $149,000,000 as of December 31, 1977, the bulk of which called for shipment within the subsequent twelve months. The backlog figures do not include any amounts for standard low voltage equipment, which is mass produced and stocked in regional warehouses where orders are filled from available stock.

There are some seasonal aspects within Federal's industry segments; but the seasonal patterns are varied enough so that in total they are offsetting.

Federal purchases its basic raw materials, consisting principally of steel, copper, aluminum, aluminum foil, kraft paper, plastics and oils, waxes, chemicals, molding powder and a limited amount of parts and components from outside vendors. These raw materials are available from a number of sources; therefore, Federal is not dependent upon any single source of supply for any item.

### Patents and Trademarks

While Federal holds a number of patents, it believes that its business generally would not be materially affected by the expiration of any patent or patent license agreement. Some of Federal's products are covered, as to one or more features, by patents owned by or licensed to it.

Federal has several well-known trademarks, including "Stab-lok™" circuit breakers for residential use.

### Research and Development

Federal does not have a separate product research and development department nor does it employ any professional personnel on a full-time basis in research activities. The research and development which is conducted by Federal is performed by professional engineers within operating divisions as part of the ongoing process of manufacturing and solving of customer problems. Accordingly, Federal does not account separately for research and development.

### Environmental Matters

Federal has not been and does not expect to be required to make any significant capital expenditures in connection with state and Federal government environmental requirements.

### Employee Relations

The number of persons employed by Federal at September 30, 1978 was approximately 9,900. Federal has agreements with labor unions covering approximately 71% of its production employees. Generally, collective bargaining agreements are negotiated on a separate plant basis for periods of two to three years. Federal considers its labor relations to be satisfactory.

### Foreign Operations

Federal is engaged through subsidiary companies in the manufacture of electrical products in Canada, Mexico, England, South Africa and Austria.

**FINANCIAL INFORMATION RELATING TO GEOGRAPHIC AREAS**

| | Year Ended December 31, | | | | | Nine Months Ended September 30, | |
|---|---|---|---|---|---|---|---|
| | 1973 | 1974 | 1975 | 1976 | 1977 | 1977 | 1978 |
| | (000's omitted) | | | | | | |
| Revenues from unaffiliated customers | | | | | | | |
| United States | $159,800 | $176,200 | $169,800 | $203,000 | $227,800 | $171,600 | $189,000 |
| Canada | 49,500 | 66,000 | 88,100 | 97,300 | 94,400 | 72,600 | 62,900 |
| Other Foreign | 13,500 | 13,800 | 18,900 | 19,200 | 14,600 | 11,200 | 14,300 |
| Sales between geographic areas | | | | | | | |
| United States | 2,400 | 4,700 | 3,600 | 5,100 | 4,300 | 3,200 | 3,400 |
| Canada | 4,100 | 4,100 | 2,900 | 2,500 | 2,500 | 1,800 | 2,700 |
| Other Foreign | 100 | | | 100 | 300 | 100 | 100 |
| Operating profit | | | | | | | |
| United States | 20,700 | 20,600 | 22,100 | 34,900 | 41,200 | 30,600 | 36,400 |
| Canada* | 6,200 | 9,400 | 16,500 | 15,100 | 8,600 | 6,500 | 4,600 |
| Other Foreign* | 2,100 | 2,700 | 3,900 | 1,600 | 1,300 | 700 | 2,200 |
| Identifiable assets | | | | | | | |
| United States | 115,400 | 133,500 | 119,500 | 133,000 | 144,500 | 141,700 | 162,600 |
| Canada | 37,700 | 50,000 | 57,400 | 60,800 | 58,800 | 58,200 | 59,100 |
| Other Foreign | 13,400 | 11,700 | 14,000 | 14,300 | 15,600 | 14,700 | 17,600 |
| Elimination of inter-company accounts | (4,000) | (3,200) | (3,000) | (2,200) | (2,500) | (2,100) | (1,800) |

* Includes approximately $267,500 and $3,600 of foreign currency exchange gains in 1973 and 1974, respectively; and $111,000, $1,240,000 and $4,108,600 of losses in 1975, 1976 and 1977, respectively; and losses of $3,442,000 and $2,145,000 in the nine months ended September 30, 1977 and 1978, respectively. Such gains and losses relate principally to Federal's Canadian and Mexican operations in the electrical segment.

Federal's business in Canada, conducted through a 59% owned subsidiary (the "Canadian Subsidiary"), is subject to regulation under the Canadian Foreign Investment Review Act ("FIRA"). Under FIRA, sales of a specified percentage of the shares of the Canadian Subsidiary owned by Federal or any of the Canadian Subsidiary's operations to those who are not Canadian citizens or residents would be subject to review by the Foreign Investment Review Agency (the "Agency"), as would certain expansions of the Canadian Subsidiary's business. Federal presently has no plans which would involve the disposition of its interest in the Canadian Subsidiary or the sale or expansion of its business in a way which would require approval of the Agency.

**Principal Properties**

The principal properties owned and leased by Federal are as follows:

| Location | Approximate Floor Space (Sq. ft.) | Principal Product | Owned or Leased | Lease Expiration |
|---|---|---|---|---|
| New Bedford, Massachusetts | 414,000 | Electronic components | Owned | |
| Newark, New Jersey | 303,000 | Switchgear, enclosures and specially designed low voltage equipment | Owned | |
| Sanford, North Carolina | 292,000 | Electronic components | Leased | March 31, 1983 |
| Albermarle, North Carolina | 265,000 | Standard low voltage equipment | Leased | January 31, 1991 |
| Des Plaines, Illinois | 228,000 | Transformers and fuses | Owned | |
| San Jose, California | 188,000 | Transformers | Owned | |
| Vidalia, Georgia | 175,000 | Enclosures for circuit breakers and switchgear | Leased | October 1, 1991 |
| Winnipeg, Manitoba, Canada | 173,000 | Transformers | Owned | |
| Edgefield, South Carolina | 146,000 | Electric heat equipment | Owned | |
| Toronto, Ontario, Canada | 143,000 | Standard low voltage equipment | Owned | |
| Fuquay Varina, North Carolina | 140,000 | Electronic components | Leased | August 31, 1987 |
| Taipei, Taiwan | 113,000 | Electronic components | Owned | |
| Fort Mill, South Carolina | 105,000 | Standard low voltage equipment (warehouse only) | Owned | |

In addition Federal owns or leases office space and plant and regional warehouse facilities at 42 other locations totalling approximately 1,390,000 square feet of floor space, approximately 49% of which is owned. All of Federal's facilities are adequately maintained for their present and anticipated use.

## BUSINESS OF UV EXCLUDING FEDERAL

**General**

The Company, incorporated in Maine in 1965, is the successor by merger to United States Smelting Refining and Mining Company, which was incorporated in 1906. Its present name was adopted in 1972.

In addition to the industry segments described above in BUSINESS OF FEDERAL, the Company currently operates within the following industry segments:

*Natural Resources.* The Company mines and mills copper ore in New Mexico which, after smelting and refining by others, is utilized in the Company's copper and brass fabricating operation. UV also mines low sulphur steam coal in Utah, a significant portion of which is sold under long-term contract to a public utility. UV produces oil and gas from properties in the United States and, to a minor extent, Canada, dredges placer gold in Alaska, and engages in the exploration and development of mineral resources on both Company-owned and leased properties.

*Copper and Brass Fabrication.* Through its wholly-owned subsidiary, Mueller Brass Co. ("Mueller"), UV fabricates copper and brass products, including brass rod and forgings and other industrial products sold chiefly to manufacturers, and Streamline™ tube, wrought fittings and other standard products sold principally to plumbing/heating and refrigeration/air conditioning jobbers.

## FINANCIAL INFORMATION ABOUT INDUSTRY SEGMENTS

## (EXCLUDING FEDERAL)

| | Years Ended December 31, | | | | | | | | | | Nine Months Ended September 30, | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 1973 | | 1974 | | 1975 | | 1976 | | 1977 | | 1977 | | 1978 | |
| | (000's omitted) | | | | | | | | | | | | | |
| | $ | % | $ | % | $ | % | $ | % | $ | % | $ | % | $ | % |
| Operating Revenues: | | | | | | | | | | | | | | |
| Natural resources: | | | | | | | | | | | | | | |
| Unaffiliated customers | 33,300 | 15 | 31,000 | 14 | 32,700 | 22 | 37,400 | 19 | 52,400 | 22 | 38,900 | 20 | 28,900 | 16 |
| Copper and brass fabrication segment(a) | | | 30,600 | 13 | 22,500 | 15 | 32,800 | 16 | 26,500 | 10 | 19,400 | 10 | 19,800 | 11 |
| | 33,300 | 15 | 61,600 | 27 | 55,200 | 37 | 70,200 | 35 | 78,900 | 32 | 58,300 | 30 | 48,700 | 27 |
| Copper and brass fabricated products: | | | | | | | | | | | | | | |
| Industrial | 91,700 | 42 | 110,000 | 48 | 60,200 | 40 | 84,700 | 43 | 96,900 | 38 | 75,000 | 41 | 73,900 | 40 |
| Standard | 95,400 | 43 | 88,100 | 38 | 58,900 | 38 | 76,200 | 38 | 99,900 | 40 | 77,300 | 39 | 79,800 | 44 |
| | 187,100 | 85 | 198,100 | 86 | 119,100 | 78 | 160,900 | 81 | 196,800 | 78 | 152,300 | 80 | 153,700 | 84 |
| Intersegment eliminations | | | (30,600) | (13) | (22,500) | (15) | (32,800) | (16) | (26,500) | (10) | (19,400) | (10) | (19,800) | (11) |
| Total operating revenues | 220,400 | 100 | 229,100 | 100 | 151,800 | 100 | 198,300 | 100 | 249,200 | 100 | 191,200 | 100 | 182,600 | 100 |
| Operating profit: | | | | | | | | | | | | | | |
| Natural resources | 11,100 | 45 | 23,400 | 58 | 13,800 | 69 | 18,000 | 72 | 20,000 | 55 | 16,300 | 55 | (1,000) | (9) |
| Copper and brass fabricated products (b) | 13,700 | 55 | 16,800 | 42 | 6,200 | 31 | 6,900 | 28 | 16,400 | 45 | 13,200 | 45 | 12,700 | 109 |
| Total operating profit | 24,800 | 100 | 40,200 | 100 | 20,000 | 100 | 24,900 | 100 | 36,400 | 100 | 29,500 | 100 | 11,700 | 100 |
| Identifiable assets: | | | | | | | | | | | | | | |
| Natural resources | 108,800 | 47 | 118,500 | 51 | 124,200 | 53 | 135,600 | 53 | 145,200 | 44 | 146,300 | 43 | 156,300 | 45 |
| Copper and brass fabricated products | 109,500 | 47 | 102,300 | 44 | 98,600 | 42 | 105,200 | 41 | 110,700 | 34 | 115,300 | 34 | 112,500 | 33 |
| Other corporate assets(c) | 12,400 | 6 | 12,300 | 5 | 11,600 | 5 | 17,200 | 6 | 73,700 | 22 | 78,600 | 23 | 76,400 | 22 |
| Total identifiable assets | 230,700 | 100 | 233,100 | 100 | 234,400 | 100 | 258,000 | 100 | 329,600 | 100 | 340,200 | 100 | 345,200 | 100 |

Notes:

(a) Intersegment sales to the copper and brass fabrication segment consist principally of refined copper. These sales are accounted for at the published average copper industry's producer price during the month in which refined copper shipments are made.

(b) Includes foreign currency translation losses of $11,000 in 1976, $198,000 in 1977 and $145,000 and $148,000 in the nine months ended September 30, 1977 and 1978, respectively.

(c) Consists principally of cash, time deposits, certificates of deposit, marketable equity securities and investment in affiliate.

## Natural Resources

The Company's principal natural resource operations are mining and milling of copper ore, coal mining, oil and gas production and placer gold mining.

*Copper.* UV's Continental Mine in southwestern New Mexico is near the towns of Bayard and Fierro. The properties on which the mine is located are in highly mineralized areas contiguous to operations of the Kennecott Copper Company and Asarco Incorporated. The Company has approximately 9,300 acres, of which 8,150 are owned and 1,150 are leased. The Company mines from two principal mineralized areas, connected by a 3,500 ft. cross-cut on the 1,300 ft. level. The main underground working levels range from 600 feet to 1,300 feet below the surface. The upper portion of the southwestern mineralized area is being mined by open pit methods. The underground mining rate averages approximately 2,500 to 3,000 tons of copper sulfide ore per day, while the open pit method yields about 5,000 tons per day.

The Company owns and operates two mills at the mine which process ore into copper concentrate through a process of crushing, grinding and flotation. The first mill has a rated capacity of 3,000 tons of ore per day based on a 24-hour 3-shift work day. The second mill has a rated capacity of 5,000 tons of ore per day based on a 24-hour 3-shift work day. During 1977 the first mill was operating at approximately its rated capacity while the second mill was operating slightly under its rated capacity. In 1977 the first mill produced 45,698 tons of copper concentrate and the second mill produced 40,373 tons. The concentrate produced by each mill averaged approximately 25% copper, yielding a total of 20,769 tons of copper returned to the Company. During the nine months ended September 30, 1978, the first mill produced 11,042 tons of copper concentrate and the second mill produced 9,848 tons. The concentrate produced by each mill averaged approximately 25% copper, yielding a total of 5,143 tons of copper returned to the Company. During 1977 and the nine months ended September 30, 1978 the Company spent approximately $3,190,000 and $1,135,000, respectively, in development at the Continental Mine. In April 1978, the operations at the Continental Mine were interrupted by a strike. On January 10, 1979, a settlement with the union was reached.

The following table reflects ore milled and grade together with per ton average mine and mill cost and average net settlement for the five years ended December 31, 1977 and the nine months ended September 30, 1978:

AVERAGE MINERAL CONTENT

| | Tons Ore Milled | Copper % | Gold Ozs. Per Ton | Silver Ozs. Per Ton | Zinc % | Avg. Mine & Mill Cost Per Ton(1) | Avg. Net Settlement Per Ton(2) |
|---|---|---|---|---|---|---|---|
| Continental Mill #1 | | | | | | | |
| 1973— | | | | | | | |
| Underground | 703,349 | 1.98 | | | | | |
| Open Pit | 210,739 | 1.01 | | | | | |
| | 914,088 | 1.76 | 0.01 | 0.16 | 0.52 | 8.44 | 14.94 |
| 1974— | | | | | | | |
| Underground | 577,837 | 1.97 | | | | 11.14 | 22.13 |
| Open Pit | 307,646 | 0.87 | | | | 5.13 | 9.81 |
| | 885,483 | 1.50 | 0.008 | 0.16 | 0.38 | 9.05 | 17.85 |
| 1975(3)— | | | | | | | |
| Underground | 498,787 | 1.87 | | | | 13.54 | 16.77 |
| Open Pit | 148,417 | 0.91 | | | | 6.10 | 8.16 |
| | 647,204 | 1.65 | 0.008 | 0.18 | 0.36 | 11.83 | 14.80 |
| 1976— | | | | | | | |
| Underground | 662,041 | 1.66 | | | | 13.55 | 15.76 |
| Open Pit | 284,048 | 0.92 | | | | 5.38 | 8.73 |
| | 946,089 | 1.44 | 0.007 | 0.15 | 0.42 | 11.09 | 13.65 |
| 1977— | | | | | | | |
| Underground | 663,604 | 1.66 | | | | 16.41 | 12.92 |
| Open Pit | 235,447 | 0.82 | | | | 8.09 | 6.33 |
| | 899,051 | 1.44 | 0.007 | 0.15 | 0.51 | 14.23 | 11.20 |
| '—9 Mos. Ended 9/30/78(4) | | | | | | | |
| Underground | 161,218 | 1.74 | | | | 18.09 | 12.76 |
| Open Pit | 65,229 | 0.60 | | | | 7.73 | 4.38 |
| | 226,447 | 1.42 | 0.008 | 0.16 | 0.50 | 15.11 | 10.35 |

## AVERAGE MINERAL CONTENT (Continued)

| | Tons Ore Milled | Copper % | Gold Ozs. Per Ton | Silver Ozs. Per Ton | Zinc % | Avg. Mine & Mill Cost Per Ton(1) | Avg. Net Settlement Per Ton(2) |
|---|---|---|---|---|---|---|---|
| Continental Mill #2(5) | | | | | | | |
| 1973 – | | | | | | | |
| Underground | 5,661 | 2.15 | | | | 8.36 | 18.41 |
| Open Pit | 757,896 | 0.80 | | | | 2.84 | 6.39 |
| | 763,557 | 0.81 | 0.004 | 0.08 | 0.07 | 2.88 | 6.48 |
| 1974– | | | | | | | |
| Underground | 123,231 | 1.95 | | | | 10.16 | 21.01 |
| Open Pit | 1,306,834 | 0.75 | | | | 3.36 | 8.08 |
| | 1,430,065 | 0.86 | 0.004 | 0.09 | 0.17 | 3.95 | 9.20 |
| 1975(3)— | | | | | | | |
| Open Pit | 996,806 | 0.85 | 0.005 | 0 10 | 0.16 | 4.25 | 7.36 |
| 1976— | | | | | | | |
| Underground | 5,663 | 1.63 | | | | 12.38 | 14.62 |
| Open Pit | 1,475,806 | 0.81 | | | | 3.81 | 7.23 |
| | 1,481,469 | 0.81 | 0.004 | 0.09 | 0.26 | 3.84 | 7.26 |
| 1977— | | | | | | | |
| Open Pit | 1,452,122 | 0.80 | 0.004 | 0.09 | 0.44 | 4.40 | 5.79 |
| 1978—9 Mos. Ended 9/30/78(4) | | | | | | | |
| Open Pit | 358,778 | 0.77 | 0.005 | 0.09 | 0.50 | 5.20 | 5.45 |

(1) Average mine and mill cost includes amortization of deferred development and deferred stripping expense per ton of ore mined of $1.04 in 1973; $.96 in 1974; $.83 in 1975; $.75 in 1976; $.81 in 1977, and $.76 in 1978. The tabulated costs per ton do not include any charges for depreciation, depletion and amortization which, per ton of ore milled, amounted to $1.02 in 1973; $.98 in 1974; $.93 in 1975; $.92 in 1976; $.95 in 1977, and $.96 in 1978.

(2) Average net settlements represent values per ton and are based on settlement terms used in smelting the copper concentrate, and are net of smelting and refining charges.

(3) Operations were affected by a twelve-week strike.

(4) Operations were affected by a strike which commenced April 1, 1978 and was settled on January 10, 1979.

(5) Operations commenced in May, 1973.

As of December 31, 1977, UV's estimated copper ore reserves, determined by drilling and development, consisted of 18.8 million tons of underground reserves in place, with an average copper assay of 2.06%, and 18.1 million tons of open pit reserves, with an average copper assay of .86%. The overall open pit waste-to-ore ratio is estimated at 2.1 to 1. Under the room and pillar mining method currently being used underground, a portion of the ore in place cannot be recovered. However, at December 31, 1977 the Company estimated that net recoverable underground copper ore reserves would be approximately 16.4 million tons. The Continental Mine is relatively new and the reported reserves are based upon the drilling program conducted to date which defined reserves primarily to an area approximately 400 ft. below the 1,300 ft. level, presently the bottom level of the mine. The Company believes that there are areas of additional copper mineralization at depths below and adjacent to the existing known ore reserves.

The Company's copper concentrate is processed principally by Asarco Incorporated ("Asarco") at its smelters at El Paso, Texas and Hayden, Arizona and its refinery at Amarillo, Texas under contracts extending through February 28, 1982. Under the contracts the Company pays processing charges and the refined copper is returned to UV. The entire output of copper returned from concentrate production from the Company's copper operation is currently sold to the Company's copper and brass fabricated products segment at the prevailing producers' prices.

Approximately 350,000 long tons of magnetite iron concentrate are produced annually as a by-product of the Company's copper ore milling operation. Presently, except for a small quantity of sales, this material is being stockpiled at the mill sites. At September 30, 1978, the stockpile contained approximately 2,008,000 long tons of magnetite iron concentrate with an average iron content of 63%.

*Coal.* United States Fuel Company ("U.S. Fuel"), a wholly-owned subsidiary of the Company, owns or leases coal rights in some 20,000 acres in Carbon and Emery Counties in Utah. The deposits at this property are of high quality steam coal, which are estimated to have an average sulphur content of less than 0.65% and an average rating in excess of 11,500 BTU's per pound. The sulphur content meets existing Federal and state air pollution standards for sulphur dioxide emissions currently applicable to coal burning utilities in those areas where U.S. Fuel markets its coal.

The following table reflects coal production and average selling price for the five years ended December 31, 1977 and the nine months ended September 30, 1978:

| | Tons Produced | Average Selling Price Per Ton |
|---|---|---|
| 1973 | 568,254 | $ 7 |
| 1974 | 537,524 | $11 |
| 1975 | 529,228 | $18 |
| 1976 | 614,790 | $20 |
| 1977 (1) | 821,969 | $21 |
| 1978—9 mos. ended 9/30/78 (1) | 467,939 | $23 |

(1) Production for 1977 and 1978 was affected by the nationwide coal strike which began on December 7, 1977 and ended March 26, 1978.

Prior to 1976, U.S. Fuel sold its coal principally to distributors, dealers and brokers on a spot basis and to small industrial users on a term basis. Pursuant to a contract expiring December 31, 1994, U.S. Fuel has agreed to supply coal to Nevada Power Company ("Nevada Power") at the rate of 400,000 tons per year commencing July 1, 1976. The contract contains price escalation provisions and provides Nevada Power with the right to increase or decrease the amount of coal so purchased by not more than 50,000 tons per year. Nevada Power did not exercise this right for an additional 50,000 tons for 1978 and for 1979 it has exercised its right to decrease its purchases by 50,000 tons. U.S. Fuel is currently concluding an agreement in principal with Nevada Power for the utility to purchase 280,000 additional tons per year from 1980 through 1989. This additional tonnage will be reduced to 200,000 tons from 1990 through 1994. During 1977 and the nine months ended September 30, 1978 approximately 50% and 63%, respectively, of all production was under long-term contracts with Nevada Power and other customers.

U.S. Fuel coal property, a portion of which is presently under production consists of multi-seam coal deposits which underlie 7,334 acres, of which 2,460 are owned and 1,369 are leased, in a northern section, and 1,395 are owned and 2,110 are leased, in a southern section. Based upon information and data supplied by U.S. Fuel, it has been estimated by Paul Weir Company Incorporated, an independent firm of mining engineers retained by U. S. Fuel, that the northern section of U.S. Fuel's properties contained in place at November 26, 1976 reserves totaling 54 million tons of coal, of which 27 million tons are recoverable on the basis of the room and pillar mining method currently being used by U.S. Fuel. Coal production since that date aggregated approximately 1.4 million tons, reducing the reserves to approximately 51.2 million tons in place and approximately 25.6 million tons recoverable as of September 30, 1978. The Company's estimates are substantially in accord with those of Paul Weir Company Incorporated. U.S. Fuel is currently evaluating the use of the longwall method for underground extraction as an alternative mining method. It believes that the longwall method, if feasible, would, with additional capital expenditure, increase recoverable reserves in the northern section. The present annual capacity is 1,100,000 tons. Coal seams in the northern section of the mine extend into the southern section where a drilling program has been conducted. In 1978 John T. Boyd Company, mining and geological engineers, completed a coal reserve and mining feasibility study on the southern section. They estimated the southern section to have 42 million tons of recoverable coal using the longwall method of extraction. It is currently estimated that initial production from the southern section could be achieved within a 2 year period after mine development and site preparation commences; however the scheduling of this work will be related to the Company's requirements for increased production and will require substantial capital investments.

The Company is continuing negotiations with Nevada Electric Company, a subsidiary of Nevada Power, involving a possible joint venture arrangement to develop, extract and market the coal deposits contained on properties leased by Nevada Electric Company which are adjacent to the southern section of U.S. Fuel s property. Such a possible joint venture might involve significant future capital expenditures on the part of the Company.

As a result of the Company's efforts to sell its coal production directly to utilities and industrial users, it is competing with major coal producers having resources and production capabilities substantially larger than those possessed by U.S. Fuel. Although the Company is not one of the major producers of coal, it believes that the low sulphur content and high BTU rating of its coal, as well as the desirable mining conditions, place it in a relatively favorable competitive position.

*Oil and Gas.* The Company has been involved in oil and gas development and production since 1947. The Company's oil and gas properties consist of both working and royalty interests. As a working interest owner, UV pays its proportionate part of the expenses incurred in the development and operation of its leasehold properties. The Company's royalty interests (including mineral interests, overriding royalty interests, and production payment arrangements) entitle it to a portion of the proceeds from the production attributed to these interests, without obligation for any cost of development and operation. All of UV's crude oil and gas production is sold at the well head to certain refinery and pipeline companies. The Company's oil and gas properties are located primarily in the Permian Basin area of West Texas, the Powder River Basin in Wyoming, and the Williston Basin in Montana and North Dakota, as well as in Canada. During 1977 and the nine months ended September 30, 1978 the Company spent approximately $2.8 million and $3.3 million, respectively, on drilling and other exploration and development activities. In addition to the use of the Company's own drilling funds, the Company engages in active drilling programs involving farm-outs on its own acreage wherein third parties put up the drilling funds to earn an undivided interest in acreage. During 1977 and the nine months ended September 30, 1978 such funds amounted to approximately $4,000,000 and $5,800,000, respectively. UV has a continuous program for the acquisition, exploration and development of working and royalty interest properties.

Information concerning net production of oil and gas for the years 1973 through 1978, inclusive, is set forth in the following table:

NET OIL AND GAS PRODUCTION FOR
EACH OF THE YEARS INDICATED

**Oil (Barrels)**

| | 1973 | 1974 | 1975 | 1976 | 1977 | 1978 |
|---|---|---|---|---|---|---|
| United States | | | | | | |
| Working Interests | 805,203 | 825,959 | 572,014 | 533,119 | 413,563 | 423,025 |
| Royalty Interests | 179,343 | 175,979 | 170,259 | 171,144 | 163,208 | 167,107 |
| Overriding Royalty Interests | 52,030 | 46,574 | 43,032 | 33,322 | 32,499 | 27,888 |
| Production Payments | — | — | 243 | 75 | 86 | 65 |
| TOTAL | 1,036,576 | 1,048,512 | 785,548 | 737,660 | 609,356 | 618,085 |
| Canada | | | | | | |
| Royalty Interests | 116,450 | 104,665 | 86,040 | 72,975 | 91,271 | 86,592 |
| Company Total | 1,153,026 | 1,153,177 | 871,588 | 810,635 | 700,627 | 704,677 |

## Gas—Per Thousand Cubic Feet (MCF)

| | 1973 | 1974 | 1975 | 1976 | 1977 | 1978 (nine months) |
|---|---|---|---|---|---|---|
| United States | | | | | | |
| Working Interests | 1,338,748 | 1,270,068 | 1,568,310 | 1,075,604 | 965,912 | 930,051 |
| Royalty Interests | 587,841 | 514,518 | 505,235 | 478,674 | 354,049 | 349,033 |
| Overriding Royalty Interests | 657,321 | 632,046 | 595,079 | 470,889 | 326,277 | 266,226 |
| Production Payments | — | 71,904 | 240,271 | 153,505 | 237,428 | 108,282 |
| TOTAL | 2,583,910 | 2,488,536 | 2,908,895 | 2,178,672 | 1,883,666 | 1,653,592 |
| Canada | | | | | | |
| Royalty Interests | 42,000 | 39,000 | 25,000 | 24,000 | 24,000 | 24,000 |
| Company Total | 2,625,910 | 2,527,536 | 2,933,895 | 2,202,672 | 1,907,666 | 1,677,592 |

| | 1977 | 1978 |
|---|---|---|
| Average realized prices: | | |
| Crude oil, condensate and natural gas liquids (dollar per barrel) | $9.82 | $10.47 |
| Natural gas (dollar per thousand cubic feet) | $1.05 | $ 1.18 |

At December 31, 1978, UV had 481 gross (117 net) producing oil wells and 31 gross (21 net) gas wells, principally located on 87,478 gross (69,566 net) leasehold acres and 102,701 gross (17,159 net) mineral and royalty acres.

Mr. B. W. Allen, Independent Petroleum Engineer, has calculated that at December 31, 1978, UV had total estimated proven reserves of approximately 6.8 million barrels of oil and approximately 29.2 million MCF of gas, consisting of approximately 2.0 million barrels of oil and approximately 7.6 million MCF of gas on royalty interest properties and approximately 4.8 million barrels of oil and approximately 21.6 million MCF of gas on working interest properties. More than 90% of the Company's estimated proven reserves of oil and gas were proven developed reserves, as opposed to proven undeveloped reserves. It is currently believed that the Company will produce approximately 0.8 million barrels of oil and 2.0 million MCF of gas from these reserves in 1979. At this time, no effort has been made to define amounts which may be recoverable through a secondary recovery program.

As of December 31, 1978, UV held working interests and mineral and royalty interests in approximately 2,156,752 gross undeveloped acres located in the United States. Of this amount, there are 562,108 gross (514,204 net) leasehold acres located primarily in Wyoming, Montana, Utah, Colorado and Texas. Of the balance, 1,594,644 gross (399,192 net) mineral and royalty acres, approximately one-half of these acres are located in North Dakota and the remainder is located primarily in Texas, Montana, South Dakota and New Mexico. In Canada the Company has approximately 42,000 net mineral acres and 142,200 net royalty acres located in Saskatchewan.

The Company is currently drilling and operating four oil and gas wells and participating in six additional wells.

The Company has not filed any oil or natural gas reserve information with any Federal government authority or agency within the past twelve months.

In connection with its efforts to acquire interests in additional oil and gas properties, the Company encounters intense competition from large international companies and numerous small to medium size independent operators.

*Gold.* Through its 85% owned subsidiary Alaska Gold Company ("Alaska Gold") the Company mines placer gold. Placer gold consists of gold particles accumulated or concentrated in sand and gravel.

Alaska Gold's properties include patented and unpatented mining claims covering approximately 17,500 acres in the Nome district in Alaska. Current estimated gold reserves (commercially mineable gold deposits under existing conditions of gold prices and production costs) at Nome totaled approximately 1,164,400 troy ounces, contained in approximately 123,346,000 cubic yards of dredgeable gravel within an area of approximately 1,280 acres.

In addition to the Nome property, Alaska Gold owns or controls approximately 11,600 acres in the Fairbanks district, on which there is located gravel containing gold deposits; however any decision to mine this property would depend upon cost, environmental and other conditions. Alaska Gold also owns approximately 2,600 additional acres of property in or close to Fairbanks, which it believes is suitable for sale to residential, industrial or commercial users.

Alaska Gold, using funds advanced by the Company at its effective interest rate, commenced gold dredging operations in Nome and Hogatza, Alaska in the 1975 season. Dredging operations at Hogatza were suspended at the close of the 1975 season, because of reduced yields and limited reserves.

During 1975, placer gold mining operations involved the dredging of 1,414,923 cubic yards of gravel (740,391 at Nome and 674,532 at Hogatza), and the production of 11,156 troy ounces of gold, (7,796 at Nome and 3,360 at Hogatza), at a production cost of $108.52 and $110.26 per troy ounce, respectively, for gold produced at Nome and Hogatza. During 1976, 1,194,620 cubic yards of gravel were dredged (all at Nome), yielding 14,320 troy ounces of gold, at a production cost of $110.40 per troy ounce. As a result of the decreasing price of gold, Alaska Gold decided not to sell any gold in 1975 and 1976. At December 31, 1976, 26,769 troy ounces of gold were being held in inventory. In 1977, the most recent year for which final data is available, the Company produced 11,563 ounces of gold at a production cost of $181.52 per ounce and sold 38,515 ounces of gold at an average price of $151.58 per ounce, which represented the Company's 1977 production and inventory together with royalty ounces received in kind from leased properties.

*Other Natural Resource Operations.* The Company has interests in various other mining properties and other operations, including the Washington Mining Company, Richmond-Eureka Mining Company, the Ophir Mine in Utah, U.S.S. Lead Refinery, and the Utah Railway Company. During 1978, none of these properties or operations were material to the Company's business, earnings, or assets. Exploration expenditures on new and existing prospects in 1978, all of which were made in Utah, Nevada, Arizona, California and New Mexico, amounted to $1,101,000 as compared to $733,000 in 1977. The most active exploration at this time is a molybdenum project at Nye, Nevada.

**Copper and Brass Fabrication**

UV is engaged, through Mueller, in the fabrication of copper and brass at plants in Port Huron and Marysville, Michigan, Fulton, Mississippi, and Hartsville and Covington, Tennessee. Mueller's products are classifiable into two main groups, industrial products and standard products.

*Industrial Products.* Industrial products include brass rod, forgings, screw machine products, impact extrusions and specialty tube. These products are sold directly by Mueller's sales force chiefly to other manufacturers and to a lesser extent to distributors.

*Standard Products.* Standard products include Streamline™ tube, wrought and cast fittings, refrigeration, plumbing and heating assemblies, and fabricated tube. These products are sold directly by Mueller's sales force principally to plumbing/heating and air conditioning/refrigeration jobbers and, to a lesser extent, to manufacturers. Streamline Copper & Brass Ltd., a wholly-owned subsidiary of UV, distributes Mueller's products in Canada to the refrigeration and air conditioning industries, and manufactures Streamline™ wrought copper solder type fittings for sale in Canada.

A major portion of Mueller's requirements for fabricating copper is normally obtained from the Company's own copper mining operation with additional amounts of copper obtained by purchase from other copper producers and dealers. In 1977, approximately 43% of Mueller's raw copper requirements were obtained from the Company's copper operations, as compared to 69% in 1976. The lower percentage of Mueller's copper requirements supplied by the Company during 1977 resulted in large part from the shutdown of Asarco, the Company's outside smelter and refiner, during the industry wide copper strike in 1977. During the nine months ended September 30, 1978 approximately 45% of Mueller's raw copper requirements were obtained from the Company. However, approximately 30% of the requirements were supplied from the Company's 1977 production which had been stockpiled at the Company's copper mine

or at refineries as a result of the industry-wide strike referred to above. The balance of 1978 requirements obtained from the Company were considerably less than normal due to the strike at the copper mine which commenced in April 1978 and was settled in January 1979. Copper and other raw materials used in the brass fabrication operation and the production of standard and special purpose alloys, including zinc, tin and lead, are obtained by purchasing scrap material from various producers and dealers. Raw materials used in the fabrication of aluminum products are purchased in the open market.

Mueller's backlog of orders as of September 30, 1978 amounted to approximately $33,600,000 compared to $27,100,000 as of December 31, 1977, the bulk of which called for shipment within the subsequent twelve months. The backlog consists principally of industrial products orders. Standard products such as valves, fittings and tubing are stocked in regional warehouses and made available to customers from available stock. No material portion of Mueller's business is dependent upon a single customer or a small group of customers.

Mueller manufactures and markets several of its standard products under the Streamline™ name, but it does not hold any patents, licenses, franchises or concessions which are material to its business.

Mueller is part of the nonferrous metal working and fabricating industry which, in the aggregate, produces a vast number of different products. The variety and composition of Mueller's products is such that, while it is in competition with many other companies with respect to most of its products, its competitive position differs from product to product and is not readily determinable. Mueller is a major fabricator of copper tube, brass rod and forgings. Some of the firms with which Mueller competes are affiliates of the major copper producers.

The principal properties owned and leased by Mueller for manufacturing purposes and their approximate square footage are as follows:

| Location | Floor Space (Sq. Ft.) | Principal Product | Owned or Leased |
|---|---|---|---|
| Port Huron, Michigan | 1,064,000 | Industrial | (1) |
| Fulton, Mississippi | 320,000 | Standard | (2) |
| Covington, Tennessee | 135,000 | Standard | Owned |
| Marysville, Michigan | 98,000 | Industrial | Owned |
| Hartsville, Tennessee | 74,000 | Standard | Owned |

(1) Approximately 26 of 103 acres of land and approximately 524,000 square feet of floor space has been conveyed to the City of Port Huron and leased back by Mueller in connection with the City of Port Huron, Michigan Industrial Development Revenue Bonds issued in 1968 in an aggregate principal amount of $22,000,000. The lease expires December 1, 1993, at which time Mueller has the right to purchase the facility for a nominal amount. To cover the cost of air and water pollution control equipment additional Industrial Development Revenue Bonds were issued in 1975 in an aggregate principal amount of $1,000,000 and in 1976 Pollution Control Revenue Bonds were issued in an aggregate principal amount of $5,000,000.

(2) This facility has been conveyed to the County of Itawamba, Mississippi, and leased back by Mueller, in connection with Industrial Revenue Bonds issued in 1968 by the County of Itawamba in the aggregate principal amount of $13,000,000. The lease expires December 1, 1993, at which time Mueller has the right to purchase the facility for a nominal amount.

UV has unconditionally guaranteed the performance of all of Mueller's obligations under both of the leases referred to in Notes 1 and 2. In addition to the above properties, Mueller leases approximately 360,000 square feet of warehouse space. All of Mueller's facilities are adequately maintained for present and anticipated use.

**Foreign Operations**

The Company's operations outside of the United States are not material.

**Environmental and Safety Matters**

Legislation and implementing regulations adopted or proposed by the Federal Environmental Protection Agency and by comparable agencies in various states affect directly and indirectly a portion of the Company's operations, and have increased the operating expenses of certain of its facilities. The Company believes it is in material compliance with applicable environmental laws and regulations and is not aware of any ecological problems at any of its operations which are material to its business. The Company cannot predict what effect, if any, the requirements of any future Federal and state regulation in this field will have The Company's mining operations are subject to numerous governmental laws and regulations, including the Federal Coal Mine Health and Safety Act of 1969 and state and local laws concerning safety.

As discussed under "Business of UV Excluding Federal--Natural Resources—Copper," the Company's copper concentrate is treated by Asarco. The concentrate is currently being treated at two of Asarco's smelters Under the terms of the contract between the Company and Asarco, the Company (in common with other users of one of Asarco's smelters) had been paying a surcharge related to special capital expenditures related to compliance with prevailing federal, state and local air pollution regulations. This additional charge was terminated by Asarco in May 1975. However, if pollution standards should be changed, it could require additional major capital expenditures by Asarco for the control of smelter emissions, which in turn could result in surcharges being reinstated or possibly the shutdown of the smelter with the resulting need for the Company to seek other smelting facilities.

**Energy Matters**

Mueller's operations require significant amounts of natural gas, the cost of which has increased significantly in recent years, and which has been subject to the threat of possible shortage. During 1975, Mueller's Port Huron, Michigan and Fulton, Mississippi plants felt the continuing pressure of the nationwide natural gas shortage as reflected in curtailments by pipeline suppliers, but production was not affected. In order to provide natural gas for its Port Huron and Fulton plants, Mueller has purchased portions of the production of nearby natural gas fields, which Mueller believes will provide it with a significant portion of its near-term natural gas requirements.

**Employee Relations**

As of September 30, 1978, the Company had approximately 3,600 employees excluding Federal's employees. Substantially all of the Company's United States production employees were represented by labor unions.

The Company considers its current labor relations to be satisfactory.

## MANAGEMENT

### Interest of Management

Except as disclosed below under "Special Bonuses," no officer or Director or other person controlling the Company will have any interest in the Sale or the Plan except as a stockholder of the Company.

### Security Ownership of Directors

The security holdings of Directors are listed below:

| Name | Common Stock Beneficially Owned February 5, 1979, Directly or Indirectly* | Percent of Class |
|---|---|---|
| Elliot B. Daniels | 3,200 | ** |
| David Finkelstein | 200 | ** |
| Theodore W. Kheel | 1,544 | ** |
| J. George Gange | 10,105(1) | ** |
| Martin Horwitz | 179,949(2) | 1.4% |
| Harry E. Knudson, Jr. | 10,500(3) | ** |
| Edwin Jacobson | 92,144(4) | .7% |
| Walter M. Jeffords, Jr. | 55,002 | 4% |
| Clarence B. Jones | — | ** |
| I. D. Robbins | 9,309(5) | ** |
| William P. Ahern | 7,140 | ** |
| Roger Berlind | 8,750 | ** |
| Arthur R. Gralla | 3,126 | ** |
| Eugene S. Machlin | 338 | ** |
| Paul Kolton | 400 | ** |
| All Directors and officers including the above (comprising 25 individuals) | 406,129 | 3.2% |

*No Director owns beneficially directly or indirectly any of the Company's $1.265 New Preferred Stock, 5¾% Convertible Subordinated Debentures or Federal's 5½% Convertible Subordinated Debentures.

**Less than .1% of Common Stock outstanding as of February 5, 1979.

This information, including that set forth in Notes 1-5 below, was given to the Company at its request by the several Directors.

(1) Mr. Gange also owns 108 shares of $5.50 Cumulative Preferred Stock.

(2) Does not include 6,300 shares of Common Stock held in the name of Mr. Horwitz's son, and 7,200 shares of Common Stock held in the name of Mr. Horwitz's daughter, as to all of which Mr. Horwitz disclaims any beneficial interest. Mr. Horwitz also owns 25 shares of $5.50 Cumulative Preferred Stock.

(3) Does not include 200 and 364 shares of Common Stock held in the name of Mr. Knudson's wife and minor son, respectively, as to all of which Mr. Knudson disclaims any beneficial interest. Mr. Knudson also owns 25 shares of $5.50 Cumulative Preferred Stock.

(4) Does not include 30 shares of Common Stock held in the name of Mr. Jacobson's minor child, as to which Mr. Jacobson disclaims any beneficial interest.

(5) Does not include 1,000 shares of Common Stock held in a pension fund in which Mr. Robbins has a beneficial interest.

As of February 5, 1979 the Directors held shares of Alaska Gold Company (a subsidiary of the Company) Common Stock as follows: Messrs. Jeffords: 33; Ahern: 100; Gralla: 728; Jacobson: 2,781; Machlin: 29; Daniels: 219; Kheel: 135; Gange: 862; Horwitz: 13,140; Knudson: 593.

### Remuneration

The following information is submitted with respect to all direct remuneration paid by the Company and its subsidiaries during the year ended December 31, 1978 to (1) each person who was a Director of the Company at any time during 1978 or was one of the three highest paid officers of the Company during that

year, and who received aggregate remuneration from the Company and its subsidiaries in excess of $40,000; and (ii) all Directors and officers as a group:

| Name or Group | Capacities in Which Received | Aggregate Remuneration |
|---|---|---|
| Martin Horwitz | Chairman of the Board and Chief Executive Officer | [redacted] |
| Edwin Jacobson | President | |
| Harry E. Knudson, Jr. | President, Federal Pacific Electric Company | |
| William P. Ahern | Vice President—Finance | |
| J. George Gange | Vice Chairman of the Board and Consultant | |
| All Directors and officers including the above (comprising 27 individuals) | | $1,662,702. |

Mr. Horwitz is employed under a contract commencing January 1, 1977, terminating December 31, 1986, at an annual salary of $350,000. Accrued deferred compensation as of January 1, 1979 of $282,349, which has been earned by Mr. Horwitz under previous contracts which began December 1, 1965 and ended December 31, 1974, is presently invested in 24,246 shares of Common Stock of the Company, computed as of the various dates of investment. Such invested deferred compensation is kept in an Officer's Reserve Fund, and the Company will pay cash to him in an amount equal to the fair market value of the Fund computed at the termination of his employment, payment to be made over a five-year period commencing with such termination. Mr. Jacobson is employed under a contract commencing on January 1, 1977 and terminating December 31, 1986 at an annual salary at the rate of $225,000. Mr. Ahern is employed under a contract commencing July 1, 1976 terminating May 31, 1981 at an annual salary of $55,000. Mr. Gange has agreed to render consulting services to the Company during the period May 1, 1977 to April 30, 1982 at an annual retainer fee of $25,000. Accrued deferred compensation of $226,716 was earned by Mr. Gange under employment contracts with the Company beginning May 23, 1966 and terminating April 30, 1977 and is presently being paid to him in installments over a five-year period beginning May 1, 1977. Amounts paid to Mr. Gange in 1978 as consulting fees and deferred compensation are included in the above remuneration table. *These contractual arrangements with officers are obligations of the Company which must be provided for in the event the Company is liquidated in accordance with the Plan.* Remuneration payments are proposed to be made in 1979 pursuant to existing plans or arrangements to all Directors and officers of the Company as a group (comprising 25 individuals) at the annual rate of $1,641,664. The Company has adopted a program whereunder it will guarantee bank loans made to officers and executives of the Company and its subsidiaries who may wish to purchase Common Stock of the Company providing such loans do not exceed the officer's annual salary (six times their annual salaries in the case of Messrs. Horwitz and Jacobson). The primary responsibility for payment of the principal of, and interest on, the loans is that of the individual borrower. The aggregate loans guaranteed may not exceed $3,550,000. As of December 31, 1978, the total loans guaranteed consisted of borrowings of Messrs. Horwitz, Jacobson and Ahern, in the respective amounts of $673,257, $900,000 and $54,858.

The following tabulation presents information as to Incentive Stock Options for the purchase of Common Stock, $1 par value, of the Company as to certain officers and Directors and as to all officers and Directors as a group including (i) the amount of options granted since the beginning of the previous full fiscal year, (ii) the amount of shares acquired since that date through the exercise of options granted since that date or prior thereto, and (iii) the amount of shares subject to all unexercised options held as of February 5, 1979:

| Common Stock* | William P. Ahern | J. George Gange | Martin Horwitz | Edwin Jacobson | Harry E. Knudson, Jr. | All officers and Directors as a group including those named |
|---|---|---|---|---|---|---|
| Granted—Jan. 1, 1978 to date | — | — | — | — | — | — |
| Exercised—Jan. 1, 1978 to date: | | | | | | |
| Number of shares | 1,000 | — | 30,000 | — | 3,750 | 40,000 |
| Aggregate option price of options exercised | $11,500 | — | $248,100 | — | $35,390 | $344,538 |



3

| Common Stock* | William P. Ahern | J. George Gange | Martin Horwitz | Edwin Jacobson | Harry E. Knudson, Jr. | All officers and Directors as a group including those named |
|---|---|---|---|---|---|---|
| Aggregate market value of shares on date options exercised | $21,438 | — | $568,125 | — | $84,844 | $737,844 |
| Unexercised at December 31, 1978: | | | | | | |
| Number of shares | — | 15,000 | 90,000 | 30,000 | — | 135,000 |
| Average per share option price | — | $14.1459 | $14.1459 | $14.1459 | — | $14.1459 |

* All Common Stock figures have been adjusted in accordance with the terms of the options to reflect the 2-for-1 stock split in June 1977.

Under the Company's Retirement Plan for Salaried Employees, all salaried employees (including those who are also Directors and officers but not including Directors as such) are members and entitled to retirement allowances upon retirement in accordance with the Retirement Plan with a maximum of $75,000 per year. There are shown in the following tabulation, for purposes of illustration, the Estimated Annual Benefits payable upon normal retirement at age 65 assuming certain specified "Average Final Compensation" which is defined in the Retirement Plan as the average annual compensation paid during the 5 consecutive calendar years in which the employee received the highest compensation during the last 10 years prior to retirement.

| Average Final Compensation | Estimated Annual Benefits at Normal Retirement Age of 65 Based on Service of | | |
|---|---|---|---|
| | 20 Years | 25 Years | 30 Years or more |
| $ 5,000 | $ 1,800 | $ 1,900 | $ 2,000 |
| 10,000 | 3,600 | 3,800 | 4,000 |
| 25,000 | 9,000 | 9,500 | 10,000 |
| 50,000 | 18,000 | 19,000 | 20,000 |
| 75,000 | 27,000 | 28,500 | 30,000 |
| 100,000 | 36,000 | 38,000 | 40,000 |
| 125,000 | 45,000 | 47,500 | 50,000 |
| 175,000 | 63,000 | 66,500 | 70,000 |
| 208,333 and over | 75,000 | 75,000 | 75,000 |

**Special Bonuses**

In the course of the liquidation process, key management and other necessary administrative personnel may look for alternative opportunities. In order to provide incentives and a continuity of necessary services, a fund of $2,500,000 has been established to provide future awards to those persons who, in the judgment of the Board of Directors, have contributed to the goal of obtaining maximum consideration for the Company's assets. It is expected that about 55 persons will be eligible for awards. Any part of the fund which is not awarded will be available for distribution to stockholders. In addition, the Company will retain, at its expense, a professional placement organization for personnel who may require such assistance. Also, efforts to provide continuity of employment for certain personnel will be made in negotiations with any acquiring entity if consistent with the interests of the acquirer of any asset or group of assets. Longevity, work record, and, primarily, performance during the liquidation period will be factors considered by the Board in making awards. The Board will also consider the effect that the liquidation has upon any such individual. Except for Mr. Ahern, no Director of the Company will be eligible to participate in any such awards. The Company has indicated its intent to pay to Harry E. Knudson, Jr., a Director of UV and President and a Director of Federal, a sum of $250,000 over a period of time to be determined to compensate him for services rendered to Federal over the years which, in the Company's view, contributed substantially to its ability to negotiate a favorable price for Federal. The payment is conditioned upon consummation of the sale of Federal.

## VOTING RIGHTS; PROXY SOLICITATION

Unless any stockholder submitting a proxy otherwise specifies therein, each properly executed unrevoked proxy received in time for the Meeting or any adjournment thereof will be voted in favor of the proposals. In each case in which the stockholder has properly specified how the proxy is to be voted, it will be voted in accordance with his specification. Any stockholder has the power to revoke his proxy at any time before it is voted by giving written notice thereof to the Secretary of the Company.

The number of shares of each class of voting securities of the Company outstanding and entitled to vote on February 13, 1979, was as follows, each share being entitled to one vote:

| | |
|---|---|
| $5.50 Cumulative Preferred Stock, $5 par value | 119,368 shares |
| Common Stock, $1 par value | 12,969,684 shares |

The Company has received from Sharon Steel Corporation ("Sharon") a Schedule 13D and amendments thereto, filed pursuant to the Securities Exchange Act of 1934, as amended, which stated that as of June 8, 1978, Sharon beneficially owned 2,052,794 shares of the Company's Common Stock, which represents approximately 15.8% of the Common Stock outstanding at February 13, 1979. Assuming conversion of all 5¾% Convertible Subordinated Debentures and all $1.265 New Preferred Stock, there would be approximately 15,254,000 shares of Common Stock outstanding on the record date. Sharon's 2,052,794 shares would represent approximately 13.5% of the Common Stock then outstanding. (Prior to the exercise of the Company's warrants to purchase Common Stock, Sharon's ownership represented approximately 22% of the Common Stock outstanding.) In a recent amendment to Schedule 13D, Sharon has stated its intention to make additional purchases of Common Stock or securities convertible into shares of Common Stock in order to maintain its holdings of Common Stock at approximately 22% of the Common Stock outstanding.

The costs of solicitation of proxies will be borne by the Company. In addition to this solicitation by mail, officers, Directors and employees of the Company may make solicitations by telephone, telegraph, mail or personal interviews and arrangements may be made with banks, brokerage firms and others to forward proxy materials to their principals, in which case the Company will reimburse them for their expenses. In addition, the Company has retained D. F. King & Co., Inc., New York, New York to assist in the solicitation of proxies, whose fees are expected to aggregate approximately $16,500 (plus out of pocket expenses).

## MARKET PRICES OF UV VOTING STOCK

The high and low price of the Company's voting stock as traded on the New York Stock Exchange by quarter for the last two calendar years is reported below. Market prices and dividends paid for the Common Stock have been restated for the 1st and 2nd quarters of 1977 to give effect to the 2-for-1 stock split distributed on June 14, 1977.

| | 1978 | | | 1977 | | |
|---|---|---|---|---|---|---|
| | High | Low | Dividend Paid | High | Low | Dividend Paid |
| COMMON | | | | | | |
| 1st Quarter | 20⅜ | 18 | $ .25 | 19½ | 15⅝ | $ .25 |
| 2nd Quarter | 21⅞ | 19⅛ | .25 | 20⅜ | 17½ | .25 |
| 3rd Quarter | 23⅜ | 18¾ | .25 | 24¼ | 15⅝ | .25 |
| 4th Quarter | 24 | 17 | .25 | 22 | 19⅛ | .25 |
| $5.50 CUMULATIVE PREFERRED | | | | | | |
| 1st Quarter | 66½ | 63½ | $1.375 | 67½ | 62½ | $1.375 |
| 2nd Quarter | 66¼ | 63 | 1.375 | 64 | 62¼ | 1.375 |
| 3rd Quarter | 66 | 60¼ | 1.375 | 66 | 63½ | 1.375 |
| 4th Quarter | 64½ | 60¼ | 1.375 | 66 | 63 | 1.375 |

From January 1, 1979 through February 14, 1979, the high and low prices of the Company's Common Stock and $5.50 Cumulative Preferred Stock ranged from a high of $32⅞ and $89, respectively to a low of $21⅞ and $63½, respectively.

## EXPERTS

The consolidated balance sheet of UV and its subsidiaries and that of Federal and its subsidiaries as of December 31, 1977, and the related statements of income, changes in stockholders' equity, and changes in financial position for each of the five years in the period ended December 31, 1977, included in this Proxy Statement have been examined by Coopers & Lybrand, independent certified public accountants, as indicated in their reports thereto and are included in reliance upon such reports and upon the authority of such firm as experts in accounting and auditing. A member of the firm of Coopers & Lybrand will be present at the Meeting with the opportunity to make a statement if he desires to do so and will respond to questions that may be asked by stockholders.

Coopers & Lybrand have served as UV's independent public accountants for many years. In connection with their audit function for 1977, Coopers & Lybrand performed an annual examination of the consolidated financial statements of UV prepared for inclusion in the report to stockholders and required filings with the Securities and Exchange Commission.

In addition, Coopers & Lybrand also provided in 1977 other professional services, the aggregate fees for which were 24% of the fees for audit services. Such other services and the percentage relationship which the fee for each service bears to the total audit fees, are as follows:

(i) Tax services consisting primarily of advising UV as to various tax planning alternatives available to it with respect to transactions from time to time contemplated by it (10%);

(ii) audits of financial statements of employee benefit plans in connection with the Employee Retirement Income Security Act of 1974 (8%);

(iii) consultation services with respect to UV's sales and billing accounting system (3%);

(iv) consultation as to the accounting implications of various business alternatives considered by UV (3%).

While neither the Audit Committee nor the Board of Directors approved of, or considered the possible effect on the independence of Coopers & Lybrand of, such nonaudit services prior to their being performed, the Committee and Board both were at all times generally aware of the nature and extent of such services.

The consolidated financial statements of Federal Pioneer Limited and Subsidiaries not included herein have been examined by Price Waterhouse & Co., independent chartered accountants, whose report thereon appears elsewhere herein. The report of Coopers & Lybrand on the financial statements of Federal and its subsidiaries included herein, insofar as it relates to the amounts included for its subsidiary, Federal Pioneer Limited, is based upon reliance upon the report of Price Waterhouse & Co. given upon their authority as experts in accounting and auditing.

## DISCRETIONARY AUTHORITY

At the time of the mailing of this Proxy Statement it is not contemplated that any business other than that specified in Items 1 and 2 of the Notice of Special Meeting will be presented at the Meeting. However, in the event that any other matters properly come before the Meeting or any adjournment or adjournments thereof, it is understood that the proxy holder or holders are fully authorized to vote thereon in accordance with their judgment and discretion unless the stockholder directs otherwise. In the event there appear to be insufficient votes to approve the Plan at the Meeting, the proxy holder or holders will have the authority to vote to adjourn the Meeting from time to time for an aggregate period not to exceed 29 days, without taking any action on the Sale, in order to solicit additional proxies. Any such adjournment will require a majority of the votes cast in person or by proxy at the session of the Meeting to be adjourned. No additional notice of such an adjourned session will be given.

By order of the Board of Directors,

SEYMOUR HORWITZ
*Secretary*

## INDEX TO FINANCIAL STATEMENTS

## REPORTS OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS

To the Stockholders,
UV Industries, Inc.

We have examined the consolidated balance sheet of UV Industries, Inc and Subsidiaries as of December 31, 1977 and the related statements of income, changes in stockholders' equity and changes in financial position for each of the five years in the period ended December 31, 1977. Our examinations were made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances. The financial statements for the two years ended December 31, 1974 have been restated with our concurrence for the change in the method of accounting for income taxes on intangible drilling costs as described in Note (n) to the consolidated statement of income.

In our opinion, the aforementioned financial statements present fairly the consolidated financial position of UV Industries, Inc. and Subsidiaries at December 31, 1977 and the results of its operations and changes in its financial position for each of the five years in the period ended December 31, 1977, all in conformity with generally accepted accounting principles consistently applied during the period except for the change, with which we concur, made as of December 31, 1975 in accounting for marketable equity securities as described in Note 3 to the financial statements.

COOPERS & LYBRAND

1251 Avenue of the Americas
New York, N.Y.
March 9, 1978

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To the Shareholder of
FEDERAL PACIFIC ELECTRIC COMPANY:

We have examined the consolidated balance sheet of Federal Pacific Electric Company and its Subsidiaries as of December 31, 1977 and the related statements of income, changes in stockholder's equity and changes in financial position for each of the five years in the period ended December 31, 1977. Our examinations were made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances. We did not examine the consolidated financial statements and schedules of the Canadian subsidiary, which statements reflect total assets constituting approximately 30 percent of consolidated assets as of December 31, 1977 and total revenues constituting approximately 30 percent of consolidated revenues for each of the five years in the period ended December 31, 1977. Such statements were examined by other public accountants whose report thereon has been furnished to us. Our opinion expressed herein, insofar as it relates to the amounts included for such subsidiary, is based solely upon such report.

In our opinion, based upon our examinations and the report of other auditors, the financial statements referred to above present fairly the consolidated financial position of Federal Pacific Electric Company and its Subsidiaries at December 31, 1977 and the results of its operations and changes in its financial position for each of the five years in the period ended December 31, 1977, all in conformity with generally accepted accounting principles applied on a consistent basis.

COOPERS & LYBRAND

Newark, New Jersey,
February 28, 1978

## REPORT OF INDEPENDENT CHARTERED ACCOUNTANTS

To the Shareholders of
FEDERAL PIONEER LIMITED:

We have examined the consolidated balance sheet of Federal Pioneer Limited and its subsidiaries as at December 31, 1977 and the related consolidated statements of income and retained earnings and changes in financial position for each of the five years then ended. Our examinations were made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the consolidated financial statements examined by us (not shown separately in this report) present fairly the financial position of Federal Pioneer Limited and its subsidiaries as at December 31, 1977 and the results of their operations and the changes in their financial position for the five years then ended, in conformity with generally accepted accounting principles applied on a consistent basis.

PRICE WATERHOUSE & CO.

Toronto, Ontario
February 3, 1978

## UV INDUSTRIES, INC. AND SUBSIDIARIES

### CONSOLIDATED BALANCE SHEET

### ASSETS

| | December 31, 1977 | September 30, 1978 (Unaudited) |
|---|---|---|
| | (000's omitted) | |
| Current assets: | | |
| Cash (Note 8) | $ 30,845 | $ 26,126 |
| Time deposits and certificates of deposit | 40,109 | 19,809 |
| Marketable equity securities (Note 3) | | 2,663 |
| Receivable from sale of investment in affiliate (Note 4) | | 39,999 |
| Accounts receivable, trade, less allowance for doubtful accounts, $2,636,000 at December 31, 1977 and $2,953,000 at September 30, 1978 | 87,771 | 110,120 |
| Other accounts and notes receivable | 1,329 | 2,566 |
| Inventories (Notes 1b and 2) | 155,518 | 147,673 |
| Prepaid expenses and other current assets | 4,145 | 4,487 |
| Total current assets | 320,017 | 353,443 |
| Marketable equity securities (Note 3) | 3,495 | 24,064 |
| Investment in affiliate (Note 4) | 25,191 | |
| Properties, plants and equipment at cost (Notes 1d and 5) | 309,814 | 323,781 |
| Less, Accumulated depreciation, depletion and amortization (Notes 1d and 5) | 138,084 | 146,165 |
| | 171,730 | 177,616 |
| Cost in excess of net assets of a business acquired (Notes 1c and 6) | 24,527 | 24,383 |
| Deferred charges and other assets (Notes 1e, f, g and 7) | 25,155 | 27,298 |
| | $570,115 | $606,804 |

See notes to financial statements.

## UV INDUSTRIES, INC. AND SUBSIDIARIES

### CONSOLIDATED BALANCE SHEET

### LIABILITIES

| | December 31, 1977 | September 30, 1978 (Unaudited) |
|---|---|---|
| | (000's omitted) | |
| Current liabilities: | | |
| Notes payable to banks (Note 8) | $ 3,133 | $ 3,717 |
| Accounts payable | 24,172 | 24,005 |
| Accrued expenses: | | |
| Salaries, wages and other compensation | 9,899 | 9,684 |
| Taxes, other than federal income taxes | 3,136 | 2,590 |
| Interest | 3,806 | 6,071 |
| Other | 5,513 | 8,745 |
| Income taxes payable | 11,391 | 15,913 |
| Dividends payable | 2,432 | 2,475 |
| Current instalments on long-term debt (Note 8) | 3,479 | 3,755 |
| Other current liabilities | 3,193 | 977 |
| Total current liabilities | 70,154 | 77,932 |
| Long-term debt, less current instalments (Note 8) | 212,377 | 206,598 |
| Deferred income taxes (Note 11) | 28,130 | 30,785 |
| Other long-term liabilities and deferred credits | 3,918 | 4,832 |
| Minority interests in consolidated subsidiaries | 19,825 | 20,357 |

### STOCKHOLDERS' EQUITY

| | | |
|---|---|---|
| Preferred Stock, par value $5 per share, 500,000 shares authorized, issuable in series; $5.50 Cumulative Preferred Stock, $17,875,900 liquidating value ($100 per share) less $5,525,000 and $5,745,000 at December 31, 1977 and September 30, 1978, respectively, attributable to treasury shares, 178,759 shares issued (Note 9) | 894 | 894 |
| New Preferred Stock, par value $5 per share, 1,000,000 shares authorized, issuable in series: $1.265 convertible series; liquidating value ($23 per share) $2,655,603 and $2,355,844 at December 31, 1977 and September 30, 1978, respectively; issued 115,461 and 102,428 shares at December 31, 1977 and September 30, 1978, respectively (Note 9) | 577 | 512 |
| Common Stock, par value $1 per share, 20,000,000 shares authorized; issued 10,489,872 and 10,671,436 shares at December 31, 1977 and September 30, 1978, respectively (Notes 9 and 10) | 10,490 | 10,671 |
| Additional paid-in capital | 94,259 | 95,753 |
| Retained earnings, as annexed (Notes 8 and 9) | 152,755 | 181,035 |
| Net unrealized loss on marketable equity securities (Note 3) | (838) | |
| | 258,137 | 288,865 |
| Less, Treasury stock, at cost (Note 9) | 22,426 | 22,565 |
| Total stockholders' equity | 235,711 | 266,300 |
| | $570,115 | $606,804 |

See notes to financial statements.

## UV INDUSTRIES, INC. AND SUBSIDIARIES

### CONSOLIDATED STATEMENT OF CHANGES IN STOCKHOLDERS' EQUITY

| | $1.265 New Preferred Stock | | Common Stock | | Additional Paid-In Capital | Retained Earnings | Net Unrealized Loss on Marketable Equity Securities | Treasury Stock |
|---|---|---|---|---|---|---|---|---|
| | Shares | Amount | Shares | Amount | | | | |
| | | | | (000's omitted) | | | | |
| YEAR ENDED DECEMBER 31, 1973: | | | | | | | | |
| Balance at December 31, 1972 | 458 | $2,292 | 2,801 | $ 2,801 | $38,173 | $ 37,385 | | $ 4,379 |
| Conversion of $1.265 New Preferred Stock to Common Stock | (54) | (270) | 43 | 43 | 227 | | | |
| Conversion of 5½% convertible subordinated debentures to Common Stock | | | 32 | 32 | 938 | | | |
| Exercise of stock options | | | 7 | 7 | 173 | | | |
| Cost of 181,972 shares of Common Stock and 9,600 shares of $5.50 Preferred Stock acquired for the treasury | | | | | | | | 5,652 |
| Net Income | | | | | | 21,010 | | |
| Cash dividends declared—Common, $5.50 Preferred and $1.265 New Preferred Stock | | | | | | (4,226) | | |
| Balance at December 31, 1973 | 404 | 2,022 | 2,883 | 2,883 | 39,511 | 54,169 | | 10,031 |
| YEAR ENDED DECEMBER 31, 1974: | | | | | | | | |
| Conversion of $1.265 New Preferred Stock to Common Stock | (67) | (338) | 60 | 60 | 277 | | | |
| Conversion of 5½% convertible subordinated debentures to Common Stock | | | 98 | 98 | 2,295 | | | |
| Exercise of stock options | | | 12 | 12 | 298 | | | |
| Cost of 7,500 shares of Common Stock and 11,450 shares of $5.50 Preferred Stock acquired for the treasury | | | | | | | | 769 |
| Par Value of Common Stock issued in 3-for-2 stock split | | | 1,488 | 1,488 | (1,488) | | | |
| Net Income | | | | | | 29,604 | | |
| Cash dividends declared—Common, $5.50 Preferred and $1.265 New Preferred Stock | | | | | | (5,346) | | |
| Balance at December 31, 1974 | 337 | 1,684 | 4,541 | 4,541 | 90,893 | 78,427 | | 10,800 |
| YEAR ENDED DECEMBER 31, 1975: | | | | | | | | |
| Conversion of $1.265 New Preferred Stock to Common Stock | (71) | (353) | 84 | 84 | 268 | | | |
| Conversion of 5½% convertible subordinated debentures to Common Stock | | | 105 | 105 | 1,957 | | | |
| Exercise of stock options | | | 80 | 80 | 1,218 | | | |
| Cost of 11,400 shares of Common Stock and 3,500 shares of $5.50 Preferred Stock acquired for the treasury | | | | | | | | 457 |
| Provision for the year | | | | | | | ($1,960) | |
| Net Income | | | | | | 24,376 | | |
| Cash dividends declared—Common, $5.50 Preferred and $1.265 New Preferred Stock | | | | | | (5,432) | | |
| Distribution of Alaska Gold Company Common Stock | | | | | | (809) | | |
| Balance at December 31, 1975 | 266 | $1,331 | 4,810 | $ 4,810 | $94,336 | $ 96,562 | ($1,960) | $11,257 |

*(continued)*

## UV INDUSTRIES, INC. AND SUBSIDIARIES

### CONSOLIDATED STATEMENT OF CHANGES IN STOCKHOLDERS' EQUITY—(Continued)

| | $1.265 New Preferred Stock | | Common Stock | | Additional Paid-In Capital | Retained Earnings | Net Unrealized Loss on Marketable Equity Securities | Treasury Stock |
|---|---|---|---|---|---|---|---|---|
| | Shares | Amount | Shares | Amount | | | | |
| | | | | (000's omitted) | | | | |
| YEAR ENDED DECEMBER 31, 1976: | | | | | | | | |
| Balance at December 31, 1975 | 265 | $1,331 | 4,810 | $ 4,810 | $94,336 | $ 96,562 | ($1,960) | $11,257 |
| Conversion of $1.265 New Preferred Stock to Common Stock | (62) | (312) | 74 | 74 | 237 | | | |
| Conversion of 5½% convertible subordinated debentures to Common Stock | | | 127 | 127 | 2,267 | | | |
| Exercise of stock options | | | 29 | 29 | 520 | | | |
| Cost of 43,100 shares of Common Stock and 300 shares of $5.50 Preferred Stock acquired for the treasury | | | | | | | | 1,336 |
| Provision for the year | | | | | | | 1,014 | |
| Net Income | | | | | | 34,888 | | |
| Cash dividends declared—Common, $5.50 Preferred and $1.265 New Preferred Stock | | | | | | (6,668) | | |
| Balance at December 31, 1976 | 204 | 1,019 | 5,040 | 5,040 | 97,360 | 124,782 | (946) | 12,593 |
| YEAR ENDED DECEMBER 31, 1977: | | | | | | | | |
| Conversion of $1.265 New Preferred Stock to Common Stock | (38) | (442) | 135 | 135 | 304 | | | |
| Conversion of 5½% convertible subordinated debentures to Common Stock | | | 78 | 78 | 1,032 | | | |
| Conversion of 5¾% convertible subordinated debentures to Common Stock | | | 2 | 2 | 42 | | | |
| Exercise of stock options | | | 48 | 48 | 703 | | | |
| Exercise of warrants | | | | | 5 | | | |
| Par Value of Common Stock issued in 2-for-1 stock split | | | 5,187 | 5,187 | (5,187) | | | |
| Cost of 450,000 shares of Common Stock and 12,000 shares of $5.50 Preferred Stock acquired for the treasury | | | | | | | | 9,833 |
| Provision for the year | | | | | | | 108 | |
| Net Income | | | | | | 38,160 | | |
| Cash dividends declared—Common, $5.50 Preferred and $1.265 New Preferred Stock | | | | | | (10,187) | | |
| Balance at December 31, 1977 | 116 | $ 577 | 10,490 | $10,490 | $94,259 | $152,755 | ($ 838) | $22,426 |

*(continued)*

## UV INDUSTRIES, INC. AND SUBSIDIARIES

### CONSOLIDATED STATEMENT OF CHANGES IN STOCKHOLDERS' EQUITY—(Continued)

| | $1.265 New Preferred Stock | | Common Stock | | Additional Paid-In Capital | Retained Earnings | Net Unrealized Loss on Marketable Equity Securities | Treasury Stock |
|---|---|---|---|---|---|---|---|---|
| | Shares | Amount | Shares | Amount | | | | |
| | | | | | (000's omitted) | | | |
| NINE MONTHS ENDED SEPTEMBER 30, 1978 (UNAUDITED): | | | | | | | | |
| Balance at December 31, 1977 | 116 | $ 577 | 10,490 | $10,490 | $94,259 | $152,755 | ($ 838) | $22,426 |
| Conversion of $1.265 New Preferred Stock to Common Stock | (13) | (65) | 31 | 31 | 34 | | | |
| Conversion of 5½% convertible subordinated debentures to Common Stock | | | 75 | 75 | 628 | | | |
| Conversion of 5¾% convertible subordinated debentures to Common Stock | | | 17 | 17 | 374 | | | |
| Exercise of stock options | | | 58 | 58 | 452 | | | |
| Exercise of warrants | | | | | 6 | | | |
| Cost of 2,200 shares of $5.50 Preferred Stock acquired for the treasury | | | | | | | | 139 |
| Provision for the period | | | | | | | 838 | |
| Net Income | | | | | | 35,778 | | |
| Cash dividends declared—Common, $5.50 Preferred and $1.265 New Preferred Stock | | | | | | (7,498) | | |
| Balance at September 30, 1978 | 103 | $ 512 | 10,671 | $10,671 | $95,753 | $181,035 | ($ 0) | $22,565 |

There were no changes in the $5.50 Cumulative Preferred Stock during the five years ended December 31, 1977 and for the nine months ended September 30, 1978. Such shares (178,759) have an aggregate par value of $893,795.

See notes to financial statements.

## UV INDUSTRIES INC. AND SUBSIDIARIES

### CONSOLIDATED STATEMENT OF CHANGES IN FINANCIAL POSITION

| | Year ended December 31, | | | | | Nine months ended September 30, (Unaudited) | |
|---|---|---|---|---|---|---|---|
| | 1973 | 1974 | 1975 | 1976 | 1977 | 1977 | 1978 |
| | (000's omitted) | | | | | | |
| SOURCE OF WORKING CAPITAL: | | | | | | | |
| Net income | $21,010 | $29,604 | $24,376 | $ 34,388 | $ 38,160 | $ 27,971 | $ 35,778 |
| Elements not requiring working capital: | | | | | | | |
| Minority interests in earnings of consolidated subsidiaries | 1,593 | 2,423 | 4,249 | 3,240 | 1,663 | 1,089 | 809 |
| Depreciation, depletion and amortization | 9,029 | 10,695 | 10,444 | 12,360 | 12,094 | 8,487 | 8,406 |
| Provision for deferred income taxes | 1,338 | 170 | 3,341 | 3,240 | 5,431 | 3,348 | 2,655 |
| Amortization of deferred charges and cost in excess of business acquired | 2,539 | 3,613 | 2,563 | 3,198 | 3,509 | 2,592 | 2,085 |
| Provision for (reversal of) unrealized losses on marketable equity securities | | | 1,530 | (1,530) | | | |
| Equity in net income of affiliate, net of dividends received | | | | | (1,801) | | (1,337) |
| Other non-cash items | 1,201 | | (642) | (650) | (1,746) | (1,062) | |
| Working capital provided from operations | 36,710 | 46,505 | 45,861 | 54,746 | 57,310 | 42,425 | 48,396 |
| Disposal of investment in affiliate | | | | | | | 26,528 |
| Issuance of long-term debt | | | | | 100,000 | 100,000 | |
| Issuance of Common Stock upon convertion of debentures and warrants | 1,240 | 2,730 | 2,414 | 2,393 | 1,159 | 1,102 | 1,100 |
| Issuance of Common Stock upon the exercise of employee stock options | 180 | 310 | 1,298 | 549 | 751 | 703 | 510 |
| Disposal of capital assets | 519 | 1,565 | 179 | 899 | 308 | 104 | 393 |
| Other, net | 226 | 1,195 | 3,123 | 2,135 | 1,139 | 277 | 2,555 |
| | 38,875 | 52,305 | 52,875 | 60,722 | 160,667 | 144,611 | 79,482 |
| USE OF WORKING CAPITAL: | | | | | | | |
| Decrease in minority interests in consolidated subsidiaries | 280 | 251 | 344 | 1,262 | 748 | 672 | 277 |
| Decrease (increase) in non-current portion of long-term debt | 2,492 | 5,740 | 11,049 | 27,433 | 7,883 | 6,192 | 5,779 |
| Purchase of treasury stock | 5,652 | 769 | 457 | 1,336 | 9,833 | 9,833 | 139 |
| Cash dividends | 4,226 | 5,346 | 5,432 | 6,668 | 10,187 | 7,717 | 7,498 |
| Additions to properties, plants and equipment | 18,262 | 20,183 | 21,101 | 16,836 | 18,890 | 14,095 | 14,863 |
| Expenditures for mine development | 4,404 | 2,387 | 783 | 2,719 | 4,986 | 1,539 | 2,884 |
| Investment in affiliate and marketable equity securities | | | | | 23,390 | 17,165 | 22,394 |
| Expenditures in connection with issuance of long-term debt | | | | | 1,884 | 1,884 | |
| | 35,316 | 34,676 | 39,166 | 56,254 | 77,806 | 59,087 | 53,834 |
| INCREASE (DECREASE) IN WORKING CAPITAL | $ 3,559 | $17,629 | $13,709 | $ 4,468 | $ 82,861 | $ 85,524 | $ 25,648 |
| Components of increase (decrease) in working capital: | | | | | | | |
| Cash, time deposits, certificates of deposit and marketable equity securities | ($3,510) | $ 4,606 | ($3,222) | $ 734 | $ 42,233 | $ 47,510 | ($22,656) |
| Receivables | 11,815 | (14,970) | 14,137 | 8,684 | (6) | 15,092 | 23,586 |
| Receivable from sale of investment in affiliate | | | | | | | 39,999 |
| Inventories | 18,595 | 34,954 | (17,652) | 27,167 | 4,493 | 290 | (7,845) |
| Accounts payable and accrued expenses | (12,303) | 4,751 | 5,578 | (7,507) | (2,215) | (14,701) | (4,569) |
| Income taxes payable | (7,808) | 334 | 2,566 | (2,230) | 1,942 | 1,954 | (4,522) |
| Notes payable to banks | (6,304) | (11,401) | 13,626 | (26,230) | 36,745 | 36,378 | (584) |
| Other | 3,074 | (645) | (1,324) | 3,940 | (331) | (999) | 2,239 |
| | $ 3,559 | $17,629 | $13,709 | $ 4,468 | $ 82,861 | $ 85,524 | $ 25,648 |

See notes to financial statements.

1. SUMMARY OF ACCOUNTING POLICIES:

a. *Principles of Consolidation:*

The accompanying consolidated financial statements include the accounts of the Company and its majority-owned subsidiaries except certain minor companies, which considered in the aggregate, would not constitute a significant subsidiary. Investments in affiliated companies, more than 20% owned, are accounted for under the equity method.

b. *Inventories:*

Inventories are carried at the lower of cost or market. Fabricated brass, copper and aluminum products are principally at last-in, first-out (LIFO). Electrical equipment products are principally at first-in, first-out (FIFO). All other inventories are principally at average cost. Cost includes materials, labor and plant overhead where applicable.

c. *Cost in excess of net assets of a business acquired:*

In conformity with Opinion No. 17 of the Accounting Principles Board, the cost in excess of net assets of a business acquired after October 31, 1970 is being amortized over a period of forty years. Such excess cost in connection with investments made prior to October 31, 1970 ($18,212,000) is not being amortized because management considers this to represent intangible assets of continuing value over an indefinite period and under generally accepted accounting principles is not required to be amortized.

d. *Properties, Plants and Equipment:*

The provisions for depreciation, depletion and amortization are computed at rates appropriate for the various properties. Depreciation, depletion and amortization for mining and oil and gas operations is computed generally using the unit of production method. All other operations principally use the straight line method of depreciation based upon the estimated lives of specific classes or groups of depreciable assets.

In view of the variety of properties and the wide range of depreciation rates applicable thereto, it is not considered practicable to set forth herein the rates or range of rates used in computing the provision for depreciation.

Maintenance and minor repairs and renewals are charged to operations as incurred; major repairs and renewals are charged to deferred accounts to be written off against future operations; betterments are capitalized as plant additions. Upon retirement or sale, the cost of the assets disposed of and the related accumulated depreciation, depletion or amortization are removed from the accounts, and any resulting gain or loss is credited or charged to operations. For oil and gas properties, where a composite depletion rate is used, the gain or loss is credited or charged to the related reserve.

e. *Mine Exploration and Development Costs:*

Expenditures related to exploration for new mining properties are charged to income as incurred. Expenditures relating to the development of ore in mining properties are deferred and amortized on the unit of production basis over the estimated ore reserves benefited.

f. *Preoperating and Start-up Costs:*

Preoperating and start-up costs relating to new plant facilities are deferred and amortized on the unit of production method but not to exceed ten years from the end of the start-up period.

g. *Debt Issuance Expense:*

Unamortized debt issuance expenses are being amortized over the lives of the related debt issues.

h. *Pension Plans:*

Pensions are provided by the Company under a combination of insured contributory and trusteed noncontributory plans for eligible employees of the Company meeting certain service and age requirements and are based generally on the length of service and earnings patterns preceding retirement. Other employees are covered by collective bargaining agreements under which payments are made to union welfare, trusts or similar funds. Actuarially computed pension costs, including provision for amortization of prior service over thirty to forty years, are funded and charged to earnings each year.

2. INVENTORIES:

| | December 31, 1977 | September 30, 1978 (Unaudited) |
|---|---|---|
| | (000's omitted) | |
| Finished goods | $ 39,210 | $ 44,512 |
| Work in process | 38,027 | 39,637 |
| Raw materials and supplies | 61,636 | 59,375 |
| Ores, concentrates, metals and other inventories | 16,645 | 4,149 |
| | $155,518 | $147,673 |

Inventories carried at last-in, first-out amounted to $30,689,000 and $31,328,000 at December 31, 1977 and September 30, 1978, respectively. The excess of estimated current cost over the value of inventories carried at last-in, first-out amounted to $21,936,000 and $25,244,000 at December 31, 1977 and September 30, 1978, respectively.

Inventories used in the determination of cost of sales were as follows:

| | (000's omitted) |
|---|---|
| December 31, 1972 | $ 80,238 |
| December 31, 1973 | $ 98,182 |
| December 31, 1974 | $128,549 |
| December 31, 1975 | $111,457 |
| December 31, 1976 | $137,842 |
| December 31, 1977 | $141,368 |
| September 30, 1977 (unaudited) | $139,622 |
| September 30, 1978 (unaudited) | $133,392 |

3. MARKETABLE EQUITY SECURITIES:

The portfolios of marketable equity securities are carried at the lower of cost or market. Comparative cost and market values of the portfolios were as follows:

| | Cost | Market | Unrealized Gain (loss) |
|---|---|---|---|
| | | (000's omitted) | |
| December 31, 1977: | | | |
| Non current | $ 4,333 | $ 3,495 | $(838) |
| September 30, 1978 (unaudited): | | | |
| Current | $ 2,663 | $ 3,030 | $ 367 |
| Non current: | | | |
| Johnson Controls, Inc., Common Stock | $ 9,130 | $10,272 | $1,142 |
| Other marketable equity securities | 14,934 | 16,261 | 1,327 |
| | $24,064 | $26,533 | $2,469 |

Pursuant to the terms of a 1976 agreement, the Company has an option, in May 1979, to sell all of its holdings of Phoenix Steel Corporation Common Shares at an aggregate price of $3,030,000. The Company's holdings of 600,000 shares, which represent 6.5% of the outstanding shares of Phoenix, were included in the non current portfolio at December 31, 1977 at a value of $2,689,000 which approximated their cost and represented the present value of the option price. At September 30, 1978 the holdings are included in the current portfolio and valued at the aggregate option price. As a result of the agreement Phoenix warrants held at December 31, 1975 were sold for $250,000 during 1976, resulting in a realized loss of $152,000, which has been included in the determination of net income.

At December 31, 1975, to reduce the carrying value of the current marketable equity securities portfolio to market, which was lower than cost, a valuation allowance in the amount of $1,530,000 was established with a corresponding charge to income at that date. During 1975 realized losses of $299,000 on the sale of marketable equity securities were included in the determination of net income. During 1976 the Company sold its current marketable equity securities portfolio realizing a loss of $1,561,000 and reversed against that loss the $1,530,000 allowance established in 1975.

The cost of securities sold was based on the average cost of all units held at the time of such sales.

4. INVESTMENT IN AFFILIATE:

During 1977 the Company acquired 1,285,400 shares of Globe-Union Inc. ("Globe") Common Stock at an aggregate cost of $23,390,000. The investment represents a 20.5% ownership in Globe and is accounted for under the equity method of accounting.

At December 31, 1977 the carrying value of the investment, adjusted for dividends received of $514,000 and equity in net income of $2,315,000, exceeded the Company's proportionate share in Globe's net assets by approximately $3,000,000. The Company's equity income in Globe was accounted for on a step-by-step basis to reflect the acquisition of the shares at various dates throughout 1977. The market value of the Company's investment was $32,100,000 at December 31, 1977 or approximately $6,900,000 in excess of the carrying value.

During the nine months ended September 30, 1978 the Company sold 1,000,000 shares of its holdings in Globe to Johnson Controls, Inc. ("Johnson") for $40,000,000 pursuant to an Option Agreement dated May 26, 1978, as amended June 23, 1978, between the Company and Johnson. In addition, pursuant to terms of a merger agreement between Johnson and Globe which was approved by their respective shareholders on September 26, 1978, the Company exchanged its remaining 285,400 shares of Globe for 380,438 shares of Johnson Common Stock valued at $9,130,000. The Company's carrying value of its investment in Globe at the time of the sale and exchange of shares amounted to $26,528,000 further adjusted for dividends received of $964,000 and equity in net income of $2,301,000 for the nine months ended September 30, 1978. As a result of the sale and exchange the Company recorded a net gain of $13,832,000, net of income taxes of $8,770,000. The effect of the gain on primary and fully diluted earnings per share amounted to $1.50 and $1.01 and $1.51 and $1.01 for the three and nine months ended September 30, 1978, respectively.

5. PROPERTIES, PLANTS AND EQUIPMENT:

The major classification of properties, plants and equipment were as follows:

| | December 31, 1977 | September 30, 1978 (Unaudited) |
|---|---|---|
| | (000's omitted) | |
| Depreciable properties: | | |
| Mill buildings and equipment | $ 34,305 | $ 34,355 |
| Mine buildings and equipment and oil and gas equipment | 63,753 | 65,303 |
| Manufacturing machinery and equipment* | 104,972 | 109,847 |
| Rolling stock, equipment and other depreciable railway property | 3,526 | 3,521 |
| Manufacturing buildings and land improvements* | 50,362 | 51,031 |
| Construction in progress | 2,228 | 6,750 |
| Other | 163 | 259 |
| | 259,309 | 271,066 |
| Depletable mining properties and oil and gas interests | 30,613 | 30,823 |
| Amortizable oil and gas well intangible drilling costs | 12,323 | 14,168 |
| Land | 3,184 | 3,136 |
| Other | 4,385 | 4,588 |
| | 309,814 | 323,781 |
| Less: Accumulated depreciation | 119,404 | 126,673 |
| Accumulated depletion and amortization | 18,680 | 19,492 |
| | 138,084 | 146,165 |
| | $171,730 | $177,616 |

* Includes an aggregate of $39,709,000 pledged against certain lease obligations.

6. COST IN EXCESS OF NET ASSETS OF A BUSINESS ACQUIRED:

Cost in excess of net assets acquired resulted from the acquisition of Federal Pacific Electric Company in 1972. Approximately $7,000,000 was acquired subsequent to October 31, 1970, and is being amortized over a forty year period.

7. DEFERRED CHARGES AND OTHER ASSETS:

| | December 31, 1977 | September 30, 1978 (Unaudited) |
|---|---|---|
| | (000's omitted) | |
| Unamortized debt issuance expenses | $ 3,967 | $ 3,643 |
| Mine development | 12,856 | 14,735 |
| Preoperating and start-up costs of new plant facilities | 3,573 | 2,958 |
| Other | 4,759 | 5,962 |
| | $25,155 | $27,298 |

8. NOTES PAYABLE TO BANKS AND LONG-TERM DEBT:

| | December 31, 1977 | September 30, 1978 (Unaudited) |
|---|---|---|
| | (000's omitted) | |
| 9¼% senior subordinated notes, due 1987 | $ 25,000 | $ 25,000 |
| 8⅞% debentures, due 1982-1997 | 75,000 | 75,000 |
| 7%-8⅛% pollution control revenue bonds, due 1981-2001 | 5,000 | 5,000 |
| 5¾% convertible subordinated debentures, due 1979-1993—convertible at $22.45 per share | 49,612 | 47,912 |
| 5½% convertible subordinated debentures, due 1987—convertible at $9.40 per share | 1,056 | 353 |
| 5⅜% subordinated debentures, due 1978-1995 | 16,062 | 15,393 |
| 5¼%-6½% notes, due 1978-1981 | 4,975 | 3,875 |
| Lease obligations: | | |
| 5⅞% industrial development bonds, due 1978-1991 | 2,535 | 2,420 |
| 5.7%-6¼% industrial development revenue bonds, due 1978-1993 | 18,895 | 18,895 |
| 6¼% industrial revenue bonds, due 1978-1993 | 11,165 | 10,675 |
| Other lease obligations | 1,229 | 1,125 |
| Other | 5,326 | 4,705 |
| | 215,856 | 210,353 |
| Less, Portion included in current liabilities | 3,479 | 3,755 |
| | $212,377 | $206,598 |

Aggregate payments on long-term debt for the three months ended December 31, 1978 and the five succeeding years are approximately:

| | (000's omitted) |
|---|---|
| Three months ended December 31, 1978 | $ 797 |
| 1979 | $ 5,010 |
| 1980 | $ 8,012 |
| 1981 | $ 7,291 |
| 1982 | $10,964 |
| 1983 | $11,087 |

In April 1977 the Company, in a public offering, issued $25,000,000 9¼% senior subordinated notes and $75,000,000 8⅞% debentures. The indenture for the 9¼% senior subordinated notes prohibits redemption prior to April 15, 1983. Thereafter the notes are redeemable at the option of the Company at their principal amount. The indenture for the 8⅞% debentures requires an annual sinking fund payment of $4,598,000 from 1982 through 1996 and provides the Company the non-cumulative right to double any annual sinking fund payment. The debentures are redeemable at any time at the Company's option at rates ranging from 108.375% of face value in 1978 decreasing annually to 100% in 1992 except that no such redemption may be made prior to April 15, 1987, directly or indirectly, from or in anticipation of money borrowed at an effective interest cost of less than 8.9% per annum.

The indenture for the 5⅜% subordinated debentures requires an annual sinking fund payment of $910,000 from 1978 through 1994. At December 31, 1977 and September 30, 1978 the Company had purchased $337,000 and $910,000, respectively, of debentures to be applied against the 1978 requirement.

In addition at September 30, 1978 the Company had purchased $97,000 to be applied against the 1979 requirement.

The indenture for the 5¼% convertible subordinated debentures requires an annual sinking fund payment of $3,333,000 from 1978 through 1993. At December 31, 1977, the Company had purchased debentures sufficient to meet its 1978 requirement and at September 30, 1978 the Company had through purchases and conversions a total of $2,089,000 to be applied against the 1979 requirement.

On December 1, 1976 the Company refinanced its revolving credit and term loan agreements by entering into a revolving credit agreement with several banks. Under the terms of the agreement the banks have a commitment, up to June 30, 1983, to lend the Company up to $53,000,000 subject to annual mandatory reductions and expirations of $7,550,000 commencing December 31, 1977. The interest on outstanding borrowings is at the prime commercial rate through June 30, 1978; ¼% over prime commercial rate from July 1, 1978 through June 30, 1980; ½% over prime commercial rate from July 1, 1980 to maturity. As at December 31, 1977 and September 30, 1978 no borrowings had been made under this agreement. Concurrent with the December 1, 1976 agreement the Company also secured additional lines of credit amounting to $53,000,000 from the same banks. At December 31, 1977 and September 30 1978 there were no borrowings outstanding under these lines of credit.

On December 1, 1978, the Company refinanced its revolving credit agreement by entering into a new revolving credit agreement with several banks. Under the terms of the agreement, the banks had a commitment, up to December 1, 1985, to lend the Company up to $90,000,000, subject to quarterly mandatory reductions and expirations of $7,500,000 commencing March 1, 1981. Effective January 19, 1979 the Company cancelled this agreement, retaining $58,000,000 of short-term lines of credit.

Under certain of the Company's debt agreements there are restrictions as to the payment of dividends and the repurchase of stock. Under the most restrictive agreement payments of cash dividends and repurchase of stock cannot exceed, subsequent to December 31, 1976, the sum of $25,000,000, consolidated net income, the aggregate net cash proceeds received by the Company from the issuance or sale of shares of any class of the Company's capital stock, and the aggregate principal amount of funded debt converted into shares of the Company's capital stock. At December 31, 1977 and September 30, 1978 the amounts unrestricted as to payments of dividends and repurchase of stock amounted to approximately $45,000,000 and $75,000,000, respectively.

In connection with its bank loans, the Company has informal arrangements with banks to maintain compensating balances. Withdrawal by the Company of these compensating balances is not legally restricted. Under the most common arrangement the Company is expected to maintain an average balance of 10% of the banks' commitments and 10% of the outstanding loans. Compensating balances at December 31, 1977 and September 30, 1978 amounted to approximately $12,700,000 and $10,800,000, respectively.

The following information pertains to short-term bank loans for the Company and Subsidiaries:

| | Year Ended December 31 1977 | Nine Months Ended September 30 1978 (Unaudited) |
|---|---|---|
| Average interest rates at end of period | 8.3% | 11.3% |
| Maximum amount of short-term borrowings outstanding at any month end during the periods | $46,300,000 | $ 3,700,000 |
| Average aggregate short-term borrowings outstanding during the periods | $16,100,000 | $ 3,300,000 |
| Average interest rate on average aggregate short-term borrowings outstanding during the periods | 7.3% | 10.4% |
| Unused lines of credit available at end of period | $98,000,000 | $97,000,000 |

9. CAPITAL STOCK:

On May 18, 1977 the stockholders approved an amendment to the Company's Certificate of Organization increasing the authorized Common Stock from 10,000,000 shares to 25,000,000 shares. In June 1977 the Company distributed shares to effect a 2-for-1 stock split. All information related to Common Shares and per share data appearing in the financial statements and elsewhere in the notes thereto has been adjusted for the stock split.

The $5.50 Cumulative Preferred Stock is redeemable, at the option of the Company, at $100 per share.

The $1.265 New Preferred Stock is redeemable, at the option of the Company, at $23 per share. Each share of the $1.265 New Preferred Stock is convertible into 2.368 shares of Common Stock.

Shares of Common Stock were reserved for the following:

| | December 31, 1977 | September 30, 1978 (Unaudited) |
|---|---|---|
| Exercise of 3,533,853 and 3,533,540 warrants outstanding at December 31, 1977 and September 30, 1978, respectively, expiring in 1979, entitling the holders to purchase 1.065 shares at $20.655 per share | 3,763,982 | 3,763,644 |
| Conversion of 5½% convertible subordinated debentures | 112,325 | 37,548 |
| Conversion of 5¾% convertible subordinated debentures | 2,210,381 | 2,134,640 |
| Conversion of $1.265 New Preferred Stock | 273,412 | 242,550 |
| Stock options | 597,962 | 536,600 |
| | 6,958,062 | 6,714,982 |

Treasury stock consisted of the following:

| | December 31, 1977 | | September 30, 1978 (Unaudited) | |
|---|---|---|---|---|
| | Shares | Cost | Shares | Cost |
| | | (000's omitted) | | (000's omitted) |
| Common Stock | 1,440,016 | $18,840 | 1,440,016 | $18,840 |
| $5.50 Cumulative Preferred Stock | 55,250 | 3,586 | 57,450 | 3,725 |
| | | $22,426 | | $22,565 |

10. STOCK OPTION PLAN:

Under the Company's qualified Incentive Stock Option Plan of 1966, options to purchase Common Stock were granted to key employees at amounts not less than the market price at the date of grant. Options were granted for five-year periods and were exercisable when granted. No additional options may be granted under this Plan.

Information with respect to options granted under the Plan is as follows (total dollars are expressed in thousands):

| | Number of Shares* | Option Price* | | Market Value at Date of Grant or Exercise | |
|---|---|---|---|---|---|
| | | Per Share | Total | Per Share | Total |
| Outstanding December 31, 1972. | 300,666 | $8.0833 to $20.815 | $2,653 | | |
| Granted | 130,200 | $8.27 to $ 9.4375 | 1,140 | $ 8.27 to $ 9.4375 | $1,140 |
| Exercised | 6,750 | $8.0833 | 55 | $12.2013 | $ 82 |
| Expired or cancelled | 15,180 | $8.0833 to $20.815 | 201 | | |
| Outstanding December 31, 1973. | 408,936 | $8.0833 to $10.5835 | 3,537 | | |
| Granted | 142,900 | $11.25 to $14.1459 | 2,000 | $11.25 to $14.1459 | $2,000 |
| Exercised | 34,760 | $8.0833 to $ 9.625 | 310 | $ 8.4375 to $15.125 | $ 437 |
| Expired or cancelled | 5,396 | $8.0833 to $ 9.4375 | 47 | | |
| Outstanding December 31, 1974. | 511,680 | $8.0833 to $14.1459 | 5,180 | | |
| Exercised | 160,280 | $8.0833 to $ 9.6033 | 1,298 | $10.3125 to $11.9062 | $1,788 |
| Expired or cancelled | 13,930 | $8.0833 | 112 | | |
| Outstanding December 31, 1975 | 337,470 | $8.27 to $14.1459 | 3,770 | | |
| Exercised | 58,436 | $8.27 to $11.50 | 549 | $13.125 to $17.5625 | $ 915 |
| Expired or cancelled | 404 | $8.27 to $11.25 | 5 | | |
| Outstanding December 31, 1976. | 278,630 | $8.27 to $14.1459 | 3,216 | | |
| Exercised | 80,668 | $8.27 to $11.50 | 751 | $16.6875 to $23.1875 | $1,485 |
| Outstanding December 31, 1977. | 197,962 | $8.27 to $14.1459 | 2,465 | | |
| Exercised | 58,212 | $8.27 to $11.50 | 510 | $18.625 to $22.625 | $1,155 |
| Expired or cancelled | 3,150 | $8.27 | 27 | | |
| Outstanding September 30, 1978. | 136,600 | $11.25 to $14.1459 | $1,928 | | |

* Adjusted for 3-for-2 stock split in April, 1974 and the 2-for-1 stock split in June, 1977.

In addition to the above, in 1973 options were exercised for 4,585 of UV Common Stock (13,756 shares after the 3-for-2 and 2-for-1 splits) under the terms of the Federal Pacific Electric Company stock option plan, at prices ranging from $9.07 to $9.44 per share. The Federal Plan has since been terminated.

No charges were made to income in connection with these Plans.

On May 18, 1977 the stockholders approved the Incentive Stock Plan of 1977 under which key employees may be paid compensation through the award of shares of Common Stock, the grant of non-qualified options or the grant of stock appreciation rights. The maximum number of shares which may be utilized under this Plan is 400,000. As of September 30, 1978 no awards had been made under this Plan.

## 11. Provision for Income Taxes:

Provision for income taxes comprises the following:

| | Year ended December 31, | | | | | Nine months ended September 30, (Unaudited) | |
|---|---|---|---|---|---|---|---|
| | 1973 | 1974 | 1975 | 1976 | 1977 | 1977 | 1978 |
| | (000's omitted) | | | | | | |
| The Company and Subsidiaries: | | | | | | | |
| U.S. Federal: | | | | | | | |
| Currently payable | | | | | | | |
| Before investment tax credit | $13,068 | $20,336 | $ 8,956 | $16,359 | $21,869 | $18,319 | $21,225 |
| Investment tax credit | (1,676) | (566) | (1,464) | (1,198) | (1,263) | (748) | (563) |
| Net | 11,392 | 19,770 | 7,492 | 15,161 | 20,606 | 17,571 | 20,662 |
| Deferred | 1,338 | (155) | 2,908 | 2,890 | 5,122 | 3,326 | 2,405 |
| | 12,730 | 19,615 | 10,400 | 18,051 | 25,728 | 20,897 | 23,067 |
| Foreign: | | | | | | | |
| Currently payable | 3,546 | 4,748 | 8,208 | 7,267 | 5,745 | 4,551 | 3,654 |
| Deferred | | 325 | 433 | 350 | 309 | 22 | 250 |
| | 3,546 | 5,073 | 8,641 | 7,617 | 6,054 | 4,573 | 3,904 |
| State | 1,846 | 1,539 | 895 | 1,989 | 2,713 | 1,956 | 2,392 |
| | $18,122 | $26,227 | $19,936 | $27,657 | $34,495 | $27,426 | $29,363 |

Deferred U.S. Federal tax expense results from timing differences in the recognition of income and expense for tax and financial statement purposes. The sources and tax effects of these differences are:

| | Year ended December 31, | | | | | Nine months ended September 30, (Unaudited) | |
|---|---|---|---|---|---|---|---|
| | 1973 | 1974 | 1975 | 1976 | 1977 | 1977 | 1978 |
| | (000's omitted) | | | | | | |
| Excess of tax over book depreciation | $ 227 | $ 941 | $1,607 | $1,355 | $1,973 | $1,325 | $1,135 |
| Reversal of book reserves no longer required | | | | | 852 | 526 | |
| Discontinued operations | (510) | (501) | 957 | (46) | | | |
| Start-up costs expensed for tax purposes and amortized for books | 548 | (356) | (363) | (375) | (272) | (288) | (295) |
| Payments of warranty expenses in excess of current provision | 220 | 257 | 515 | 170 | 35 | (10) | (62) |
| Mine development costs amortized for books and deducted for tax purposes when incurred | 1,357 | (254) | 572 | 490 | 1,224 | 981 | 902 |
| Adjustment of previously deferred tax relating to interest assessment on prior years additional taxes | (228) | 228 | | | | | |
| Intangible drilling costs of oil and gas wells amortized for books and deducted for tax purposes when incurred | 1,099 | 680 | 413 | 400 | 590 | 395 | 738 |
| Other | (1,375) | (1,150) | (793) | 896 | 720 | 397 | (13) |
| | $ 1,338 | $ (155) | $2,908 | $2,890 | $5,122 | $3,326 | $2,405 |

Total tax expense differs from the amount which would be provided by applying the U.S. Federal income tax rate of 48% to income before tax. The reasons for this difference (expressed as a percentage of pretax income) are as follows:

| | Year ended December 31, | | | | | Nine months ended September 30, (Unaudited) | |
|---|---|---|---|---|---|---|---|
| | 1973 | 1974 | 1975 | 1976 | 1977 | 1977 | 1978 |
| Computed "expected" tax expense | 48.0% | 48.0% | 48.0% | 48.0% | 48.0% | 48.0% | 48.0% |
| Gain on disposal of investment in affiliate | | | | | | | (3.2) |
| Effect of foreign translation losses | | | | .4 | 3.0 | 2.9 | 1.7 |
| Effect of percentage depletion | (2.7) | (4.7) | (3.5) | (4.2) | (1.4) | (1.2) | (.7) |
| Effect of equity in net income of affiliate | | | | | (1.3) | | (1.4) |
| Investment tax credit | (2.5) | (1.0) | (3.0) | (1.8) | (1.7) | (1.3) | (.9) |
| Foreign tax rate vs. effective tax rate | | | | (1.6) | (1.9) | (1.4) | (1.0) |
| Provision for estimated tax deficiencies relative to IRS examinations of prior years | | 1.6 | | | | | |
| State and local income taxes, net of federal income tax | 2.3 | 1.4 | 1.1 | 1.6 | 2.0 | 1.5 | 1.5 |
| Other | (0.6) | (0.3) | (1.5) | (.4) | (.3) | .1 | .1 |
| Effective tax rate | 44.5% | 45.0% | 41.1% | 42.0% | 46.4% | 48.6% | 44.5% |

It is the Company's intention to permanently reinvest substantially all of the undistributed earnings of its foreign subsidiaries, and accordingly, no provision has been made for United States income taxes on undistributed foreign earnings, which amounted to $28,380,000 and $30,205,000 at December 31, 1977 and September 30, 1978, respectively.

12. PENSION PLANS:

Aggregate pension expense for the five years ended December 31, 1977 and the nine months ended September 30, 1977 and 1978 amounted to approximately:

| | (000's omitted) |
|---|---|
| 1973 | $2,000 |
| 1974 | $2,500 |
| 1975 | $3,000 |
| 1976 | $4,400 |
| 1977 | $5,300 |
| Nine months ended September 30, 1977 (unaudited) | $4,100 |
| Nine months ended September 30, 1978 (unaudited) | $4,400 |

The increase in pension expense in 1976 was due primarily to pension plan changes resulting from the enactment of the Employee Retirement Income Security Act of 1974.

The aggregate unfunded prior service costs of the plans at December 31, 1977 and September 30, 1978 approximated $36,000,000 and $40,000,000, respectively.

The actuarially computed value of vested benefits for certain of the plans as of the date of the latest actuarial valuation exceeded the total of the pension funds by approximately $28,000,000.

13. LEASE COMMITMENTS:

At December 31, 1977 minimum commitments under all noncancellable leases are as follows:

| | |
|---|---|
| 1978 | $ 2,398,000 |
| 1979 | 1,987,000 |
| 1980 | 1,568,000 |
| 1981 | 1,314,000 |
| 1982 | 1,232,000 |
| Later years | 15,341,000 |
| | $23,840,000 |

There was no material change in noncancellable leases during the nine months ended September 30, 1978.

14. SUPPLEMENTARY PROFIT AND LOSS INFORMATION:

The following amounts have been charged to costs and expenses:

| | Year ended December 31 | | | | | Nine months ended September 30 (Unaudited) | |
|---|---|---|---|---|---|---|---|
| | 1973 | 1974 | 1975 | 1976 | 1977 | 1977 | 1978 |
| | (000's omitted) | | | | | | |
| Maintenance and Repairs | $ 9,695 | $11,679 | $10,371 | $12,891 | $16,928 | $13,518 | $11,717 |
| Depreciation, depletion and amortization of property, plant and equipment | $ 9,029 | $10,695 | $10,444 | $12,360 | $12,094 | $ 8,487 | $ 8,406 |
| Taxes other than income taxes: | | | | | | | |
| Property | $ 3,071 | $ 3,514 | $ 3,907 | $ 3,680 | $ 3,695 | $ 3,197 | $ 3,017 |
| Payroll | 6,052 | 6,438 | 5,403 | 6,782 | 8,181 | 6,568 | 7,526 |
| Other | 1,743 | 2,330 | 1,321 | 1,432 | 1,218 | 1,257 | 1,093 |
| | $10,866 | $12,282 | $10,631 | $11,894 | $13,094 | $11,022 | $11,636 |
| Rents | $ 4,565 | $ 4,286 | $ 4,996 | $ 5,059 | $ 5,596 | $ 4,102 | $ 4,762 |

15. BUSINESS SEGMENTS AND GEOGRAPHIC OPERATIONS:

The Company operates in three business segments—electrical equipment and electronic components; natural resources; and copper and brass fabrication. Operations in the electrical equipment and electronics component segment involve the production and sale, principally in the United States and Canada, of electrical control, distribution and transmission equipment and electronic capacitors and other electronic components. Operations in the natural resource segment involve the mining and milling of copper ore, mining of low sulphur coal, production of oil and gas, lead recycling, gold placer mining and the exploration and development of mineral resources, all principally within the United States. Operations in the copper and brass fabrication segment involve fabrication and sale, principally within the United States of brass rod and forgings and copper tube and wrought fittings. Financial information with respect to the Company's business segments and geographic operations is as follows:

| | Year Ended December 31, 1977 | Nine Months Ended September 30, 1978 (Unaudited) |
|---|---|---|
| **Business Segments:** | | |
| Operating Revenues: | | |
| Electrical and electronic | $336,834 | $265,265 |
| Natural resources | | |
| Unaffiliated customers | 52,395 | 28,952 |
| Intersegment sales | 26,477 | 19,794 |
| | 78,872 | 48,746 |
| Copper and brass fabrication | 196,773 | 153,692 |
| Eliminate intersegment sales | (26,477) | (19,794) |
| | $586,002 | $447,909 |
| Revenues of electrical and electronic and copper and brass fabrication segments are all from unaffiliated customers. Intersegment sales of the natural resource segment consist principally of sales of refined copper to the copper and brass fabrication segment. These sales are accounted for at the published average copper industry's producers' price during the month in which shipments are made. | | |
| Operating profit: | | |
| Electrical and electronic* | $ 50,890 | $ 42,967 |
| Natural resources | 19,978 | (1,005) |
| Copper and brass fabrication* | 16,446 | 12,664 |
| | $ 87,314 | $ 54,626 |
| *Including foreign currency translation losses for: | | |
| Electrical and electronic | $ 4,108 | $ 2,145 |
| Copper and brass fabrication | 198 | 148 |
| | $ 4,306 | $ 2,293 |

| | Year Ended December 31, 1977 | Nine Months Ended September 30, 1978 (Unaudited) |
|---|---|---|
| Identifiable assets: | | |
| Electrical and electronic | $240,461 | $261,494 |
| Natural resources | 145,222 | 156,315 |
| Copper and brass fabrication | 110,730 | 112,519 |
| Corporate assets* | 73,702 | 76,476 |
| | $570,115 | $606,804 |
| *Consist principally of cash, short term investments, marketable equity securities and investment in affiliate. | | |
| Capital expenditures: | | |
| Electrical and electronic | $ 5,558 | $ 4,464 |
| Natural resources | 8,488 | 6,939 |
| Copper and brass fabrication | 4,844 | 3,460 |
| | $ 18,890 | $ 14,863 |
| Depreciation, depletion and amortization: | | |
| Electrical and electronic | $ 4,582 | $ 3,844 |
| Natural resources | 4,722 | 2,357 |
| Copper and brass fabrication | 2,790 | 2,205 |
| | $ 12,094 | $ 8,406 |
| Geographic Operations | | |
| Operating Revenues: | | |
| United States | | |
| Unaffiliated customers | $471,322 | $363,964 |
| Foreign affiliates (principally Canadian)** | 5,649 | 4,850 |
| | 476,971 | 368,814 |
| Canada | | |
| Unaffiliated customers | 100,028 | 69,470 |
| Affiliated customers (principally U.S.)** | 2,527 | 2,697 |
| | 102,555 | 72,167 |
| Other Foreign Countries | | |
| Unaffiliated customers | 14,652 | 14,475 |
| Affiliated customers** | 317 | 148 |
| | 14,969 | 14,623 |
| Eliminations | (8,493) | (7,695) |
| | $586,002 | $447,909 |

**Sales between geographic areas are accounted for at prices comparable to normal unaffiliated sales.

| | Year Ended December 31, 1977 | Nine Months Ended September 30, 1978 (Unaudited) |
|---|---|---|
| Operating profit: | | |
| United States | $ 76,557 | $ 47,187 |
| Canada* | 9,458 | 5,281 |
| Other foreign countries* | 1,299 | 2,158 |
| | $ 87,314 | $ 54,626 |
| *Including foreign currency translation losses for: | | |
| Canada | $ 3,407 | $ 2,479 |
| Other foreign countries | 899 | (186) |
| | $ 4,306 | $ 2,293 |
| Identifiable assets: | | |
| United States | $495,136 | $528,533 |
| Canada | 61,908 | 62,451 |
| Other foreign countries | 15,611 | 17,644 |
| Eliminations | (2,540) | (1,824) |
| | $570,115 | $606,804 |

16. UNAUDITED INTERIM RESULTS OF OPERATIONS:

The unaudited results of operations for interim periods are summarized below:

| | Three months ended | | |
|---|---|---|---|
| | March 31, 1978 | June 30, 1978 | September 30, 1978 |
| | (000's omitted except per share amounts) | | |
| Net Sales | $140,335 | $155,314 | $146,247 |
| Gross Profits | $ 29,086 | $ 36,281 | $ 32,341 |
| Net Income | $ 5,656 | $ 10,256 | $ 19,866(a) |
| Net income per share: | | | |
| Primary | $0.60 | $1.10 | $2.14 |
| Fully diluted | $0.45 | $0.79 | $1.49 |

(a) Includes net income on disposal of investment in affiliate of $13,832,000.

| | Three months ended | | | |
|---|---|---|---|---|
| | March 31, 1977 | June 30, 1977 | September 30, 1977 | December 31, 1977 |
| | (000's omitted except per share amounts) | | | |
| Net Sales | $145,857 | $152,142 | $139,205 | $138,460 |
| Gross Profit | $ 34,344 | $ 37,271 | $ 33,524 | $ 34,634 |
| Net Income | $ 8,891 | $ 10,427 | $ 8,653 | $ 10,189 |
| Net income per share: | | | | |
| Primary | $0.94 | $1.10 | $0.90 | $1.11 |
| Fully diluted | $0.67 | $0.77 | $0.64 | $0.78 |

| | Three months ended | | | |
|---|---|---|---|---|
| | March 31, 1976 | June 30, 1976 | September 30, 1976 | December 31, 1976 |
| | (000's omitted except per share amounts) | | | |
| Net Sales | $123,947 | $132,051 | $128,091 | $126,682 |
| Gross Profit | $ 29,276 | $ 31,210 | $ 29,613 | $ 33,715 |
| Net Income | $ 8,471 | $ 9,381 | $ 7,328 | $ 9,708 |
| Net income per share: | | | | |
| Primary | $0.94 | $1.03 | $0.78 | $1.05 |
| Fully diluted | $0.62 | $0.69 | $0.56 | $0.72 |

17. UNAUDITED CURRENT REPLACEMENT COST INFORMATION:

The replacement cost data presented below is furnished pursuant to Rule 3-17 of Regulation S-X, which was announced in the Securities and Exchange Commission's ("SEC") Accounting Series Release No. 190. In that Release, the SEC cautioned investors and analysts against "simplistic use" of replacement cost information. In issuing that warning, the SEC stated:

> ". . . . (The Commission) intentionally determined not to require the disclosure of the effect on net income of calculating cost of sales and depreciation on a current replacement cost basis, both because there are substantial theoretical problems in determining an income effect and because it did not believe that users should be encouraged to convert the data into a single revised net income figure. The data are not designed to be a simple road map to the determination of 'true income'. In addition, investors must understand that due to the subjective judgments and the many different specific factual circumstances involved, the data will not be fully comparable among companies and will be subject to errors of estimation."

The replacement cost data is based on the hypothetical assumption that the Company would replace its inventory and productive capacity on December 31, 1977 and December 31, 1976 at then existing costs. This assumption requires management to contemplate many actions and make subjective judgments which would not be deemed necessary in the normal course of its current operations. Accordingly, the information should not be interpreted to indicate that the Company actually has present plans to replace its productive capacity or that actual replacement would or could take place in the manner assumed in producing the required information. In the normal course of business, the Company will replace its productive capacity over an extended period of time at costs which may differ significantly from those referred to herein. Decisions concerning replacement would be made in the light of economic, regulatory and competitive conditions existing on the dates such determinations are actually made and could differ substantially from the assumptions on which the data included herein are based.

The replacement cost data presented herein are not necessarily representative of the "current value" at which the assets could be sold. Therefore, the difference between the replacement cost and the historical cost of inventory and productive capacity does not represent additional book value but instead may indicate additional funds which might be required to replace existing capacity. The funds for the eventual replacement of the Company's productive capacity may be provided not only by earnings retained after payment of dividends but also by investment tax credits, debt, or issues of equity securities.

The replacement cost data presented below does not reflect all of the effects of inflation and other economic factors on the Company's current costs of operating the business. Rule 3-17 does not require consideration of these effects on assets and liabilities other than inventories and productive capacity. The

Company has not attempted to quantify the total impact of inflation and changes in general economic factors that could affect its business.

The replacement cost data required by Rule 3-17 is presented below, subject to the above comments:

| | 1977 | | 1976 | |
|---|---|---|---|---|
| | Replacement Cost | Historical Cost | Replacement Cost | Historical Cost |
| | (000's ommitted) | | | |
| Inventories | $178,592 | $153,121 | $175,703 | $148,735 |
| Properties, plant and equipment— | | | | |
| Manufacturing machinery and equipment | $194,576 | $ 98,742 | $178,585 | $ 92,438 |
| Manufacturing buildings | 84,790 | 47,605 | 80,040 | 46,026 |
| Mill buildings and equipment | 65,171 | 32,209 | | |
| Mine buildings and equipment | 50,687 | 22,362 | | |
| Rolling stock, equipment and other railway properties | 25,998 | 4,168 | | |
| | 421,222 | 205,086 | 258,625 | 138,464 |
| Less, accumulated depreciation | 206,398 | 91,262 | 130,681 | 64,955 |
| | $214,824 | $113,824 | $127,944 | $ 73,509 |
| Cost of products sold (exclusive of depreciation and depletion) | $422,845 | $419,988 | $391,278 | $379,518 |
| Depreciation: | | | | |
| Included in cost of products sold | $ 15,400 | $ 8,837 | $ 9,680 | $ 6,662 |
| Included in selling, general and administrative expenses | 1,021 | 698 | 782 | 530 |
| | $ 16,421 | $ 9,535 | $ 10,462 | $ 7,192 |

The basic replacement cost data presented above does not reflect any operating cost savings which the Company believes may result from the replacement of existing assets with assets of improved technology.

If the Company's productive capacity were to be replaced in a manner assumed in the calculation of replacement cost of existing productive capacity, the Company believes certain costs other than depreciation (e.g., direct labor costs, repairs and maintenance, utilities), particularly those related to the Company's copper and brass fabrication business, might be improved. Although these expected cost changes cannot be quantified with any great precision, the current level of operating costs other than depreciation would be reduced as a result of the technological improvements assumed in the hypothetical replacement. It should also be noted that no attempt was made to re-engineer the Company's productive capacity. Actual future replacements would, in many instances, contemplate improved and more efficient manufacturing techniques and therefore could result in additional cost savings.

Further, the above replacement cost information standing alone does not recognize the customary relationships between cost changes and changes in selling prices. The Company has been able, over the past several years, consistent with competitive and regulatory conditions, to adjust selling prices in relation to cost changes. Although there is no assurance that it will be able to do so in the future, the Company presently intends to modify its selling prices to recognize future cost changes.

The following reconciles the comparable related historical cost amounts included in the consolidated balance sheets and income statements for the years 1977 and 1976, with the historical amounts for which

replacement cost data have and have not been provided. The totals are the same as the "Historical Cost" shown above.

| | Inventories | Property Plant and Equipment | Accumulated Depreciation | Cost of Products Sold(a) | Depreciation and Depletion |
|---|---|---|---|---|---|
| | | | (000's omitted) | | |
| 1977: | | | | | |
| Totals as shown in the accompanying consolidated financial statements | $155,518 | $309,814 | $138,084 | $424,630 | $12,094(b) |
| Less, amounts for which replacement cost data have not been provided: | | | | | |
| Depletable mining properties | | 24,353 | 7,695 | | 486 |
| Oil and gas producing assets | | 32,955 | 10,529 | | 1,764 |
| Assets not currently expected to be replaced. | 2,397 | 35,979 | 28,598 | 4,642 | 309 |
| Land, land improvements, track structures and construction in progress, at cost | | 11,440 | | | |
| Historical amounts for which replacement cost data have been replaced | $153,121 | $205,087 | $ 91,262 | $419,988 | $ 9,535 |
| 1976: | | | | | |
| Totals as shown in the accompanying consolidated financial statements | $151,025 | $293,592 | $128,001 | $380,251 | $12,360 |
| Less amounts for which replacement cost data have not been provided: | | | | | |
| Mineral resource assets | | 139,852 | 56,903 | | 4,789 |
| Operations located outside North America and the European Economic Community | 2,290 | 2,504 | 878 | 753 | 169 |
| Assets not currently expected to be replaced. | | 7,083 | 5,265 | | 210 |
| Land, land improvements and construction in progress, at cost | | 5,689 | | | |
| Historical amounts for which replacement cost data have been provided | $148,735 | $138,464 | $ 64,955 | $379,518 | $ 7,192 |

(a) Exclusive of depreciation and depletion.

(b) Includes $833,000 of depreciation charged to administrative expenses.

The methods used in determining current replacement cost are as follows:

Inventories—Raw materials were estimated on the basis of a combination of cost indices applied, where appropriate, to historical or standard costs and the use of most recent purchase prices. Finished goods and work in process have been estimated on the basis of a combination of standard costs adjusted to reflect current material, labor and overhead variances and historical costs adjusted to current labor and overhead experience, including adjustments to reflect depreciation on a current replacement cost basis.

Buildings—Current replacement cost was estimated as appropriate by the use of current published construction costs per square foot for equivalent floor space, independent studies and appraisals utilizing local building cost indices and quoted construction costs. Where used, the independent studies contemplated current construction techniques and building design to accomodate current productive capacity.

Machinery and equipment—Where practicable current replacement cost was estimated by reference to current quoted prices or estimates of current market prices; however, current replacement cost was estimated primarily by the use of cost indices applied to historical costs. In one division a 44% sample was taken to determine current quoted market prices and the data relevant to this sample was processed through a least squares model to determine correlation and percent variability explained. Confidence limits were established and internal computed factors developed. These internal computed factors were

then applied to the original cost of all machinery and equipment by year of acquisition to compute replacement cost. In addition, where a recent appraisal was made, cost indices were applied to appraised values.

Cost of products sold—Current replacement cost of sa · was estimated by adjusting historical costs for the approximate time lag between acquisition of inventory and its subsequent conversion into sales revenue.

Depreciation—Estimated on the basis of a straight-line depreciation of the replacement cost of productive capacity using the same estimates of useful lives and salvage values utilized in preparing the historical cost financial statements. Average replacement cost of productive capacity at the end of the year, exclusive of 1977 and 1976 additions, was used in determining the basis upon which depreciation expense was computed. Depreciation expense for current year additions is stated at historical cost.

All replacement cost amounts related to foreign assets, cost of products sold and depreciation expense have been initially calculated in the relevant foreign currency and then translated to U.S. dollars using year end rates of exchange for assets and yearly average rates of exchange for cost of products sold and depreciation expense.

18. SUBSEQUENT EVENTS:

Pursuant to a Stock Purchase Agreement dated December 18, 1978 between the Company, New REC, Inc. and New REC's parent, Reliance Electric Company, the Company has agreed to sell all of the outstanding capital stock of its wholly-owned subsidiary, Federal Pacific Electric Company ("Federal"), to New REC, Inc. The sale is subject to approval by the Company's stockholders.

On January 17 and on February 9, 1979 the Board of Directors voted to approve a Plan of Liquidation and Dissolution (the "Plan"), subject to stockholder approval. In addition the Board of Directors voted to redeem, on February 28, 1979, all of the Company's outstanding 5¾% Convertible Subordinated Debentures and $1.265 New Preferred Stock.

If the Company's stockholders approve the sale of Federal without approving the Plan, the Company will realize a gain of approximately $110,000,000 over the book value of Federal at September 30, 1978, net of estimated income taxes of approximately $42,000,000. If the Company's stockholders also approve the Plan and such liquidation is completed within one year from the date of the adoption of the Plan, th · the Company could realize a nontaxable gain of approximately $152,000,000 over the book value of Federal at September 30, 1978.

## FEDERAL PACIFIC ELECTRIC COMPANY AND SUBSIDIARIES

### CONSOLIDATED BALANCE SHEET

### ASSETS

| | December 31, 1977 | September 30, 1978 (Unaudited) |
|---|---|---|
| | (000's omitted) | |
| Current assets: | | |
| Cash (Note 3) | $ 14,582 | $ 17,059 |
| Time deposits and certificates of deposit | 2,668 | 5,100 |
| Accounts receivable, trade, less allowance for doubtful accounts, $1,255,000 at December 31, 1977 and $1,571,000 at September 30, 1978 | 64,302 | 76,111 |
| Receivable from parent and affiliate | 61 | 53 |
| Inventories (Note 1b) | 92,416 | 96,024 |
| Prepaid expenses and other current assets | 1,398 | 1,406 |
| Total current assets | 175,427 | 195,753 |
| Properties, plants and equipment, at cost (Notes 1c and 2) | 83,228 | 87,515 |
| Less, Accumulated depreciation and amortization (Notes 1c and 2). | 43,339 | 47,109 |
| | 39,889 | 40,406 |
| Cost in excess of net assets of a business acquired | 419 | 407 |
| Deferred charges and other assets | 618 | 951 |
| | $216,353 | $237,517 |

See notes to financial statements.

## FEDERAL PACIFIC ELECTRIC COMPANY AND SUBSIDIARIES

### CONSOLIDATED BALANCE SHEET

### LIABILITIES

| | December 31, 1977 | September 30, 1978 (Unaudited) |
|---|---|---|
| | (000's omitted) | |
| Current liabilities: | | |
| Notes payable to banks (Note 3) | $ 2,758 | $ 2,917 |
| Accounts payable | 12,971 | 15,093 |
| Accrued expenses: | | |
| Salaries, wages and other compensation | 4,795 | 5,116 |
| Taxes, other than income taxes | 717 | 787 |
| Interest | 288 | 245 |
| Other | 3,720 | 4,354 |
| Income taxes payable | 5,356 | 4,866 |
| Current instalments on long-term debt (Note 4) | 1,601 | 1,637 |
| Total current liabilities | 32,206 | 35,015 |
| Long-term debt, less current instalments (Note 4) | 11,505 | 8,962 |
| De.. ed income taxes (Notes 1e and 6) | 4,168 | 4,490 |
| Oth long-term liabilities and deferred credits | 45 | 9 |
| Minority interests in consolidated subsidiaries (Note 1a) | 19,215 | 19,952 |

### STOCKHOLDER'S EQUITY

| | | |
|---|---|---|
| Common stock, $10 par value: | | |
| Authorized and outstanding, 100 shares (Note 1a) | 1 | 1 |
| Additional paid-in capital | 41,892 | 42,595 |
| Retained earnings, as annexed (Note 4) | 107,321 | 126,493 |
| Total stockholder's equity | 149,214 | 169,089 |
| | $216,353 | $237,517 |

See notes to financial statements.

## FEDERAL PACIFIC ELECTRIC COMPANY AND SUBSIDIARIES

### CONSOLIDATED STATEMENT OF CHANGES IN STOCKHOLDER'S EQUITY

| | Additional Paid-In Capital | Retained Earnings |
|---|---|---|
| | (000's omitted) | |
| YEAR ENDED DECEMBER 31, 1973: | | |
| Balance at December 31, 1972 | $32,963 | $ 34,560 |
| Principal amount of 5½% convertible subordinated debentures converted into common stock of parent company, UV Industries, Inc. | 970 | |
| Net income | | 12,102 |
| Cash dividends declared | | (2,500) |
| Balance at December 31, 1973 | 33,933 | 44,162 |
| YEAR ENDED DECEMBER 31, 1974: | | |
| Principal amount of 5½% convertible subordinated debentures converted into common stock of parent company, UV Industries, Inc. | 2,393 | |
| Net income | | 12,046 |
| Balance at December 31, 1974 | 36,326 | 56,208 |
| YEAR ENDED DECEMBER 31, 1975: | | |
| Principal amount of 5½% convertible subordinated debentures converted into common stock of parent company, UV Industries, Inc. | 2,062 | |
| Net income | | 16,470 |
| Cash dividends declared | | (5,000) |
| Balance at December 31, 1975 | 38,388 | 67,678 |
| YEAR ENDED DECEMBER 31, 1976: | | |
| Principal amount of 5½% convertible subordinated debentures converted into common stock of parent company, UV Industries, Inc. | 2,394 | |
| Net income | | 22,009 |
| Cash dividends declared | | (4,000) |
| Balance at December 31, 1976 | 40,782 | 85,687 |
| YEAR ENDED DECEMBER 31, 1977: | | |
| Principal amount of 5½% convertible subordinated debentures converted into common stock of parent company, UV Industries, Inc. | 1,110 | |
| Net income | | 21,634 |
| Balance at December 31, 1977 | $41,892 | $107,321 |
| NINE MONTHS ENDED SEPTEMBER 30, 1978: (UNAUDITED) | | |
| Balance at December 31, 1977 | $41,892 | $107,321 |
| Principal amount of 5½% convertible subordinated debentures converted into common stock of parent company, UV Industries, Inc. | 703 | |
| Net income | | 19,172 |
| Balance at September 30, 1978 | $42,595 | $126,493 |

There were no changes in the Common Stock, $10 par value, during the five years ended December 31, 1977 and for the nine months ended September 30, 1978. Such shares (100) have an aggregate par value of $1,000.

See notes to financial statements.

# FEDERAL PACIFIC ELECTRIC COMPANY AND SUBSIDIARIES

## CONSOLIDATED STATEMENT OF CHANGES IN FINANCIAL POSITION

| | Year ended December 31, | | | | | Nine months ended September 30, (Unaudited) | |
|---|---|---|---|---|---|---|---|
| | 1973 | 1974 | 1975 | 1976 | 1977 | 1977 | 1978 |
| | (000's omitted) | | | | | | |
| SOURCE OF WORKING CAPITAL: | | | | | | | |
| Net income | $12,102 | $ 12,046 | $ 16,470 | $22,009 | $21,634 | $15,955 | $19,172 |
| Elements not requiring working capital: | | | | | | | |
| Minority interests in earnings of consolidated subsidiaries | 1,593 | 2,473 | 4,231 | 3,459 | 1,661 | 1 055 | 1,014 |
| Depreciation and amortization | 3,420 | 3,645 | 3,967 | 4,796 | 4,582 | 3,462 | 3,844 |
| Provision for deferred income taxes | 5 | 602 | 805 | 713 | 528 | 132 | 324 |
| Working capital provided from operations | 17,120 | 18,716 | 25,473 | 30,977 | 28,405 | 20,604 | 24,354 |
| Contribution of capital relating to conversion of 5½% convertible subordinated debentures into common stock of parent company | 970 | 2,393 | 2,062 | 2,394 | 1,110 | 1,061 | 703 |
| Disposal of property, plant and equipment | 289 | 1,113 | 108 | 106 | 18 | | 92 |
| | 18,379 | 22,222 | 27,643 | 33,477 | 29,533 | 21,665 | 25,149 |
| USE OF WORKING CAPITAL: | | | | | | | |
| Decrease in minority interests in consolidated subsidiaries | 280 | 251 | 344 | 1,262 | 748 | 672 | 277 |
| Decrease in non-current portion of long-term debt | 2,417 | 3,697 | 4,879 | 3,889 | 2,729 | 2,782 | 2,543 |
| Cash dividends | 2,500 | | 5,000 | 4,000 | | | |
| Additions to properties, plants and equipment | 5,427 | 7,057 | 5,866 | 4,607 | 5,558 | 3,491 | 4,465 |
| Other, net | (1,146) | 534 | 1,219 | 136 | 70 | 46 | 347 |
| | 9,478 | 11,539 | 17,308 | 13,894 | 9,105 | 6,991 | 7,632 |
| INCREASE (DECREASE) IN WORKING CAPITAL | $ 8,901 | $ 10,683 | $ 10,335 | $19,583 | $20,428 | $14,674 | $17,517 |
| Components of increase (decrease) in working capital: | | | | | | | |
| Cash, time deposits, certificates of deposit | $(2,546) | $ 942 | $ 1,954 | $(2,006) | $10,372 | $ 1,400 | $ 4,909 |
| Receivables | 8,791 | (190) | 11,480 | 4,568 | (1,145) | 6,558 | 11,809 |
| Inventories | 12,708 | 27,450 | (17,489) | 15,438 | 642 | (1,608) | 3,608 |
| Notes payable to banks | (6,304) | (11,401) | 13,626 | 1,057 | 9,832 | 9,466 | (159) |
| Accounts payable and accrued expenses | (5,895) | (2,430) | 3,483 | (4,960) | 3,062 | 1,187 | (3,104) |
| Income taxes payable | 2,082 | (927) | (4,709) | 3,059 | (1,793) | (330) | 490 |
| Notes payable to parent | | (4,700) | 4,700 | | | (2,000) | |
| Other | 65 | 1,939 | (2,710) | 1,536 | (542) | 1 | (36) |
| | $ 8,901 | $ 10,683 | $ 10,335 | $19,583 | $20,428 | $14,674 | $17,517 |

See notes to financial statements.

## FEDERAL PACIFIC ELECTRIC COMPANY AND SUBSIDIARIES

### NOTES TO FINANCIAL STATEMENTS

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES:

a. *Principles of Consolidation*—The consolidated financial statements include the accounts of the Company and its Subsidiaries. Federal Pacific Electric Company, is a wholly-owned subsidiary of UV Industries, Inc. Transactions with the parent and affiliated companies are not material.

The equity of minority shareholders in subsidiary companies is summarized as follows:

| | December 31, 1977 | September 30, 1978 (Unaudited) |
|---|---|---|
| | (000's omitted) | |
| Preferred stock | $ 448 | $ 77 |
| Common stock | 3,542 | 3,913 |
| Capital in excess of par value | 637 | 637 |
| Retained earnings | 14,588 | 15,325 |
| | $19,215 | $19,952 |

b. *Inventories* are valued principally at the lower of first-in, first-out cost or market.

Inventories consisted of the following:

| | December 31, 1977 | September 30, 1978 (Unaudited) |
|---|---|---|
| | (000's omitted) | |
| Finished goods | $25,135 | $28,159 |
| Work in process and manufactured parts | 27,888 | 28,887 |
| Raw materials and supplies | 39,393 | 38,978 |
| | $92,416 | $96,024 |

Inventories used in the computation of cost of products sold were as follows:

| | (000's omitted) |
|---|---|
| December 31, 1972 | $53,667 |
| December 31, 1973 | $66,375 |
| December 31, 1974 | $93,824 |
| December 31, 1975 | $76,335 |
| December 31, 1976 | $91,774 |
| December 31, 1977 | $92,416 |
| September 30, 1977 (unaudited) | $90,166 |
| September 30, 1978 (unaudited) | $96,024 |

c. *Property, Plant and Equipment* are stated at cost. Expenditures for additions, renewals and betterments are capitalized; expenditures for maintenance and repairs are charged to operations. At the time properties are sold, retired, or otherwise disposed of, the costs and accumulated depreciation thereon are eliminated from the accounts and the difference between the net amount so disposed of and the sale or salvage amount from such disposal is reflected in operations.

Depreciation has been provided principally on the straightline basis at varying rates based on the estimated lives of properties. The annual depreciation rates are as follows:

| | |
|---|---|
| Buildings and structures | 15-50 years |
| Machinery and equipment | 3-15 years |
| Leasehold improvements | Term of lease |

d. *Federal Income Taxes*—The earnings of the Company and its domestic subsidiary are to be included in the consolidated federal income tax return of the parent company. Periodic payments have been made to the parent and applied against the Company's federal income tax liability. Federal income and other taxes have not been provided on undistributed earnings of foreign subsidiaries which approximated $26,059,000 and $27,800,000 as of December 31, 1977 and September 30, 1978, respectively, since it is the Company's intention to reinvest substantially all of the undistributed earnings of these subsidiaries.

The Company follows the policy of treating Investment Tax Credits, which are not significant to the operations of the Company, as reductions of the federal income tax provision in the year in which the credits are deductible for federal income tax purposes.

e. *Deferred Federal Income Taxes* relate primarily to differences between book and tax depreciation.

f. *Pension Costs*—The Company and its Subsidiaries have noncontributory plans for certain hourly employees and contributory retirement plans for salaried employees. Total pension expense under the plans for the five years ended December 31, 1977 and the nine months ended September 30, 1977 and 1978 amounted to approximately:

| | (000's omitted) |
|---|---|
| 1973 | $ 530 |
| 1974 | $ 740 |
| 1975 | $ 906 |
| 1976 | $1,378 |
| 1977 | $1,721 |
| Nine months ended September 30, 1977 (unaudited) | $1,360 |
| Nine months ended September 30, 1978 (unaudited) | $1,655 |

Pension cost is funded as accrued. The aggregate unfunded prior service costs of the plans at December 31, 1977 and September 30, 1978 approximated $4,658,000 and $7,117,000, respectively.

The actuarial computed value of vested benefits of the plans as of the latest actuarial valuation exceeded the total of the pension funds by approximately $4,756,000.

Increased pension expense results principally from certain changes in actuarial methods and assumptions resulting from compliance with the Employee Retirement Income Security Act of 1974.

2. PROPERTY, PLANT AND EQUIPMENT:

Property, plant and equipment consists of the following:

| | December 31, 1977 | September 30, 1978 (Unaudited) |
|---|---|---|
| | (000's omitted) | |
| Land and improvements | $ 2,088 | $ 2,037 |
| Buildings and improvements | 28,203 | 28,542 |
| Machinery and equipment | 49,244 | 53,227 |
| Leased property under capital leases | 3,693 | 3,709 |
| | 83,228 | 87,515 |
| Less accumulated depreciation | 43,339 | 47,109 |
| | $39,889 | $40,406 |

3. SHORT-TERM BORROWINGS AND COMPENSATING BALANCES:

| | December 31, 1977 | September 30, 1978 (Unaudited) |
|---|---|---|
| | (000's omitted) | |
| Borrowings of subsidiaries outside the U.S. and Canada | $2,758 | $2,917 |

The following information pertains to short-term bank loans for the Company and Subsidiaries:

| | Year ended December 31, 1977 | Nine months ended September 30, 1978 (Unaudited) |
|---|---|---|
| Average interest rates at end of period | 8.2% | 11.3% |
| Maximum amount of short-term borrowings outstanding at any month end during the periods | $12,000,000 | $ 2,900,000 |
| Average aggregate short-term borrowings outstanding during the periods | $ 8,000,000 | $ 2,700,000 |
| Average interest rate on average aggregate short-term borrowings outstanding during the periods | 7.7% | 10.5% |
| Unused lines of credit available at end of period | $40,000,000 | $39,000,000 |

The short-term borrowings outstanding are evidenced by promissory term notes and overdraft borrowing agreements. Generally, the Company and Subsidiaries have informal agreements with their lenders to maintain compensating balances. Compensating balances at December 31, 1977 and September 30, 1978 amounted to approximately $2,100,000 and $1,000,000, respectively.

4. LONG-TERM DEBT:

Long-term debt includes the following:

| | December 31, 1977 | September 30, 1978 (Unaudited) |
|---|---|---|
| | (000's omitted) | |
| 5¼%-6½% notes payable to insurance companies, due 1978-1981 | $ 4,975 | $ 3,875 |
| 5½% convertible subordinated debentures, due 1987 | 1,056 | 353 |
| 5¾%-6% mortgage loans, due 1978-1981 | 373 | 291 |
| 5⅞% lease obligations, due 1978-1991 | 2,535 | 2,420 |
| 6¼% sinking fund debentures, due 1978-1987 | 3,081 | 2,714 |
| 6½%-10% mortgage and bank loans, due 1978-1990 | 777 | 695 |
| Capital lease obligations, due 1978-1980 | 309 | 251 |
| | 13,106 | 10,599 |
| Less, portion included in current liabilities | 1,601 | 1,637 |
| | $11,505 | $ 8,962 |

Aggregate maturities of total long-term debt of the Company and Subsidiaries for the three months ended December 31, 1978 and each of the five years 1979-1983 are as follows:

| | (000's omitted) |
|---|---|
| Three months ended December 31, 1978 | $ 62 |
| 1979 | $1,628 |
| 1980 | $2,299 |
| 1981 | $1,393 |
| 1982 | $ 368 |
| 1983 | $ 386 |

At the option of the holder, the 5½% convertible subordinated debentures are convertible into common stock of the parent company at any time prior to maturity at a conversion rate of 106.368 shares for each $1,000 principal amount of debentures (equivalent to $9.40 per common share). The Company has the option to double any sinking fund payments and can call the debentures for early retirement at rates ranging from 102.50% of face value in 1978 decreasing annually to 100% in 1985. At December 31, 1977 and September 30, 1978, $8,944,000 and $9,647,000, respectively, of principal amount of debentures, acquired by the Company through conversions, is available for the annual sinking fund requirements of $700,000 which commenced in 1977.

The 6¼% sinking fund debentures are collateralized by the fixed assets of a subsidiary which have an undepreciated book cost approximating $8,922,000.

The various long-term debt agreements require, among other things, consolidated working capital of not less than $36,500,000 and contain certain dividend and other restrictions. At December 31, 1977 and September 30, 1978, retained earnings approximating $40,000,000 and $49,000,000, respectively, were free of such restrictions.

5. LEASE COMMITMENTS:

The Company conducts a portion of its business from leased facilities, including certain manufacturing plants, warehouses and sales offices. In addition, certain machinery and equipment used in the business is leased.

At December 31, 1977, the future minimum rental payments under all noncancellable leases are as follows:

| | (000's omitted) |
|---|---|
| 1978 | $ 1,698 |
| 1979 | 1,375 |
| 1980 | 1,130 |
| 1981 | 952 |
| 1982 | 884 |
| Thereafter | 7,041 |
| | $13,080 |

There was no material change in non-cancellable leases during the nine months ended September 30, 1978.

6. PROVISION FOR INCOME TAXES:

Provision for income taxes comprises the following:

| | Year ended December 31, | | | | | Nine months ended September 30, (Unaudited) | |
|---|---|---|---|---|---|---|---|
| | 1973 | 1974 | 1975 | 1976 | 1977 | 1977 | 1978 |
| | (000's omitted) | | | | | | |
| U.S. Federal: | | | | | | | |
| Currently payable | | | | | | | |
| Before investment tax credit | $ 8,572 | $ 8,114 | $ 8,597 | $14,617 | $18,122 | $13,607 | $16,580 |
| Investment tax credit | (142) | (103) | (183) | (150) | (183) | (120) | (154) |
| Net | 8,430 | 8,011 | 8,414 | 14,467 | 17,939 | 13,487 | 16,426 |
| Deferred | (404) | 346 | 407 | 374 | 232 | 110 | 74 |
| | 8,026 | 8,357 | 8,821 | 14,841 | 18,171 | 13,597 | 16,500 |
| Foreign: | | | | | | | |
| Currently payable | 3,316 | 4,582 | 8,079 | 6,963 | 5,577 | 4,398 | 3,486 |
| Deferred | 61 | 256 | 398 | 339 | 296 | 22 | 250 |
| | 3,377 | 4,838 | 8,477 | 7,302 | 5,873 | 4,420 | 3,736 |
| State | 1,150 | 800 | 1,016 | 1,815 | 2,175 | 1,604 | 1,955 |
| | $12,553 | $13,995 | $18,314 | $23,958 | $26,219 | $19,621 | $22,191 |

Total tax expense differs from the amount which would be provided by applying the U.S. Federal income tax rate of 48% to income before tax. The reasons for this difference (expressed as a percentage of pretax income) are as follows:

| | Year ended December 31, | | | | | Nine months ended September 30, (Unaudited) | |
|---|---|---|---|---|---|---|---|
| | 1973 | 1974 | 1975 | 1976 | 1977 | 1977 | 1978 |
| Computed "expected" tax expense | 48.0% | 48.0% | 48.0% | 48.0% | 48.0% | 48.0% | 48.0% |
| Adjustments resulting from audits of prior years' tax returns | | 3.2 | | | | | |
| Effect of foreign translation losses | | | | .5 | 4.2 | 4.3 | 2.5 |
| Difference between tax provisions for foreign income, subject to foreign income tax, but not expected to be subject to U.S. tax at 48% rate | (2.0) | (2.9) | (2.3) | (2.0) | (2.6) | (2.1) | (1.5) |
| State and local income taxes, net of federal income tax | 2.2 | 1.5 | 1.4 | 2.0 | 2.3 | 2.3 | 2.4 |
| Investment tax credits | (.5) | (.4) | (.5) | (.3) | (.4) | (.3) | (.4) |
| Other | .1 | (.2) | .3 | .3 | 1.5 | 1.4 | 1.4 |
| Effective tax rate | 47.8% | 49.2% | 46.9% | 48.5% | 53.0% | 53.6% | 52.4% |

## 7. Financial Information By Industry Segments and Geographic Areas:

### a. *Industry Segments:*

The Company is engaged in two industry segments—the manufacture and sale of electrical control, distribution and transmission equipment, including circuit breakers, panelboards, transformers and assembled switchgear; and the manufacture and sale of electronic components, including electromechanical components and assemblies.

| | Year Ended December 31, 1977 (000's omitted) | | | |
|---|---|---|---|---|
| | Electrical | Electronic | Eliminations | Consolidated |
| Revenues from unaffiliated customers | $289,900 | $46,934 | | $336,834 |
| Intersegment sales | 55 | 3,973 | ($4,028) | |
| Total revenue | $289,955 | $50,907 | ($4,028) | $336,834 |
| Operating profit | $ 47,059 | $ 4,006 | | $ 51,065* |
| Interest expense | | | | 1,551 |
| Income before minority interest and income taxes | | | | $ 49,514 |
| Identifiable assets at December 31, 1977 | $185,464 | $30,957 | ($68) | $216,353 |
| Depreciation and amortization | $ 3,862 | $ 720 | | $ 4,582 |
| Capital expenditures | $ 4,223 | $ 1,335 | | $ 5,558 |

| | Nine Months Ended September 30, 1978 (Unaudited) | | | |
|---|---|---|---|---|
| | (000's omitted) | | | |
| | Electrical | Electronic | Eliminations | Consolidated |
| Revenues from unaffiliated customers | $225,982 | $39,282 | | $265,264 |
| Intersegment sales | 66 | 2,802 | ($2,868) | |
| Total revenue | $226,048 | $42,084 | ($2,868) | $265,264 |
| Operating profit | $ 39,116 | $ 3,982 | | $ 43,098* |
| Interest expense | | | | 721 |
| Income before minority interest and income taxes | | | | $ 42,377 |
| Identifiable assets at September 30, 1978 | $205,258 | $32,395 | ($136) | $237,517 |
| Depreciation and amortization | $ 3,207 | $ 637 | | $ 3,844 |
| Capital expenditures | $ 3,864 | $ 601 | | $ 4,465 |

b. *Geographic Areas:*

| | Year Ended December 31, 1977 | | | | |
|---|---|---|---|---|---|
| | (000's omitted) | | | | |
| | United States | Canada | Other Foreign | Eliminations | Consolidated |
| Revenue from unaffiliated customers | $227,799 | $94,383 | $14,652 | | $336,834 |
| Sales between geographic areas | 4,255 | 2,527 | 317 | ($7,099) | |
| Total revenue | $232,054 | $96,910 | $14,969 | ($7,099) | $336,834 |
| Operating profit | $ 41,243 | $ 8,552 | $ 1,299 | ($29) | $ 51,065* |
| Interest expense | | | | | 1,551 |
| Income before minority interest and income taxes | | | | | $ 49,514 |
| Identifiable assets at December 31, 1977 | $144,461 | $58,821 | $15,611 | ($2,540) | $216,353 |

| | Nine Months Ended September 30, 1978 (Unaudited) | | | | |
|---|---|---|---|---|---|
| | (000's omitted) | | | | |
| | United States | Canada | Other Foreign | Elimination | Consolidated |
| Revenue from unaffiliated customers | $188,970 | $61,967 | $14,327 | | $265,264 |
| Sales between geographic areas | 3,405 | 2,697 | 147 | ($6,249) | |
| Total revenue | $192,375 | $64,664 | $14,474 | ($6,249) | $265,264 |
| Operating profit | $ 36,412 | $ 4,557 | $ 2,157 | ($28) | $ 43,098* |
| Interest expense | | | | | 721 |
| Income before minority interest and income taxes | | | | | $ 42,377 |
| Identifiable assets at September 30, 1978 | $162,644 | $59,053 | $17,644 | ($1,824) | $237,517 |

* Includes foreign currency exchange losses relating principally to the Company's Canadian and Mexican operations in the electrical segment as follows:

| | (000's omitted) |
|---|---|
| Year 1977 | $4,109 |
| Nine months ended September 30, 1978 (unaudited) | $2,145 |

Total revenue by industry segment includes both sales to unaffiliated customers, as reported in the Company's consolidated income statement, and intersegment sales, which are made at prevailing market price.

The principal operation included in "Other Foreign" is located in Mexico. Sales between geographic areas are made at prevailing market prices.

8. UNAUDITED QUARTERLY FINANCIAL INFORMATION:

The unaudited results of operations for interim periods are summarized below:

| 1978 Calendar Quarter Ended | Net Sales | Gross Profit | Income Before Minority Interest and Income Taxes | Net Income |
|---|---|---|---|---|
| March 31 | $ 86,511 | $23,707 | $13,070 | $ 5,832 |
| June 30 | 91,260 | 25,943 | 16,341 | 7,509 |
| September 30 | 85,901 | 24,088 | 12,966 | 5,831 |
| | $263,672 | $73,738 | $42,377 | $19,172 |
| **1977 Calendar Quarter Ended** | | | | |
| March 31 | $ 83,554 | $22,366 | $10,464 | $ 4,163 |
| June 30 | 88,100 | 23,643 | 12,921 | 5,885 |
| September 30 | 83,350 | 23,352 | 13,246 | 5,907 |
| December 31 | 81,181 | 23,303 | 12,883 | 5,679 |
| | $336,185 | $92,664 | $49,514 | $21,634 |

| 1976 Calendar Quarter Ended | Net Sales | Gross Profit | Income Before Minority Interest and Income Taxes | Net Income |
|---|---|---|---|---|
| March 31 | $ 78,234 | $21,641 | $12,972 | $ 5,805 |
| June 30 | 82,762 | 21,825 | 13,187 | 5,971 |
| September 30 | 78,905 | 21,147 | 10,830 | 4,484 |
| December 31 | 79,005 | 23,946 | 12,437 | 5,749 |
| | $318,906 | $88,559 | $49,426 | $22,009 |

9. Replacement Cost Data (Unaudited):

In compliance with Securities and Exchange Commission requirements (as set forth in their Accounting Series Release No. 190) management has estimated the current replacement cost of the Company's productive capacity and related accumulated depreciation as of December 31, 1977 and 1976 and depreciation expense on a current replacement cost basis for the years then ended. In addition, management has estimated the replacement cost of inventories as of December 31, 1977 and 1976 and the cost of products sold (at the time of sale) during the years then ended.

The current replacement cost of buildings was estimated primarily through the use of independent studies and appraisals utilizing local building cost indexes and quoted construction costs. Such independent studies contemplated current construction techniques and building design.

Where applicable, the replacement cost of machinery and equipment was estimated on the basis of current quoted prices or estimates of current market prices. The remaining machinery and equipment replacement costs were estimated through the use of cost indexes applied to historical costs or recent (1973) appraisals of machinery and equipment.

Approximately 90% of the Company's historical inventory cost is valued on a first-in, first-out (FIFO) basis. The remaining inventory is valued on an average cost basis. Historical cost valuations were adjusted to the most recent purchase prices through a combination of actual price studies and the use of cost indexes applied to the historical costs. Current replacement cost inventories have been adjusted to reflect depreciation expense on a current replacement cost basis.

Replacement cost of products sold was estimated by adjusting historical costs for the approximate time lag between acquisition of inventory and its subsequent conversion into revenue.

All replacement cost amounts related to foreign assets, cost of products sold and depreciation expense have been initially calculated in the relevant foreign currency and then translated into U.S. dollars using year-end rates of exchange for assets and yearly average rates of exchange for cost of products sold and depreciation expense.

The following compares historical costs with replacement cost estimates:

| | 1977 | | 1976 | |
|---|---|---|---|---|
| | (Thousands of Dollars) | | | |
| | Historical Cost | Current Replacement Cost | Historical Cost | Current Replacement Cost |
| Property, plant and equipment: | | | | |
| For which replacement cost has been determined | $ 74,484 | $134,103 | $ 68,909 | $122,965 |
| Included at historical cost | 8,744 | 8,744 | 9,885 | 9,885 |
| | 83,228 | 142,847 | 78,794 | 132,850 |
| Less accumulated depreciation | 43,339 | 75,252 | 39,864 | 68,191 |
| Total shown on accompanying consolidated balance sheet | $ 39,889 | $ 67,595 | $ 38,930 | $ 64,659 |
| Inventories: | | | | |
| For which replacement cost has been determined | $ 91,827 | $ 93,296 | $ 89,484 | $ 90,012 |
| Included at historical cost | 589 | 589 | 2,290 | 2,290 |
| Total shown on accompanying consolidated balance sheet | $ 92,416 | $ 93,885 | $ 91,774 | $ 92,302 |
| Cost of products sold (exclusive of depreciation expense): | | | | |
| For which replacement cost has been determined | $238,346 | $242,654 | $225,204 | $228,252 |
| Included at historical cost | 1,038 | 1,038 | 733 | 733 |
| Total | $239,384 | $243,692 | $225,937 | $228,985 |
| Depreciation expense: | | | | |
| For which replacement cost has been determined: | | | | |
| Included in cost of product sold | $ 3,862 | $ 5,803 | $ 4,241 | $ 5,737 |
| Included in selling, general and administrative expenses | 417 | 583 | 254 | 419 |
| Included at historical cost | 303 | 303 | 301 | 301 |
| Total | $ 4,582 | $ 6,689 | $ 4,796 | $ 6,457 |

The current replacement cost data, set forth above, is theoretical and must be viewed in light of the Company's intention of not replacing its entire productive capacity at one time. The cost savings which may result from the technological improvements in replacing productive capacity are not reflected in the foregoing data. In addition, management will not use the foregoing data, alone, to estimate future costs and their effect on income, nor will it use the foregoing data, alone, to determine the capital needs of the Company. It has been and will continue to be a policy of the Company to view the effect of changes in costs and productive capacity requirements on a continuous basis with maximum return on investment being given utmost priority.

10. SUPPLEMENTARY PROFIT AND LOSS INFORMATION:

The following amounts have been charged to costs and expenses:

| | Year ended December 31, | | | | | Nine months ended September 30 (Unaudited) | |
|---|---|---|---|---|---|---|---|
| | 1973 | 1974 | 1975 | 1976 | 1977 | 1977 | 1978 |
| | (000's omitted) | | | | | | |
| Depreciation and amortization of property, plant and equipment | $3,420 | $3,64, | $3,967 | $4,796 | $4,582 | $3,462 | $3,844 |
| Taxes other than income taxes: | | | | | | | |
| Social security | $3,562 | $3,910 | $3,364 | $3,938 | $4,547 | $3,644 | $4,305 |
| Franchise and other state taxes | 225 | 236 | 236 | 256 | 154 | 132 | 135 |
| Real estate and personal property | 1,428 | 1,585 | 1,649 | 1,762 | 1,791 | 1,444 | 1,461 |
| | $5,215 | $5,741 | $5,249 | $5,956 | $6,492 | $5,220 | $5,901 |
| Rents | $2,821 | $2,573 | $2,964 | $3,119 | $ (a) | $ (a) | $ (a) |

(a) Amount does not exceed 1% of total revenues

11. SUBSEQUENT EVENT:

Pursuant to a Stock Purchase Agreement dated December 18, 1978 between the Company's parent UV Industries, Inc., New REC, Inc. and New REC's parent, Reliance Electric Company, UV Industries, Inc. has agreed to sell all of the outstanding capital stock of the Company to New REC, Inc. The sale is subject to approval by the stockholders of UV Industries, Inc.

ANNEX I

# PLAN OF LIQUIDATION AND DISSOLUTION

The following shall constitute the Plan of complete liquidation and dissolution of UV Industries, Inc (the "Corporation") pursuant to Section 337 of the Internal Revenue Code of 1954, as amended, subject to the approval of the shareholders of the Corporation of the Plan and subject to the sale of the Corporation's wholly-owned subsidiary, Federal Pacific Electric Company:

1. The effective date of the Plan shall be the date on which it is adopted by the shareholders of the Corporation.

2. The following actions shall be completed not later than the termination of a twelve-month period commencing with the date of adoption of the Plan by the shareholders as provided in paragraph 1 hereof:

(a) The Corporation shall sell, exchange or otherwise dispose of its assets to the extent such can be accomplished for a consideration (which may include securities) and upon terms and conditions deemed by the Board of Directors to be in the best interests of the Corporation and its stockholders. Sales of subsidiaries may take the form of stock sales or asset sales. The Corporation shall collect or make provision for the collection of all accounts receivable, debts and claims owing to it.

(b) After paying or making provisions for the debts, expenses, taxes and all other obligations of the Corporation, all of the assets of the Corporation shall be distributed pro rata to the shareholders. Such distribution may occur all at once or in a series of payments and may be made in cash or in kind, and in such manner, as the Board of Directors, in its discretion, may determine.

(c) The Board of Directors of the Corporation is authorized to appoint one or more liquidating trustees for the benefit of the Corporation's shareholders, to authorize the execution and delivery on its behalf of a Liquidating Trust Agreement substantially in the form attached hereto as Exhibit I and to transfer to such trustees any assets which are not reasonably susceptible of distribution among the shareholders including assets held on behalf of shareholders who cannot be located or who do not tender their shares.

3. The distributions to the Corporation's shareholders pursuant to Section 2 above shall be in complete redemption and cancellation of all of the outstanding shares of common stock of the Corporation. The Directors of the Corporation shall have full authority to carry out the provisions of the Plan as set forth herein and shall wind up the affairs of and dissolve the Corporation.

I hereby certify that the foregoing
Plan of Liquidation and Dissolution
was adopted by the shareholders of
UV Industries, Inc. at a meeting thereof
duly held on March 26, 1979

_____

*Secretary*

# UV INDUSTRIES, INC. LIQUIDATING TRUST AGREEMENT

AGREEMENT AND DECLARATION OF TRUST by and between UV Industries, Inc., a corporation in liquidation under the laws of the state of Maine, hereinafter called "UV", and

hereinafter collectively called the Trustees.

WHEREAS: On January 17 and February 9, 1979, the Board of Directors of UV voted to submit to the stockholders of UV a Plan of Liquidation and Dissolution (the "Plan"). The Plan was adopted by the stockholders of UV at a meeting thereof held on March 26, 1979. The Plan provides for the creation of this liquidating trust.

NOW, THEREFORE, in consideration of the premises and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, UV hereby grants, releases, assigns, transfers, conveys and delivers unto the Trustees all of UV's right, title and interest in and to all assets it presently owns, holds, or otherwise possesses any interest in, together with the appurtenances and all the estate and rights of UV in and to such assets, in trust for the uses and purposes stated hereinabove, subject to the terms and provisions set out below, and the Trustees hereby accept such assets and such Trust, subject to the same terms and provisions; to wit:

## ARTICLE I.

## NAME AND DEFINITIONS

1.1 *Name.* This trust shall be known as the UV Industries, Inc. Liquidating Trust.

1.2 *Certain Terms Defined.* For all purposes of this instrument, unless the context otherwise requires:

(a) *Agreement or Agreement of Trust* shall mean this instrument as originally executed or as it may from time to time be amended pursuant to the terms hereof.

(b) *Beneficiaries* shall mean stockholders of UV who have surrendered their certificates of UV stock for cancellation, and their legal representatives.

(c) *Beneficial Interest* shall mean the proportionate share of each stockholder in the Trust Estate determined by the ratio of the number of issued and outstanding shares of Common Stock of UV each stockholder held on the close of business on the date of the transfer of UV's assets to the Trustees hereunder to the number of issued and outstanding shares of such stock held by all stockholders.

(d) *UV* shall mean UV Industries, Inc., a corporation organized under the laws of the state of Maine and intended to be dissolved after the execution of this instrument.

(e) *Stockholders* shall mean the holders of record of the shares of the outstanding capital stock of UV at the close of business on the date of the transfer of UV's assets to the Trustees hereunder.

(f) *Trust Estate* shall mean all the property held from time to time by the Trustees under this Agreement of Trust

(g) *Trust Assets* shall mean all dividends, rents, royalties, income, proceeds, and other receipts of or from the Trust Estate, including but not limited to (i) dividends and other cash distributions from any corporation, all or a portion of the outstanding stock of which is part of the Trust Estate, (ii) compensation for any part of the Trust Estate taken by eminent domain, (iii) proceeds (whether cash or securities) of sale of any part of the Trust Estate, (iv) proceeds of insurance upon any part of

the Trust Estate, and (v) interest earned on any moneys or securities held by the Trustees under this Agreement of Trust.

(h) *Trustees* shall mean the original Trustees and their successors.

1.3 *Meaning of Other Terms.* Except where the context otherwise requires, words importing the masculine gender include the feminine and the neuter, if appropriate, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include firms, associations, and corporations. All references herein to Articles, Sections, and other subdivisions refer to the corresponding Articles, Sections, and other subdivisions of this instrument; and the words herein, hereof, hereby, hereunder, and words of similar import, refer to this instrument as a whole and not to any particular Article, Section, or subdivision of the Agreement.

## ARTICLE II.

## NATURE OF TRANSFER

2.1 *Purpose of Trust.* The sole purpose of this Trust is to liquidate the Trust Estate in a manner calculated to conserve and protect the Trust Estate, and to collect and distribute the income and proceeds therefrom to the beneficiaries in as prompt and orderly a fashion as possible after the payment of, or provision for, expenses and liabilities.

2.2 *No Reversion to UV.* In no event shall any part of the Trust Estate, as this term is hereinabove defined, revert to or be distributed to UV or to any stockholder, as such.

2.3 *Instruments of Further Assurance.* UV and such persons as shall have the right and power after the dissolution of UV will, upon reasonable request of the Trustees, execute, acknowledge, and deliver such further instruments and do such further acts as may be necessary or proper to effectively carry out the purposes of this Agreement, to transfer any property intended to be covered hereby, and to vest in the Trustees, their successors and assigns, the estate, powers, instruments or funds in trust hereunder.

2.4 *Payment of UV Liabilities.* The Trustees hereby assume all the liabilities and claims (including unascertained or contingent liabilities and expenses) of UV. With respect to claims by officers, directors or other persons for indemnification under UV's Bylaws, the Trustees may engage independent legal counsel acceptable to them to render a written opinion as to whether the applicable standard of conduct set forth in UV's Bylaws has been met. Should any liability be asserted against the Trustees as the transferees of the Trust Estate or as a result of the assumption made in this paragraph the Trustees may use such part of the Trust Estate as may be necessary in contesting any such liability or in payment thereof.

2.5 *Assignment for Benefit of UV Stockholders.* The Trustees hereby assign to the stockholders of UV the beneficial interest in all the Trust Estate, and retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized herein.

## ARTICLE III.

## BENEFICIARIES

3.1 *Beneficial Interests.* The beneficial interest of each stockholder shall be determined by the Trustees in accordance with a certified copy of UV's stockholder list as of the date of transfer of UV's assets to the Trustees. UV will deliver such a certified copy of its stockholder list to the Trustees within a reasonable time after such date of transfer. For ease of administration, the Trustees may, if they so elect, express the beneficial interest of each stockholder in terms of units (when not specifically required to do so by any provision herein).

When the Trustees have determined the beneficial interests of the stockholders, they shall notify each stockholder of the amount of his beneficial interest and shall advise him to surrender his certificates of Common Stock of UV in exchange for the rights of a beneficiary herein. Such notices shall be accompanied by a letter of transmittal for use by each stockholder in transmitting his certificates to the Trustees, or to such agent as the Trustees may designate.

If any conflicting claims or demands are made or asserted to any shares of UV Common Stock, or to any interest of any stockholder herein, or if there should be any disagreement between the transferees, assignees, heirs, representatives or legatees succeeding to all or a part of the interest of any stockholder resulting in adverse claims or demands being made in connection with such interest, then, in any of such events, the Trustees shall be entitled, at their sole election, to refuse to comply with any such conflicting claims or demands. In so refusing, the Trustees may elect to make no payment or distribution to the interest represented by the Common Stock involved, or any part thereof, and in so doing the Trustees shall not be or become liable to any of such parties for their failure or refusal to comply with any of such conflicting claims or demands, nor shall the Trustees be liable for interest on any funds which it may so withhold. The Trustees shall be entitled to refrain and refuse to act until (i) the rights of the adverse claimants have been adjudicated by a final judgment of a court of competent jurisdiction, (ii) all differences have been adjusted by valid written agreement between all of such parties, and the Trustees shall have been furnished with an executed counterpart of such agreement, or (iii) there is furnished to the Trustees a surety bond or other security satisfactory to the Trustees, as they shall deem appropriate, to fully indemnify them as between all conflicting claims or demands.

All liquidating distributions and other payments due any stockholder of UV who has failed to surrender his certificates of Common Stock shall be retained by the Trustees for his benefit until his certificates of stock are surrendered or until he furnishes the Trustees with (i) evidence satisfactory to them of the loss, theft, or destruction of such certificates of stock and (ii) a surety bond satisfactory to them, unlimited in amount if they shall so specify, or such other security or indemnity as may be required by them, in which event the Trustees shall release all liquidating distributions due such stockholder to him.

Any beneficiary whose certificates of UV stock are cancelled subsequent to the transfer of UV's assets to the Trustees shall be entitled to the benefits of this Agreement of Trust equally and ratably with all beneficiaries. If required by the Trustees, any such beneficiary may also be required, as a condition precedent to the release of any liquidating distributions due him, to pay all reasonable costs, expenses and attorneys' fees incurred in connection with proof of his ownership and cancellation of his certificates of UV stock.

3.2 *Rights of Beneficiaries.* Each beneficiary shall be entitled to participation in the rights and benefits due to a beneficiary hereunder according to his beneficial interest. Each beneficiary shall take and hold the same subject to all the terms and provisions of this Agreement of Trust. The interest of the beneficiary is hereby declared and shall be in all respects personal property and upon the death of an individual beneficiary his interest shall pass to his legal representative and such death shall in no wise terminate or affect the validity of this Agreement. A beneficiary shall have no title to, right to, possession of, management of, or control of, the Trust Estate except as herein expressly provided. No widower, widow, heir, or devisee of any person who may be a beneficiary shall have any right of dower, homestead, or inheritance, or of partition, or of any other right, statutory or otherwise, in any property whatever forming a part of the Trust Estate, but the whole title to all the Trust Estate shall be vested in the Trustees and the sole interest of the beneficiaries shall be the rights and benefits given to such persons under the Agreement of Trust.

3.3 *No Transfer of Interests of Beneficiaries.* The interest of a beneficiary may not be transferred either by the beneficiary in person or by a duly authorized agent or attorney, or by the properly appointed legal representatives of the beneficiary, nor may a beneficiary have authority or power to sell, assign, transfer, encumber, or in any other manner anticipate or dispose of his interest in the trust; provided, however, that the interest of a beneficiary shall be assignable or transferable by will, intestate succession, or operation of law.

3.4 *Applicable Law.* As to matters affecting the title, ownership, transferability, or attachment of the interest of a beneficiary in the trust, the laws from time to time in force in the state of Maine shall govern except as otherwise herein specifically provided.

3.5 *Trustees as Beneficiaries.* Each Trustee, either individually or in a representative or fiduciary capacity may be a beneficiary to the same extent as if he were not a Trustee hereunder.

## ARTICLE IV.

## DURATION AND TERMINATION OF TRUST

4.1 *Duration.* The existence of this trust shall terminate three years from the date of the transfer of UV's assets to the Trustees, unless an earlier termination is required by the applicable laws of the state of Maine or by the action of the beneficiaries as provided in Section 4.2, or unless earlier terminated by the distribution of all of the Trust Estate as provided in Section 5.5.

4.2 *Termination by Beneficiaries.* The trust may be terminated at any time by the action of beneficiaries having an aggregate beneficial interest of ⅔ as evidenced in the manner provided in Article XII.

4.3 *Continuance of Trust for Winding Up.* After the termination of the trust and for the purpose of liquidating and winding up the affairs of this trust, the Trustees shall continue to act as such until their duties have been fully performed. Upon distribution of all of the Trust Estate, the Trustees shall retain the books, records, stockholder lists, Common Stock certificates and files which shall have been delivered to or created by the Trustees. At the Trustees' discretion, all of such records and documents may be destroyed at any time after three years from the distribution of all of the Trust Estate. Except as otherwise specifically provided herein, upon the distribution of all of the Trust Estate, the Trustees shall have no further duties or obligations hereunder except to account as provided in Section 5.6.

## ARTICLE V.

## ADMINISTRATION OF TRUST ESTATE

5.1 *Sale of Trust Estate.* The Trustees may, at such times as they may deem appropriate, transfer, assign, or otherwise dispose of all or any part of the Trust Estate as they deem appropriate at public auction or at private sale for cash or securities, or upon credit (either secured or unsecured as the Trustees shall determine).

5.2 *Collection of Trust Assets.* All Trust Assets shall be collected by the Trustees and held as a part of the Trust Estate. The Trustees shall hold the Trust Estate without provision for or the payment of any interest thereon to any beneficiary.

5.3 *Payment of Claims, Expenses and Liabilities.* The Trustees shall pay from Trust Assets all claims, expenses, charges, liabilities, and obligations of the Trust Estate and all liabilities and obligations which the Trustees specifically assume and agree to pay pursuant to this Agreement of Trust and such transferee liabilities which the Trustees may be obligated to pay as transferees of the Trust Estate, including among the foregoing, and without limiting the generality of the foregoing, interest, taxes, assessments, and public charges of every kind and nature and the costs, charges, and expenses connected with or growing out of the execution or administration of this trust and such other payments and disbursements as are provided in this Agreement or which may be determined to be a proper charge against the Trust Estate by the Trustees. The Trustees may, in their discretion, make provisions by reserve or otherwise out of the Trust Assets or the Trust Estate, for such amount as the Trustees in good faith may determine to be necessary to meet present or future claims and liabilities of the trust, whether fixed or contingent.

5.4 *Interim Distributions.* At such times as may be determined by them, but at least semi-annually if practicable, the Trustees may distribute, or cause to be distributed, to the beneficiaries of record on the close of business on such record date as the Trustees may determine, in proportion to the respective interests of the beneficiaries in the Trust Estate, such cash or non-cash property comprising a portion of the Trust Estate as the Trustees may in their sole discretion determine may be distributed without detriment to the conservation and protection of the Trust Estate.

5.5 *Final Distribution.* If the Trustees determine that all claims, debts, liabilities, and obligations of the trust have been paid or discharged, or if the existence of the trust shall terminate pursuant to Sections 4.1 or 4.2, the Trustees shall, as expeditiously as is consistent with the conservation and protection of the Trust Estate, distribute the Trust Estate to the beneficiaries of record on the close of business on such record date as the Trustees may determine, in proportion to their interests therein. The Trustees shall make disposition of all liquidating distributions and other payments due any stockholders who have not been located or who have not surrendered their certificates of Common Stock for cancellation pursuant to Section 3.1 in accordance with Maine law.

5.6 *Reports to Beneficiaries.* As soon as practicable after the end of each fiscal year of the trust and after termination of the trust, the Trustees shall submit a written report and account to the beneficiaries showing (i) the assets and liabilities of the trust at the end of such fiscal year or upon termination and the receipts and disbursements of the Trustees for such fiscal year or period, certified by independent public accountants, (ii) any changes in the Trust Estate which they have not previously reported, and (iii) any action taken by the Trustees in the performance of their duties under this Agreement of Trust which they have not previously reported and which, in their opinion, materially affects the Trust Estate. The Trustees may submit similar reports for such interim periods during the fiscal year as they deem advisable. The approval by beneficiaries having an aggregate beneficial interest of more than 50% of any report or account shall, as to all matters and transactions disclosed therein, be final and binding upon all persons, whether in being or not, who may then or thereafter become interested in the Trust Estate. The fiscal year of the trust shall end on of each year unless the Trustees deem it advisable to establish some other date as the date on which the fiscal year of the trust shall end.

5.7 *Federal Income Tax Information.* As soon as practicable after the close of each fiscal year, the Trustees shall mail to each beneficiary at the close of the year, a statement showing on a unit basis the dates and amounts of all distributions made by the Trustees, depletion and depreciation allowances, if any, and such other information as is reasonably available to the Trustees which may be helpful in determining the amount of taxable income from the trust that such beneficiary should include in his Federal income tax return for the preceding year. In addition, after receipt of a request in good faith, or in their discretion without such request, the Trustees may furnish to any person who has been a beneficiary at any time during the preceding year a statement containing such further information as is reasonably available to the Trustees which may be helpful in determining the amount of taxable income which such person should include in his Federal income tax return.

## ARTICLE VI.

## POWERS OF AND LIMITATIONS ON THE TRUSTEES

6.1 *Limitations on Trustees.* The Trustees shall not at any time, on behalf of the trust or beneficiaries, enter into or engage in any business, and no part of the Trust Estate or the proceeds, revenue or income therefrom shall be used or disposed of by the Trustees in furtherance of any business. This limitation shall apply irrespective of whether the conduct of any such business activities is deemed by the Trustees to be necessary or proper for the conservation and protection of the Trust Estate. The Trustees shall not invest any of the funds held in the Trust Estate, except that the Trustees may invest any portion of the Trust Estate in certificates of deposit of domestic banks having in excess of $10,000,000 in capital and surplus, savings accounts or certificates of deposit issued by any savings institution insured by the Federal

Savings and Loan Insurance Corporation, and marketable direct obligations of, or guaranteed as to principal and interest by, the United States Government or any agency thereof. The Trustees shall be restricted to the holding and collection of the Trust Assets and the payment and distribution thereof for the purposes set forth in this Agreement and to the conservation and protection of the Trust Estate and the administration thereof in accordance with the provisions of this Agreement. In no event shall the Trustees receive any property, make any distribution, satisfy or discharge any obligation, claim, liability or expense or otherwise take any action which is inconsistent with a complete liquidation of UV as that term is used and interpreted by Sections 337 and 331 of the Internal Revenue Code of 1954, regulations promulgated thereunder, and rulings, decisions, and determinations of the Internal Revenue Service and courts of competent jurisdiction.

6.2 *Specific Powers of Trustees.* Subject to the provisions of Section 6.1, the Trustees shall have the following specific powers in addition to any powers conferred upon them by any other Section or provision of this Agreement of Trust; provided, however, that enumeration of the following powers shall not be considered in any way to limit or control the power of the Trustees to act as specifically authorized by any other Section or provision of this Agreement and to act in such a manner as the Trustees may deem necessary or appropriate to conserve and protect the Trust Estate or to confer on the beneficiaries the benefits intended to be conferred upon them by this Agreement:

(a) To determine the terms on which assets comprising the Trust Estate should be sold or otherwise disposed of;

(b) To collect and receive any and all money and other property of whatsoever kind or nature due to or owing or belonging to the trust and to give full discharge and acquittance therefor;

(c) Pending sale or other disposition or distribution, to retain all or any assets constituting part of the Trust Estate regardless of whether or not such assets are, or may become, underproductive, unproductive or a wasting asset, or whether such assets, if considered to be investments, might be considered to be speculative or extrahazardous. The Trustees shall not be under any duty to reinvest such part of the Trust Estate as may be in cash, or as may be converted into cash, nor shall the Trustees be chargeable with interest thereon except to the extent that interest may be paid to the Trustees on such cash amounts;

(d) To retain and set aside such funds out of the Trust Estate as the Trustees shall deem necessary or expedient to pay, or provide for the payment of (i) unpaid claims, liabilities, debts or obligations of the trust or UV, (ii) contingencies, and (iii) the expenses of administering the Trust Estate.

(e) To do and perform any acts or things necessary or appropriate for the conservation and protection of the Trust Estate, including acts or things necessary or appropriate to maintain assets held by the Trustees pending sale or other disposition thereof or distribution thereof to the beneficiaries, and in connection therewith to employ such agents and to confer upon them such authority as the Trustees may deem expedient, and to pay reasonable compensation therefor;

(f) To cause any investments of Trust Assets to be registered and held in the name of any one or more of their names or in the names of a nominee or nominees without increase or decrease of liability with respect thereto;

(g) To institute or defend actions or declaratory judgments or other actions and to take such other action, in the name of the Trust or of UV if otherwise required, as the Trustees may deem necessary or desirable to enforce any instruments, contracts, agreements, or causes of action relating to or forming a part of the Trust Estate;

(h) To cancel, terminate, or amend any instruments, contracts, or agreements relating to or forming a part of the Trust Estate, and to execute new instruments, contracts, or agreements, not withstanding that the terms of any such instruments, contracts, or agreements may extend beyond the

terms of this trust, provided that no such new instrument, contract, or agreement shall permit the Trustees to engage in any activity prohibited by Section 6.1;

(i) To vote by proxy or otherwise and with full power of substitition all shares of stock and all securities held by the Trustees hereunder and to exercise every power, election, discretion, option and subscription right and give every notice, make every demand, and to do every act and thing in respect to any shares of stock or other securities held by the Trustees which the Trustees might or could do if they were the absolute owners thereof;

(j) To undertake or join in any merger, plan of reorganization, consolidation, liquidation, dissolution or readjustment of any corporation, any of whose shares of stock or other securities, obligations, or properties may at any time constitute a part of the Trust Estate, and to accept the substituted shares of stock, bonds, securities, obligations and properties and to hold the same in trust in accordance with the provisions hereof;

(k) In connection with the sale or other disposition or distribution of any securities held by the Trustees, to comply with the applicable Federal and state securities laws, and to enter into agreements relating to sale or other disposition or distribution thereof;

(l) To contract for and to borrow money in such amounts as the Trustees deem advisable for any trust purpose (including, but without limitation, protecting or conserving any portion of the Trust Estate and making any payment of income or principal) and, in connection therewith, to draw, make, accept, endorse, execute, issue and deliver promissory notes, drafts and other negotiable or transferable instruments and evidence of indebtedness and all renewals or extensions of same;

(m) To authorize transactions between corporations or other entities held by the Trustees as part of the Trust Estate;

(n) In the event any of the property which is or may become a part of the Trust Estate is situtated in any state or other jurisdiction in which any Trustee is not qualified to act as Trustee, to nominate and appoint an individual or corporate trustee qualified to act in such state or other jurisdiction in connection with the property situated in that state or other jurisdiction as a trustee of such property and require from such trustee such security as may be designated by the Trustees. The trustee so appointed shall have all the rights, powers, privileges and duties and shall be subject to the conditions and limitations of this trust, except as modified or limited by the Trustees and except where the same may be modified by the laws of such state or other jurisdiction (in which case, the laws of the state or other jurisdiction in which such trustee is acting shall prevail to the extent necessary). Such trustee shall be answerable to the Trustees herein appointed for all monies, assets and other property which may be received by it in connection with the administration of such property. The Trustees hereunder may remove such trustee, with or without cause, and appoint a successor trustee at any time by the execution by the Trustees of a written instrument declaring such trustee removed from office, and specifying the effective date and time of removal;

(o) To grant or consent to licenses, easements, and consents for roads, rights-of-way, power lines, telephone lines, pipe lines, boundary line agreements, and similar uses and to grant other usage rights, on or with respect to the Trust Estate, whether or not the term thereof may extend beyond the duration of this trust;

(p) To perform any act authorized, permitted, or required under any instrument, contract, agreement, or cause of action relating to or forming a part of the Trust Estate whether in the nature of an approval, consent, demand, or notice thereunder or otherwise, unless such act would require the consent of the beneficiaries in accordance with the express provisions of this Agreement.

6.3 *Powers of Trustees to Deal with Trust in Non-Fiduciary Capacity.* Any Trustee may, except as limited by Section 6.1 herein, loan property to, borrow property from, purchase property from, sell

property to, or otherwise deal with the Trust Estate as if he were not a Trustee thereof, provided that any such dealing shall be with the prior written consent of a majority of the Trustees not otherwise interested therein. If there is no Trustee not otherwise interested in the transaction for which such prior written consent is required, then the transaction shall be prohibited.

## ARTICLE VII.

## CONCERNING THE TRUSTEES

7.1 *Generally.* The Trustees accept and undertake to discharge the trusts created by this Agreement, upon the terms and conditions thereof. The Trustees shall exercise such of the rights and powers vested in them by this Agreement, and use the same degree of care and skill in their exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs. No provision of this Agreement shall be construed to relieve the Trustees from liability for their own negligent action, their own negligent failure to act, or their own wilful misconduct, except that:

(a) No Trustee shall be responsible for the acts or omissions of any other Trustee if done or omitted without his knowledge or consent unless it shall be proved that such Trustee was negligent in ascertaining the pertinent facts, and no successor Trustee shall be in any way responsible for the acts or omissions of any Trustees in office prior to the date on which he becomes a Trustee.

(b) No Trustee shall be liable except for the performance of such duties and obligations as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Trustees.

(c) In the absence of bad faith on the part of the Trustees, the Trustees may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustees and conforming to the requirements of this Agreement; but in the case of any such certificates or opinions which are specifically required to be furnished to the Trustees by any provision hereof, the Trustees shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Agreement.

(d) No Trustee shall be liable for any error of judgment made in good faith.

(e) No Trustee shall be liable with respect to any action taken or omitted to be taken by them in good faith in accordance with the direction of beneficiaries having an aggregate beneficial interest of more than 50% relating to the time, method, and place of conducting any proceeding for any remedy available to the Trustees, or exercising any trust or power conferred upon the Trustees under this Agreement.

7.2 *Reliance by Trustees.* Except as otherwise provided in Section 7.1:

(a) The Trustees may rely and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document believed by them to be genuine and to have been signed or presented by the proper party or parties.

(b) The Trustees may consult with legal counsel to be selected by them, and the Trustees shall not be liable for any action taken or suffered by them in accordance with the advice of such counsel.

(c) Persons dealing with Trustees shall look only to the Trust Estate to satisfy any liability incurred by the Trustees to such person in carrying out the terms of this trust, and the Trustees shall have no personal or individual obligation to satisfy any such liability.

7.3 *Indemnification of Trustees.* Each Trustee shall be indemnified by and receive reimbursement from the Trust Estate against and from any and all loss, liability or damage which such Trustee may incur

or sustain, in good faith and without gross negligence, in the exercise and performance of any of the powers and duties of such Trustee under this Agreement. The Trustees may purchase with assets of the Trust Estate, such insurance as they feel, in the exercise of their discretion, adequately insures that each Trustee shall be indemnified against any such loss, liability or damage pursuant to this Section

## ARTICLE VIII.

## PROTECTION OF PERSONS DEALING WITH THE TRUSTEES

8.1 *Action by Trustees.* All action required or permitted to be taken by the Trustees, in their capacity as Trustees, shall be taken (i) at a meeting at which a quorum is present, having been duly called by one or more of the Trustees on at least three days' prior written or telegraphic notice to all of the Trustees then serving, or (ii) without a meeting, by a written vote, resolution, or other writing signed by all the Trustees then serving. Except where this Agreement otherwise provides, all action taken at such a meeting shall be by vote or resolution of a majority of such of the Trustees as are present and shall have the same force and effect as if taken by all the Trustees. A majority of the Trustees then serving shall constitute a quorum.

8.2 *Reliance on Statement by Trustees.* Any person dealing with the Trustees shall be fully protected in relying upon the Trustees' certificate signed by any one or more of the Trustees that they have authority to take any action under this trust. Any person dealing with the Trustees shall be fully protected in relying upon the Trustees' certificate setting forth the facts concerning the calling of any meeting of the beneficiaries, the giving of notice thereof, and the action taken at such meeting, including the aggregate beneficial interest of beneficiaries taking such action.

8.3 *Application of Money Paid or Transferred to Trustees.* No person dealing with the Trustees shall be required to follow the application by the Trustees of any money or property which may be paid or transferred to the Trustees.

## ARTICLE IX.

## COMPENSATION OF TRUSTEES

9.1 *Amount of Compensation.* In lieu of commissions or other compensation fixed by law for trustees, each Trustee shall receive as compensation for services as Trustee hereunder and as additional compensation from the cash proceeds of the sale of any part of the Trust Estate while he is serving as Trustee, such compensation as shall be first determined by the Board of Directors of UV at the time this Agreement is entered into, or as may subsequently be approved by beneficiaries having an aggregate beneficial interest of more than 50%.

9.2 *Dates of Payment.* The compensation payable to each Trustee pursuant to the provisions of Section 9.1 shall be paid quarterly or at such other times as the Trustees may determine.

9.3 *Expenses.* Each Trustee shall be reimbursed from the Trust Estate for all expenses reasonably incurred by him in the performance of his duties in accordance with this Agreement.

## ARTICLE X.

## TRUSTEES AND SUCCESSOR TRUSTEES

10.1 *Number of Trustees.* Subject to the provisions of Section 10.3 relating to the period pending the appointment of a successor Trustee, there shall always be three Trustees of this trust, each of whom shall be a citizen and resident of the United States.

If any corporate Trustee shall ever change its name, or shall reorganize or reincorporate, or shall merge with or into or consolidate with any other bank or trust company, such corporate Trustee shall be deemed to be a continuing entity and shall continue to act as a Trustee hereunder with the same liabilities, duties, powers, titles, discretions and privileges as are herein specified for a Trustee.

10.2 *Resignation and Removal.* Any Trustee may resign and be discharged from the trusts hereby created by giving written notice thereof to the remaining Trustees and by mailing such notice to the beneficiaries at their respective addresses as they appear in the records of the Trustees. Such resignation shall become effective on the day specified in such notice or upon the appointment of such Trustee's successor and such successor's acceptance of such appointment, whichever is earlier. Any Trustee may be removed at any time, with or without cause, by beneficiaries having an aggregate beneficial interest of ⅔.

10.3 *Appointment of Successor.* Should at any time a Trustee resign or be removed, or die or become incapable of action, or be adjudged a bankrupt or insolvent, a vacancy shall be deemed to exist and a successor shall be appointed by the remaining Trustees. If such vacancy is not filled by the remaining trustees within 30 days, the beneficiaries may, pursuant to Article XIII hereof, call a meeting to appoint a successor trustee by majority in interest. Pending the appointment of a successor Trustee, the remaining Trustees then serving may take any action in the manner set forth in Section 8.1.

10.4 *Acceptance of Appointment by Successor Trustee.* Any successor Trustee appointed hereunder shall execute an instrument accepting such appointment hereunder and shall deliver one counterpart thereof each to the other Trustees and, in case of a resignation, to the retiring Trustee. Thereupon such successor Trustee shall, without any further act, become vested with all the estates, properties, rights, powers, trusts, and duties of his or its predecessor in the trust hereunder with like effect as if originally named therein; but the retiring Trustee shall nevertheless, when requested in writing by the successor Trustee or by the remaining Trustees, execute and deliver an instrument or instruments conveying and transferring to such successor Trustee upon the trust herein expressed, all the estates, properties, rights, powers and trusts of such retiring Trustee, and shall duly assign, transfer, and deliver to such successor Trustee all property and money held by him hereunder.

10.5 *Bonds.* Unless required by the Board of Directors of UV prior to the transfer of the assets of UV to the Trustees, or unless a bond is required by law, no bond shall be required of any original Trustee hereunder. Unless required by a majority vote of the Trustees prior to a successor Trustee's acceptance of an appointment as such pursuant to Section 10.4, or unless a bond is required by law, no bond shall be required of any successor Trustee hereunder. If a bond is required by law, no surety or security with respect to such bond shall be required unless required by law or unless required by the Board of Directors of UV (in the case of an original Trustee) or the Trustees (in the case of a successor Trustee). If a bond is required by the Board of Directors of UV or by a majority vote of the Trustees, the Board of Directors of UV or the Trustees, as the case may be. shall determine whether, and to what extent, a surety or security with respect to such bond shall be required.

## ARTICLE XI.

## CONCERNING THE BENEFICIARIES

11.1 *Evidence of Action by Beneficiaries.* Whenever in this Agreement it is provided that the beneficiaries may take any action (including the making of any demand or request, the giving of any notice, consent, or waiver, the removal of a Trustee, the appointment of a successor Trustee, or the taking of any other action), the fact that at the time of taking any such action such holders have joined therein may be evidenced (i) by any instrument or any number of instruments of similar tenor executed by beneficiaries in person or by agent or attorney appointed in writing, or (ii) by the record of the beneficiaries voting in favor thereof at any meeting of beneficiaries duly called and held in accordance with the provisions of Article XII.

11.2 *Limitation on Suits by Beneficiaries.* No beneficiary shall have any right by virtue of any provision of this Agreement to institute any action or proceeding at law or in equity against any party other than the Trustees upon or under or with respect to the Trust Estate or the agreements relating to or forming part of the Trust Estate, and the beneficiaries do hereby waive any such right, unless beneficiaries having an aggregate beneficial interest of 25% shall have made written request upon the Trustees to institute such action or proceeding in their own names as Trustees hereunder and shall have offered to the Trustees reasonable indemnity against the costs and expenses to be incurred therein or thereby, and the Trustees for 30 days after their receipt of such notice, request, and offer of indemnity shall have failed to institute any such action or proceeding.

11.3 *Requirement of Undertaking.* The Trustees may request any court to require, and any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Agreement, or in any suit against the Trustees for any action taken or omitted by them as Trustees, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; provided, that the provisions of this Section shall not apply to any suit by the Trustees, and such undertaking shall not be requested by the Trustees or otherwise required in any suit by any beneficiary or group of beneficiaries having an aggregate beneficial interest of more than 5%.

## ARTICLE XII.

## MEETING OF BENEFICIARIES

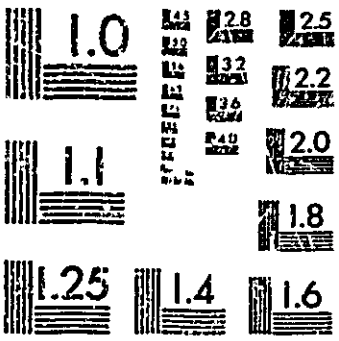
12.1 *Purpose of Meetings.* A meeting of the beneficiaries may be called at any time and from time to time pursuant to the provisions of this Article for the purposes of taking any action which the terms of this Agreement permit a beneficiary having a specified aggregate beneficial interest to take either acting alone or with the Trustees.

12.2 *Meeting Called by Trustees.* The Trustees may at any time call a meeting of the beneficiaries to be held at such time and at such place within the state of Maine (or elsewhere if so determined by a majority of the Trustees) as the Trustees shall determine. Written notice of every meeting of the beneficiaries shall be given by the Trustees (except as provided in Section 12.3), which written notice will set forth the time and place of such meeting and in general terms the action proposed to be taken at such meeting, and shall be mailed not more than 60 nor less than 10 days before such meeting is to be held to all of the beneficiaries of record not more than 60 days before the date of such meeting. The notice shall be directed to the beneficiaries at their respective addresses as they appear in the records of the Trustees.

12.3 *Meeting Called on Request of Beneficiaries.* Within 30 days after written request to the Trustees by beneficiaries having an aggregate beneficial interest of 25% to call a meeting of all the beneficiaries, which written request shall specify in reasonable detail the action proposed to be taken, the Trustees shall proceed under the provisions of Section 12.2 to call a meeting of the beneficiaries, and if the Trustees fail to call such meeting within such 30-day period then such meeting may be called by beneficiaries having an aggregate beneficial interest of 25% or their designated representative.

12.4 *Persons Entitled to Vote at Meeting of Beneficiaries.* Each beneficiary on the record date shall be entitled to vote at a meeting of the beneficiaries either in person or by his proxy duly authorized in writing. The signature of the beneficiary on such written authorization need not be witnessed or notarized.

12.5 *Quorum.* At any meeting of beneficiaries, the presence of beneficiaries having an aggregate beneficial interest sufficient to take action on any matter for the transaction of which such meeting was called shall be necessary to constitute a quorum; but if less than a quorum be present, beneficiaries having an aggregate beneficial interest of more than 50% of the aggregate beneficial interest of all beneficiaries represented at the meeting may adjourn such meeting with the same effect and for all intents and purposes as though a quorum had been present.

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12.6 *Adjournment of Meeting.* Any meeting of beneficiaries may be adjourned from time to time and a meeting may be held at such adjourned time and place without further notice.

12.7 *Conduct of Meetings.* The Trustees shall appoint the Chairman and the Secretary of the meeting. The vote upon any resolution submitted to any meeting of beneficiaries shall be by written ballot. Two Inspectors of Votes, appointed by the Chairman of the meeting, shall count all votes cast at the meeting for or against any resolution and shall make and file with the Secretary of the meeting their verified written report.

12.8 *Record of Meeting.* A record of the proceedings of each meeting of beneficiaries shall be prepared by the Secretary of the meeting. The record shall be signed and verified by the Secretary of the meeting and shall be delivered to the Trustees to be preserved by them. Any record so signed and verified shall be conclusive evidence of all the matters therein stated.

## ARTICLE XIII.

## AMENDMENTS

13.1 *Consent of Beneficiaries.* At the direction or with the consent (evidenced in the manner provided in Section 11.1) of beneficiaries having an aggregate beneficial interest of ⅔, the Trustees shall promptly make and execute a declaration amending this Agreement for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Agreement or amendments hereto, provided, however, that no such amendment shall permit the Trustees hereunder to engage in any activity prohibited by Section 6.1 or affect the beneficiaries' rights to receive their pro rata shares of the Trust Estate at the time of distribution.

13.2 *Notice and Effect of Amendment.* Promptly after the execution by the Trustees of any such declaration of amendment, the Trustees shall give notice of the substance of such amendment to the beneficiaries or, in lieu thereof, the Trustees may send a copy of the amendment to each beneficiary. Upon the execution of any such declaration of amendment by the Trustees, this Agreement shall be deemed to be modified and amended in accordance therewith and the respective rights, limitations of rights, obligations, duties, and immunities of the Trustees and the beneficiaries under this Agreement shall thereafter be determined, exercised, and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any such amendment shall be thereby deemed to be part of the terms and conditions of this Agreement for any and all purposes.

## ARTICLE XIV.

## MISCELLANEOUS PROVISIONS

14.1 *Filing Documents.* This Agreement shall be filed or recorded in the office of the Secretary of State of the State of Maine, and in such other office or offices as the Trustees may determine to be necessary or desirable. A copy of this Agreement and all amendments thereof shall be filed in the office of each Trustee and shall be available at all times for inspection by any beneficiary or his duly authorized representative. The Trustees shall file or record any amendment of this Agreement in the same places where the original Agreement is filed or recorded. The Trustees shall file or record any instrument which relates to any change in the office of Trustee in the same places where the original Agreement is filed or recorded.

14.2 *Intention of Parties to Establish Trust.* This Agreement is not intended to create and shall not be interpreted as creating an association, partnership, or joint venture of any kind. It is intended as a trust to be governed and construed in all respects as a trust.

14.3 *Laws as to Construction.* This Agreement shall be governed by and construed in accordance with the laws of the state of Maine, and UV, the Trustees, and the beneficiaries (by their acceptance of any distributions made to them pursuant to this Agreement) consent and agree that this Agreement shall be governed by and construed in accordance with such laws.

14.4 *Separability.* In the event any provision of this Agreement or the application thereof to any person or circumstances shall be finally determined by a court of proper jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

14.5 *Notices.* Any notice or other communication by the Trustees to any beneficiary shall be deemed to have been sufficiently given, for all purposes, if given by being deposited, postage prepaid, in a post office or letter box addressed to such person at his address as shown in the records of the Trustees.

14.6 *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, UV Industries, Inc. has caused this Agreement to be signed and acknowledged by its Chairman of the Board and its corporate seal to be affixed hereto, and the same to be attested by its Secretary, and the Trustees herein have signed, sealed, and executed this Agreement, effective this day of , 19 .

UV INDUSTRIES, INC.

By: _____

*Chairman of the Board*
*and Chief Executive Officer*

Corporate Seal

ATTEST:

_____

*Secretary*

_____

_____

_____

*Trustees*

ANNEX II

# STOCK PURCHASE AGREEMENT

THIS STOCK PURCHASE AGREEMENT (the "Agreement") made and entered into on December 18, 1978 by and among RELIANCE ELECTRIC COMPANY, a Delaware corporation ("Reliance"), NEW REC, INC., a Delaware corporation ("Buyer"), and UV INDUSTRIES, INC., a Maine corporation ("Seller"),

WITNESSETH:

WHEREAS, Seller owns all of the outstanding capital stock (the "Stock") of Federal Pacific Electric Company, a Delaware corporation (the "Company"), and wishes to sell all of such Stock to Buyer pursuant to this Agreement (the "Sale"); and

WHEREAS, Reliance owns all of the outstanding capital stock of Buyer and wishes to cause Buyer to buy all of the Stock from Seller pursuant to this Agreement,

NOW, THEREFORE, Reliance, Buyer and Seller agree as follows:

## ARTICLE I

## PURCHASE OF STOCK

1.1. *Basic Transaction.* Subject to and upon the terms and conditions hereof, on the Closing Date (as defined below), Seller shall sell, assign, transfer and deliver to Buyer, and Buyer shall purchase from Seller, all of the Stock for an aggregate price determined pursuant to Section 1.2 hereof.

1.2. *Purchase Price.* The aggregate price for the Stock (the "Price") shall be $345,000,000, *provided, however,* that if (a) the product of multiplying (i) the Company's Net Pre-Tax Earnings (as defined below) by (ii) a factor of 6.9 is less than (b) $345,000,000, then the Price shall be equal to such lesser amount, but in no event less than $325,000,000. As used herein, the term "Net Pre-Tax Earnings" means the income of the Company and its consolidated subsidiaries, before minority interests, provisions for income taxes and foreign currency exchange gains and losses, for the year ended December 31, 1978, computed in accordance with generally accepted accounting principles on a basis consistent with that applied in preparing the financial statements in the Company's Annual Report on Form 10-K for the year ended December 31, 1977 (the "10-K"). The Company's Net Pre-Tax Earnings shall be determined based upon the financial statements of the Company and its consolidated subsidiaries, as certified by the Company's independent accountants, Coopers & Lybrand (the "1978 Financial Statements"). If the Price has not been finally determined by the Closing Date for the reason that the 1978 Financial Statements are not yet available and if all other conditions of closing have been satisfied (or waived), the Closing (as defined below) shall be consummated with the payment by Buyer to Seller of $325,000,000 and the deposit by Buyer of $20,000,000 in an interest-bearing escrow account at Chase Manhattan Bank, N.A., or any other banking institution mutually agreed upon by the parties hereto. Upon the delivery by Seller to said bank, as escrow agent, and to Reliance of a manually executed copy of the 1978 Financial Statements, with a request that said bank determine the Price, said bank shall determine the Price in accordance with this Section 1.2 and, after five days prior notice of the Price to both Reliance and Seller, said Bank shall pay Seller such additional amount (if any) as is owed to it (together with the interest accrued on said additional amount) and shall pay Buyer all amounts (if any) remaining in the escrow account (including all other accrued interest).

1.3. *Seller's Stockholders' Meeting.* Seller shall use its best efforts to convene a special meeting of its stockholders as promptly as practicable for the purpose of seeking the approval of the Sale by the holders

of its shares of Common Stock and Preferred Stock, if any, outstanding on the record date for such meeting. Seller will recommend that its stockholders approve the Sale and otherwise use its best efforts to obtain all such approvals.

1.4. *The Closing.* On a mutually acceptable date (the "Closing Date"), not later than the third business day after the approval of the Sale by Seller's stockholders, a meeting (the "Closing") shall be held at a mutually acceptable place for the purpose of consummating the Sale. If all conditions of the parties' obligations set forth in Article IV under this Agreement are determined to be satisfied (or are duly waived), the Closing shall be consummated by

(a) the delivery by Buyer to Seller of immediately available funds in the amount of the Price (unless such Price has not been finally determined, in which case Section 1.2 hereof shall be applicable and the funds delivered to Seller and the escrow agent shall be in the respective amounts referred to therein), against

(b) the delivery by Seller to Buyer of the certificates representing all of the Stock, duly endorsed or accompanied by duly endorsed stock powers, and all such other documents as are necessary to transfer to Buyer good and marketable title to the Stock, free and clear of any liens or encumbrances (except such liens or encumbrances as may arise from acts of Buyer).

If any such condition is not determined to be satisfied (and is not duly waived), the party whose obligations are subject to such condition may either:

(x) terminate this Agreement, or

(y) extend the Closing Date for up to sixty days,

*provided, however,* that if the condition not satisfied or waived is that set forth in Sections 4.1(c) and 4.2(c) hereof (relating to injunctions then in effect) or that set forth in Sections 4.1(e) and 4.2(e) hereof (relating to certain waiting periods under the antitrust laws), any party may require that the Closing Date be extended for up to sixty days or, if earlier, the first business day after such condition is satisfied. The parties shall at all times use their best efforts to cause all conditions of Closing to be satisfied.

## ARTICLE II

## REPRESENTATIONS AND WARRANTIES

2.1. *Representations and Warranties of Seller.* Seller hereby represents and warrants to Reliance and Buyer as follows:

2.1(a) *Authorization and Effect of Agreement.* Seller has all requisite corporate power and authority to enter into and perform all of its obligations under this Agreement. The execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action on the part of Seller, except for approvals by the holders of Seller's outstanding shares of Common Stock and Preferred Stock. Subject to all such approvals of stockholders, this Agreement constitutes the valid and legally binding obligation of Seller.

2.1(b) *Capital Stock of the Company.* The authorized capital stock of the Company consists of 100 shares of Common Stock (par value $10.00 per share), all of which shares are outstanding and owned by Seller, free and clear of any liens or encumbrances. All of such outstanding shares are validly issued, fully-paid and nonassessable. The 10-K correctly sets forth the Company's direct and indirect percentage ownership of the capital stock of each of its material subsidiaries. Such subsidiaries are hereinafter called the "Subsidiaries". Except as set forth in the 10-K and the 1977 Annual Report to Shareholders of Federal Pioneer Limited (which is one of the Subsidiaries), there are not outstanding any offers, subscriptions, options, conversion rights, warrants or other agreements

or commitments (either firm or conditional) obligating the Company or any of the Subsidiaries (or obligating Seller to cause the Company or any of the Subsidiaries) to issue, sell, grant or otherwise dispose of (or cause to be issued, sold, granted or otherwise disposed of) any of its capital stock.

2.1(c) *Interim Events.* Since September 30, 1978, the Company and the Subsidiaries have not changed the conduct of their business and said business has in all material respects been conducted only in the usual and ordinary course since September 30, 1978. To the best of Seller's knowledge, since September 30, 1978, there has not been any material adverse change in the financial condition, assets, or the consolidated results of operations of the Company and the Subsidiaries (taken as a whole) due to any cause whatsoever, whether or not the same has been insured against.

2.2. *Representations and Warranties of Reliance and Buyer.* Reliance and Buyer represent and warrant to Seller as follows:

2.2(a) *Authorization and Effect of Agreement.* Each of Reliance and Buyer has all requisite corporate power and authority to enter into and perform all of its respective obligations under this Agreement. The execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action on the part of Reliance and Buyer. This Agreement constitutes a valid and legally binding obligation of Reliance and Buyer.

2.2(b) *Availability of Funds.* Reliance has, at the date hereof, firm commitments for, and will have available at the Closing funds, which, in the aggregate, are sufficient in amount to perform its obligations under Section 1.4 hereof.

2.2(c) *Purchase for Investment.* The Stock to be acquired pursuant to this Agreement will be acquired by Buyer for its own account, for investment, and not with a view to the distribution or resale thereof, except to Reliance or a wholly-owned subsidiary of Reliance and except in compliance with the requirements of the Securities Act of 1933, as amended.

## ARTICLE III

## CERTAIN COVENANTS

3.1. *Certain Covenants of Seller.*

3.1(a) *Preservation of Business Organization.* Prior to the Closing Date, Seller shall use its best efforts to cause the Company and each of the Subsidiaries to preserve intact its business organization and to preserve the good will of its suppliers, customers and others having business relations with it.

3.1(b) *Consents.* Prior to the Closing Date, Seller shall use its best efforts to cause the Company and each of the Subsidiaries to obtain appropriate consents in writing in order that the Sale shall not result in any default, termination, amendment or modification with respect to any material agreement, contract, commitment, or instrument to which the Company or any of the Subsidiaries is a party or by which the Company, any of the Subsidiaries or any of their respective assets is bound.

3.1(c) *Access.* Prior to the Closing Date, at any time and from time to time, the Chief Executive Officer and Chief Operating Officer of Seller and the President of the Company (collectively, "Seller's Representatives") shall be available for discussions with the Chief Executive Officer, the Chief Financial Officer and the Vice President and General Counsel of Reliance (collectively, "Buyer's Representatives"), and pursuant to such discussions Reliance shall be provided with such information as Reliance may reasonably request. All information received by Reliance pursuant to this Section 3.1(c) shall be kept in strictest confidence. In addition, Seller shall, to the extent reasonably possible, cause Reliance to be notified in advance of any material event regarding the Company and the Subsidiaries and, if so requested by Reliance, shall cause Seller's Representatives to consult with Buyer's Representatives concerning such event.

3.1(d) *Course of Conduct Prior to Closing.* Prior to the Closing Date, Seller shall use its best efforts to cause the Company and the Subsidiaries to conduct their business only in the usual and ordinary course, diligently and in a manner consistent with past practices, and (without limiting the generality of the foregoing provision) Seller shall not permit or cause the Company or any of the Subsidiaries to take any of the following actions (or make any agreement or commitment, firm or conditional, to do so):

(i) make any change in its Certificate of Incorporation or By-laws, or in any of its indentures or (except in the usual and ordinary course of business) any other material agreements;

(ii) issue, sell, grant or otherwise dispose of any of its capital stock (except for the issuance by Federal Pioneer Limited of additional voting stock upon the exercise of conversion rights outstanding on the date of this Agreement and described in Federal Pioneer Limited's 1977 Annual Report); or

(iii) (A) declare or pay any dividend, distribution or other payment with respect to any of its capital stock, or make any commitment relating thereto, except that Federal Pioneer Limited may declare and pay dividends in accordance with its prior practices, or (B) directly or indirectly, redeem, purchase or otherwise acquire any of its capital stock.

3.1(e) *No Solicitations.* Seller shall not, at any time prior to the Closing Date or the termination of this Agreement in accordance with the terms hereof, solicit (or authorize or encourage any other person or entity to solicit on its behalf) any other proposal or offer to acquire the stock, assets or business of the Company and the Subsidiaries or any material portion thereof.

3.2. *Certain Covenants of Reliance.*

3.2(a) *Provision of Amounts.* Reliance shall provide and deliver to or on behalf of Buyer all amounts payable to Seller pursuant to Article I hereof.

3.3. *Certain Covenants of Reliance, Buyer and Seller.*

3.3(a) *Cooperation.* Reliance, Buyer and Seller shall each use their best efforts to cause the Closing to occur as promptly as possible and none of them shall undertake any course of action inconsistent with such intended result.

3.3(b) *Press Releases.* Reliance, Buyer and Seller agree to use their best efforts to cooperate with each other in making any press releases or other public announcements concerning the transactions contemplated by this Agreement.

3.3(c) *Regulatory Filings.* Reliance, Buyer and Seller shall each promptly take all actions necessary to make each filing it is required to make with any governmental agency or authority as a condition to or consequence of the consummation of the Sale, including without limitation the filings required under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, and shall each use its best efforts to assist the others in making such required filings.

3.3(d) *Injunctions.* If any United States court having jurisdiction over any party hereto or the Company issues or otherwise promulgates any injunction, decree or similar order which prohibits the consummation of the Sale (an "Injunction"), all parties hereto shall use their best efforts to have such Injunction dissolved or otherwise eliminated as promptly as possible, *provided, however,* that the foregoing provision shall not require any party hereto to dispose of any of its assets or business or to agree to any restriction on its ownership, acquisition or disposition of assets or the conduct of its business, or take any action other than to pursue the litigation diligently and in good faith.

## ARTICLE IV

## CONDITIONS OF CLOSING

4.1. *Conditions Applicable to Reliance and Buyer.* The obligations of Reliance and Buyer under this Agreement to consummate the Sale are subject only to the following conditions, any of which may be waived at the option of Reliance and Buyer:

4.1(a) *Stockholders' Approval.* Seller shall have duly obtained the approval of the Sale by its stockholders.

4.1(b) *Representation, Warranties and Covenants.* The representations and warranties of Seller contained in Section 2.1 hereof shall be true and correct both at and as of the date of this Agreement and, as to Sections 2.1(a) and 2.1(b) only, at and as of the Closing Date (except for changes as of the Closing Date in the Company's percentage of share ownership of Federal Pioneer Limited resulting from the issuance of additional voting stock upon the exercise of conversion rights outstanding on the date of this Agreement and described in Federal Pioneer Limited's 1977 Annual Report). All the terms, covenants and conditions set forth in Section 3.1(d) of this Agreement to be complied with and performed by Seller on or before the Closing Date shall have been complied with and performed in all material respects.

4.1(c) *Injunctions.* There shall not be in effect any Injunction.

4.1(d) *Officers' Certificate Concerning This Agreement.* Seller shall have furnished to Reliance and Buyer a certificate dated the Closing Date, signed by its Chief Executive Officer and its Chief Financial Officer, to the effect that the conditions set forth in Sections 4.1(a), 4.1(b) and (as to Seller and the Company only) 4.1(c) have been satisfied.

4.1(e) *Hart-Scott-Rodino.* All waiting periods required by the Hart-Scott-Rodino Antitrust Improvements Act of 1976 with respect to the consummation of the Sale shall have expired.

4.2. *Conditions Applicable to Seller.* The obligation of Seller under this Agreement to cause the Sale to be consummated is subject to the following conditions, any of which may be waived at the option of Seller:

4.2(a) *Stockholders' Approval.* Seller shall have duly obtained the approval of the Sale by its stockholders.

4.2(b) *Representations and Warranties.* The representations and warranties of Reliance and Buyer contained in Section 2.2 hereof shall be true and correct both at and as of the date hereof and at and as of the Closing Date.

4.2(c) *Injunctions.* There shall not be in effect any Injunction.

4.2(d) *Officers' Certificate Concerning This Agreement.* Reliance and Buyer shall have furnished to Seller a certificate dated the Closing Date, signed by their respective Chief Executive Officers, to the effect that the conditions set forth in Sections 4.2(b) and (as to Buyer and Reliance only) 4.2(c) hereof have been satisfied.

4.2(e) *Hart-Scott-Rodino.* All waiting periods required by the Hart-Scott-Rodino Antitrust Improvements Act of 1976 with respect to the consummation of the Sale shall have expired.

4.3. *Special Circumstances.* If the management and Board of Directors of Seller receive an offer from a third party for the purchase of the Company in an amount which the Board of Directors of Seller concludes, in the exercise of its fiduciary responsibility, should be transmitted to the stockholders of Seller, such offer may be so transmitted together with the proposal for the Sale of the Company to Reliance which is the subject matter of this Agreement. If the stockholders of Seller reject such proposal for the Sale of the Company to Reliance, the parties hereto agree that the conditions contained in Sections 4.1(a) and 4.2(a) of this Agreement shall not be deemed to have been fulfilled.

## ARTICLE V

## MISCELLANEOUS

5.1. *Termination.*

5.1(a) *By Mutual Consent.* This Agreement may be terminated pursuant to the mutual consent of the Boards of Directors of Reliance, Buyer and Seller at any time for any reason.

5.1(b) *By Reliance and Buyer or Seller.* This Agreement may be terminated by written notice from Reliance and Buyer to Seller (authorized by the Boards of Directors of Reliance and Buyer), or by written notice from Seller to Reliance and Buyer (authorized by the Board of Directors of Seller), if the Closing is not consummated in accordance with Section 1.4 hereof within the time (including any extension) specified therein or the Sale does not occur on or before June 30, 1979, whichever is earlier.

5.1(c) *Expenses.* If termination shall occur as provided herein, each party will pay all of its own fees and expenses. There shall be no further liability hereunder on the part of any party or any of its Directors or officers if this Agreement shall be so terminated, except by reason of the breach of this Agreement.

5.2. *Notices.* All notices and other communications to be given under or by reason of this Agreement shall be in writing and shall be deemed to have been duly given when delivered in person or posted by United States registered or certified mail, with postage prepaid, addressed as follows:

(a) if to Reliance and/or Buyer:

29325 Chagrin Boulevard
Cleveland, Ohio 44122
Attention: Stephen J. Burns, Vice President,
General Counsel and Secretary;

(b) if to Seller:

437 Madison Avenue
New York, New York 10022
Attention: Martin Horwitz, Chairman of the Board

or to such other address or addresses as any such party may from time to time designate as to itself, by notice as provided herein

5.3. *Assignment.* No party shall assign this Agreement or any part hereof without the prior written consent of the other parties, *provided that* Buyer may make such an assignment to any wholly-owned subsidiary of Reliance if prior thereto Reliance has delivered to Seller its unconditional written guarantee that the assignee will perform all of its assumed obligations to Seller. Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

5.4. *Waiver.* Reliance and Buyer, on the one hand, and Seller, on the other hand, may, by written notice to the other, (a) extend the time for the performance of any of the obligations or other actions of the other under this Agreement; (b) waive any inaccuracies in the representations or warranties of the other contained in this Agreement or in any document delivered pursuant to this Agreement; (c) waive compliance with any of the conditions or covenants of the other contained in this Agreement; or (d) waive or modify performance of any of the obligations of the other under this Agreement. Except as provided in the preceding sentence, no action taken pursuant to this Agreement, including without limitation, any investigation by or on behalf of any party, shall be deemed to constitute a waiver of compliance with any representations, warranties, covenants or agreements contained in this Agreement or of any other right which such party may have. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

5.5. *Entire Agreement.* This Agreement supersedes any other agreement, whether written or oral, that may have been made or entered into by Reliance, Buyer or Seller (or by any officer or officers of such

parties) relating to the matters contemplated hereby. This Agreement constitutes the entire agreement by the parties and there are no agreements or commitments except as set forth herein.

5.6. *Amendments, Supplements, Etc.* At any time before or after the approval of the Sale by the stockholders of Seller, this Agreement may be amended or supplemented by additional written agreements, as may mutually be determined by the parties hereto to be necessary, desirable or expedient to further the purposes of this Agreement, or to clarify the intention of the parties hereto.

5.7. *Limitations on Rights of the Parties.* Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon or give any person, firm or corporation other than the parties hereto and their respective stockholders any rights or remedies under or by reason of this Agreement or any transaction contemplated hereby.

5.8. *Applicable Law.* This Agreement and the legal relations among the parties hereto shall be governed by and construed in accordance with the substantive laws of the State of Delaware without giving effect to the principles of conflicts of laws thereof.

5.9. *Employment Agreements.* Reliance and Buyer understand that on or before the Closing Date the Company may enter into five-year employment contracts with Messrs. Harry E. Knudson and Harold E. Young which contracts shall provide employment on terms substantially equivalent to those currently in effect for such individuals, including compensation at levels not in excess of that to which such individuals are presently entitled and shall only contain customary provisions for contracts of this type.

5.10. *Captions; Counterparts.* The captions in this Agreement are for convenience only and shall not be considered a part of or affect the construction or interpretation of any provision of this Agreement. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Agreement has been approved by resolution duly adopted by the Board of Directors of each of the parties hereto and has been executed by duly authorized officers of each of the parties hereto, all as of the date first above written.

RELIANCE ELECTRIC COMPANY

By /s/ B. C. AMES
*President*

ATTEST:

/s/ S. J. BURNS
*Secretary*

NEW REC, INC.

/s/ B. C. AMES
*President*

ATTEST:

/s/ S. J. BURNS
*Secretary*

UV INDUSTRIES, INC.

By /s/ MARTIN HORWITZ
*Chairman of the Board*

ATTEST:

/s/ SEYMOUR HORWITZ
*Secretary*

*Annex II*

**ANNEX III**

EF Hutton & Company Inc
Member New York Stock Exchange

EF Hutton

One Battery Park Plaza
New York, New York 10004
Telephone (212) 742-5000

February 9, 1979

The Board of Directors
UV Industries, Inc.
437 Madison Avenue
New York, New York 10022

Gentlemen:

You have requested E.F. Hutton & Company Inc. ("EFH") to confirm its opinion to the Directors of UV Industries, Inc. ("UV") as to whether the terms and conditions of the proposed sale of UV's wholly owned subsidiary Federal Pacific Electric Company ("Federal Pacific") to Reliance Electric for a maximum $345 million or a minimum of $325 million in cash is fair and reasonable to UV and its shareholders.

Our opinion is based on our review of: a) the terms and conditions of the proposed transaction as set forth in the stock purchase agreement dated December 18, 1976; b) publicly available financial statements of Federal Pacific; c) a statistical, comparative analysis of premiums paid for acquisitions in the electrical products industry; d) a statistical, comparative current market value analysis of comparable electrical products companies; e) management interviews and f) such other market information which we deemed appropriate.

Based upon our analysis described above, it is Hutton's opinion that the cash sale price for Federal Pacific is fair and reasonable to UV and its shareholders.

Very truly yours,

E.F. HUTTON & COMPANY INC.

By C. Clarke Anderson

ANNEX IV

# UV INDUSTRIES, INC.

## STATEMENT SETTING FORTH THE COMPUTATION OF PER SHARE EARNINGS FULLY DILUTED BASIS

| | Year ended December 31 | | | | | Nine months ended September 30, (unaudited) | |
|---|---|---|---|---|---|---|---|
| | 1973 | 1974 | 1975 | 1976 | 1977 | 1977 | 1978 |
| | (000's omitted) | | | | | | |
| Net income | $21,010(a) | $29,604(a) | $24,376 | $34,838 | $38,160 | $27,971 | $35,778 |
| Dividend requirements on $5.50 Cumulative Preferred Stock | (835) | (812) | (763) | (745) | (704) | (534) | (506) |
| Dividend requirements on $1.265 New Preferred Stock | (557) | (451) | (360) | (296) | (194) | (157) | (104) |
| Applicable to common stock | 19,618 | 28,341 | 23,253 | 33,847 | 37,262 | 27,280 | 35,168 |
| Adjustments: | | | | | | | |
| Dilutive effect of Federal Pacific Electric Company Canadian subsidiaries | (64) | (123) | (215) | (381) | | (75) | |
| Interest on 5¼% convertible debentures, net of federal income taxes | 1,794 | 1,794 | 1,790 | 1,632 | 1,500 | 1,129 | 1,094 |
| Interest on 5½% convertible debentures, net of federal income taxes | 258 | 196 | 138 | 83 | 38 | 31 | 9 |
| Expenses written off re: 5¼% debentures, and Federal Pacific Electric Company Long-Term Debt, net of federal income taxes | 31 | 31 | 66 | 151 | 87 | 69 | 78 |
| Interest savings and interest earned on proceeds from options and warrants (see annexed): | | | | | | | |
| Interest on short-term debt retired, net of federal income taxes | | 1,241 | 1,084 | 575 | 117 | 116 | 93 |
| Interest on long-term debt retired, net of federal income taxes | 1,080 | 485 | 756 | 412 | 957 | 719 | 667 |
| Interest on bank loans, net of federal income taxes | 1,091 | 1,230 | 1,066 | 984 | | | |
| Interest on invested proceeds from exercise of options and warrants, net of federal income taxes | 225 | | | | 310 | 179 | 291 |
| Conversion of $1.265 New Preferred Stock | 557 | 451 | 360 | 296 | 194 | 157 | 104 |
| Total | 4,972 | 5,305 | 5,045 | 3,752 | 3,203 | 2,325 | 2,336 |
| Adjusted net income | $24,590 | $33,646 | $28,298 | $37,599 | $40,465 | $29,605 | $37,504 |
| Fully diluted per adjusted number of shares outstanding | $1.66 | $2.29 | $1.91 | $2.59 | $2.80 | $2.07 | $2.73 |

(a) Restated to give effect to the adoption in 1975 of Statement No. 9 of the Financial Accounting Standards Board relating to income taxes on intangible drilling costs.

## UV INDUSTRIES, INC.

### STATEMENT SETTING FORTH THE COMPUTATION OF PER SHARE EARNINGS FULLY DILUTED BASIS—(Continued)

| | Year ended December 31 | | | | | Nine months ended September 30, (unaudited) | |
|---|---|---|---|---|---|---|---|
| | 1973 | 1974 | 1975 | 1976 | 1977 | 1977 | 1978 |
| | (000's omitted) | | | | | | |
| Adjusted number of shares outstanding(1): | | | | | | | |
| Weighted average of shares outstanding | 7,880 | 8,071 | 8,538 | 8,911 | 9,216 | 9,278 | 9,150 |
| Shares issuable on conversion of 5¾% debentures | 2,673 | 2,673 | 2,665 | 2,629 | 2,233 | 2,240 | 2,174 |
| Shares issuable on conversion of 5½% debentures | 902 | 730 | 538 | 355 | 156 | 170 | 63 |
| Shares issuable on exercise of warrants | 3,534 | 3,534 | 3,692 | 3,764 | 3,764 | 3,764 | 3,764 |
| Shares issuable on exercise of options | 368 | 489 | 401 | 312 | 225 | 233 | 157 |
| Shares issuable on conversion of $1.265 New Preferred Stock | 1,043 | 849 | 688 | 557 | 366 | 394 | 263 |
| Shares assumed repurchased with portion of proceeds from exercise of warrants and options (limited to 20% outstanding shares) | (1,556) | (1,635) | (1,743) | (1,818) | (1,810) | (1,802) | (1,846) |
| Total | 14,844 | 14,711 | 14,779 | 14,510 | 14,150 | 14,277 | 13,725 |
| Proceeds and assumed use as follows: | | | | | | | |
| Proceeds from stock options | $ 3,556 | $ 5,180 | $ 3,769 | $ 3,215 | $ 2,464 | $ 2,512 | $ 1,928 |
| Proceeds from warrants | 77,750 | 77,750 | 77,750 | 77,750 | 77,745 | 77,745 | 77,738 |
| Total | $81,306 | $82,930 | $81,519 | $80,965 | $80,209 | $80,257 | $79,666 |
| Assumed use: | | | | | | | |
| Purchase of outstanding shares | $15,174 | $19,389 | $18,346 | $28,631 | $36,525 | $38,302 | $38,532 |
| Short-term debt-Federal Pacific Electric Company | | 27,273 | 13,648 | 12,590 | 2,758 | 3,125 | 2,917 |
| Long-term debt Federal Pacific Electric Company | 16,558 | 15,108 | 13,450 | 10,939 | 8,056 | 8,114 | 6,589 |
| Repayment of bank loans | 25,000 | 21,160 | 25,000 | 27,288 | | | |
| Retire 5½% notes | 2,800 | | 1,050 | | | | |
| Retire long-term debt of Mueller Brass Co. | | | | | 5,920 | 5,920 | 5,875 |
| Retire 5¾% subordinated debentures | 17,440 | | 10,025 | 1,514 | 16,063 | 16,063 | 15,393 |
| Invested in commercial paper | 4,334 | | | | 10,887 | 8,733 | 10,360 |
| Total | $81,306 | $82,930 | $81,519 | $80,965 | $80,209 | $80,257 | $79,666 |

(1) Adjusted for the 3-for-2 stock split in April, 1974 and the 2-for-1 stock split in June, 1977

# TITLE 13-A OF MAINE BUSINESS CORPORATION ACT

**§908. Right of shareholders to dissent**

1. Except as provided in subsections 3 and 4, any shareholders of a domestic corporation, by complying with section 909, shall have the right to dissent from any of the following corporate actions:

A. Any plan of merger or consolidation in which the corporation is participating; or

B. Any sale or other disposition, excluding a mortgage or other security interest, of all or substantially all of the property and assets of the corporation not made in the usual and regular course of its business, including a sale in liquidation, but not including a sale pursuant to an order of a court having jurisdiction in the premises or a sale for cash on terms requiring that all or substantially all of the net proceeds of sale be distributed to the shareholders in accordance with their respective interests within one year after the date of sale; or

C. Any other action as to which a right to dissent is expressly given by this Act.

2. A shareholder may dissent as to less than all of the shares registered in his name. In that event, his rights shall be determined as if the shares as to which he has dissented and his other shares were registered in the names of different shareholders.

3. There shall be no right of dissent in the case of shareholders of the surviving corporation in a merger

A. If such corporation is, on the date of filing of the articles of merger, the owner of all the outstanding shares of the other corporations, domestic or foreign, which are parties to the merger, or

B. If a vote of the shareholders of such surviving corporation was not necessary to authorize such merger.

4. There shall be no right of dissent in the case of holders of any class or series of shares in any of the participating corporations in a merger or consolidation, which shares were, at the record date fixed to determine the shareholders entitled to receive notice of and to vote at the meeting of shareholders at which the plan of merger or consolidation was to be voted on, either:

A. Registered or traded on a national securities exchange; or

B. Registered with the Securities and Exchange Commission pursuant to section 12(g) of the Act of Congress known as the Securities Exchange Act of 1934, as the same has been or may hereafter be amended, being Title 15 of the United States Code Annotated, §78*l*(g);

unless the articles of incorporation of that corporation provide that there shall be a right of dissent.

5. The exceptions from the right of dissent provided for in subsection 3, paragraph B and in subsection 4 shall not be applicable to the holders of a class or series of shares of a participating corporation if, under the plan of merger or consolidation, such holders are required to accept for their shares anything, except:

A. Shares of the surviving or new corporation resulting from the merger or consolidation, or such shares plus cash in lieu of fractional shares; or

B. Shares, or shares plus cash in lieu of fractional shares, of any other corporation, which shares were, at the record date fixed to determine the shareholders entitled to receive notice of and to vote at the meeting of shareholders at which the plan of merger or consolidation was acted upon, either:

(1) Registered or traded on a national securities exchange; or

(2) Held of record by not less than 2,000 shareholders; or

C. A combination of shares, or shares plus cash in lieu of fractional shares, as set forth in paragraphs A and B.

**§ 909. Right of dissenting shareholders to payment for shares**

1. A shareholder having a right under any provision of this Act to dissent to proposed corporate action shall, by complying with the procedure in this section, be paid the fair value of his shares, if the corporate action to which he dissented is effected. The fair value of shares shall be determined as of the day prior to the date on which the vote of the shareholders, or of the directors in case a vote of the shareholders was not necessary, was taken approving the proposed corporate action, excluding any appreciation or depreciation of shares in anticipation of such corporate action.

2. The shareholder, whether or not entitled to vote, shall file with the corporation, prior to or at the meeting of shareholders at which such proposed corporate action is submitted to a vote, a written objection to the proposed corporate action. No such objection shall be required from any shareholder to whom the corporation failed to send notice of such meeting in accordance with this Act.

3. If the proposed corporate action is approved by the required vote and the dissenting shareholder did not vote in favor thereof, the dissenting shareholder shall file a written demand for payment of the fair value of his shares. Such demand

A. Shall be filed with the corporation or, in the case of a merger or consolidation, with the surviving or new corporation; and

B. Shall be filed by personally delivering it, or by mailing it via certified or registered mail, to such corporation at its registered office within this State or to its principal place of business or to the address given to the Secretary of State pursuant to section 906, subsection 4, paragraph B; it shall be so delivered or mailed within 15 days after the date on which the vote of shareholders was taken, or the date on which notice of a plan of merger of a subsidiary into a parent corporation without vote of shareholders was mailed to shareholders of the subsidiary; and

C. Shall specify the shareholder's current address; and

D. May not be withdrawn without the corporation's consent.

4. Any shareholder failing either to object as required by subsection 2 or to make demand in the time and manner provided in subsection 3 shall be bound by the terms of the proposed corporate action. Any shareholder making such objection and demand shall thereafter be entitled only to payment as in this section provided and shall not be entitled to vote or to exercise any other rights of a shareholder.

5. The right of a shareholder otherwise entitled to be paid for the fair value of his shares shall cease, and his status as a shareholder shall be restored, without prejudice to any corporate proceedings which may have been taken during the interim,

A. If his demand shall be withdrawn upon consent, or

B. If the proposed corporate action shall be abandoned or rescinded, or the shareholders shall revoke the authority to effect such action, or

C. If, in the case of a merger, on the date of the filing of the articles of merger the surviving corporation is the owner of all the outstanding shares of the other corporations, domestic and foreign, that are parties to the merger, or

D. If no action for the determination of fair value by a court shall have been filed within the time provided in this section, or

E. If a court of competent jurisdiction shall determine that such shareholder is not entitled to the relief provided by this section.

6. At the time of filing his demand for payment for his shares, or within 20 days thereafter, each shareholder demanding payment shall submit the certificate or certificates representing his shares to the corporation or its transfer agent for notation thereon that such demand has been made; such certificates

shall promptly be returned after entry thereon of such notation. A shareholder's failure to do so shall, at the option of the corporation, terminate his rights under this section, unless a court of competent jurisdiction, for good and sufficient cause shown, shall otherwise direct. If shares represented by a certificate on which notation has been so made shall be transferred, each new certificate issued therefor shall bear a similar notation, together with the name of the original dissenting holder of such shares, and a transferee of such shares shall acquire by such transfer no rights in the corporation other than those which the original dissenting shareholder had after making demand for payment of the fair value thereof.

7. Within the time prescribed by this subsection, the corporation, or, in the case of a merger or consolidation, the surviving or new corporation, domestic or foreign, shall give written notice to each dissenting shareholder who has made objection and demand as herein provided that the corporate action dissented to has been effected, and shall make a written offer to each such dissenting shareholder to pay for such shares at a specified price deemed by such corporation to be the fair value thereof. Such offer shall be made at the same price per share to all dissenting shareholders of the same class. The notice and offer shall be accompanied by a balance sheet of the corporation the shares of which the dissenting shareholder holds, as of the latest available date and not more than 12 months prior to the making of such offer, and a profit and loss statement of such corporation for the 12 months' period ended on the date of such balance sheet. The offer shall be made within the later of 10 days after the expiration of the period provided in subsection 3, paragraph B, for making demand, or 10 days after the corporate action is effected; corporate action shall be deemed effected on a sale of assets when the sale is consummated, and in a merger or consolidation when the articles of merger or consolidation are filed or upon which later effective date as is specified in the articles of merger or consolidation as permitted by this Act.

8. If within 20 days after the date by which the corporation is required, by the terms of subsection 7, to make a written offer to each dissenting shareholder to pay for his shares, the fair value of such shares is agreed upon between any dissenting shareholder and the corporation, payment therefor shall be made within 90 days after the date on which such corporate action was effected, upon surrender of the certificate or certificates representing such shares. Upon payment of the agreed value the dissenting shareholder shall cease to have any interest in such shares.

9. If within the additional 20-day period prescribed by subsection 8, one or more dissenting shareholders and the corporation have failed to agree as to the fair value of the shares:

A. Then the corporation may, or shall, if it receives a demand as provided in subparagraph (1), bring an action in the Superior Court in the county in this State where the registered office of the corporation is located praying that the fair value of such shares be found and determined. If, in the case of a merger or consolidation, the surviving or new corporation is a foreign corporation without a registered office in this State, such action shall be brought in the county where the registered office of the participating domestic corporation was last located. Such action:

(1) Shall be brought by the corporation, if it receives a written demand for suit from any dissenting shareholder, which demand is made within 60 days after the date on which the corporate action was effected; and if it receives such demand for suit, the corporation shall bring the action within 30 days after receipt of the written demand; or,

(2) In the absence of a demand for suit, may at the corporation's election be brought by the corporation at any time from the expiration of the additional 20-day period prescribed by subsection 8 until the expiration of 60 days after the date on which the corporate action was effected.

B. If the corporation fails to institute the action within the period specified in paragraph A, any dissenting shareholder may thereafter bring such an action in the name of the corporation.

C. No such action may be brought, either by the corporation or by a dissenting shareholder, more than 6 months after the date on which the corporate action was effected.

D. In any such action, whether initiated by the corporation or by a dissenting shareholder, all dissenting shareholders, wherever residing, except those who have agreed with the corporation upon the price to be paid for their shares, shall be made parties to the proceeding as an action against their shares quasi in rem. A copy of the complaint shall be served on each dissenting shareholder who is a resident of this State as in other civil actions, and shall be served by registered or certified mail, or by personal service without the State, on each dissenting shareholder who is a nonresident. The jurisdiction of the court shall be plenary and exclusive.

E. The court shall determine whether each dissenting shareholder, as to whom the corporation requests the court to make such determination, has satisfied the requirements of this section and is entitled to receive payment for his shares; as to any dissenting shareholder with respect to whom the corporation makes such a request, the burden is on the shareholder to prove that he is entitled to receive payment. The court shall then proceed to fix the fair value of the shares. The court may, if it so elects, appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have such power and authority as shall be specified in the order of their appointment or an amendment thereof.

F. All shareholders who are parties to the proceeding shall be entitled to judgment against the corporation for the amount of the fair value of their shares, except for any shareholder whom the court shall have determined not to be entitled to receive payment for his shares. The judgment shall be payable only upon and concurrently with the surrender to the corporation of the certificate or certificates representing such shares. Upon payment of the judgment, the dissenting shareholder shall cease to have any interest in such shares.

G. The judgment shall include an allowance for interest at such rate as the court may find to be fair and equitable in all the circumstances, from the date on which the vote was taken on the proposed corporate action to the date of payment. If the court finds that the refusal of any shareholder to accept the corporate offer of payment for his shares was arbitrary, vexatious or not in good faith, it may in its discretion refuse to allow interest to him.

H. The costs and expenses of any such proceeding shall be determined by the court and shall be assessed against the corporation, but all or any part of such costs and expenses may be apportioned and assessed as the court may deem equitable against any or all of the dissenting shareholders who are parties to the proceeding to whom the corporation shall have made an offer to pay for the shares, if the court shall find that the action of such shareholders in failing to accept such offer was arbitrary or vexatious or not in good faith. Such expenses shall include reasonable compensation for and reasonable expenses of the appraisers, but shall exclude the fees and expenses of counsel for any party and shall exclude the fees and expenses of experts employed by any party, unless the court otherwise orders for good cause. If the fair value of the shares as determined materially exceeds the amount which the corporation offered to pay therefor, or if no offer was made, the court in its discretion may award to any shareholder who is a party to the proceeding such sum as the court may determine to be reasonable compensation to any expert or experts employed by the shareholder in the proceeding, and may, in its discretion, award to any shareholder all or part of his attorney's fees and expenses.

I. At all times during the pendency of any such proceeding, the court may make any and all orders which may be necessary to protect the corporation or the dissenting shareholders, or which are otherwise just and equitable. Such orders may include, without limitation, orders:

(1) Requiring the corporation to pay into court, or post security for, the amount of the judgment or its estimated amount, either before final judgment or pending appeal;

(2) Requiring the deposit with the court of certificates representing shares held by the dissenting shareholders;

(3) Imposing a lien on the property of the corporation to secure the payment of the judgment, which lien may be given priority over liens and incumbrances contracted after the vote authorizing the corporate action from which the shareholders dissent;

(4) Staying the action pending the determination of any similar action pending in another court having jurisdiction.

10. Shares acquired by a corporation pursuant to payment of the agreed value therefor or to payment of the judgment entered therefor, as in this section provided, may be held and disposed of by such corporation as in the case of other treasury shares, except that, in the case of a merger or consolidation, they may be held and disposed of as the plan of merger or consolidation may otherwise provide.

11. The objection required by subsection 2 and the demand required by subsection 3 may, in the case of a shareholder who is a minor or otherwise legally incapacitated, be made either by such shareholder, notwithstanding his legal incapacity, or by his guardian, or by any person acting for him as next friend. Such shareholder shall be bound by the time limitations set forth in this section, notwithstanding his legal incapacity.

12. Appeals shall lie from judgments in actions brought under this section as in other civil actions in which equitable relief is sought.

13. No action by a shareholder in the right of the corporation shall abate or be barred by the fact that the shareholder has filed a demand for payment of the fair value of his shares pursuant to this section.

UV INDUSTRIES, INC.
437 Madison Avenue, New York, N. Y. 10022

March 6, 1979

Dear Stockholder:

Your Board of Directors believes it is in your interest as a UV stockholder that we consummate the $345 million sale of Federal Pacific Electric Company ("Federal") and adopt the Plan of Liquidation and Dissolution (the "Plan") as set forth in detail as Items 1 and 2 in our February 20, 1979 Notice and Proxy Statement. Approval of the Plan requires that two-thirds of the outstanding stock be voted FOR the Plan at the forthcoming Special Meeting to be held March 26, 1979.

On March 5, 1979, the Board of Directors voted to submit to stockholders at the Special Meeting an alternative proposal (**Item 3** on the enclosed blue proxy card) calling for the authorization to sell substantially all of the Company's assets (the "Proposal"). Under the Proposal, the Company would have the authority to sell assets in addition to Federal, distribute the proceeds from such sales to stockholders and to continue to operate the remaining assets as an on-going business. Approval of such a proposal requires that only a majority of the outstanding stock be voted FOR the Proposal.

Let me tell you why your Board believes it is necessary that this alternative Proposal (**Item 3** on the blue proxy card) be available for your consideration.

Sharon Steel Corporation ("Sharon"), a company controlled by Victor Posner, has been seeking to purchase at least an additional 1.3 million shares of UV Common Stock. Sharon has stated that its sole purpose in attempting to purchase additional shares is for investment and to maintain an ownership of 22 to 23 percent of the outstanding stock of UV but has stated that it has not yet decided how it will vote its shares at the meeting.

We believe that Victor Posner and Sharon intend to vote for the sale of Federal and intend to vote against the Plan in an attempt to defeat the Plan with the ultimate objective of obtaining control of the Company. Accordingly, we believe it to be in the best interest of the stockholders to present the alternative Proposal to them for consideration

The United States District Court in Maine, where UV is incorporated, has issued a preliminary injunction enjoining Sharon's purchase of the 1.3 million share block which Sharon attempted to purchase on Thursday, February 22 and any future purchase by Sharon of any of the shares solicited in connection with the assemblage of the block. On the same date, the Supreme Court of the State of New York issued an order vacating a temporary restraining order issued on February 23, 1979 enjoining completion of the purchase. Nevertheless, while the United States District Court preliminary injunction is in effect, Sharon is prohibited from completing the purchase of the 1.3 million shares and from making future purchases of shares which were solicited as part of the 1.3 million share transaction.

In summary, the objective of the Proposal is to provide an alternative to the Plan which would require only a majority vote for approval and, when approved, would permit a distribution to UV stockholders from the sale of assets *even if* the Plan (which requires a vote of two-thirds for approval) is not approved.

This additional Proposal (**Item 3** on the enclosed blue proxy card) will be presented for action at the Special Meeting only if the Plan is not approved and the sale of Federal is approved.

**MANAGEMENT RECOMMENDS A FOR VOTE ON EACH OF THE PROPOSALS.**

Please date, sign and return the enclosed blue proxy card ***with a FOR vote on each of the proposals (Items 1, 2 and 3) even if you have already returned the earlier yellow card.*** We thank you for your cooperation.

Very truly yours,

Martin Horwitz

MARTIN HORWITZ
*Chairman of the Board*

**PLEASE ACT PROMPTLY • YOUR VOTE IS IMPORTANT**

UV INDUSTRIES, INC.

437 Madison Avenue, New York, N. Y. 10022

## Revised Notice of Special Meeting of Stockholders

*To the Stockholders:*

A Special Meeting of Stockholders of UV Industries, Inc. (the "Company") will be held at Chase Manhattan Bank, 1 Chase Manhattan Plaza, New York, New York, Ground Floor Auditorium, Room "A," on Monday, the 26th day of March, 1979, at two o'clock in the afternoon, Eastern Standard Time to consider four items, of which three (Items 1, 2 and 4) are described in the Proxy Statement previously sent to you:

1. To consider the advisability of dissolving the Company by acting upon a proposal to approve and adopt a Plan of Liquidation and Dissolution attached as Annex I to the Proxy Statement dated February 20, 1979 (the "Proxy Statement") whereby, within a twelve-month period from the date of stockholder approval, the assets of the Company will be sold (or distributed to stockholders or to a liquidating trust on behalf of stockholders), and the proceeds of any such sales, including the proceeds of the sale of shares of the Company's wholly-owned subsidiary, Federal Pacific Electric Company ("Federal"), after paying or providing for claims, liabilities and other obligations, will be distributed to the Company's stockholders, and the Company will thereafter be dissolved.

2. To consider and act upon a proposal to approve the sale of all of the outstanding capital stock of Federal to New REC, Inc., a wholly-owned subsidiary of Reliance Electric Company pursuant to a Stock Purchase Agreement attached as Annex II to the Proxy Statement.

3. To consider and act upon an alternative proposal to approve the sale of substantially all of the Company's property and assets upon such terms and conditions and for such consideration as the Board of Directors of the Company may fix.

4. To transact any and all other business that may properly come before the meeting and any adjournments thereof, in connection with the foregoing matters or otherwise.

Stock transfer books will not be closed for the meeting, but only stockholders of record at the close of business on February 28, 1979 will be entitled to notice of, or to vote at, the meeting, the record date above stated having been fixed by the Directors in conformity with the Company's by-laws. Article V of the by-laws has been amended to change the minimum period of notice of special stockholders' meetings from twenty days to ten days.

By order of the Board of Directors,

SEYMOUR HORWITZ,
*Secretary*

March 6, 1979

**To insure proper representation at the meeting, it is important, however small your holdings, that you fill out, date, sign and return the enclosed blue proxy promptly, if you cannot attend the meeting. A self-addressed return envelope requiring no postage if mailed in the United States is enclosed for your convenience. If you later find that you can be present at the meeting or for any other reason desire to revoke your proxy, you may do so at any time before voting.**

## SUMMARY

The following is a summary of information contained elsewhere in this Supplemental Proxy Statement or in the Proxy Statement under the same captions. Reference is made to those captions for a more complete description of the matters summarized below. As used in the Supplemental Proxy Statement and this Summary, the term "Proxy Statement" means the Proxy Statement dated February 20, 1979 which was previously sent to you and references herein to captions are references to captions in the Proxy Statement.

## ALTERNATIVE PROPOSAL TO SELL SUBSTANTIALLY ALL OF THE ASSETS

ITEM 3 ON THE BLUE PROXY CARD

### Reasons For the Alternative Proposal

A favorable vote of the holders of two-thirds of the outstanding capital stock is required to approve the Plan of Liquidation and Dissolution (the "Plan"). Among other things, failure to adopt the Plan would initially cost UV approximately $42 million in Federal income taxes, or nearly $3 per share of UV Common Stock because the favorable tax provisions of Section 337 of the Internal Revenue Code would not apply to the gain from the sale of Federal.

In the event that the proposal to approve the Plan is not approved pursuant to Item 1 on the proxy card, the shares of stock represented at the Meeting by proxies or in person will then be voted upon a proposal to sell substantially all the property and assets of the Company (the "Proposal"—Item 3 on the blue proxy card).

While approval of the Plan requires a two-thirds vote, approval of the Proposal requires only a majority vote of the outstanding stock. The Company intends to sell assets in addition to Federal, distribute the proceeds from such sales to stockholders and continue to operate the remaining assets as an on-going business.

Sharon Steel Corporation ("Sharon"), a company controlled by Victor Posner, has been seeking to purchase an additional 1.3 million shares of UV Common Stock. Sharon has stated that the sole purpose of that purchase was for investment and to maintain an ownership of 22 to 23 percent of the outstanding stock of UV. Management believes that this may not be the ultimate objective of Victor Posner and Sharon which he heads. Although Sharon has stated that it has not yet decided how it will vote its shares at the Meeting, we believe Sharon and Mr. Posner intend to vote for the sale of Federal and intend to vote against the Plan in an attempt to defeat the Plan in order to prevent the liquidation of UV and the distribution of its assets to stockholders and to gain control of UV. In order to prevent that possibility, the Board of Directors has determined that a proposal to sell substantially all of the Company's property and assets should be recommended to stockholders. The Board of Directors expects that by adopting the Proposal (Item 3 on the blue proxy card) after approval of the Sale of Federal, stockholders of the Company will receive significantly greater value than the trading values of the Company's Common Stock generally prevailing prior to the Board's public announcement on December 18, 1978 that it had agreed to sell Federal and was considering a liquidation. Such range of trading values from September 1, 1978 through December 15, 1978 was $17 to $22⅞. Subsequent to the Board's December 18, 1978 announcement, the range of trading values through March 5, 1979 was $21¾ to $33⅞. (See "Market Prices of UV Voting Stock").

If the Proposal is approved by stockholders but Federal is not sold, the Proposal will not be implemented and will be abandoned.

### Description of the Proposal

As promptly as feasible after approval by the Company's stockholders, the Company shall consummate the Sale of Federal and endeavor to sell other significant assets except for one or more subsidiaries or divisions which will be retained by the Company and operated as an on-going business. The sales price for any asset sold will be determined through arms'-length bargaining unless it is sold to an affiliate (other than a subsidiary), in which case the sale price would be based on an independent

appraisal. Where appropriate, the Company will use investment bankers or other experts to weigh the adequacy of any offer or proposed transaction, including an evaluation of whether a particular offer appears to be the best available. The Company intends that distributions shall be made to the Company's stockholders, pro rata, at such time or times as determined by the Board of Directors of the Company. However, at all times there will be retained an amount of cash and other assets which the Board deems necessary to pay, or provide for the payment of, all of the liabilities and claims (including contingent liabilities) and all of the expenses and other obligations of the Company.

**Distributions**

As is the case upon approval of the Plan (Item 1 on the proxy card), the Board has stated its intention upon approval of the Proposal to declare an initial distribution of $18 per share of Common Stock or an aggregate of approximately $274,572,000, after giving effect to the exercise of all options to purchase Common Stock. The time schedule for this distribution and for subsequent distributions cannot be determined at this time. No sale or agreement or agreement in principle to sell any assets of UV other than Federal have been entered into at this time.

**Special Bonuses**

In the course of the distribution process, key management and other necessary administrative personnel may look for alternative opportunities. See "Management—Special Bonuses" for information with respect to a fund established to provide future awards to those persons who have contributed to the goal of obtaining maximum consideration for the Company's assets.

**$5.50 Cumulative Preferred Stock**

The $5.50 Cumulative Preferred Stock will not be retired.

**Federal Income Tax Consequences**

Sales of assets by the Company will be taxable transactions to it and it will recognize gain or loss as to each asset sold measured by the difference between the amount realized and the adjusted basis of the asset.

If the distribution to the stockholders, in actual or constructive redemption of a portion of the Company's stock, of the proceeds of the sale of substantially all of the Company's assets, less amounts retained for the satisfaction of liabilities attributable to such assets (including taxes and other expenses incurred in connection with such sale and distribution) occurs within the taxable year in which the Proposal is adopted or in the succeeding taxable year, such distribution will constitute a distribution in partial liquidation of the Company. A stockholder will recognize gain or loss measured by the difference between the amount of the distribution received and the stockholder's cost or other basis of the shares deemed to have been surrendered in exchange therefor. Such gain or loss will be capital gain or loss if the Company's stock is held as a capital asset by the stockholder at the time of distribution.

If the distribution does not constitute a distribution in partial liquidation of the Company, it will be treated as the distribution of a dividend, taxable as ordinary income to the stockholders, to the extent of the Company's current and accumulated earnings and profits.

**Vote Required to Approve Proposal**

The affirmative vote of a majority of the outstanding shares of Common Stock and $5.50 Cumulative Preferred Stock of the Company, voting together as a single class, is required to adopt the Proposal. See "Voting Rights; Proxy Solicitation" for information about Sharon's ownership of Common Stock.

**Security Ownership of Certain Beneficial Owners**

On March 5, 1979, the Company was advised by Stauffer Chemical Company that it is the beneficial owner of 14,200 shares (11.9%) of the $5.50 Cumulative Preferred Stock which it acquired for investment.

On March 5, 1979, the Company received from Sharon an amendment to its Schedule 13D which states in part that Sharon intends to purchase additional shares of UV Common Stock in order to restore its ownership in UV to approximately 22 to 23 percent of the outstanding Common Stock and that it reaffirms that it has not yet determined how it will vote its shares of UV Common Stock at the meeting.

**Litigation Concerning Sharon's Stock Purchases**

After a hearing on February 28, 1979, the United States District Court for the District of Maine (the "USDC for Maine") at the request of the Company issued a preliminary injunction restraining and enjoining Sharon, until further order of the Court, from completing an executory contract to purchase 1.3 million shares of UV Common Stock, which purchase was found to be in violation of the Maine Takeover Bid Disclosure Law. Sharon was also enjoined from the future purchase of shares which were solicited as part of the 1.3 million share transaction.

On the same date, the Supreme Court of the State of New York issued an order vacating a temporary restraining order issued on February 23, 1979 enjoining the completion of said purchase of stock. UV has filed notice of its intention to appeal this ruling to the Supreme Court of New York, Appellate Division. Nevertheless, the preliminary injunction of the USDC for Maine prohibits Sharon from purchasing any of the 1.3 million shares and from making future purchases of shares which were solicited as part of the 1.3 million share block.

On February 23, 1979, Martin Horwitz and Edwin Jacobson, Chairman of the Board and President, respectively, of the Company, filed a class action lawsuit on their individual behalf as stockholders and on behalf of all other similarly situated stockholders in the Supreme Court of New York alleging that Sharon, Victor Posner and their affiliates, NVF Company and Securities Management Corp., have entered into an illegal scheme and conspiracy to block the proposed liquidation of UV, and thereby to deprive other stockholders and UV of the benefits to be derived from it. Messrs. Horwitz and Jacobson seek damages on behalf of the stockholders in the class in the amount of $120,000,000.

On February 23, 1979, UV filed an action in the United States District Court for the Southern District of New York against the above-named defendants and certain of their affiliates, seeking injunctive relief and damages, and alleging that the defendants' purchases of UV securities are part of an undisclosed scheme to block the proposed liquidation and to take control of UV in violation of the Securities Exchange Act of 1934, the Investment Company Act of 1940 and common law.

**Rights of Dissenting Stockholders**

Pursuant to Section 908 of the Maine Business Corporation Act (the "Act"), if the Proposal is approved by the stockholders, any stockholder who objects to the Proposal shall have the right to dissent therefrom and to be paid the fair value of his shares, provided he complies with the requirements of Section 909 of the Act. A copy of Sections 908 and 909 of the Act is attached as Annex "I" to the Proxy Statement.

UV INDUSTRIES, INC.
437 Madison Avenue, New York, N. Y. 10022

*Supplemental*
*Proxy Statement*

## GENERAL

The proxy enclosed with the Revised Notice of Special Meeting is solicited by the Management, by order of the Board of Directors of UV Industries, Inc. (hereinafter referred to as "UV" or the "Company"), for use at the Special Meeting of the Company to be held on March 26, 1979 and at any adjournment or adjournments thereof (the "Meeting").

## ALTERNATIVE PROPOSAL TO SELL SUBSTANTIALLY ALL OF THE ASSETS

### Reasons for the Alternative Proposal

Approval of the Plan requires that two-thirds of the outstanding stock be voted FOR the Plan of Liquidation and Dissolution of the Company (the "Plan"). Among other things, failure to adopt the Plan would initially cost UV approximately $42 million in Federal income taxes, or nearly $3 per share of UV Common Stock because the favorable tax provisions of Section 337 of the Internal Revenue Code of 1954, as amended, would not apply to the gain from the Sale of Federal. In the event that the proposal to approve the Plan is not approved pursuant to Item 1 on the proxy card, the shares of stock represented at the Meeting by proxies or in person will then be voted upon a proposal to sell substantially all the property and assets (the "Proposal"—Item 3 on the blue proxy card). While approval of the Plan requires a two-thirds vote, approval of the Proposal requires only a majority of the outstanding stock. The Company intends to sell assets in addition to Federal, distribute the proceeds from such sales to stockholders and to continue to operate the remaining assets as an on-going business. The information set forth below is furnished in connection with that Proposal and should be read in conjunction with the description of the business and properties of the Company and the financial statements and related notes included in the Proxy Statement.

Sharon Steel Corporation ("Sharon"), a company controlled by Victor Posner, has been seeking to purchase an additional 1.3 million shares of UV Common Stock. Sharon has stated that the sole purpose of that purchase was for investment and to maintain an ownership of 22 to 23 percent of the outstanding stock of UV. Your management believes that this may not be the ultimate objective of Victor Posner and Sharon, which he heads. Although Sharon stated that it has not yet decided how it will vote its shares at the Meeting, we believe Sharon and Mr. Posner intend to vote for the Sale of Federal and intend to vote against the Plan in an attempt to defeat the Plan and to gain control of UV. *In order to prevent that possibility, the Board of Directors has determined that a proposal to sell substantially all of the Company's property and assets should be recommended to the stockholders.* The Board of Directors expects that by adopting the Proposal (Item 3 on the blue proxy card) after approval of the Sale of Federal, stockholders of the Company will receive significantly greater value than the trading values of the Company's Common Stock generally prevailing prior to the Board's public announcement on December 18, 1978 that it had

agreed to sell Federal and was considering a liquidation. Such range of trading values from September 1, 1978 through December 15, 1978 was $17 to $22⅞. Subsequent to the Board's December 18, 1978 announcement, the range of trading values through March 5, 1979 was $21¼ to $33⅞. (See "Market Prices of UV Voting Stock" below).

**Description of the Proposal**

As promptly as feasible after approval by the Company's stockholders, the Company shall consummate the Sale of Federal and endeavor to sell other significant assets. The Company intends to continue to own and operate one or more of its subsidiaries or divisions and will not dissolve. The sales price for any asset sold will be determined through arms'-length bargaining unless it is sold to an affiliate (other than a subsidiary), in which case the sale price would be based on an independent appraisal. Where appropriate, the Company will use investment bankers or other experts to weigh the adequacy of any offer or proposed transaction, including an evaluation of whether a particular offer appears to be the best available. No offer to purchase any other subsidiary or other asset has been received at this time.

The Company intends that distributions shall be made to the Company's stockholders, pro rata, at such time or times as determined by the Board of Directors of the Company. However, at all times there will be retained an amount of cash and other assets which the Board deems necessary to pay, or provide for the payment of, all of the liabilities, claims and other obligations (including contingent liabilities) and all of the expenses of the Company.

**Distributions**

As is the case upon approval of the Plan (Item 1 on the proxy card), the Board has stated its intention upon approval of the Proposal to declare an initial distribution of $18 per share of Common Stock or an aggregate of approximately $274,572,000, after giving effect to the exercise of all options to purchase Common Stock. The time schedule for this distribution and for subsequent distributions cannot be determined at this time.

Uncertainties as to the net realizable value of assets and the ultimate amount of liabilities make it impractical to predict the aggregate net amounts ultimately distributable to stockholders. Any gains from the sale of assets will be subject to Federal income taxes.

While the Proposal gives to the Board of Directors of the Company the power to sell substantially all of the property and assets of the Company, including the remaining subsidiaries of UV, no sale or agreement or agreement in principle to sell any assets of UV has been made except for the Sale of Federal. Any such other sale will only be made after the Board of Directors has determined that the sale is in the best interest of the stockholders.

At present the Company intends to retain and operate as an on-going business one or more of its subsidiaries or divisions. Shares of Mueller Brass Co. ("Mueller") and United States Fuel Company ("U.S. Fuel") are being presently considered as possibilities for retention. However, no final decisions have been made and it is possible the Company might receive and accept an offer to buy the stock of one or more such subsidiaries and retain other property or assets. For the year 1977 Mueller provided 19% of the assets and 19% of the operating profit of the Company. For the year 1977 U.S. Fuel provided 2% and 8%, respectively, of assets and operating profit.

It is anticipated that some or all of the present Directors and officers of the Company will continue to serve in such capacities following adoption of the Proposal. Although no decisions have been made at this time as to compensation, such Directors and officers remaining in office will receive reasonable compensation for the duties then being performed. It is also anticipated that most of the present Directors and officers of the Company will serve as officers or Directors of any subsidiary of the Company that is not ultimately sold.

*The distributions to the Company's stockholders will not be in complete liquidation of the Company and the Company will not be dissolved. The Company will continue to operate one or more of its subsidiaries or divisions as described above.* On a date set by the Board of Directors as a record date to determine the stockholders of record to whom distributions will be made, a first distribution will be made to such stockholders. Additional distributions will be made to stockholders of record on subsequent record dates fixed by the Board. Four days prior to the record date for the initial distribution, the Company's Common Stock will be traded ex-dividend on the New York Stock Exchange. Due bills will be used to insure that

the appropriate person receives the distribution, in the case of the sale of any Company Common Stock. On the record date, trading of the Company's Common Stock will be suspended and trading will resume after the distribution. Prior to subsequent distributions, the same process may be used. It is the judgment of Management at this time that the Company will be able to continue to meet the criteria of the New York Stock Exchange for the listing of its Common Stock after the sale and distribution of assets pursuant to the Proposal.

**$5.50 Cumulative Preferred Stock**

The $5.50 Cumulative Preferred Stock will not be retired.

**Federal Income Tax Consequences**

The Company has been advised by Messrs. Skadden, Arps, Slate, Meagher & Flom, tax counsel, that the sale of assets by the Company and the distribution of the proceeds of such sales will have the following Federal income tax consequences.

Sales of assets by the Company will be taxable transactions to it and the Company will recognize gain or loss as to each asset sold measured by the difference between the amount realized from the sale and the adjusted basis of the asset sold. If such asset is held as a capital asset by the Company at the time of sale, such gain or loss will be capital gain or loss. In the case of directly-held depreciable assets or real property held for more than one year and used in the Company's operating business, if all sales of such assets during a taxable year result in a net gain such gain will be capital gain. However, to the extent of any recapture of depreciation, intangible drilling costs and mining exploration expenditures with respect to such assets, such gain will be taxable as ordinary income. If all sales of such assets result in a net loss, such loss will be an ordinary loss. It is anticipated that such sales by the Company will result in a net gain. In addition, the sale of certain assets could result in tax liability to the Company from recapture of investment tax credits.

A stockholder will recognize capital gain or loss on the distribution of the proceeds of the sale of the Company's assets provided that the Company's stock is held as a capital asset by such stockholder at the time of distribution and provided that the distribution (or the whole of a series of distributions) constitutes a distribution in partial liquidation of the Company within the meaning of section 346(a)(2) of the Internal Revenue Code of 1954, as amended. If substantially all of the Company's assets are sold, the distribution to the stockholders, in actual or constructive redemption of a portion of the Company's stock, of the proceeds of such assets sold, less any amounts retained for the satisfaction of liabilities attributable to such assets (including any taxes and other expenses incurred in connection with such sale and distribution) will constitute a distribution in partial liquidation of the Company provided that such distribution (or the whole of a series of distributions) occurs within the taxable year in which the Proposal is adopted or within the succeeding taxable year. The distribution of the proceeds of the sale of substantially all of the Company's assets may also include an amount of the Company's working capital reasonably attributable to the assets sold. Amounts distributed in excess of the proceeds of the sale of assets plus an amount of working capital reasonably attributable to such assets sold may be treated as the distribution of a dividend, taxable as ordinary income to the stockholders, to the extent of the Company's current and accumulated earnings and profits. The distribution of amounts attributable to the sale of investment assets not used in the business of the Company or its subsidiaries also may be treated as the distribution of a dividend.

A stockholder will recognize an amount of gain or loss on the receipt of distributions in partial liquidation of the Company measured by the difference between the amount of each such distribution and the stockholder's cost or other basis for the shares deemed to have been surrendered in exchange therefor. A stockholder will be deemed to have surrendered a number of shares of his stock which bears the same proportion to the total number of shares held by him which the per share amount of the distribution bears to the per share fair market value of the Company's stock on the date of distribution (such fair market value to be determined on the basis of the average trading price of such stock on such date).

In the case of a stockholder other than a corporation, 60% of the stockholder's net capital gain (excess of net long-term capital gain over short-term capital loss), if any. may be deducted from gross income and will constitute an item of tax preference which may be subject to the alternative minimum tax, as added to the Internal Revenue Code by the Revenue Act of 1978. In the case of a stockholder which is a corporation, a portion of any net capital gain subject to tax under the 28% alternative tax on capital gains will constitute an item of tax preference which may be subject to the 15% add-on minimum tax.

If the distribution (or the whole of a series of distributions) does not constitute a distribution in partial liquidation of the Company, the entire amount of the distribution will be treated as the distribution of a dividend, taxable as ordinary income to the stockholders, to the extent of the Company's current and accumulated earnings and profits.

Stockholders should consult their own tax advisors for detailed information concerning the Federal income tax treatment of the sale and distribution to them including the manner of determining the amount of gain or loss recognized on distributions in partial liquidation of the Company. Stockholders should also consult their own income tax advisors as to the tax consequences to them under state, local and foreign tax laws.

**Vote Required to Approve the Proposal**

The affirmative vote of a majority of the outstanding shares of Common Stock and $5.50 Cumulative Preferred Stock of the Company, voting together as a single class, is required to adopt the Proposal. Proxies which have been granted on the yellow proxy card will be valid and counted at the Meeting unless revoked or superseded by a blue proxy card. See "Voting Rights; Proxy Solicitation" and "Security Ownership of Certain Beneficial Owners" for information about Sharon's Stock ownership.

**Litigation Concerning Sharon's Stock Purchases**

After a hearing on February 28, 1979, the United States District Court for the District of Maine (the "USDC for Maine") at the request of the Company issued a preliminary injunction restraining and enjoining Sharon, until further order of the Court, from completing an executory contract to purchase 1.3 million shares of UV Common Stock, which purchase was found to be in violation of the Maine Takeover Bid Disclosure Law. Sharon was also enjoined from the future purchase of shares which were solicited as part of the 1.3 million share transaction.

On the same date, the Supreme Court of the State of New York issued an order vacating a temporary restraining order issued on February 23, 1979 enjoining the completion of said purchase of stock. UV has filed notice of its intention to appeal this ruling to the Supreme Court of New York, Appellate Division. Nevertheless, the preliminary injunction of the USDC for Maine prohibits Sharon from purchasing any of the 1.3 million shares while it is in effect.

On February 23, 1979, Martin Horwitz and Edwin Jacobson, Chairman of the Board and President, respectively, of the Company, filed a class action lawsuit on their individual behalf as stockholders and on behalf of all other similarly situated stockholders in the Supreme Court of New York alleging that Sharon, Victor Posner and their affiliates, NVF Company and Securities Management Corp., have entered into an illegal scheme and conspiracy to block the proposed liquidation of UV, and thereby to deprive other stockholders and UV of the benefits to be derived from it. Messrs. Horwitz and Jacobson seek damages on behalf of the stockholders in the class in the amount of $120,000,000.

On February 23, 1979, UV filed an action in the United States District Court for the Southern District of New York against the above named defendants and certain of their affiliates, seeking injunctive relief and damages, and alleging that the defendants' purchases of UV securities are part of an undisclosed scheme to block the proposed liquidation and to take control of UV in violation of the Securities Exchange Act of 1934, the Investment Company Act of 1940 and common law.

**Security Ownership of Certain Beneficial Owners**

The Company has received from Stauffer Chemical Company ("Stauffer") a Schedule 13D, filed pursuant to the Securities Exchange Act of 1934, as amended, which stated that as of February 28, 1978, Stauffer beneficially owned 14,200 shares of the Company's $5.50 Cumulative Preferred Stock acquired for investment purposes, which represents approximately 11.9% of the $5.50 Cumulative Preferred Stock outstanding at February 28, 1978.

On March 5, 1979, the Company received from Sharon an amendment to its Schedule 13D which states in part that Sharon intends to purchase additional shares of UV Common Stock in order to restore its ownership in UV to approximately 22 to 23 percent of the outstanding Common Stock and that it reaffirms that it has not yet determined how it will vote its shares of UV Common Stock at the Meeting.

**Rights of Dissenting Stockholders**

Pursuant to Section 908 of the Maine Business Corporation Act (the "Act"), if the Proposal is approved by the stockholders, any stockholder who objects to the Proposal shall have the right to dissent therefrom and to be paid the fair value of his shares, provided that he complies with the requirements of Section 909 of the Act.

Any stockholder desiring to exercise his right to dissent must comply with each of the following requirements of Section 909: (1) *He must file with the Company a written objection to the adoption of the Proposal prior to, or at, the Meeting.* (The mere filing by a stockholder of a proxy or a ballot directing a vote against the approval of the Proposal will not be treated by the Company as a written objection to that proposed action within the meaning of Section 909.) (2) He must *not* vote to approve the Proposal. (A stockholder who fails to vote does not waive his right to dissent.) (3) He must file with the Company, within 15 days after the Proposal is approved by the stockholders, a written demand, which complies with Section 909, for the payment of the fair value of his shares. (4) He must submit the certificate or certificates representing his shares to the Company or its transfer agent within 20 days after the demand referred to in the preceding sentence is filed with the Company. (His certificate or certificates will be returned to him with a notation of his demand.) (5) Unless he elects to accept the offer of settlement which the Company must make pursuant to Section 909, he must file a written demand with the Company within 60 days after the Proposal is approved by the stockholders, demanding that the Company bring an action in the Cumberland County Superior Court, Portland, Maine, to have the fair value of his shares determined if no such action has previously been initiated by the Company; and, if the Company fails to bring such an action within 30 days after receipt of his written demand to do so, he must initiate such an action himself within six months after the Proposal is approved by the stockholders. (6) He must take all other actions required by Section 909 to preserve his right to dissent and his right to be paid the fair value of his shares in the manner set forth in that Section.

The foregoing summary of the requirements of Sections 908 and 909 is general in form and is qualified in its entirety by reference to the full text of Sections 908 and 909 of the Act which is attached as Annex V to the Proxy Statement.

If neither the Plan nor the Proposal is approved by the stockholders but the Sale of Federal is approved by the stockholders, then no stockholder will have any rights of dissent or appraisal remedies under Maine law.



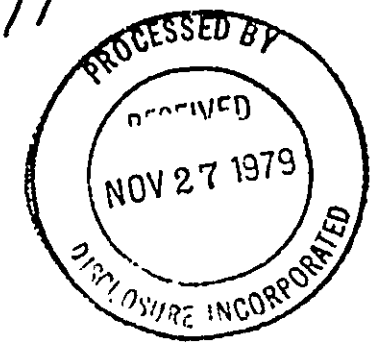
— END

Exhibit 8

117252

U993204

17




SECURITIES AND EXCHANGE COMMISSION
Washington, D. C. 20549


Form 10-Q

QUARTERLY REPORT UNDER SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934

For Quarter Ended September 30, 1979 Commission File Number 1-5172

UV INDUSTRIES, INC.
(Exact name of registrant as specified in its charter)

| MAINE | 04-2380295 |
|---|---|
| (State or other jurisdiction of incorporation or organization) | (I.R.S. Employer Identification No.) |
| 437 Madison Avenue, New York, New York | 10022 |
| (Address of principal executive offices) | (Zip Code) |

Registrant's telephone number, including area code (212) 754-0666

NONE
Former name, former address and former fiscal year, if changed since last report

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such report), and (2) has been subject to such filing requirements for the past 90 days.

Yes X No

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the close of the period covered by this report.

| Class | Outstanding at September 30, 1979 |
|---|---|
| Common Stock, par value $1 per share | 15,227,821 shares |

UV INDUSTRIES, INC. AND SUBSIDIARIES

# I N D E X

PART I. FINANCIAL INFORMATION

UV INDUSTRIES, INC. AND SUBSIDIARIES
IN LIQUIDATION (NOTES 1 & 6)
CONSOLIDATED CONDENSED BALANCE SHEETS

| | September 30 (Unaudited) (000's omitted) 1979 (Note 2) | 1978 |
|---|---|---|
| **A S S E T S** | | |
| **Current Assets** | | |
| Cash, time deposits and certificates of deposits and marketable equity securities | $184,604 | $ 48,598 |
| Receivable from sale of oil and gas properties | 134,453 | - |
| Receivable from sale of investment in affiliate | - | 39,999 |
| Accounts and notes receivable, net | 44,843 | 112,686 |
| Inventories: | | |
| Finished goods | 14,328 | 44,511 |
| Work-in-process | 10,230 | 39,638 |
| Raw materials & supplies | 21,743 | 59,375 |
| Ores, concentrates & other inventories | 12,011 | 4,149 |
| | 58,312 | 147,673 |
| Prepaid expenses and other current assets | 2,620 | 4,487 |
| Total current assets | 424,832 | 353,443 |
| Marketable equity securities | - | 24,064 |
| Properties, plant and equipment, net | 113,085 | 177,616 |
| Cost in excess of net assets of a business acquired | - | 24,383 |
| Deferred charges and other assets | 23,103 | 27,298 |
| | $561,020 | $606,804 |
| **LIABILITIES AND STOCKHOLDERS' EQUITY** | | |
| **Current Liabilities** | | |
| Notes payable to banks | $ - | $ 3,717 |
| Accounts payable | 11,437 | 24,005 |
| Current installments on long-term debt | 1,145 | 3,755 |
| Accrued expenses, income tax payable, dividends payable and other current liabilities | 24,484 | 46,455 |
| | 37,066 | 77,932 |
| Commitments and contingencies (Note 5) | - | - |
| Long-term debt, less current installments (Note 4) | 132,149 | 206,598 |
| Deferred income taxes and other long-term liabilities | 33,205 | 35,617 |
| Minority interests in consolidated subsidiaries | - | 20,357 |
| **STOCKHOLDERS' EQUITY (Note 4)** | | |
| Preferred stock | - | 894 |
| New Preferred stock | - | 512 |
| Common stock | 16,668 | 10,671 |
| Additional paid-in capital | 197,037 | 95,753 |
| Retained earnings | 163,735 | 181,035 |
| | 377,440 | 288,865 |
| Less: Treasury stock, at cost | 18,840 | 22,565 |
| Total stockholders' equity | 358,600 | 266,300 |
| Total liabilities and stockholders' equity | $561,020 | $606,804 |

See accompanying notes to consolidated condensed financial statements.

UV INDUSTRIES, INC. AND SUBSIDIARIES
IN LIQUIDATION (NOTES 1 & 6)
CONSOLIDATED CONDENSED STATEMENTS OF INCOME

| | Three months Ended September 30 | | Nine months Ended September 30 | |
|---|---|---|---|---|
| | 1979 | 1978 | 1979 | 1978 |
| | (Unaudited) (000's omitted) | | (Unaudited) (000's omitted) | |
| Operating revenues: | | | | |
| Net sales | $ 69,772 | $146,247 | $300,384 | $441,896 |
| Royalties and other revenues | 412 | 2,020 | 3,411 | 6,013 |
| | 70,184 | 148,267 | 303,795 | 447,909 |
| Operating expenses: | | | | |
| Cost of sales | 61,337 | 113,906 | 249,310 | 344,188 |
| Selling, general and administrative | 6,783 | 15,760 | 28,873 | 46,802 |
| Foreign currency translation losses, net | 1 | 1,273 | 95 | 2,293 |
| | 68,121 | 130,939 | 278,278 | 393,283 |
| Operating income | 2,063 | 17,328 | 25,517 | 54,626 |
| Gain on disposal of investment in affiliate | - | 22,602 | - | 22,602 |
| Equity in net income of affiliate | - | - | - | 2,301 |
| Interest income | 4,129 | 293 | 13,594 | 1,267 |
| Interest expense | (2,969) | (4,142) | (9,668) | (12,441) |
| Other income and (expense), net | (1,446) | (816) | (4,877) | (2,405) |
| Gains on liquidation (Note 3) | 104,274 | - | 243,315 | - |
| Income before provision for income taxes and minority interests in net income of consolidated subsidiaries | 106,051 | 35,265 | 267,881 | 65,950 |
| Provision for income taxes | 577 | 15,412 | 10,895 | 29,363 |
| Income before minority interests in net income of consolidated subsidiaries | 105,474 | 19,853 | 256,986 | 36,587 |
| Minority interests in net income of consolidated subsidiaries | - | (13) | 229 | 809 |
| Net income | $105,474 | $ 19,866 | $256,757 | $ 35,778 |
| Earnings per average outstanding share of common stock after preferred dividend requirements: | | | | |
| Primary: | | | | |
| Net income | $6.93 | $2.14 | $17.55 | $3.84 |
| Fully diluted | | | | |
| Net income | $6.93 | $1.49 | $16.93 | $2.73 |
| Cash dividends declared on common stock during the period: | | | | |
| Regular | $ - | $0.25 | $0.25 | $0.75 |
| Liquidating | $ - | $ - | $18.00 | $ - |
| Weighted average of shares outstanding: (000's omitted) | | | | |
| Primary | 15,228 | 9,202 | 14,613 | 9,150 |
| Fully diluted | 15,229 | 13,701 | 15,178 | 13,725 |
| Cash dividends declared: (000's omitted) | | | | |
| Preferred stock | - | $ 166 | $ 255 | $ 506 |
| New Preferred stock | - | 34 | 23 | 106 |
| Common Stock - Regular | - | 2,308 | 3,801 | 6,886 |
| Common Stock - Liquidating | $ 3 | - | 274,070 | - |

See accompanying notes to consolidated condensed financial statements.

UV INDUSTRIES, INC. AND SUBSIDIARIES
IN LIQUIDATION (NOTES 1 & 6)
CONSOLIDATED CONDENSED STATEMENTS OF CHANGES IN FINANCIAL POSITION

| | Nine months Ended September 30 | |
|---|---|---|
| | 1979 | 1978 |
| | (Unaudited) (000's omitted) | |
| Source of funds: | | |
| Working capital provided from operations and liquidation | $269,602 | $48,396 |
| Disposal of oil & gas properties | 28,117 | - |
| Disposal of investment in affiliate | - | 26,528 |
| Disposal of net long-term assets of Federal Pacific Electric Company | 34,175 | - |
| Issuance of common stock upon the conversion of warrants | 60,055 | - |
| Issuance of common stock upon the conversion of 5-3/4% convertible subordinated debentures | 46,054 | - |
| Issuance of common stock upon the exercise of employee stock options | 1,928 | 510 |
| Other sources of funds | 1,781 | 4,048 |
| Total funds provided | 441,712 | 79,482 |
| Use of funds: | | |
| Increase in marketable equity securities non-current | - | 22,394 |
| Decrease in non-current portion of long-term debt | 63,488 | 5,779 |
| Additions to properties, plants and equipment | 11,391 | 14,863 |
| Liquidating cash distribution ($274,070,000) and regular cash dividends | 278,149 | 7,498 |
| Redemption of Preferred Stock and New Preferred Stock | 12,335 | - |
| Other uses of funds | 3,591 | 3,300 |
| | 368,954 | 53,834 |
| Net increase in working capital | $ 72,758 | $25,648 |

See accompanying notes to consolidated condensed financial statements.

UV INDUSTRIES, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS

1. Plan of Liquidation and Dissolution

On March 26, 1979, the stockholders of the Company approved a Plan of Liquidation and Dissolution ("the Plan") of the Company. The Plan provides that, as promptly as feasible after the approval by the Company's Stockholders, the Company shall dispose of all of its assets and that it shall be completely liquidated within one year from the date on which the Plan is adopted. Such disposal will be accomplished by distributing to stockholders the proceeds of the sale of its assets, after paying or providing for claims, liabilities and other obligations of the Company. The Company intends that its liquidation be in conformity with Section 337 of the Internal Revenue Code of 1954, as amended. The Company anticipates that it will be able to sell or distribute substantially all of its assets within the one year period. To the extent it is unable to do so, the Company anticipates that prior to the expiration of that period, it will distribute its assets in trust to one or more liquidating Trustees for the pro rata benefit of the Company's stockholders.

2. Basis of Accounting in Liquidation

Uncertainties as to the net realizable value of assets and the ultimate amount of liabilities and claims make it impracticable to estimate the aggregate net amounts ultimately distributable to stockholders. The accompanying September 30, 1979 Balance Sheet has been prepared on a going concern basis which contemplates the realization of the remaining assets and the payment of remaining liabilities in the regular and ordinary course of business and does not purport to represent the amounts which would be realized upon final liquidation.

In the opinion of the Company, the accompanying unaudited consolidated financial statements contain all necessary adjustments, consisting only of normal recurring accruals made on a going concern basis, and fairly present the financial position at September 30, 1979 and 1978, the results of operations and liquidation transactions for the three and nine month periods ended September 30, 1979 and 1978, and changes in financial position for the nine months ended September 30, 1979 and 1978.

3. Gains on Liquidations

On March 26, 1979, the stockholders of the Company approved the sale of all of the outstanding capital stock of the Company's wholly-owned subsidiary, Federal Pacific Electric Company ("Federal"), to New REC, Inc., pursuant to a Stock Purchase Agreement dated December 18, 1978 by and among the Company, New REC, Inc., and Reliance Electric Company, New REC's parent. The sale was consummated on March 29, 1979 for an aggregate sales price of $345,000,000 resulting in a gain of $138,241,000, which was recorded in the three months ended March 31, 1979.

On October 2, 1979 the Company sold substantially all of its oil and gas properties to Tenneco Oil Company for an aggregate sales price of $134,453,000 pursuant to a purchase agreement entered into on July 23, 1979. The resulting gain of approximately $103,315,000 was recorded in the three months ended September 30, 1979. In addition, in accordance with the purchase agreement, the Company reserved a 5% interest, in the form of a production payment, in certain of the properties sold to Tenneco Oil.

No provision for income taxes has been made on these gains because the Plan (see Note 1) comtemplates liquidation in conformity with Section 337 of the Internal Revenue Code of 1954, as amended.

4. Long Term Debt and Stockholders' Equity

On January 17, 1979 the Board of Directors voted to redeem, on February 28, 1979 all of the Company's outstanding 5-3/4% convertible subordinated debentures and $1.265 New Preferred Stock.

On April 9, 1979 the Board of Directors voted to redeem on May 21, 1979 all of the Company's outstanding $5.50 Cumulative Preferred Stock, $5.00 par value at the stated redemption price of $100 per share plus accrued and unpaid dividends.

Also on April 9, 1979 the Board of Directors voted to pay an initial liquidating distribution of $18 per share of Common Stock on April 30, 1979 to holders of record at the close of business on April 20, 1979 and to discontinue the Company's $.25 quarterly dividend on Common Stock. The aggregate initial distribution amounted to approximately $274,000,000.

4. Long Term Debt and Stockholders' Equity (Cont'd)

On April 30, 1979 the Company entered into an agreement with certain of the banks which act as trustees with respect to the Company's long-term debt whereby the Company agreed to set aside $155,000,000 in cash, government or other securities, which pursuant to the Plan will be used to satisfy the requirements of currently outstanding long-term indebtedness of the Company. No firm timetable for the payment of this indebtedness has been established, but the Company has initiated discussions with trustees and has presented a proposal to each trustee as to providing for payment of such long-term indebtedness. These proposals are currently being discussed by the Company and the trustees.

On July 16, 1979 the Company announced that its wholly-owned subsidiary, Mueller Brass Co., plans the tax exempt advance refunding of two issues of industrial revenue bonds and the advance refunding with taxable bonds of an issue of pollution control revenue bonds. The Company is the guarantor of the foregoing bonds, which are being refunded in order to release the Company from its guaranty.

5. Commitments and Contingencies

In connection with the Plan the Company anticipates that expenses for professional fees and other expenses of liquidation will be substantial, however the Company does not believe that a reliable estimate of all those expenses can be made at this time. The Company has established a Special Bonus Fund to provide incentive and to encourage continuity of the services of key management and administrative personnel. In addition, the Company is obligated under contractual arrangements with certain officers and will be liable for certain unfunded vested pension benefits. In the aggregate the maximum liability for these items is not material to the Company's net assets. Management does not know of any material contingent liability.

6. Subsequent Event

On November 12, 1979 Reliance Group, Incorporated ("Reliance Group") and the Company jointly announced that their Boards of Directors have approved an agreement whereby Reliance Group would purchase all of the assets and assume all of the liabilities of the Company for a total consideration of $449 million. The purchase price consists of $5.00 in cash and $24.50 principal amount of twenty-year 13-1/8% subordinated sinking fund debentures for each presently outstanding share of the Company's common stock.

6. Subsequent Event (Cont'd)

The assets of the Company consist of various natural resource and other properties and approximately $306 million in cash and marketable securities. The liabilities assumed include various indentures and guarantees aggregating approximately $131 million.

The debentures will mature on January 2, 2000, will be redeemable beginning in 1990 at the principal amount thereof through operation of a sinking fund providing for the redemption of 5% of the debentures per annum, and will be callable at a premium at Reliance Group's option beginning in 1989. In all other material respects, the debentures will have substantially the same terms as Reliance Group's 9-7/8% subordinated sinking fund debentures due 1999, which are listed on the New York Stock Exchange. An application to list these debentures on the New York Stock Exchange will be made by Reliance Group.

At the closing, which is scheduled for November 26, 1979, Reliance Group will deliver a note to the Company in the principal amount of $449 million, which will bear interest initially at the rate of 10% per annum subject to further adjustment. Reliance Group anticipates filing a registration statement covering the debentures with the SEC in December, 1979. Upon the effectiveness of such a registration statement, the note will be exchanged for the cash and the debentures.

The November 26 closing provides for an escrow arrangement pending the expiration of the waiting period under the Hart- Scott-Rodino Act. The agreement may be terminated by the Company at any time prior to the closing date.

At the Company's Board meeting, which was held on November 12, 1979, Steven Posner, a director of the Company and Vice Chairman of Sharon Steel, Corp. ("Sharon"), abstained from voting, pending consideration of Sharon Steel's alternatives.

On November 12, 1979 Messrs. Steven and Victor Posner, Directors of Sharon, said they intend to propose to the Sharon Board that Sharon make a higher offer than the one made by Reliance Group. Sharon said any higher offer by Sharon would be made after discussion with its investment bankers and would be subject to approval by Sharon's Board. Sharon owns approximately 22.5% of the Company's outstanding common stock.

## UV INDUSTRIES, INC. AND SUBSIDIARIES IN LIQUIDATION (SEE NOTE 1 TO THE FINANCIAL STATEMENTS) MANAGEMENT'S DISCUSSION AND ANALYSIS OF CONSOLIDATED CONDENSED STATEMENTS OF INCOME FOR THE THREE AND NINE MONTH PERIODS ENDED SEPTEMBER 30, 1979 AS COMPARED TO PRIOR PERIODS

(The following analysis and discussion should be read in conjunction with the Notes to Consolidated Condensed Financial Statements)

### Operating income

All items of revenues, costs and expenses decreased when compared to prior periods principally due to the sale of Federal Pacific Electric Company on March 29, 1979. The results of operations of Federal Pacific Electric Company are included only through March 31, 1979. Also contributing to decreased revenues and costs was the sale of substantially all of the Company's oil and gas properties. The results of the oil and gas operations are included only through June 30, 1979. (See Note 3 to Consolidated Condensed Financial Statements). The balance of the Company's unliquidated operations include the Copper and Brass Fabrication segment and the Natural Resource segment which includes principally copper, coal and gold mining and secondary lead recycling operations.

### Gain on disposal of investment in affiliate

This represents the gain on the sale and exchange of 1,285,400 shares of Globe-Union, Inc. Common Stock for $40,000,000 in cash and 380,438 shares of common stock of Johnson Controls, Inc.

### Equity in net income of affiliate

Equity in net income of affiliate represents The Company's equity in the net income of Globe-Union Inc. The investment in Globe-Union, Inc. was sold during the three months ended September 30, 1978.

UV INDUSTRIES, INC. AND SUBSIDIARIES
IN LIQUIDATION (SEE NOTE 1 TO THE
FINANCIAL STATEMENTS)
MANAGEMENT'S DISCUSSION AND ANALYSIS OF
CONSOLIDATED CONDENSED STATEMENTS OF INCOME
FOR THE THREE AND NINE MONTH PERIODS
ENDED SEPTEMBER 30, 1979 AS COMPARED
TO PRIOR PERIODS (CONT'D)

Interest income

Interest income increased substantially due to the increase in cash available for short-term investments. The increase in cash resulted from the proceeds from conversion of warrants prior to their expiration on January 15, 1979 and the proceeds from the sale of Federal Pacific Electric Company. On April 30, 1979 a substantial portion of the increase in cash was distributed to shareholders in the Company's first liquidating dividend of $18 per share.

Interest expense

Interest expense decreased principally due to the reduction in long-term debt resulting from the conversion and redemption of the 5-3/4% convertible subordinated debentures which the Company's Board of Directors voted to redeem on February 28, 1979.

Other income and (expense), net

Other income and (expense), net, increased due to increased legal and other administrative expenses incurred in connection with matters relating to the Company's Special Shareholders Meeting held on March 26, 1979.

Gains on liquidation

Gains on liquidation result primarily from the sale of Federal Pacific Electric Company and substantially all of the Company's oil and gas properties.

Provision for income taxes

The low effective tax rate for the three and nine months ended September 30, 1979 is due to the fact that no Federal income taxes have been provided on gains on liquidation because the Company is in the course of liquidation pursuant to Section 337 of The Internal Revenue Code of 1954, as amended.

EXHIBIT 3

UV INDUSTRIES, INC. AND SUBSIDIARIES
STATEMENT SETTING FORTH COMPUTATION OF PER SHARE EARNINGS
FULLY DILUTED

| | Three months Ended September 30 | | Nine months Ended September 30 | |
|---|---|---|---|---|
| | 1979 | 1978 | 1979 | 1978 |
| | (Unaudited) (000's omitted) | | (Unaudited) (000's omitted) | |
| NET INCOME | $105,474 | $19,866 | $256,757 | $35,778 |
| Dividend requirements on $5.50 Cumulative Preferred Stock | - | (166) | (255) | (506) |
| Dividend requirements on $1.265 New Preferred Stock | - | (33) | (13) | (104) |
| Applicable to common stock | 105,474 | 19,667 | 256,489 | 35,168 |
| Adjustments: | | | | |
| Interest on 5-3/4% convertible debentures, net of federal income taxes | - | 359 | 123 | 1,094 |
| Interest on 5-1/2% convertible debentures, net of federal income taxes | - | 2 | | 9 |
| Expenses written off re 5-3/4% debentures, and Federal Pacific Electric Co. Long-Term Debt, net of federal income taxes | - | 27 | 352 | 78 |
| Interest savings and interest earned on proceeds from options and warrants (see annexed): | | | | |
| Interest on short-term debt retired, net of federal income taxes | - | 31 | | 93 |
| Interest on long-term debt retired, net of federal income taxes | - | 222 | | 667 |
| Interest on invested proceeds from exercise of options and warrants, net of federal income taxes | - | 100 | | 291 |
| Conversion of $1.265 New Preferred Stock | - | 33 | 13 | 104 |
| Total | - | 774 | 488 | 2,336 |
| Adjusted net income | $105,474 | $20,441 | $256,977 | $37,504 |
| Fully diluted per adjusted number of shares outstanding | $6.93 | $1.49 | $16.93 | $2.73 |

UV INDUSTRIES, INC. AND SUBSIDIARIES
COMPUTATION OF ADJUSTED NUMBER OF SHARES OUTSTANDING
FULLY DILUTED BASIS(CONTINUED)

| | Three months Ended September 30 | | Nine months Ended September 30 | |
|---|---|---|---|---|
| | 1979 | 1978 | 1979 | 1978 |
| | (Unaudited) (000's omitted) | | (Unaudited) (000's omitted) | |
| Weighted average of shares outstanding | 15,228 | 9,202 | 14,613 | 9,150 |
| Shares issuable on conversion of 5-3/4% Debentures | - | 2,144 | 397 | 2,174 |
| Shares issuable on conversion of 5-1/2% Debentures | - | 40 | 12 | 63 |
| Shares issuable on exercise of warrants | 2 | 3,764 | 161 | 3,764 |
| Shares issuable on exercise of options | - | 145 | 30 | 157 |
| Conversion of $1.265 New Preferred Stock | - | 252 | 43 | 263 |
| Shares assumed repurchased with portion of proceeds from exercise of warrants and options (limited to 20% of outstanding shares) | (1) | (1,846) | (78) | (1,846) |
| Adjusted number of shares outstanding | 15,229 | 13,701 | 15,178 | 13,725 |
| Proceeds and assumed use as follows: | | | | |
| Proceeds from exercise of options | $ - | $ 1,928 | $ 415 | $ 1,928 |
| Proceeds from exercise of warrants | 26 | 77,738 | 3,326 | 77,738 |
| Total | $ 26 | $79,666 | $3,741 | $79,666 |
| Assumed use: | | | | |
| Purchase of the outstanding shares | $ 26 | $39,289 | $3,741 | $38,532 |
| Short-term debt- Federal Pacific Electric Co. | | 2,917 | | 2,917 |
| Long-term debt- Federal Pacific Electric Co. | | 6,589 | | 6,589 |
| Retire long-term debt of Mueller Brass Co. | | 5,875 | | 5,875 |
| Retire 5-3/8% subordinated debentures | | 15,393 | | 15,393 |
| Investments in commercial paper | | 9,603 | | 10,360 |
| | $ 26 | $79,666 | $3,741 | $79,666 |

UV INDUSTRIES, INC. AND SUBSIDIARIES

PART II. OTHER INFORMATION

Item 6. Decrease in amount Outstanding of Securities or Indebtedness

| | 5-3/8% Subordinated Debentures | 8-7/8% Debentures | 9-1/4% Senior Subordinated Notes |
|---|---|---|---|
| Outstanding June 30, 1979 | $15,218,900 | $75,000,000 | $25,000,000 |
| Purchased for Treasury from August 3, 1979 to September 10, 1979 and subsequently surrendered to the trustees for cancellation | (1,000,000) | (7,725,000) | (8,590,000) |
| Outstanding September 30, 1979 | $14,218,900 | $67,275,000 | $16,410,000 |

Item 9. (b) Exhibits and Reports on Form 8-K

Reports on Form 8-K. On October 10, 1979 the Company filed a Form 8-K reporting, under Item 2 - Acquisition or Disposition of Assets, the sale of substantially all of its oil and gas properties.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

UV INDUSTRIES, INC.

Date November 14, 1979

Martin Horwitz
Chairman of the Board of Directors
and Chief Executive Officer
(Principal Executive Officer)

Date November 14, 1979

Kenneth A. Leach
Vice President-Corporate Comptroller
(Principal Accounting Officer)



END

Exhibit 9

W. Benjamin Fisherow
Gary J. Fisher
David B. Glazer
Attorneys for United States of America
U.S. Department of Justice
Land and Natural Resources Division
Environmental Enforcement Section
Box 7611 Ben Franklin Station
12th & Pennsylvania Avenue, N.W.
Washington, D.C. 20044
(202) 633-1113



**IN THE UNITED STATES DISTRICT COURT**
**DISTRICT OF UTAH, CENTRAL DIVISION**

| | |
|---|---|
| UNITED STATES OF AMERICA,<br><br>Plaintiff,<br><br>v.<br><br>SHARON STEEL CORPORATION, UV INDUSTRIES, INC., UV INDUSTRIES, INC. LIQUIDATING TRUST, and THE ATLANTIC RICHFIELD COMPANY, INC.,<br><br>Defendants. | Civil Action No. 86-C-924J |

PLAINTIFF UNITED STATES OF AMERICA'S MEMORANDUM IN RESPONSE TO THE MOTIONS FOR RECONSIDERATION AND SUMMARY JUDGMENT ON BEHALF OF DEFENDANTS UV INDUSTRIES, INC. LIQUIDATING TRUST AND UV INDUSTRIES, INC., AND IN SUPPORT OF ITS CROSS MOTION FOR SUMMARY JUDGMENT

4/12

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## INTRODUCTION

Plaintiff United States of America brought this action under sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607, and section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973, to abate an imminent and substantial endangerment to the public health and welfare and to the environment posed by conditions at a former milling facility in Midvale, Utah (the "site"), and to recover costs incurred and to be incurred by the United States in responding to those conditions. The United States named UV Industries, Inc. ("UV"), UV Industries, Inc. Liquidating Trust ("UV Trust"), and Sharon Steel Corporation ("Sharon") as defendants in this action.[1]

On December 22, 1986, UV Trust filed a motion to dismiss the complaint on behalf of UV, arguing that UV was not amenable to suit (and, therefore, not subject to service of process). The Trust argued that UV's capacity to be sued was governed, pursuant to Fed. R. Civ. P. 17(b), by the law of Maine, its state of incorporation. Because UV had been dissolved

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[1] Defendants impleaded Chief Consolidated Mining Company, Newpark Resources, Inc., Park City Consolidated Mines, and the State of Utah as third-party defendants. Those parties, except for the State, were dismissed by Order of May 17, 1989. On September 23, 1988, the United States, with leave of Court, filed an Amended Complaint, adding the Atlantic Richfield Company ("ARCO") as a defendant on the grounds that it operated the site jointly with UV. ARCO has impleaded additional third-party defendants. On April 25, 1989, the United States was granted leave to file a Second Amended Complaint, charging ARCO with having generated wastes deposited at the site. In its Second Amended Complaint, the United States also dropped its RCRA count against all defendants.

pursuant to Maine law, and because Maine law provides for the institution of actions against dissolved corporations only during the two year period following dissolution, the Trust contended that the United States' claims in this action were barred.

On August 18, 1987, the Court ruled, rejecting the Trust's position that Maine law immunized UV from suit. The Court construed the phrase, "[n]otwithstanding any other provision or rule of law," contained in CERCLA section 107(a), as explicitly overriding the provisions of Rule 17(b). United States v. Sharon Steel Corp., 681 F. Supp. 1492, 1495-96 (D. Utah 1987).

On September 1, 1987, the Trust moved the Court for certification of an interlocutory appeal, pursuant to 28 U.S.C. § 1292(b). The Court summarily rejected that motion. Order of December 23, 1987.

The Trust has recently filed a motion for reconsideration of the Court's prior decision denying the motion to dismiss as to UV and, in addition, has moved for summary judgment as to both UV and the Trust.[2] UV seeks reconsideration of the Court's earlier decision on its motion to dismiss, as well as summary judgment, on two grounds. First, it asserts that the Court premised its decision upon a finding (or an assumption) that UV's business had not been completely "wound up" and that its assets

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[2] The Trust has also filed a motion to dismiss UV from the related Midvale Slag Site case, U.S. v. Sharon Steel Corp., Civil Action No. 89-C-136J, which raises similar issues. The United States is filing herewith a response to that motion.

had thus not been distributed to its shareholders. UV now maintains, in the context of its motion for summary judgment, that its assets were distributed upon the corporation's dissolution and that the Trust was created merely to hold the assets for the benefit of the corporation's former shareholders. Second, UV asserts that the Court's decision was simply erroneous as a matter of law. On its own behalf, the Trust moves for summary judgment on the grounds that, in the absence of a basis upon which to disinter the deceased UV, no action may be had derivatively against the Trust.

As discussed more fully below, the Court's original decision denying the motion to dismiss UV was entirely correct insofar as it recognized that assets that have not been distributed to UV's former shareholders should be available to pay for a remedy at the Midvale site. 681 F. Supp. at 1498. However, the United States urges the Court to adopt a somewhat different route by which to reach that result. Specifically, the United States asks the Court to apply the longstanding principles of federal common law governing successor liability to the facts of this case and to rule that a liquidating trust, which holds assets transferred to it by a dissolved corporation and which is obligated to pay out the corporation's liabilities from trust property, may be liable for implementing or contributing towards a site remedy under CERCLA.

Because the rule urged by the United States applies irrespective of the facts adduced by defendants in support of the

pending motions, it compels a decision rejecting the Trust's motion for summary judgment and granting summary judgment to the United States as to the Trust's responsibility for UV's liabilities. Moreover, under the rule of decision urged here, UV's continued presence in this lawsuit does not appear to be necessary. For that reason and because, as the Court has already recognized, the corporation may be technically judgment proof, 681 F. Supp. at 1498-99, the United States would not object to an order dismissing UV from the case.

Accordingly, the United States respectfully requests the Court to enter an order denying the Trust's motion for summary judgment and granting summary judgment to the United States as to the potential liability of the UV Trust.[3] The material facts as to which there is no genuine dispute are outlined below, following the United States' objections to defendants' statement of material facts.

## STATEMENT OF FACTS

### A. Objections to Defendants' Statement of Material Facts as to Which no Genuine Issues Exist

The factual underpinning of the Trust's argument that UV has been completely dissolved and its assets distributed to

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[3] The United States does not seek at this time a ruling that the Trust is liable for a release or threat of release of hazardous substances at or from the Midvale site, under section 107(a) of CERCLA, 42 U.S.C. § 9607(a), or for abating an imminent and substantial endangerment to the public health and welfare or to the environment, under section 106(a) of the statute, 42 U.S.C. § 9606(a). The United States seeks only a determination that, if such liabilities are found, the Trust may not interpose a defense based upon its non-amenability to suit or upon the extinguishing of UV's liabilities by operation of Maine law.

its former shareholders rests entirely upon semantics. It may be true that, under Maine state corporation law and for federal income tax purposes, UV "distributed" its assets prior to its dissolution by transferring those assets to the Liquidating Trust. However, it cannot be said that those assets have actually been distributed to the former shareholders in any meaningful sense. As discussed more fully in the United States' Statement of Material Facts as to Which There is no Genuine Dispute ("P. SMF"), set out below, the Trust in fact holds the assets realized from the sale of UV to Sharon, subject to any liabilities that may be set off against those assets, as well as any expenses (including the costs of this litigation) that may have to be paid out of Trust property. Before the assets may be finally "distributed" to the former shareholders, all such liabilities must first be satisfied. Whether those liabilities include the claims brought in this action by the United States is a legal, not a factual, matter. A review of Defendants' Statement of Material Facts as to Which no Genuine Issues Exists [sic] ("D. SMF") reveals that the Trust ignores this reality, in favor of presenting to the Court certain matters that, while true as a formal matter, do nothing to cast light on the underlying nature of this dispute.

In addition to the foregoing general objection, the United States sets out below specific objections to the following paragraphs of Defendants' Statement of Material Facts:

D. SMF ¶ 12: UV has not been completely liquidated in any meaningful sense; a substantial portion of assets derived from the sale of UV to Sharon is held by the UV Trust, to be distributed -- if at all -- at the conclusion of this litigation. Plaintiff's Exhibit[4] ("P. Exh.") 1, at 10 and cover letter; P. Exh. 7 at 27-31, 39-43.

D. SMF ¶ 18: UV's assets held as of March 24, 1980 were never "distributed" or "transferred" to the corporation's shareholders. Legal and equitable title to the assets is vested in the Liquidating Trustees; the unitholders of the Trust neither own nor are able to enjoy the Trust property itself. Defendants' Exhibit[5] ("D. Exh.") 5, preamble and ¶ 3.2; D. Exh. 6; D. Exh. 7, at 5-6; P. Exh. 6 at 1; P. Exh. 7 at 19-25.

D. SMF ¶ 23: Same objection as above.

D. SMF ¶¶ 30-35: The United States objects to these paragraphs in that the tax treatment accorded the transfer of assets to the Trust and income

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[4] Plaintiff's exhibits are submitted herewith in the accompanying Appendix.

[5] References to "Defendants' Exhibits" are to those exhibits submitted by defendants in support of their motions for reconsideration and summary judgment.

received by the Trust is irrelevant to the issues raised in this proceeding.

D. SMF ¶ 44: The Trust's assumption of UV's liabilities was not, in any of the operative documents, made subject to the limitations of the Maine survival statute. D. Exh. 5, ¶¶ 2.1, 2.4, 5.3, 6.2(d); D. Exh. 16.

D. SMF ¶ 48: The United States objects to this paragraph as it purports to state a legal conclusion about the effect of the Trust's assumption of UV's liabilities, rather than stating facts material to the issues raised in this proceeding. To the extent that it purports to be a statement of facts about the Trustees' intentions as to the Trust's assumption of liabilities, it is irrelevant to the matters raised in this proceeding.

D. SMF ¶ 49: The United States objects to this paragraph in that the Trustees' expectations as to what liabilities were to be paid out of Trust property are legally irrelevant to the issues raised in this proceeding. Indeed, as it turns out, a substantial settlement of other litigation was paid out of Trust property. D. SMF ¶ 47.

D. SMF ¶ 52: The United States objects to this paragraph in that the time as of which defendants were on notice of environmental problems at the site is irrelevant to the issues raised in this proceeding. Moreover, the paragraph seriously misstates the facts it purports to establish. UV was long on notice that the site posed problems for the surrounding community. P. Exh. 12, 13. UV was aware of of problems created by erosion and blowing of the tailings offsite, P. Exh. 9, 10, and communicated with both state and federal agencies about these problems and their potential solutions. P. Exh. 11, 14, 15. Finally, the United States did not admit, U.S. Admissions ¶ 85, that prior to the August 28, 1985 letter to the Trust from Robert Duprey, the Trust was not on notice of potential environmental problems at the site; the United States admitted only that the Duprey letter may have been the first formal notification from EPA that the UV and/or the Trust were potentially liable under CERCLA for conditions at the site.

B. The United States' Statement of Material Facts as to Which There is no Genuine Dispute

The United States incorporates herein by reference those portions of Defendants' Statement of Material Facts as to which the United States does not object. In addition, the United States sets out the following additional undisputed facts:

1. On or about March 24, 1980, UV conveyed, by an "Assignment," all assets held by it to the Trustees of the Liquidating Trust, to hold for the benefit of the former UV shareholders. D. SMF ¶ 19; D. Exh. 6.

2. The principal asset conveyed was the promissory note received from Sharon Steel in exchange for all of UV's then-held assets. D. SMF ¶ 17.

3. The note represented an obligation on the part of Sharon to pay, for the assets it received, approximately $106 million in cash and approximately $411 million in Sharon debentures, together with accrued interest. D. SMF ¶ 15; D. Exh. 3, ¶¶ 2, 3, 4; P. Exh. 7 at 27.

4. On September 25, 1980, the note was exchanged for approximately $411 million in temporary Sharon debentures, approximately $82.6 million in cash, and a promissory note in the principal amount of roughly $24 million. D. SMF ¶ 42; P. Exh. 6 at 2.

5. Interest on the note was paid on December 1, 1980, by payment of approximately $37.6 million in cash together with a promissory note for some $11.8 million. P. Exh. 6 at 2.

6. On March 2, 1981, Sharon made the first interest payments on the temporary debentures, consisting of $21.4 million in cash and a note for $6.2 million. P. Exh. 6 at 2.

7. Further interest payments on the temporary debentures were made on September 1, 1981 (promissory note for $7.2 million), and March 1, 1982 (cash of $24.7 million and note for $7.2 million), P. Exh. 5 at 13; September 1, 1982 (note for $7.2 million) and March 1, 1983 (cash of $21.9 million and note for $6.4 million), P. Exh. 4 at 11; and in subsequent semi-annual installments (until Sharon defaulted in March 1985), see P. Exh. 3 at 12-13; P. Exh. 2 at 2; D. SMF ¶ 50.

8. A portion of the cash and of the debentures received in exchange for the note has not been distributed. D. SMF ¶ 51; P. Exh. 1, at 2; P. Exh. 7 at 27-31, 39-43.

9. The Trust also holds monies representing interest on the debentures received by the Trust from Sharon prior to March 1985, as well as the proceeds of investments made with monies received from the sale. P. Exh. 1, at 2, 6; P. Exh. 7 at 27-29.

10. The Trust holds additional funds derived from the following sources: payment of $11 million made by Sharon on judgments obtained against it in other litigation; monies received from Sharon for payment of certain Trust expenses, and cash representing the reversal in February 1987 of the reserve of $6 million set aside for contingent liabilities. P. Exh. 1, at 6, 12.

11. The Trust is the beneficiary of certain insurance proceeds that may be available to satisfy a judgment in this action and has received at least partial payment of such proceeds as well as monies from other insurance policies. P. Exh. 1, at 4 and cover letter; P. Exh. 7 at 36.

12. The Trust is answerable for all liabilities and expenses of UV, including unascertained or contingent liabilities and expenses, and is obligated to pay those liabilities and expenses out of the assets held in trust. D. Exh. 5, ¶¶ 2.1, 2.4, 5.3, 6.2(d); D. Exh. 16.

13. The Trust has paid and continues to pay for the expenses of the Trust out of trust assets. P. Exh. 7 at 34-38; P. Exh. 1, at 4.

14. Payment of expenses out of Trust assets could, under the terms of the Trust, continue indefinitely until the Trust assets are exhausted. P. Exh. 7 at 35-37.

15. The Trust has paid $42 million out of Trust assets in settlement of other litigation. D. SMF ¶ 47; P. Exh. 2 at 9, 14.

16. UV assigned all of its assets existing as of the date of assignment to the Liquidating Trust, not to its shareholders. D. Exh. 5, preamble and ¶ 3.2; D. Exh. 6; P. Exh. 6 at 1.

17. All title, both legal and equitable, in the Trust assets is vested in the Trustees, not the unitholders of the Trust. D. Exh. 5, ¶ 3.2.

18. The former shareholders of UV hold only beneficial interests in the Trust property and take those interests subject to the other provisions of the Trust instrument, including those providing for payment of liabilities and expenses out of the Trust property. D. Exh. 5, ¶ 3.2.

ARGUMENT

A. Overview

In their moving papers,[6] the UV Trust seeks to persuade the Court that a fund of money derived from the sale to Sharon Steel of UV's assets -- including its former milling operation -- is somehow shielded from this Court's power to compel its use in cleaning up hazardous wastes left by UV in Midvale, Utah. In so doing, the Trust urges the Court to place form above substance and to put the interests of individuals who profited from the activities that gave rise to conditions at the Midvale site above the needs of the residents of Midvale who must bear the consequences of those activities. The result sought by the Trust, however, is in no way compelled either by the facts of this case or by the applicable law. On the contrary, the implications of the result reached by the Court two years ago compels a finding that the Trust is not only amenable to suit but also that its assets are available to satisfy any judgment rendered in this case.

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[6] Pertinent portions of defendants' memorandum of law in support of their motions shall be cited as "Memorandum at ___."

First, the Trust has adduced no facts upon which the Court can or should base a decision to grant judgment against the United States. The Trust has simply shown that UV may have satisfied the prerequisites of Maine law relating to corporate dissolutions and federal tax law applicable to the taxation of certain types of asset sales. Rather than shielding the Trust from liability, the undisputed facts demonstrate, to the contrary, that the Trust, as the entity charged with winding up UV's affairs and paying off its liabilities, holds assets that are available to satisfy any judgment rendered in this action as to UV's liability for conditions at the Midvale site.

Second, the Trust's legal position that UV's compliance with Maine corporation law and the federal income tax code renders the Trust immune from suit misses the point entirely. While as a formal matter the Trust may be a duly constituted liquidating trust, its establishment under Maine law and its tax treatment under federal law have little to do with the United States' ability, in this CERCLA action, to reach the assets held by the Trust. First, if the instant suit had been brought within the two year limitations period prescribed by the Maine survival statute, it is undisputed that the United States could ultimately reach the Trust assets, notwithstanding any purported "distribution" of those assets to the UV shareholders upon the corporation's dissolution. The only impediment raised is the two year limitations period, which the Trust asserts is made applicable by Fed. R. Civ. P. 17(b). That supposed impediment is

no obstacle at all. Under Rule 17(b), the Trust is amenable to suit in a court sitting in Utah (or even in Maine), because it is a validly existing trust or, alternatively, because it is an unincorporated association against which a federal cause of action is being maintained pursuant to CERCLA. Having the capacity to be sued under Rule 17(b), the Trust is answerable for UV's environmental liabilities as the corporation's successor-in-interest, under principles of federal common law as applied in CERCLA cases.

B. The Trust is Amenable to Suit Under Rule 17(b)

It should be noted at the outset that, in the three years this suit has been pending, the Trust has never claimed that it is not an entity that may be sued, and it does not so claim now. See Memorandum at 81ff. The Trust asserts only that it is not liable for UV's debts, not that it cannot be sued in federal court. Nevertheless, to the extent that the Trust's amenability to suit may be relevant, Rule 17(b) provides that this action may be maintained against the Trust.

Rule 17(b) provides that

> The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized. In all other cases [other than those of corporations and individuals in a nonrepresentative capacity] capacity to sue or be sued shall be determined by the law of the state in which the district court is held, except (1) that a partnership or other unincorporated association, which has no such capacity by the law of such state, may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right

> existing under the Constitution or laws of the United States . . . .

Under the Rule, if the Trust is deemed not to be a corporation, its capacity to sue must be determined first under the law of the forum state. Under Utah law, the Trust may be sued because it is a validly existing Trust. Moreover, even if Utah law did not permit suit against the Trust, the Trust could still be sued as an unincorporated association against which the United States seeks to enforce a substantive right existing under federal law. Finally, even if Maine law were relevant to this proceeding, the Trust would still be amenable to suit because Maine law recognizes that a liquidating trust is an entity amenable to suit.

1. The Trust may be sued under Utah law

If, as the Trust insists, D. SMF ¶ 40, it is a validly existing trust, it must be amenable to suit under Utah law. Utah provides that a dissolved corporation may continue in existence for the purpose of winding up and distributing any remaining assets. Utah Code Ann. § 16-10-101 (Michie 1987 replacement volume). While Utah law does not expressly provide that former corporate directors become liquidating trustees as does Maine law,[7] there is no reason to think that a Utah court would deem the UV Trust to be an improper mechanism for winding up UV's

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[7] See discussion infra.

affairs.[8] As the Trust itself maintains, Memorandum at 33-34, liquidating trusts are common vehicles for winding up a corporation's affairs when the corporate assets to be distributed to its former shareholders are not immediately susceptible to division. See 16 A Fletcher, Cyclopedia of the Law of Private Corporations § 8191, at 613 (perm. ed. 1988). Utah law provides for the prosecution of actions involving the duties and obligations of a trust. Utah Code Ann. §§ 75-7-201, -204, -207 (Allen Smith 1978 replacement volume). The Trust may thus be sued under Utah law and, therefore, is amenable to suit in federal court under Rule 17(b).

2. The Trust may be sued on a federal cause of action as an unincorporated association

Even if the Trust were not amenable to suit under Utah law, it would still possess the capacity to be sued as an unincorporated association on a claim arising under the laws of the United States. Fed. R. Civ. P. 17(b)(1); Oyler v. National Guard Ass'n of the United States, 743 F.2d 545, 550 (7th Cir. 1984); Colorado Springs Cablevision, Inc. v. W.A. Lively, 579 F.

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[8] The Trust persists in claiming, Memorandum at 31-46, that it is in the business of winding up the affairs of the former UV shareholders and not the affairs of UV. If that is meant to be a distinction, it is one that is irrelevant to this proceeding. The Trust has been and is involved in maintaining, investing, and dispersing assets transferred to it by UV and in paying out UV's liabilities. D. SMF ¶¶ 36-37, 39, 44-47; P. SMF ¶¶ 8-18.

Supp. 252, 254 n.3 (D. Colo. 1984). The Trust is therefore a proper defendant in this federal suit.[9]

3. The Trust may be sued as a trust under Maine law

Finally, even if Maine law applied to govern the Trust's capacity to be sued, suit against the Trust could proceed. Maine law provides that, upon the dissolution of a corporation, the directors of the corporation as of the date of dissolution become the corporation's liquidating trustees. 13A Maine Rev. Stat. Ann. § 1122(2) (West 1981). A liquidating trust is an entity that may sue and be sued under Maine law. See, e.g., Stevens v. Hill, 29 Me. 133, 134 (1848), cited by the Trust, Memorandum at 33.

C. Under Evolving Principles of Federal Common Law Applicable to CERCLA cases, the UV Trust is Liable as UV's Successor-in-Interest

Under a solid line of cases extending back to Clearfield Trust Company v. United States, 318 U.S. 363 (1943), a federal rule of decision will be established where the application of state law -- such as the Maine survival statute at issue here -- would thwart the enforcement of a federal right and where a uniform rule is needed. 318 U.S. at 367; United States v. Van Diviner, 822 F.2d 960, 963 (10th Cir. 1987); United States v. New Mexico Landscaping, Inc., 785 F.2d 843, 845 (10th Cir. 1986); Pratt v. Hercules, Inc., 570 F. Supp. 773, 800-02 (D. Utah

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[9] CERCLA specifically defines "person," as used in section 107 and elsewhere, to include an "association." 42 U.S.C. § 9601(21). Therefore, the Trust is not only amenable to suit as an association, under Rule 17(b), but it is also liable as a "person" under CERCLA. See further discussion infra.

1982). A federal rule of decision governing successor liability in corporate dissolutions is needed to address both of these concerns.

First, as this Court has recognized, 681 F. Supp. at 1496, 1497-98, deference to state corporation law, such as Maine's, would thwart CERCLA's broad remedial purposes. Second, a uniform rule is clearly needed in this area to provide certainty and fairness in an area of federal regulation that typically involves, in a single action, multiple parties domiciled in different districts and that thus cuts across state boundaries. As it stands now, state corporate survival statutes differ widely in their preclusive effects on post-dissolution suits. A number of states, just as Maine and Utah, provide that such suits must be brought within two years of dissolution.[10] Others provide for limitations periods of three years,[11] five years,[12] or even for an indefinite period of time as the liquidation process may require.[13] At least one state,

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[10] E.g., Alabama, Ala. Code § 10-2A-203 (1987); Rhode Island, R.I. Gen Laws § 7-1.1-98 (1985); Nevada, Nev. Rev. Stat. § 78.585 (1986).

[11] E.g., Delaware, Del. Code Ann., Tit. 8, § 278 (1983 & Supp. 1988); Massachusetts, Mass Gen. Laws Ann., Ch. 156B, § 102 (1979 & Supp. 1989); New Hampshire, N.H. Rev. Stat. § 293-A:106 (1987); Vermont, Vt. Stat. Ann., Tit. 11, § 2075 (1984).

[12] E.g., Montana, Mont. Code Ann. § 35-1-930 (1987); Oregon, Or. Rev. Stat. Ann. § 60.644 (1988).

[13] E.g., Arizona, Ariz. Rev. Stat. Ann. § 10-105 (1977); California, Cal. Corp. Code Ann. § 2010 (1977); Kansas, Kan. Stat. Ann. § 17-6808 (1988); Michigan, Mich. Stat. Ann. § 21.200(833), (834) (1983); New Jersey, N.J. Stat. Ann.

(continued...)

significantly, provides that the survival period for a claim shall be determined by the duration of the applicable statute of limitations.[14] Clearly, the liability under CERCLA of a dissolved corporation or its successor should not depend upon the state in which the entity happened to have been originally organized, particularly if it is being sued for disposing of waste in another state. Moreover, because a number of states have amended their survival statutes to provide for limitation periods of indefinite duration, rather than arbitrarily fixed periods,[15] the trend appears to be towards holding dissolved corporations or their successors responsible for conduct occurring prior to dissolution. Certainly, CERCLA's remedial purposes require that a similar rule be applied when the liability sought to be enforced arises from the improper disposal of hazardous substances. For that reason, this Court should rule that, as UV's successor, the Trust may be liable for contamination at the Midvale site irrespective of the limitations that might otherwise be imposed by Maine's fortuitously short survival period for corporate liabilities.

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[13](...continued)
§ 14A:12-9 (1969 & Supp. 1989); New Mexico, N.M. Stat. Ann. § 53-16-24 (1983); New York, N.Y. Bus. Corp. Act § 1006 (1986); Oklahoma, Okla. Stat. Ann., Tit. 18, § 1099 (1986 & Supp. 1989); Virginia, Va. Code § 13.1-755 (1985).

[14] Mississippi, Miss. Code Ann. § 79-3-209 (1973). As discussed infra, the limitations period of a survival statute is really akin to a statute of limitations; the Mississippi Code simply makes that relationship explicit.

[15] E.g., Arizona, Kansas, Michigan.

Indeed, a growing number of courts have recognized that CERCLA is to be interpreted in light of an evolving federal common law. See, e.g., Smith Land & Improvement Corp. v. Celotex Corp., 851 F.2d 86, 90-92 (3d Cir. 1988); United States v. Nicolet, Inc., Civil Action No. 85-3060, slip op. at 16-17 (E.D. Pa. May 10, 1989); United States v. Thomas Solvent Company, No. K86-167, slip op. at 20 (W.D. Mich. Dec. 2, 1988);[16] In re Acushnet and New Bedford Harbor Proceedings, 675 F. Supp. 22, 31 (D. Mass. 1987)[17]; United States v. Miami Drum Services, Inc., 25 Env't Rep. Cas. (BNA) 1469, 1472 (S.D. Fla. 1986); United States v. A & F Materials Co., Inc., 578 F. Supp. 1249, 1255 (S.D. Ill. 1984). As the court in Miami Drum cogently explained:

> Because the disposal of hazardous substances is a uniquely national concern and in accordance with legislative intent, the rights, liabilities and responsibilities of the United States under 42 U.S.C. § 9607 are to be governed by an evolving Federal common law. United States v. Chem-Dyne Corp., 572

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16 All cases not found in the West federal reports are reproduced in the accompanying Appendix, together with cited portions of the legislative history.

17 Defendants suggest that there is no conflict between CERCLA and the Maine survival statute because Superfund monies could be used to pay for cleaning up the Midvale site. Memorandum at 68-71. Yet as the legislative history cited by defendants indicates, the Superfund is to be reserved for cleaning up sites where no responsible parties can be found. For that reason, and because the total price tag on remedying hazardous wastes sites around the country far exceeds the monies available through the Fund, the Superfund must be jealously preserved. See, e.g., S. Rep. No. 96-848, 96th Cong., 2d Sess. 17-18 (1980), reprinted in 1 Senate Committee on Environment and Public Works, A Legislative History of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Superfund) 324-25 (1983). The Fund is not available to let viable defendants, such as the Trust, off the hook.

> F. Supp. 802[, 808-09] ([S.D. Ohio] 1983). So too, it is incumbent upon this Court to fill in the "interstitial gaps" inevitably left in federal statutes. United States v. Little Lake Misene Land Co., 412 U.S. 580, 593 (1973).

25 Env't Rep. Cas. at 1472 (footnote omitted); see also United States v. Monsanto Co., 858 F.2d 160, 171 (4th Cir. 1988); 126 Cong. Rec. H11787 (Dec. 3, 1980) (remarks of Rep. Florio) ("[CERCLA] will encourage the further development of a Federal common law in this area"). As set forth below, a fair, reasonable and uniform rule of decision governing the liability of a dissolved corporation or its successor may be readily articulated and applied.

1. Under principles of federal common law applied in CERCLA cases, the Trust is liable as UV's successor-in-interest

At the outset, one point should be emphasized about the relationship between UV and the Trust. Just prior to UV's dissolution -- and in order to render that dissolution effective under Maine law -- the Trust expressly assumed

> all debts, obligations, contracts and liabilities and expenses of UV as of the date [of the assumption], of any kind, character or description, direct or indirect, whether accrued, absolute, contingent, ascertained or otherwise, and whether asserted before or after such date to the extent not assumed and paid for by Sharon Steel Corporation . . . .

D. Exh. 16 at 2; see also D. Exh. 5 at ¶ 2.4. An express assumption of liabilities, such as this, has long been held sufficient to render a successor entity liable for the debts of its predecessor. See, e.g., R.J. Enstrom Corp v. Interceptor

Corp., 555 F.2d 277, 281-82 (10th Cir. 1977); West Texas Refinery & Development Co. v. Commissioner of Int. Rev., 68 F.2d 77, 81 (10th Cir. 1933). For that reason alone, the Trust should be held liable for conditions at the Midvale site.[18]

However, even if the assumption language were insufficient to charge the Trust with UV's liability under traditional common law principles, the Trust is nevertheless liable under the evolving federal common law of successor liability in CERCLA actions. A number of courts have determined that the corporate form should be disregarded where it would impede the United States in protecting the public interest in

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[18] Although the language of the assumption instrument states that the Trust assumed UV's liabilities as of the date the agreement was executed, it goes on to provide that the Trust assumed liabilities that were "contingent" and not yet ascertained or accrued. But even if the language of the assumption agreement were not clear on this point, liability for the Midvale site must be included among the liabilities assumed by the Trust. Because CERCLA imposes liability retroactively, it gives rise to a claim for actions performed prior to the date on which the assumption agreement was executed. See, e.g., NEPACCO, 810 F.2d at 732-37; Sharon Steel, 681 F. Supp. at 1495. Since the Trust stands in UV's shoes, and since UV -- if fully alive today -- could be held liable for the site, the Trust must be held accountable for that liability by virtue of having expressly assumed UV's liabilities.

Similarly, CERCLA's scheme of joint and several liability renders the prior assignment of UV's liabilities to Sharon ineffective as against the United States. See 42 U.S.C. § 9607(e)(1); Smith Land & Improv. Corp., 851 F.2d at 89; U.S. v. Hooker Chemicals & Plastics Corp., 680 F. Supp. 546, 549 (W.D.N.Y. 1988). The Trust's only recourse is a cross-claim against Sharon, see, e.g., U.S. v. South Carolina Recycling and Disposal, Inc., 653 F. Supp. 984, 995-96 (D.S.C. 1984), aff'd in pertinent part sub nom., U.S. v. Monsanto Co., 858 F.2d 160 (4th Cir. 1988); U.S. v. Conservation Chemical Co., 619 F. Supp. 162, 214 (W.D. Mo. 1985). Therefore, the Trust may not argue that it did not assume UV's environmental liabilities simply because those liabilities had been previously assigned to Sharon.

remedying hazardous waste sites. See, e.g., United States v. Nicolet, No. 85-3060, slip op. at 16-20; United States v. Mottolo, 695 F. Supp. 615, 624 (D.N.H. 1988); United States v. Thomas Solvent Company, slip op. at 23-24.

In United States v. Thomas Solvent Company, the court placed significance on the fact that the entity sought to be sued on its predecessor's liabilities "ha[d] benefited from [the] polluting practices of [its] predecessor." Slip op. at 23 (citing Trujillo v. Longhorn Manufacturing Co., 694 F.2d 221, 225 (10th Cir. 1982); Equal Employment Opportunity Comm'n v. MacMillan Bloedel Containers, Inc., 503 F.2d 1086, 1092 (6th Cir. 1974)). While the instant case is, admittedly, not on all fours with the typical case involving a successor corporation's continuation of its predecessor's active business and, therefore, its succession to its predecessor's liabilities, it nevertheless entails important equitable considerations which call for a finding of successorship. The beneficiaries of the Trust are, for the most part, former shareholders of UV. Those who are not nonetheless chose to acquire interests in a Trust that had as one of its stated purposes the payment of UV's corporate liabilities.[19] See D. SMF ¶ 56. On the whole, then, the unitholders are all people who have profited, or seek to profit,

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[19] Although the Trust points out that not all of the unitholders are former UV shareholders, since units were marketable for a brief period and also may have passed by gift or bequest, D. SMF ¶ 56, the percentage of such unitholders is not readily ascertainable and is likely in any event to be very small. P. Exh. 8 at 50-51.

from UV's former business activities. In addition, the Liquidating Trustees are all former directors of the corporation. Sharon Steel, 681 F. Supp. at 1494. As substantial unitholders, those former directors have gained significantly, and stand to gain further, from the distribution of the UV sale proceeds. See, e.g., P. Exh. 2 at 16. In these circumstances, it would be inequitable to allow the Trust, which holds the assets of UV's former directors and shareholders, to hide behind UV's dissolution and escape the obligation to contribute towards the clean-up of the Midvale site. See Trujillo, 694 F.2d at 225.

2. The two year survival period provided by Maine law cannot impede the United States in acting to protect the public interest in this case

It is well established that a state statute of limitations cannot limit a federal right of action. See, e.g., United States v. Summerlin, 310 U.S. 414, 416-17 (1940); Federal Deposit Ins. Corp. v. Petersen, 770 F.2d 141, 143 (10th Cir. 1985). As discussed above, the liquidating trust is an entity that is perfectly able to respond to a judgment in this action; all that stands in the way is the two year limitation of the Maine survival statute. Because a state statute of limitations may not bar a federal suit, its seems clear by analogy that the arbitrary limitations period of a state survival statute should not prevent the United States from reaching the assets held by a liquidating trust that is still in existence.

While this Court has noted that a statute of limitations is somewhat different from a corporate survival statute,

681 F. Supp. at 1495 n.6, the Court also recognized that a limitation on capacity to be sued entails in part a limitation on liability, and vice versa. Id. at 1497. The expiration of the limitations period provided in a survival statute extinguishes liability in the same way as the running of a statute of limitations. For that reason, it is one thing for a defendant to claim that it lacks capacity to be sued altogether, as in the case of a minor or incompetent; it is quite another for a defendant -- who would otherwise have capacity to be sued -- to assert that it lacks such capacity merely because the plaintiff's claim was brought too late. In the latter case, the defendant is saying no more than it is entitled to repose, just as if it were relying upon a statute of limitations.[20]

3. The Trust is liable under the rationale of the Court's previous ruling and under the rule of law urged herein

In holding that UV was amenable to suit under CERCLA, the Court left open the question of whether the United States could reach the assets held by the Trust. 681 F. Supp. at 1498-

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[20] A somewhat different situation might arise if the defendant relying upon the survival statute actually ceased its existence in accordance with that statute or with other applicable law. In this case, however, the Trust is still a viable entity; it merely wants to take advantage of the running of what -- as applied to it -- is no more than a statute of repose.

Again, as discussed above, the Trust does not even argue that it lacks capacity to be sued. Instead, it asserts, Memorandum at 81ff., that it is not liable for UV's debts because the Maine survival statute has extinguished that liability. The Trust must concede, then, that the Maine statute upon which it relies is, in this instance, really more a statute of limitations than a limitation upon capacity to be sued.

99. However, the clear logic of the Court's opinion was that, notwithstanding any contrary provisions of Maine law, UV, while perhaps technically "dead," remains unburied. Id. at 1493-94, 1498. It is left unburied because the Trust has not completed the job of laying it to rest. Id. at 1494, 1498; D. SMF ¶¶ 50, 51; Memorandum at 30. It is the Trust that now holds and maintains UV's worldly goods and, most importantly, holds them subject to the obligation of paying off UV's liabilities out of Trust property. D. SMF ¶¶ 36-37, 39, 44-47; P. SMF ¶¶ 8-18. Obviously UV, if a financially viable entity in its own right, would be liable for abating conditions at the Midvale site, because CERCLA imposes liability retroactively. See, e.g., NEPACCO, 810 F.2d at 732-37; Sharon Steel, 681 F. Supp. at 1495. Because the Trust is charged with the burden of paying off UV's liabilities, the Trust is answerable now for remedying the environmental harm caused by UV.

D. The Undisputed Facts of Record Demonstrate that the Assets Held in the UV Trust are Available to Satisfy a Judgment in this Action

While the Trust has tried hard to convince this Court that it holds no assets that would be available to satisfy a judgment in this action, its attempt must fail.

As an initial matter, the Trust's argument simply proves too much. If the Trust were correct that all the assets derived from UV's sale had been "distributed" to UV's shareholders when they were transferred to the Trust, those assets would not have been available to pay any claim asserted

against UV or the Trust during the two-year survival period provided by Maine law and, indeed, would not have been available to pay the $42 million that was, in fact, paid to the Reliance Electric Company in settlement of other litigation. P. SMF ¶ 15. Moreover, the Trust would not be able to pay its day-to-day expenses, as well as the costs of this litigation, if it had no assets from which to pay them. But, of course, those expenses do get paid, P. SMF ¶¶ 13, because the unitholders of the Trust possess only a right of future ownership of pro rata portions of the Trust property and hold those interests subject to the Trust's obligation to pay off the liabilities and expenses of UV and the Trust itself out of the Trust corpus. P. SMF ¶¶ 12, 16-18. Indeed, the payment of liabilities and expenses out of Trust property could continue indefinitely until the Trust assets were exhausted. P. SMF ¶ 14. It is thus rather disingenuous for the Trust to assert, Memorandum at 30-31, that the Trust's continued administration of the trust corpus is of "no more legal significance than if those funds were held by a bank or trust company." If the former UV shareholders had received the proceeds of UV's sale -- in any form -- and had then, without more, transferred them to a bank or trust account, the Trust might have a point. Instead, however, UV's assets were transferred to the Trust, subject to the express provision that the Trust would pay for UV's liabilities -- including

"unascertained or contingent" liabilities -- out of Trust property.[21]

Once the sophism of a purported "distribution" of UV's assets to its former shareholders is swept aside, it is clear that the Trust holds real, tangible assets derived from the sale of UV to Sharon that remain undistributed. P. SMF ¶¶ 8-11. And as noted above, the Trust holds them subject to set-off of UV's liabilities. Id. ¶¶ 12-18. Those assets include cash and debentures that continue to be held for the benefit of unitholders who have not been identified or located, funds representing part of the interest portion of the purchase price of UV, cash from the payment of certain judgments in favor of UV, payments by Sharon of cash to cover expenses of the Trust, interest on investments made with the sale proceeds, and certain insurance monies. To speak of these funds, as the Trust does, as

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[21] The United States does not take issue with the Trust's claim that the way in which the government has taxed the transfer of assets to the Trust, as well as the receipt by the Trust of additional assets and income from the investment of Trust property, may have been premised upon a "distribution," within the meaning of the Internal Revenue Code, to the UV shareholders in trust. That tax treatment, however, merely recognizes that the Trust is not a business trust, organized for profit-making purposes and therefore taxable itself. See, e.g., Mullendore Trust Co. v. U.S., 271 F.2d 748, 750 (10th Cir. 1959). Moreover, the taxation of the unitholders directly for their pro rata shares of Trust income does not entail a finding that no judgment may be paid out of Trust property. In the first place, a substantial sum in settlement of litigation has already been paid, P. SMF ¶ 15, which was evidently disbursed in accordance with the Trust instrument. Second, as the Trust has noted, the unitholders are able to write off their pro rata shares of Trust expenses on their individual tax returns, as presumably they did when the Trust paid out the Reliance Electric settlement. See Memorandum at 85 n.48 (citing section 671 of the Internal Revenue Code, 26 U.S.C. § 671).

somehow unavailable or immune from levy mocks reality. Because the two year survival period provided in corporate dissolutions by Maine law must give way to CERCLA's remedial purposes, there is nothing that stands in the way of this Court's power to reach those very real assets held by the Trust.

In an effort to make its position more sympathetic, the Trust argues that an action against the Trust would really amount to an action against the former shareholders of UV and that no such action is possible under the facts and applicable law. Memorandum at 88-91. As pointed out above, however, any action against the Trust -- including, of course, one brought within the two-year survival period provided by Maine law -- would under the Trust's theory be an action against the unitholders of the Trust. Yet as the Trust ultimately recognizes, Memorandum at 43, 82, 85-86, the unitholders would be liable under those circumstances to pay the debts of UV out of the Trust property. And that is all the United States seeks here; the government has not brought an action in personam against the unitholders as a group, seeking to charge them with personal liability for the corporation's activities. Rather, the United States desires merely that its claims be charged against Trust assets as liabilities of UV.

E. The United States is Entitled to Summary Judgment Against the Trust on the Trust's Assumption of UV's Liability for the Midvale Site

Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment should be granted when the moving party can "show that there is no genuine issue as to any material

fact and that the moving party is entitled to a judgment as a matter of law." The Rule further states that summary judgment may be granted upon "any part" of a claim. Rule 56(d). The applicable law discussed above, applied to the facts of record as set forth in the United States' Statement of Material Facts as to Which There is no Genuine Dispute, as well as pertinent portions of defendants' Statement of Material Facts,[22] establishes that the United States is entitled to a ruling that the Trust may be held liable, as a matter of law, for conditions at the Midvale site.

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[22] A review of the United States' objections to defendants' statement of facts reveals that the parties are in substantial agreement upon the operative facts, but differ primarily in their interpretation of those facts. The additional facts set out in the United States' statement are not open to dispute by the Trust, having come entirely from documents produced by the Trust or from the testimony of a Liquidating Trustee. Those additional facts, under the United States' theory of liability, compel a decision granting the government summary judgment against the Trust.

## CONCLUSION

For the foregoing reasons, the United States urges the Court to enter an order denying the UV Trust's motion for summary judgment and granting summary judgment to the United States. The United States further requests the Court to hold that the assets derived from UV's sale and held by the Trust, subject to UV's liabilities, are available to satisfy a judgment in this action.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that, on this 5th day of July, 1989, I caused true and correct copies of (1) Plaintiff United States of America's Motion for Summary Judgment Against Defendant UV Industries, Inc., Liquidating Trust and (2) Plaintiff United States of America's Memorandum in Response to the Motions for Reconsideration and Summary Judgment on Behalf of Defendants UV Industries, Inc. Liquidating Trust and UV Industries, Inc., and in Support of its Cross Motion for Summary Judgment, together with Appendix of Exhibits, Cases, and Legislative Materials, to be served upon the following counsel of record at the addresses and in the manner set out below:

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Exhibit 10

0393.107(2)(mt)

6/21/90

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**IN THE UNITED STATES DISTRICT COURT**
**DISTRICT OF UTAH, CENTRAL DIVISION**

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| UNITED STATES OF AMERICA,<br><br>Plaintiff,<br><br>v.<br><br>SHARON STEEL CORPORATION, UV INDUSTRIES, INC., and UV INDUSTRIES, INC. LIQUIDATING TRUST,<br><br>Defendants. | ) | Civil Action No. 86-C-924J<br><br>REPLY OF THE UNITED STATES TO DEFENDANTS' OPPOSITIONS TO THE UNITED STATES' MOTION FOR PARTIAL SUMMARY JUDGMENT AND ANSWER IN OPPOSITION TO DEFENDANTS' CROSS-MOTIONS FOR SUMMARY JUDGMENT |

## INTRODUCTION

The United States hereby replies to the answers of Atlantic Richfield Company, Inc. ("ARCO") and the UV Industries Liquidating Trust (the "Trust") in opposition to the United States' motion for partial summary judgment on liability pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607. The United States also responds in opposition to the cross motions for summary judgment filed by ARCO and the Trust.

0393.107(2) (NC)

6/21/90

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**IN THE UNITED STATES DISTRICT COURT**
**DISTRICT OF UTAH, CENTRAL DIVISION**

| | |
|---|---|
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## INTRODUCTION

The United States hereby replies to the answers of Atlantic Richfield Company, Inc. ("ARCO") and the UV Industries Liquidating Trust (the "Trust") in opposition to the United States' motion for partial summary judgment on liability pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607. The United States also responds in opposition to the cross motions for summary judgment filed by ARCO and the Trust.

motion and some of which are asserted in support of the respective cross-motions for summary judgment. In this brief supporting its motion for summary judgment and opposing defendants' cross-motions, the United States will address the following issues raised by the defendants[1]:

A. There is no showing of a "release" because there is no showing of migration from the site and no showing of harm from such migration.

B. There is no showing that releases or threats of releases caused the incurrence of response costs (within the meaning of Amoco v. Borden, 889 F.2d 664 (5th Cir. 1989).

C. Successors such as the Trust and ARCO are not liable under CERCLA for the acts of their predecessors.

D. The tailings disposed of at the Midvale Site are excluded from CERCLA's definition of "hazardous substances."

E. The evidence does not demonstrate that ARCO is liable as one who "arranged for disposal" of hazardous substances.

F. The evidence does not demonstrate that ARCO is liable as one who "operated" a facility at the time hazardous substances were disposed of.

G. The evidence does not demonstrate that the Trust assumed the liabilities of UV which are asserted by the United States in this case.

H. The defendants' affirmative defenses should not be stricken.

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[1] The organization of this memorandum will not precisely track both defendants' presentation of their arguments because ARCO and the Trust have in some cases raised the same issue in support of different ends. For example, the Trust raises the purported exclusion of mining waste from the definition of "hazardous substance" under CERCLA in opposition to the United States motion, while ARCO raises this issue in support of its cross motion for summary judgment.

At the outset, the United States submits that there is much to be gained from resolving the issues raised in the instant motion prior to trial. Contrary to the Trust's arguments (at 10-12), resolution of these issues now will save time. The Court will not have to hear a full presentation of evidence relating to the creation and disposal of tailings at the site. The issue of UV's responsibilities for the site as owner and operator will be resolved. The status of ARCO as the liable successor of International Smelting Refining and Mining Co. ("International") will be resolved. The status of the tailings as hazardous substances will be resolved. And the entitlement of the United States to the costs of responding to releases and threats of releases at and from the Midvale Tailings site will be resolved. There assuredly is a savings in time and energy to be realized by resolving these issues prior to trial.

A. There Have Been Releases of Tailings "at" and "from" the Midvale Site.

The defendants argue that acts of disposal, without separate evidence of migration of the substances disposed of, are not sufficient to constitute "releases" within the meaning of CERCLA.[2] In addition to the authority presented in its initial

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[2] ARCO implies, in addition, that to satisfy the "release" element under Section 107, the migration of hazardous substances must be shown to "harm" the environment (ARCO at 19-20, n.9, and elsewhere). The United States views this argument as a variation of both defendants' contentions, discussed infra in Section B,

(continued...)

memorandum, the United States notes that the court in States v. BFG Electroplating and Manufacturing Co., 31 E.R.C. 1183, 1185 (W.D.Pa. 1990) (copy attached) squarely addressed the point raised by both defendants that the act of disposal onto the land does not without more, constitute a "release" within the meaning of Section 107(a) CERCLA. In States a defendant arranged for disposal of used cinder blocks containing hazardous substances that were used on the plaintiff's property. The court, relying upon the definition of "release" contained in Section 101(29) of CERCLA, 42 U.S.C. § 9601(29), reaffirmed its earlier ruling that

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[2](...continued)
that the magnitude of a release must exceed some quantified threshold in order to "cause" the incurrence of response costs -- a separate element of liability. ARCO's apparent argument that a court must find harm before the "release" element will be satisfied has absolutely no support in the case law. See, e.g., Amoco v. Borden, 889 F.2d at 669 ("As with 'hazardous substance,' the plain language [of Section 107] fails to impose any quantitative requirement on the term 'release.'); United States v. Wade, 577 F.Supp. 1326, 1339-41 (E.D. Pa. 1983). The notion that harm as a result of a release must be shown is inconsistent with the statute's authorization to EPA to act to prevent harm before it occurs. Threats of releases are to be protected against by EPA. Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), authorizes the full panoply of response measures at EPA's disposal in advance of the occurrence of harm. (Whenever "any hazardous substance is released or there is a substantial threat of such a release into the environment," the President is authorized to act, consistent with the national contingency plan to respond. 42 U.S.C. § 9604(a)). Section 107 carries forward the statute's prophylactic purposes by authorizing recovery for costs incurred in responding to threats of release. See, e.g., United States v. Northernaire Plating Co., 670 F.Supp. 742, 747 (W.D. Mich. 1987)("the presence of hazardous substances at the facility, when combined with the evidence of the unwillingness of any party to assert control over the substances, amounts to a threat of release.").

the disposal of those hazardous substances, alone, constituted a release of the substances for purposes of Section 107.[3]

Notwithstanding the plaintiff's position here that the act of disposing tailings via a slurry onto the land at the Midvale site is sufficient to demonstrate a release within the meaning of Section 107, there is evidence that tailings material has migrated "from" the tailings impoundment into the residential area to the east of the site via wind transport and into the Jordan River via sloughing and erosion. Various individuals who have been deposed by the defendants have testified that they witnessed tailings material being blown off the site. Three of the United States' expert witnesses testified that when they visited the site in early 1989 they watched tailings blow from the site. Lape Deposition at 92-95, 116-17 (Exhibit 1); Lowe Deposition at 224-27 (Exhibit 2); Chrostowski Deposition at 653

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[3] Both defendants also criticize the United States' reliance on Amoco v. Borden, 889 F.2d 669 (5th Cir. 1989) for the proposition that disposal of the tailings onto the ground at Midvale constituted a release. (Trust at 17, n.10; ARCO at 81) The defendants claim the Amoco court's conclusion rested solely upon the emission of radioactive gas from the piles of waste. This is not the case:

> Borden's actions met the release requirement in two ways. First, it did so by disposing of the phosphogypsum and highly radioactive wastes on the property. See § 9601(22). Second, the gas emanating from the radionuclides constitutes a release within the meaning of the statute. [citation omitted]. (emphasis added)

889 F.2d at 669.

(Exhibit 3). Further, witnesses employed by the State of Utah Bureau of Air Quality testified that they have seen tailings blow from the site. Harned Deposition at 22-25 (Exhibit 4); Bone Deposition at 32-33 (Exhibit 5).

As to sloughing and erosion of tailings into the Jordan River, Dan Grundvig of the United States Bureau of Reclamation testified that he observed tailings material that had sloughed from the tailings impoundment into the Jordan River. Grundvig Deposition at 29-36 (Exhibit 6). Robert Strand, also of the Bureau of Reclamation and an expert in sediment transport, testified that the evidence of erosion apparent on the slopes of the tailings embankment adjacent to the Jordan River demonstrated that material from the tailings impoundment had sloughed into the river. Strand Deposition at 36-42, 114-115, 117-118 (Exhibit 7).[4] Further evidence of migration of the tailings into the river is supplied in documentary form by a letter to USSRMC from the Utah Water Pollution Control Board dated December 20, 1955. (Exhibit 8).[5] The letter memorializes a meeting between officials of USSRMC and representatives of the Board. The second paragraph of the letter states:

> The industrial wastes of the Midvale Plant consist of mill wastes and smelter wastes.

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[4] Mr. Strand was not able to quantify precisely how much tailings material eroded from the sloped embankments of the tailings into the Jordan River, but he was unequivocal in his statements that erosion had occurred.

[5] This letter was produced to the United States in response to discovery from Sharon Steel. It was contained within documents housed in the warehouse at the site.

> The mill wastes have a volume of 2 to 2.5 cubic feet per second and are presently being discharged into tailings ponds with an overflow into the Jordan River.

Finally, the United States is supplying the Court with a copy of a videotape recorded by KUTV news cameraman William Tumpowski, as well as Mr. Tumpowski's affidavit authenticating the videotape. (Exhibits 9 and 10).[6] The videotape records tailings material blowing from the site in 1986 and disposes of any conceivable question as to whether tailings have migrated "from" the impoundment.

B. Releases and Threatened Releases at the Site Have Caused the Incurrence of Response Costs.

In Amoco v. Borden, supra, the Fifth Circuit Court of Appeals ruled, inter alia, that to "cause" the incurrence of response costs -- a separate element of liability from the "release or threat of release" element in Section 107 -- the private plaintiff in that action needed to prove that the magnitude of the releases in question surpassed some minimum threshold of significance, such as a regulatory standard that would apply to the remedy for that release (i.e. an "ARAR"). Both defendants urge this Court to follow Amoco and require the United States to demonstrate that the releases addressed in the instant motion surpassed some quantitative standard. The United

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[6] Both the tape and affidavit were provided to ARCO, Sharon Steel, and the Trust in April, 1990.

States urges the Court not to follow this aspect of the Amoco opinion.

Section 107 requires only that the release or threat of release in question be of a "hazardous substance," from a "facility," "which causes the incurrence of response costs." 42 U.S.C. § 9607(a)(See United States' Memorandum in Support of Motion for Partial Summary Judgment at 11-12 and cases cited there). The statute does not require that the release exceed some threshold amount in order to "cause" the incurrence of response costs. The United States has demonstrated through the affidavit of Kelcey Land (SMF ¶34) that costs have been incurred in response to releases and threats of releases at the Midvale site. The defendants do not dispute the United States' position that it has incurred response costs or that those costs were incurred in response to releases or threats of releases at and from the site.

As discussed below, the Amoco court's threshold requirement for liability imposes a significant additional evidentiary burden on the United States clearly beyond the literal language of the statute. The imposition of such an unarticulated requirement into an environmental statute through judicial construction that has the effect of disabling EPA from taking action was recently addressed and rejected by the Supreme Court in General Motors Corp. v. United States, No. 89-369, June 14, 1990 (copy attached). General Motors asserted that EPA was required under the Clean Air Act to act on a revision proposed by the State of

Massachusetts to its existing State Implementation Plan (SIP) (covering emissions limitations on compounds that contribute to ozone) within four months. The four month time frame was not specifically included in the statute's section governing EPA action on such proposed revisions; it was included in the section addressing EPA action on the original SIP. While EPA's decision on the proposed revision was pending, the Agency sued General Motors for violations of the original SIP. GM argued, and the District Court agreed, that, because EPA did not act on the proposed revision within the four month period which the statute had provided for action on the original SIP, EPA was barred from enforcing the original SIP. The Court disagreed. The four month time limit did not specifically apply to SIP revisions, and "since [the statute] does not separately require the Administrator to process a proposed revision within four months, we are not free to read that limitation into the statute." Slip op. at 6.

The Court also noted that Congress had included such time limitations in other portions of the Act, and concluded that their omission from the section at issue reflected an intention that they not apply. Slip op. at 6-7. Similarly, in CERCLA, Congress has dealt at length with the subject of ARARs. See 42 U.S.C. § 9621(d). Clearly, ARARs were contemplated as cleanup standards to be attained by remedies at sites. If Congress had intended that ARARs be made a part of liability determinations, it could and would have done so.

Just as the Court in General Motors took account of the important public health underpinnings of the Clean Air Act as one basis for its conclusions (Slip op. at 1, 5, 10), so also here should this Court recognize that to interpret the limited causation element in Section 107 as requiring the exceedance of a quantitative threshold to justify the incurrence of recoverable response costs would conflict with the broad remedial purposes of the statute. Indeed, it was just these recognized legislative goals underlying CERCLA that led the Amoco court itself to reject the imposition of analogous quantitative threshold requirements before finding a "hazardous substance" or a "release." See 889 F.2d at 668-69. With respect, the court should not have lost sight of these goals in addressing other aspects of liability.

For the same reasons discussed above concerning ARCO's argument that harm must be shown before a statutory "release" may be found, the United States submits that adding an "adverse effect" requirement measured against some quantitative standard in order to justify the incurrence of response costs is squarely at odds with an important prophylactic purpose of the statute: permitting EPA to act to prevent the consequences of releases of hazardous substances by authorizing action in the face of threats of release.[7] To require that a release surpass some threshold as a prerequisite to the recoverability of response costs under

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[7] Determining what ARARs apply to remedial decisions for actual releases is a complex enough task. See 42 U.S.C. § 9621(d). Determining ARARs where the Agency acts in the face of threats of release is an even more complicated proposition.

Section 107 places the Superfund and also the public in jeopardy. It must be born in mind that recoverable response costs include not only the costs of actual cleanup of sites, but also the costs of investigating sites in order to determine the extent to which response is appropriate.[8] If EPA is disabled, as a matter of law, from recovering response costs incurred at facilities where releases are later found to fall short of some quantitative threshold, the agency will, in effect, be placed in the position of investigating potential sites at its peril. If it turns out that the severity of the releases or threats of releases is not quantitatively sufficient, the Superfund which underwrites such activities will be depleted, and so will the Agency's capacity to respond at other sites. The result will necessarily be that, in order to shepherd the Superfund, EPA will be forced to, or at least inclined to, restrict its activities to areas where it is convinced -- in advance and in the absence of site specific information -- that releases of a magnitude sufficient to surpass some standard have occurred or will occur. While defendants seeking to limit the Agency's capacity to act under this statute might well endorse such an approach, it is clearly not the result Congress intended in vesting the agency with broad authority to

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[8] See 42 U.S.C. § 9601(23)("the terms 'remove' or 'removal' means the cleanup or removal of released hazardous substances from the environment, ... such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances...."); 42 U.S.C. § 9601(25)("the terms 'respond' or 'response' means remove, removal ....").

investigate and respond to releases of hazardous substances in order to protect the public.

The approach of the Amoco court is further undermined by the fact that the court appears to have assumed, erroneously, that in all cases where a release or threat of release may have occurred, there is some extant quantitative standard against which to measure its severity. This is simply not the case. And the instant case is one example. Here, the United States asserts that the disposal of tailings onto the ground in the impoundments at the Midvale site -- and the migration of the tailings into the residential areas to the east of the impoundments -- constituted actionable releases. There is no extant quantitative standard in the form of an "applicable or relevant and appropriate requirement" that specifies the appropriate cleanup level for lead or arsenic or cadmium in the soil. Defendants have offered none. Indeed, one important part of the remedial process at this site involves the EPA's determining, based on site specific information and risk assessment, what an appropriate clean up level for these hazardous substances should be at this site. That site specific determination is now being made. Thus, to posit an extreme case, the tailings impoundment -- or the residential soils to which tailings migrated -- could be one hundred percent lead, and it would not alter the fact that without an extant quantitative standard the Amoco test could not be satisfied.

The United States also urges the Court to recognize the significance of the fact that Amoco v. Borden was a private CERCLA action. The "only" concern which led the Fifth Circuit to reject the amicus views presented by EPA -- to the effect that no threshold requirement should be set for causation of response costs -- was confined to that private litigation context:

> The only concern that should support the use of a quantitative measure at the liability phase is potential abuse of the broad provisions which may subject some defendants to harassing litigation.

889 F.2d at 670. The court's concern about harassment of parties at the hands of other private parties simply does not obtain in a situation where the United States, on behalf of EPA, seeks recovery of response costs at a Superfund site. The United States submits that, at a minimum, where, as here, a Superfund site has been proposed for placement, or finally placed, on the National Priorities List (NPL) of the most hazardous sites in the nation,[9] and has thereby qualified for use of Superfund money to remedy releases at and from the site,[10] it cannot be said that litigation by the United States to recover response costs incurred at such facilities is "harassment."

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[9] See 42 U.S.C. § 9605(a)(8)(A) and (B), § 9605(c)

[10] See 40 C.F.R. § 300.425(b) of the revised NCP. This limitation was also contained in the previous version of the NCP at 40 C.F.R. § 300.68(a). Indeed, even where a site has not been placed on the NPL, all EPA response actions under CERCLA are still governed by the process detailed in the NCP (see 42 U.S.C. § 9605(a)) which provides substantial safeguards against "harassment."

In general, the difference between actions maintained by the United States pursuant to Section 107 and those maintained by private parties is significant, and it was not lost upon the Congress. The United States is entitled to recover "all costs" of responding to releases of hazardous substances incurred not inconsistent with the National Contingency Plan. 42 U.S.C. § 9607(a)(4)(A). Private parties are not so entitled. They are limited to "necessary costs" of response. 42 U.S.C. § 9607(a)(4)(B). The Amoco decision has the effect of imposing a limitation on the recovery of the United States that is inconsistent with the provision made by Congress for the recovery of "all costs." The National Contingency Plan provides for the investigation of contamination and the assessment of the need for response actions regardless of whether a particular release has exceeded some specified quantitative threshold (such as an ARAR). See, e.g., 40 C.F.R. § 300.410 (authorizing a removal site evaluation).

The selection, development, and consideration of quantitative standards against which to measure the severity of a release is a remedial matter dealt with at length in CERCLA and the NCP. See 42 U.S.C. § 9621(d); 40 C.F.R. §§ 300.400(g) and 300.515(d).[11] As reflected by Congress' placement of ARARs in

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[11] "In accordance with §§ 300.400(g) and 300.430, the lead and support agencies shall identify their respective potential ARARs and communicate them to each other in a timely manner, i.e., no later than the early stages of the comparative analysis described in § 300.430(e)(9), such that sufficient time is available for the lead agency to consider and incorporate all

(continued...)

the statutory section addressing remedial standards, their development is part and parcel of the determination of the appropriate response to a release of a hazardous substance. The Amoco court thus "placed the cart before the horse." The determination of the appropriate response (including the appropriate ARARs), and of the appropriateness of response costs, are matters of remedy and not liability. By injecting consideration of ARARs -- a remedial consideration -- into liability determinations, the court is turning the NCP remedy selection process on its head.

These considerations make clear that the issue of the extent and consequence of releases are not matters to be addressed when focusing upon a party's liability under Section 107. They are matters for consideration when addressing the extent to which a response to those releases is not inconsistent with the NCP.

### C. CERCLA Imposes Liability Upon Successors

Both ARCO and the Trust argue that CERCLA does not impose liability upon successors. ARCO makes this argument despite the fact that it expressly assumed the liabilities of the Anaconda Company, which itself had expressly assumed the liabilities of International. The Trust repeats its arguments, which this Court has already rejected, concerning its

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[11](...continued)
potential ARARs without inordinate delays and duplication of effort." 40 C.F.R. § 300.515(d)(1) (55 Fed. Reg. at 8855)

relationship to UV, and also argues generally that CERCLA does not impose liability on successors.

There is no question that both ARCO and the Trust are successors to entities who were responsible for releases of hazardous substances at the Midvale site. ARCO merged with the Anaconda Copper Mining Company in 1977. The Plan of Merger between ARCO and Anaconda provided in part:

> All rights of creditors and all liens upon the property of Anaconda shall be preserved and unimpaired, and all debts, liabilities and duties of Anaconda shall thereafter attach to Atlantic Richfield as the Surviving Corporation and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

(Exhibit 11 "Certificate of Ownership and Merger Merging the Anaconda Company into Atlantic Richfield Company", containing Exhbit A "Plan of Merger" Article II, ¶2.01). Anaconda, in turn, had previously merged with the International Smelting and Refining Co. in 1974. Prior to that merger, International was virtually a wholly owned subsidiary of Anaconda. (Tidball Affidavit (Exhibit D to ARCO's cross-motion). The International/Anaconda Articles of Merger dated December 12, 1972 provided, in part:

> 1. Effective at the opening of business on January 1, 1973 ... the Surviving Corporation [the Anaconda Company] hereby merges into itself each Constituent Subsidiary [including International Smelting and Refining Company] and assumes all the liabilities and obligations of each Constituent Subsidiary.

(Exhibit 12, containing "Articles of Merger" at 2).

The Trust is the successor to UV. The instrument of Assumption of Liabilities executed by the Trust is already before the Court and provides that the Trust assumed UV's liabilities.

As fully developed in the United States Brief in Opposition to the Motion for Reconsideration filed in 1989 by the Trust of this Court's earlier denial of the Trust's and UV's motion to dismiss, where a party expressly assumes the liabilities of its predecessor, or succeeds to those liabilities through a merger, as both ARCO and the Trust did here, it ought to be held accountable for those liabilities.

Contrary to the Trust's and ARCO's assertions, CERCLA does indeed impose liability on successors. The United States submits that Anspec Co. Inc. v. Johnsons Controls, Inc. No. 89-CV-71165 - DT (E.D. Mich. Sept. 25, 1989), appeal docketed No.89-2393 (6th Cir. Dec. 18, 1989) relied upon by both the Trust and ARCO is wrongly decided. The general statutory rules for construing federal statutes provide that unless expressly otherwise indicated, the statutory term "person" includes corporations, companies, and associations. 1 U.S.C. § 1. These general laws, governing all federal statutory construction, further provide that the word company or association "used in reference to a corporation, shall be deemed to embrace the words 'successors and assigns of such company or association'", 1 U.S.C. § 5 (emphasis added). There is no indication from the language of Section 107(a) or from the legislative history of CERCLA that Congress intended to except CERCLA from the general rule that "successors"

to a corporation are embraced within the statutory term of "person". Thus, when Congress in Section 107(a) of CERCLA imposed liability on "persons", and defined "persons" in Section 101(21) to include corporations, associations, and commercial entities, it necessarily encompassed "successors" to those entities. 42 U.S.C. 9601(21).[12]

Failure to include successors and assigns as potentially responsible parties in Section 107(a) actions would permit a polluting corporation to merge with another entity or otherwise transfer its liabilities to another and thereby escape its responsibility to clean up the environment. This result simply cannot be reconciled with the goals, purposes or legislative history of CERCLA. CERCLA was enacted in response to Congress' perception that hazardous waste sites present a serious public health threat. Mardan Corp. v. C.G.C. Music, Ltd., 804 F.2d 1455 (9th Cir. 1986); Dedham Water Co. v. Cumberland Dairy Farms, Inc., supra, 805 F. 2d at 1081-1082. Congress adopted this strict liability statute to shift the costs of remedying the

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12 Numerous courts have ruled that the doctrine of successor liability applies under CERCLA. See Smith Land & Improvement Co. v. Celotex Corp, 851 F.2d 86, 91-92 (3rd Cir. 1988), cert. denied, 109 S.Ct. 837 (1989); In re Acushnet River & New Bedford Harbor, 712 F. Supp. 1010,1014 (D. Mass. 1989); United States v. Nicolet, 712 F. Supp. 1193, 1202 (E.D. Pa. 1989); Kelley v. Thomas Solvent Co., 725 F. Supp. 1446, 1457-59 (W.D. Mi. 1988); United States v. Mottolo, 695 F. Supp. 615, 624-25 (D.N. #. 1988); United States v. Vertac Chemical Co., 671 F.Supp 595, 615-16 (E.D. Ark. 1987), vacated and remanded on the grounds, 855 F. 2d 856 (8th Cir. 1988). e.f. Oner II, Inc. v. EPA, 597 F. 2d 184, 186 (9th Cir. 1979) (Federal Insecticide, Fungicide, and Rodenticide Act); contra Anspec Co. v. Johnson Controls, Inc., supra.

problems created at waste sites away from the public to industries that were responsible for creating dangerous conditions or that profited from activities at the sites. United States v. NEPACCO, supra, 810 F.2d at 734. To allow entities that have merged with a company, or expressly assumed its liabilities to evade their predecessor's environmental responsibilities would defeat the purpose of CERCLA. It would shift the burden of hazardous waste cleanup to the taxpayers or to relatively innocent parties that had no involvement with disposal of the hazardous substances that were deposited on the site. It would "frustrate the congressional purpose by exempting from the operation of the Act a large class of persons who are uniquely qualified to assume the burden imposed by [CERCLA]:" United States v. NEPACCO, 579 F. Supp. 823, 848 (E.D. Mo. 1984), aff'd in part, rev'd in part on other grounds, 810 F.2d 726 (8th Cir. 1986), cert. denied, 108 S. Ct. 146 (1987), quoting United States v. Mobil Oil Corp., 464 F.2d 1124, 1127 (5th Cir. 1972).

As aptly explained in Smith Land, & Improvement Corp. v. Celotex Corp. F.2d 86,91 (3rd Cir. 1988), cert. denied, 109 S. Ct., 837 (1989):

> The Act views response liability as a remedial, rather than a punitive, measure whose primary aim is to correct the hazardous condition. Just as there is liability for ordinary torts or contractual claims, the obligation to take necessary steps to protect the public should be imposed on a successor corporation. The costs associated with clean-up must be absorbed somewhere. Congress has emphasized funding by responsible parties, but if they cannot be ascertained or cannot pay the sums necessary, federal monies may be used.

> [C]ongressional intent supports the conclusion that when choosing between the taxpayers or a successor corporation, the successor should bear the cost. Benefits from use of the pollutant as well as savings resulting from the failure to use non-hazardous disposal methods inured to the original corporation, its successors, and their respective stockholders and accrued only indirectly, if at all, to the general public. We believe it in line with the thrust of the legislation to permit -- if not require -- successor liability under traditional concepts.

Given the language of Title 1 referred to earlier, especially when read in the context of the Act's goals and purposes, it would have been necessary for Congress to expressly exempt successors from liability if it had wished to do so.[13]

The Trust's reliance upon United States v. Distler, No. 88-0201-L(J) (W.D. Ky. Feb. 14, 1990), in this regard is curious. There, a corporation had completely wound up its affairs and had distributed all its assets to shareholders. No liquidating entity, such as the Trust here, had been created to assume the corporation's liabilities and carry on the distribution process. The Distler court ruled that:

> If CERCLA imposes liability [on the dissolved corporation] but the corporation lacks the capacity to be sued under state law the two laws conflict and CERCLA preempts the state capacity statute. The court follows Sharon

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[13] The normal rule of statutory construction suggests that if Congress intended for CERCLA to change the common law rules, it would make that intent specific. See Mid-Atlantic National Bank v. N.J. Dept. of Environmental Protection, 474 U.S. 494, 501 (1986). Under this rule, Congress would need to explicitly exempt successors from CERCLA's liability provisions.

> Steel and declines to follow the Levin Metals court in this regard.[14]

(Memo at 5). The Distler court also noted that it had applied "the doctrine of successor liability to the [corporation's] successor." (Memo at 6)

ARCO mischaracterizes the applicability here of Joslyn Manufacturing Co. v. T.L. James & Co., 893 F.2d 80 (5th Cir. 1990) in suggesting that the United States must pierce the corporate veil between its predecessor parent and subsidiary corporations, Anaconda and International, respectively. Wholly apart from the Joslyn court's holding regarding the circumstances under which veil piercing is appropriate, here Anaconda expressly assumed the liabilities of International when the latter was merged into it in 1974. There is no need to pierce the corporate veil between parent and subsidiary where the parent voluntarily and expressly assumes its subsidiary's liabilities through a merger.

The fact that CERCLA does not explicitly include successors among the parties liable for response costs should not lead the Court to conclude that such a result is contrary to Congressional intent. In Smith Land, the Third Circuit recognized that it would be necessary for the courts to develop several subsidiary principles and rules because CERCLA had simply failed to address many important issues expressly, including that of successor

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[14] The court also noted: "Whether a corporation is liable under CERCLA is a question of federal law and cannot depend on the law of the state of incorporation which will vary from state to state." (memo at 6).

liability. The legislative history of CERCLA indicates that Congress intended and empowered the federal courts to enunciate the substantive law to govern liability issues not explicitly resolved by Congress. See, e.g., U.S. v. Monsanto, supra, 858 F.2d 160,171 (4th Circ. 1988); United States v. Chem-Dyne, 572 F.Supp. 802 (S.D. Ohio 1983); United States v. Wade, 577 F. Supp. 1326, 1337-38 (E.D. Pa. 1983); H.R. Re[p. No. 253(I), 99th Cong., 2d Sess. 79-80 (1985), reprinted in, 1986 U.S. Code Cong. & Admin. News 2835, 2861-62. For example, Senator Randolph, Co-sponsor of CERCLA, stated:

> It is intended that issues of liability not resolved by this act, if any, shall be governed by traditional and evolving principles of common law. An example is joint and several liability. Any reference to these terms has been deleted, and the liability of joint tort feasors will be determined under common or previous statutory law.

126 Cong. Rec. at S14964 (Nov. 24, 1980).[15] Thus, the issue of a successor's liability, if not resolved by the statute, is an issue Congress intended to be resolved by the federal courts, based on the statute as a whole and its underlying principles and policies. See e.g., Firestone Tire & Rubber Co., v. Bruch, 109 S.Ct. 948, 954 (1989) (federal courts required to develop a federal common law of rights and obligations to fill in interstices of Federal pension statutes); Textile Workers Union

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[15] Because Sen. Randolph was a co-sponsor of the legislation, his statements are to be accorded substantial weight. Federal Energy Administration v. Algonquin SNG, Inc., 426 U.S. 548, 564 (1976).

v. Lincoln Mills, 353 U.S. 448, 456 (1957) (federal courts to fill in interstices of federal labor law statutes).

Pursuant, then, to the principles enunciated by the Court in Clearfield Trust Co. v. United States, 318 U.S. 363, (1943), and further elaborated upon in United Sates v. Kimbell Foods, Inc., 440 U.S. 715, 727-728 (1979) and Wilson v. Omaha Indian Tribe, 442 U.S. 653, 671-673 (1979), courts should look to the underlying purposes of CERCLA articulated above, to develop a rule to resolve the issue of successor liability.

The legislative history and purpose of CERCLA demonstrate the appropriateness of applying a uniform federal law governing liability under CERCLA. In United States v. A&F Materials Co., Inc., 578 F. supp. 1249 (S.D. Ill. 1984), the court delineated a number of "compelling reasons" for the development of a uniform federal common law in the area of hazardous waste:

> First, CERCLA and RCRA [Resource Conservation and Recovery Act] taken together represent a substantial federal interest in the abatement of toxic waste hazards. Second, CERCLA is a liability creating statute which relies on the federal courts for implementation . . . . Third, a uniform rule of law will prevent excessive dumping in states with more lenient laws. Finally, the federal government has an interest in preserving the integrity of the Superfund. . . .

Id. at 1255. See also U.S. v. Nicolet, 712 F. Supp. 1193, 1202 (e.D. Pa. 1989) (the strong federal interest in uniform enforcement of environmental legislation, the risk that application of state laws would frustrate the objectives of the federal program, and the fact that a federal law would not

disrupt commercial relations, warrants the development of a uniform federal rule governing alter ego claims under CERCLA).

The Third Circuit recognized these concerns in Smith Land and concluded that there was a need for a uniform federal rule on successor liability, because "otherwise, CERCLA aims may be evaded easily by a responsible party's choice to arrange a merger or consolidation under the laws of particular states which unduly restrict successor liability." Id, 851 F.2d at 92. Allowing corporations to tailor their transactions under an exculpatory state law would create a liability loophole that would inflict serious damage on this national program. Furthermore, without a uniform federal rule, varying successor liability laws among the states would result in inconsistent findings of successor liability under CERCLA, thus encouraging a result of the sort that Congress sought to avoid in enacting CERCLA. See S. Rep. No. 96-848, 96th Cong., 2d Sess. 11 (1980) (explaining the need for CERCLA because "there is no general federal law establishing liability in the case of accidents or other incidents involving hazardous substances' and because of "laws which vary from State to State").

## D. Mining Waste such as Tailings is Not Excluded from the Definition of Hazardous Substances in CERCLA

ARCO and the Trust spend considerable time focusing the Court's attention on the contention that mining wastes, such as

tailings, are excluded from CERCLA's definition of "hazardous substance." The defendants evoke the legislative history behind the original enactment of CERCLA in 1980, but they ignore the history accompanying enactment of the Superfund Amendments and Reauthorization Act of 1986. The defendants both criticize Eagle-Picher Industries v. EPA, 759 F.2d 922 (D.C. Cir. 1985), but they ignore the fact that every court that has addressed the issue of coverage of mining wastes under CERCLA has followed the Eagle-Picher analysis, and they ignore the fact that Congress in reauthorizing CERCLA in 1986 explicitly endorsed Eagle-Picher. This issue is closed.

The defendants play a semantic shell game with the definition of "hazardous substance" contained in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14). The same arguments were considered and rejected in Eagle-Picher. They have also been rejected by every other court that has generally considered the coverage of mining wastes under CERCLA generally and the more specific issue of the RCRA exclusion contained in Section 101(14)(C). See Idaho v. Hanna Mining Co., 699 F.Supp. 827, 833 (D. Id. 1987); Idaho v. Bunker Hill, 635 F.Supp. 665, 673 (D.Id. 1986); United States v. Conservation Chemical Corp., 619 F.Supp. 162, 222 (W.D. Mo 1985); United States v. Union Gas Co., 586 F.Supp. 1522, 1525 (E.D. Pa. 1984); United States v. Metate Asbestos Corp., 584 F.Supp. 1143, 1146-47 (D. Ariz. 1984).

1. Congress Made Clear its Intent to Cover Mining Waste Under CERCLA During the 1986 Reauthorization Process

SARA's provisions and legislative history make crystal clear that mining wastes may be hazardous substances notwithstanding Section 101(14)(C). Congress dealt expressly with mining waste sites in Section 105 of SARA, which amended CERCLA to include what is currently Section 105(g) of CERCLA, 42 U.S.C. 9605(g). Section 105(g) of CERCLA prescribes special procedures before EPA places a mining waste site, involving waste subject to the Bevill exclusion, onto the NPL. See 42 U.S.C. 9605(g)(1)(B) (Special procedures of Section 105(g) apply to those wastes described in 42 U.S.C. 6921(b)(3)(A)(ii), RCRA's Bevill exclusion dealing with mining wastes.) There would be no need for Section 105(g) of CERCLA if Bevill exclusion mining wastes were not hazardous substances under CERCLA. Consistent with this view, SARA's Conference Report describes Section 105(g) as follows:

> [T]he President must consider certain factors in adding facilities at which special study wastes described in paragraphs (2), (3)(A)(ii) or (3)(A)(iii) of section 3001(b) of the Solid Waste Disposal Act [42 U.S.C. 6921(b)] are present in significant quantities. Facilities included on, or proposed for inclusion on, the National Priorities List are not subject to this provision....
>
> Nothing in this amendment affects or otherwise limits the President's authority under this Act to conduct response or enforcement actions (including abatement actions under section 106(a)).

Conference Report, H.R. 2005, H. Rep. 99-962, 99th Cong., 2d Sess. 202 (Oct. 3, 1986).

In addition, SARA added special provisions for two tailings sites that would have been unnecessary if Congress believed that mining waste sites were not subject to CERCLA. Section 118(g) of SARA, 100 Stat. 1615, 1657 (Oct. 17, 1986) (not codified), expressly places conditions on the liability of the Montana Power Company for its ownership of the Milltown Reservoir, the site of accumulated upstream mining wastes. See 131 Cong. Rec. S12,027 (Sept. 24, 1985) (remarks of Sen. Baucus concerning predicament of Montana Power Company). Section 118(p) of SARA, 100 Stat. at 1662 (not codified), conditionally removes the Silver Creek Tailings Site, described as "located on tailings from noncoal mining operations," from the NPL. Section 118(g) and 118(p) of SARA would have been wholly unnecessary if Congress believed that ownership of sites upon which mining wastes had been released were not subject to CERCLA liability.

The legislative history of SARA also demonstrates Congressional cognizance and approval of the D.C. Circuit's opinion in Eagle-Picher. The House Committee on Energy and Commerce expressly stated that:

> [t]he Committee confirms the Administrator's existing authority under current law, as ratified in Eagle-Pitcher Industries Inc. v. United States Environmental Protection Agency, D.C. CIR. No. 83-2259, (slip op. April 16, 1985) to use the full response, abatement and liability authorities of current law to address releases or threatened releases at mining waste sites.

H. Rep. No. 99-253, Part I, 99th Cong., 1st Sess. 91-92. In addition, Representative Eckart, a leading House sponsor of the SARA amendments, noted that:

> Section 105 of the conference report directs [EPA] to review the hazard ranking system ... in order to enable it to assess, more accurately, the relative risks presented by the sites considered. However, this is not intended to reverse or undermine the decision of the U.S. Court of Appeals for the District of Columbia Circuit in the case of Eagle-Picher Industries v. EPA, 759 F.2d 905 (D.C. Cir. 1985).

132 Cong. Rec. H9624 (Oct. 8, 1986). In addition, Senator Baucus, after citing Eagle-Picher by name, stated:

> During the interim period while the Hazard Ranking System is being reviewed, in determining whether to list mining waste sites ..., the President is to ensure that adequate consideration is given to onsite factors and to the specific nature of a site, prior to its inclusion on the national priorities list.

132 Cong. Rec. S14,931 (Oct. 3, 1986). Senator Stafford, the leading Senate sponsor of SARA, stated that:

> Both the President and the courts should constantly bear in mind that this [i.e., CERCLA] is a law directed at all toxic threats, whether air, water, or waste, and without regard to the specific use if any, to which the chemical or organism was to be used; pesticides are covered as well as PCB's, mining wastes as well as spent solvents, and organisms as well as chemicals.

131 Cong. Rec. S11,578 (Sept. 17, 1985). Senator Stafford expressly rejected the notion that "[m]ining companies who sought and won an exemption form the hazardous waste requirements [of RCRA]" should be "immunized" from CERCLA liability. 131 Cong. Rec. S11,579 (Sept. 17, 1985). See also 132 Cong. Rec. S14,896 (Oct. 3, 1986) (remarks of Sen. Stafford) (discussing number of "mining waste sites" identified by EPA but "not yet ... listed or evaluated under the Superfund Program"); 131 Cong. Rec. S11,585 (Sept. 17, 1985) (remarks of Sen. Mitchell) (including "mining waste sites" in estimating funding needs of the Superfund).

2. EPA's Position on the Coverage of the Statute is Entitled to Deference

The defendants have obtained an early memo authored by an EPA attorney which they claim demonstrates the Agency's conclusion that mining wastes were not covered by CERCLA. In fact, it does nothing of the kind.

Apparently, the defendants would agree that a court must give deference to an agency's interpretation of the statute it implements. If the agency's interpretation is reasonable, a court may not substitute its own interpretation of the statute, even if the agency's interpretation is not the only reasonable interpretation or the interpretation that the court would adopt. See Chevron, U.S.A., Inc. v. NRDC, 467 U.S. 837, 844 (1984); Mustang Energy Corp. v. FERC, 859 F.2d 1447, 1453 (10th Cir. 1988), cert. denied, 109 S. Ct. 1743 (1989). In fact, EPA -- as an agency -- has consistently and repeatedly articulated, adhered to, and relied on its position that mining wastes may be hazardous substances under Section 101(14) of CERCLA, 42 U.S.C. 101(14), if they contain substances considered hazardous under Section 101(14)(A), (B), (D), or (E).[16] Since this

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16 See, e.g., 55 Fed. Reg. 8,666, 8,763 (March 8, 1990) (discussing effect of Bevill exclusion on mining sites under new NCP); 54 Fed. Reg. 43,778, 43,781 (Oct. 26, 1989) ("The Agency's position is that mining wastes may be hazardous substances, pollutants, or contaminants under CERCLA and, therefore, mining waste sites are eligible for the NPL."); 54 Fed. Reg. 41,015, 41,020 (Oct. 4, 1989) ("The Agency's position is that mining wastes may be hazardous substances, pollutants, or contaminants under CERCLA and, therefore, mining waste sites are eligible for

(continued...)

interpretation is a reasonable one, it cannot be rejected simply because the statute might be subject to an alternative construction.

### E. The Evidence and Legal Authority Before the Court Establishes that International Arranged for Disposal of Tailings at Midvale

ARCO says the raw ore that was the subject of the Milling Agreement between International and USSRMC was not a hazardous substance (ARCO 20-23). This assertion is an obvious attempt to bring the thirteen year milling arrangement within the scope of this Court's May 17, 1989 order granting judgment in favor of certain mining companies in this case, and ARCO has simply mischaracterized the circumstances to suit its purpose.

The arrangement between International and USSRMC lacked the two principal characteristics that led the Court to dismiss the mining companies. First, unlike the mining companies,

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[16](...continued)
the NPL."); 54 Fed. Reg. 13,296, 13,300 (March 31, 1989) ("The Agency's position is that mining wastes may be hazardous substances, pollutants, or contaminants under CERCLA and, therefore, mining waste sites are eligible for the NPL."); 54 Fed. Reg. 29,820, 29,823 (July 14, 1989) ("The Agency's position is that mining wastes may be hazardous substances, pollutants, or contaminants under CERCLA and, therefore, mining waste sites are eligible for the NPL."); 53 Fed. Reg. 51,962, 52,001 (Dec. 23, 1988) (discussing EPA methodology for computing Hazard Ranking System score for mining waste sites); 53 Fed. Reg. 23,988, 23,993 (June 24, 1988) ("The Agency's position, as discussed in the preambles to previous NPL final rulemakings (48 FR 40658, September 8, 1984; 49 FR 37070, September 21, 1984; 51 FR 21054, June 10, 1986; 52 FR 27620, July 22, 1987), is that mining wastes may be hazardous substances, pollutants, or contaminants under CERCLA and, therefore, are eligible for the NPL.").

International did not sell its raw ore to USSRMC. Slip op. at 10-11. Second, unlike the mining companies, International arranged to dispose of a waste -- the tailings that were created as an inescapable product of the arrangement with USSRMC. Id.

ARCO focuses on the fact that the ore International sent to Midvale for milling was the same as the ore sold by the dismissed mining companies. That may be true, but International did not "arrange for disposal" of raw ore. It arranged to have its raw ore milled and concentrated by USSRMC, and, as discussed below, it arranged to have the inherent and unavoidable waste product of the milling and concentration process -- tailings -- disposed of. International's arrangement did not involve the sale of raw ore. International sold nothing to USSRMC under the Milling Agreement. Asserting that it retained title only to the ore and to the milled concentrates, ARCO now seeks to wash its hands of the tailings.

As this Court considers the nature of the arrangement between International and USSRMC, the United States urges the Court to bear in mind a fundamental approach adopted by numerous courts confronting CERCLA liability issues in various fact situations:

> [courts] will not interpret section 9607(a) in any way that apparently frustrates the statute's goals, in the absence of a specific congressional intent otherwise.

Dedham Water Co. v. Cumberland Farms Dairy, Inc., 805 F.2d 1074, 1081 (1st Cir. 1986); New York v. Shore Realty Corp., 759 F.2d

1032, 1045 (2d Cir. 1985); United States v. ACETO Agricultural Chemicals Co., 872 F.2d 1373, 1380 (8th Cir. 1989).

1. Literal Ownership or Possession of the Hazardous Substance Disposed of is not a Prerequisite

ARCO says International retained no interest in the tailings, and it cites authority for the proposition that tailings must have been "owned or possessed" by International for Section 107(a)(3) liability to attach. (ARCO at 23-30). Two responses are appropriate. First, ARCO misstates International's interest in the tailings as provided in the Milling Agreement. Second, courts have not required defendants' literal "ownership" or "possession" of the hazardous substance in order to satisfy the requirements of Section 107(a)(3).

The Milling Agreement states that International "owned the products produced from the ores furnished by it for treatment." (Milling Agreement, ¶2; see ¶20.) Mr. Steinbach states in his affidavit that International periodically prevailed upon USSRMC to further process the tailings in order to extract pyrite from them, and he states that "International received the economic benefit from the sale of the pyrite that was separated [from the tailings]." (Steinbach Affidavit, ¶9).[17] ARCO cites property and mining law to bolster its position that the tailings always belonged to USSRMC. In fact, however, the authority ARCO cites

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[17] The Steinbach Affidavit is before the Court as Exhibit 28 to the Trust's memorandum in opposition to ARCO's cross-motion for summary judgment.

stands only for the proposition that title to the tailings passed when the tailings were disposed of onto the ground. During the processing, the products -- including the tailings -- produced from the ores were International's. (Milling Agreement, ¶2).

Second, the requirement for "ownership or possession" of the hazardous substance disposed of has been construed by courts to require not necessarily actual ownership or actual possession but responsibility for the disposal. See, e.g., United States v. Northeastern Pharmaceutical & Chemical Co., 810 F.2d 726, 743, cert. denied, 484 U.S. 848 (1987)("[R]equiring proof of personal ownership or actual physical possession of hazardous substances as a precondition for liability under CERCLA 107(a)(3) ... would be inconsistent with the broad remedial purposes of CERCLA.")

In United States v. Bliss, 667 F.Supp. 1298, 1306-07 (E.D.Mo. 1987), the defendant was a broker in a transaction involving the disposal of hazardous substances. He did not literally "own" the wastes; he did not literally "possess" the wastes. Yet, Bliss assuredly was responsible for arranging for their disposal. In New York v. City of Johnstown, 701 F. Supp. 33 (N.D.N.Y. 1988), the court reviewed Bliss and also United States v. NEPACCO, supra, United States v. Mottolo, 629 F. Supp. 56, 60 (D.N.H. 1984); and United States v. Ward, 618 F. Supp. 884, 894 (E.D. N.C. 1985), for purposes of assessing the relationship between the alleged Section 107(a)(3) "arranger" and the hazardous substances disposed of. Recognizing that these

cases did not involve literal "ownership" or "possession", the court stated:

> there has to be some nexus between the allegedly responsible person and the owner of the hazardous substances before a party can be held liable under 42 U.S.C. § 9607(a)(3).

701 F. Supp. at 36.[18]

ARCO's reliance upon City of Johnstown on the "ownership or possession" issue is misplaced. The court there held that the State of New York did not satisfy the ownership or possession requirement of Section 107(a)(3) in circumstances where the State was in the process of developing a remedial approach to a hazardous waste problem at a municipal landfill. The State had no relation to the hazardous substances deposited into the landfill and had no relation to the parties that deposited wastes into the landfill. The court simply reasoned that the State had an insufficient "nexus" to the problem to be liable.[19]

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[18] See United States v. Consolidated Rail Corp., 729 F.Supp. 1461, 1469 (D.Del. 1990)(recognizing that to be liable under Section 107(a)(3) a party "need not have generated the hazardous substances" nor "have actual ownership or possession of the waste.")

[19] Similarly, a party who sells raw material or a useful product to be used by another in its manufacturing business has been shown to lack a sufficient connection to the disposal of a hazardous substance to be liable under Section 107(a)(3). But the situation here was different; it was not analogous to the sale of creosote and chromated copper arsenate in Edward Hines Lumber Co., 685 F. Supp. 651, 653-56 (N.D. Ill. 1988) or to the sale of raw ore by the mining companies to USSRMC previously discussed.

The teaching of these cases is that 107(a)(3) liability attaches to a party who can fairly be said to be responsible for, or at least to share significantly, in the decision and process whereby the hazardous substances were disposed of. The court in United States v. A&F Materials Co., Inc., 582 F. Supp. 842 (S.D.Ill. 1984), focused the issue in the same way:

> Given the scope of the language otherwise arranged in § 9607(a)(3), the relevant inquiry is who decided to place the waste into the hands of a particular facility that contains hazardous wastes.

When viewed in this light, the arrangement between International and USSRMC clearly satisfies this test. International made the crucial decision to dispose of tailings when it decided to mill its ore. As we discuss next, the relationship between International's decision to mill its ore at Midvale and the creation and disposal of tailings is direct and unescapable. Even if International somehow transferred legal title to the tailings to USSRMC after they were deposited into the tailings impoundment, there would have been no tailings to dispose of without International's decision to mill its ore.

### 2. International "Arranged for the Disposal" of Tailings -- a Hazardous Substance -- at Midvale

The Milling Agreement was an arrangement for the disposal of tailings at Midvale. As ARCO candidly says, this Court must look to the nature of the transaction to ascertain whether it was an "arrangement for disposal" within the meaning

of Section 107(a)(3). ARCO's expert on milling practices, Gregory Chlumsky, spoke clearly to the nature of the arrangement at issue here:

Q. In your experience, is it possible to mill ore without creating tailings from those operations?

A. Not normally.

Q. Would this be true for the period in the 20th Century from 1906 to 1970, in your experience?

A. Yes.

Q. Again, in your experience, and talking about the period from, let's say, 1900 to 1970, would it have been possible to mill ore without disposing of the tailings created from those operations?

A. No, something would have to be done with the tailings.

Q. Have you ever read about a milling operation in the United States during the period of time we have been talking about that did not create tailings?

A. In general, no.

Q. Do you have some specific exception in mind?

A. I don't have a specific, but if the ore is high-enough grade and the tailings product might contain an ore and the waste product from one given operation may contain something that is not recoverable at that particular mill, it could go off to another site, where it might be smelted or whatever. There are possibilities.

Q. I understand that. In your experience in talking about the ores that are being milled for purposes of extracting lead sulfide, let us say, would you have in mind any specific exceptions to the general rule that we have discussed?

A. No.

Q. Similarly, have you ever read or heard about a milling operation in the United States during the period 1900 to 1970 where tailings were created that did not also involve the disposal of those tailings?

A. No. ....

Chlumsky Deposition, at 18-20 (Exhibit 13).

> Q. Based upon your earlier answers, would it be fair for one to characterize tailings creation and tailings disposal as an unavoidable part of the process of milling lead-bearing ores?
>
> A. In most cases, yes.
>
> Q. Do you have any specific exceptions --
>
> A. No.
>
> Q. -- to that?
>
> A. No.

Id., at 21 (Exhibit 13).

In short, the entire purpose of milling and concentrating ore is "to separate the wheat from the chaff." One cannot mill and concentrate ore without creating tailings. To say, as ARCO does, that the creation and disposal of tailings was "incidental" to the arrangement between International and USSRMC simply ignores the reality articulated by its own expert.

In fact, the arrangement for disposal here is even clearer than the one in United States v. Aceto Agricultural Chemicals Corp., 872 F. 2d 1373 (8th Cir. 1989) and United States v. Velsicol Chemical Corp., 701 F.Supp. 140 (W.D. Tenn. 1987).[20] In the context of formulating pesticides from raw materials supplied by the alleged "generators," the court in Aceto noted that disposal of waste was viewed as an "inherent part of the

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[20] ARCO emphasizes the fact that Aceto involved a motion to dismiss. This fact does not diminish the significance of the 8th Circuit's ruling rejecting the defendants' position that CERCLA does not impose liability on an arrangement for processing of a "useful product."

formulation process." But in Aceto, unlike here, the creation and disposal of waste containing hazardous substances was not the purpose of the arrangement. There, the defendant manufacturers wanted to have commercial grade pesticides formulated. They did not seek the creation of wastes, or the disposal of wastes, even though some waste generation was apparently unavoidable in that process. Here, the creation and disposal of wastes -- tailings -- were as much a part of the arrangement as the concentration of International's ore. It is conceivable that the pesticide formulation in Aceto could have been performed perfectly and generated no waste at all. Here that would have been impossible. As Mr. Chlumsky testified there is no way to concentrate ore without creating tailings.

When viewed in light of the underlying nature of the transaction, the "pesticide cases" -- Aceto and Velsicol -- are not the aberrations from settled law that ARCO claims.[21] They are squarely in keeping with the notion that parties responsible for the disposal of hazardous substances will be liable for their cleanup. Even more so here, where the very purpose of the transaction was to create the waste disposed of, it simply cannot credibly be said that International lacked responsibility for that process.

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21 The "key" treatise (Cooke, The Law of Hazardous Waste) cited by ARCO as criticizing these cases was only first published in 1987, and it incorrectly refers to these cases as involving "commercial sales of raw materials."

3. An Arrangement for Disposal Need Not Include Control Over Disposal

ARCO next argues that International exercised no control over how tailings were disposed of at Midvale, and that this fact also ought to absolve it from responsibility. However, courts have frequently and uniformly rejected a requirement that a 107(a)(3) arrangement for disposal must include some direction from the generator as to how its wastes should be handled. As aptly stated by the court in United States v. Ward, 618 F. Supp. 884 (E.D.N.C. 1985):

> The assertion that CERCLA requires a generator who arranges for disposal to know where the disposal is to take place before liability is established is unfounded ... To give the statute the interpretation argued by the Ward defendants would allow generators of hazardous wastes to escape liability under CERCLA by closing their eyes to the method in which their hazardous wastes were disposed of. This would encourage exactly the type of blatant disregard for the consequences of hazardous waste disposal that occurred here.

618 F. Supp. at 895. See United States v. Aceto Agricultural Chemicals Corp., 872 F. 2d at 1381 (arrangements for disposal where defendants did not know where the substances would be deposited); United States v. Parsons, 723 F. Supp. 757, 762 (N.D.GA. 1989)(fact that defendant did not select the site where wastes were to be dumped did not negate its "arrangement" for their disposal); Violet v. Picillo, 648 F. Supp. 1283, 1290-92 (D.R.I. 1986)(defendant's position that it must be shown to have selected the disposal site runs counter to the weight of established judicial precedent, legislative history and common sense); United States v. Conservation Chemical Co., 619 F. Supp.

162 233-34 (W.D. Mo. 1985)(to argue that generator select manner of disposal is to ignore the intent behind CERCLA); Missouri v. Independent Petrochemical Corp., 610 F. Supp. 4, 5 (E.D. Mo. 1985); United States v. Wade, 577 F. Supp. 1326, 1333 n. 3 (E.D. Pa. 1983).

As Mr. Steinbach stated, International was far from completely removed from the tailings disposal process. It paid for the disposal of tailings from the milling operations. Steinbach Affidavit, ¶7. From the nature of its arrangement with USSRMC, International must be held to have known that tailings would be disposed of in impoundments near the mill. Finally, even if International did not actually direct the tailings disposal operations, the Milling Agreement gave it the authority to intercede in the process if it chose to exercise that authority.[22]

In sum, International arranged to have its ore milled at Midvale, and it thereby arranged for the disposal of the tailings that were the anticipated waste product of that process.

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[22] Mr. Kastelic stated: "if International had wanted to alter the method of tailings disposal, that issue could not have been rejected unilaterally by USSRMC ... A decision to alter tailings disposal practices in any major way would have required significant changes to the plant and would have involved the investment of new capital ... It is precisely to resolve this type of dispute that the Technical and Review Committees and the procedures for mandatory arbitration were established." Kastelic Affidavit, ¶16. The Kastelic Affidavit is before the Court as Exhibit 24 to the Trust's memo in opposition to ARCO's cross-motion for summary judgment.

F. There are Genuine Issues of Material Fact Regarding International's Status as a Joint Operator of the Midvale Mill

Summary judgment in ARCO's favor on "operator liability" is not appropriate for three reasons. First, the United States has not conceded, in fact or by deed, that ARCO is not or cannot be liable as an operator of the Midvale Mill. Second, operator liability under Section 107(a)(2) and generator liability under Section 107(a)(3) are not inherently inconsistent. Third, disputed issues of material fact as to International's role at the Midvale Mill exist.

The Amended Complaint adding ARCO to the case alleged operator liability, pursuant to Section 107(a)(2), premised upon International's alleged joint operation of the facility -- pursuant to the Milling Agreement -- with USSRMC. Subsequently, the Steinbach deposition, taken alone, raised the possibility that International may not have exercised the incidents of control over Midvale operations that were contemplated by the Milling Agreement. Rather than ignore the possibility that ARCO might prevail on the operator liability allegations, the United States amended the allegations against it to include "generator" liability under Section 107(a)(3).

In explaining why the second theory of liability was being advanced, counsel for the United States advised the Court that the Steinbach deposition supported the position that International arranged for the disposal of tailings at a facility that was owned or operated by another party -- USSRMC. The

United States did not ask the Court to dismiss the "operator" liability count. Counsel advised the Court that generator liability might be inconsistent with joint operation on the facts that were known at that time. The colloquy with the Court, quoted in part by ARCO, was sparked by an inquiry as to what new facts warranted further amendment of the Complaint. Counsel for the United States did not concede, as ARCO suggests, that Sections 107(a)(2) and 107(a)(3) are inherently inconsistent, and did not state that the same conduct may not, under some circumstances, expose a defendant to liability under both theories.

In fact, the statute on its face permits liability under both 107(a)(2) and 107(a)(3) for the same conduct. Section 107(a)(3) focuses upon one who arranged for disposal at a facility "owned or operated" by another party or entity. Thus, even if joint operation of the Midvale facility is proven under Section 107(a)(2), International still could be found to have been a Section 107(a)(3) "generator" because it arranged for disposal at a facility owned by USSRMC.[23]

Summary judgment in ARCO's favor on this issue is also inappropriate because evidence of International's control over, and participation in, operations at Midvale may well support a

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[23] A number of cases have involved complaints in which allegations have been raised that a defendant is liable under both Sections 107(a)(2) and 107(a)(3) for the same conduct. See, e.g., United States v. Consolidated Rail Corp., 729 F.Supp. 1461 (D.Del. 1990); United States v. New Castle County, 727 F.Supp. 854 (D.Del. 1990).

finding that it jointly operated the Midvale milling facility. At a minimum, genuine issues of material fact exist on this matter. On June 18, 1990, the Trust filed its memorandum in opposition to ARCO's cross motion for summary judgment on Section 107(a)(2) "operator" liability and submitted numerous exhibits in support of the position that International's and USSRMC's conduct under the Milling Agreement constituted joint operation of the Midvale Mill. Rather than reiterate the entire factual presentation contained in the Trust's memorandum relating to the "operator" issue, the United States refers the Court to the Trust's preliminary statement at pages 2 through 13 of its memorandum, to the Trust's arguments at pages 25 through 39 of its memorandum based upon the documentary and deposition evidence there cited, and to the Trust's Statement of Material Facts as to which Genuine Issues Exist contained in the appendix to the Trust's memorandum.

The United States believes that the recently obtained affidavits of William Kastelic and Emile Steinbach, alone, are sufficient to create genuine issues of material fact with respect to International's status as a joint operator of the Midvale Mill during the period of the Milling Agreement. Mr. Kastelic makes clear that the milling and smelting agreements were viewed by International and USSRMC as a joint effort to keep their respective milling and smelting facilities operating efficiently. (Kastelic Affidavit, ¶10). He discusses International's conduct under the milling agreement in terms of visits to Midvale,

suggestions for plant operations, and discussions over capital outlays throughout the thirteen year term of the Milling Agreement. (Id., ¶¶13-15). Mr. Steinbach refers to the relationship between International and USSRMC as a "joint venture" and states that the parties had "frequent and extensive contact" concerning their respective operations. (Steinbach Affidavit, ¶¶5,6).

ARCO's factual position on operator liability rests exclusively on the Milling Agreement and on the deposition of Emile Steinbach. But, as more fully developed by the Trust, the Milling Agreement vests International with authority to share management of the Midvale Mill. International had veto power over significant decisions affecting the Mill. (Kastelic Affidavit, ¶16). Its personnel were involved with, and participated in, oversight of the mill's functioning. (Id., ¶¶12-15). Furthermore, International paid a proportionate share of the mill's operating costs, including the costs of disposing of tailings. (Steinbach Affidavit, ¶7). Thus, contrary to ARCO's position, we are not here focused upon a situation where International had, at most, the unexercised authority to participate in the control and management of the Midvale mill. International, in fact, exercised the substantial authority that the Milling Agreement vested in it.

ARCO relies for legal support on cases that offer it no assistance. International did not "hover in the background" as did the alleged operator in Edward Hines Lumber Co. v. Vulcan

Materials Co., 861 F.2d at 158. ARCO makes much of the fact that there is no evidence that International actually participated in milling or tailings management or disposal operations, and it argues (again from the Milling Agreement and the Steinbach deposition alone) that it lacked the requisite capacity to affect those waste disposal practices. In fact, as the Kastelic and Steinbach affidavits make clear, International would have been involved in any significant decisions affecting the methods of tailings disposal (Kastelic Affidavit, ¶ 16), and USSRMC could not have unilaterally decided to alter the methods of tailings disposal without involving International. (Id.) Indeed, Mr. Steinbach states that International had the authority to, and did, request USSRMC to further process the tailings prior to their disposal so that International could profit from the pyrite contained in them. (Steinbach Affidavit, ¶9). In short, International did have the "capacity to prevent and abate damage" that was found to be important to operator status by the court in Idaho v. Bunker Hill Co., 635 F.Supp. 665, 672 (D. Id. 1986).

The evidence of joint operation, coupled with the Milling Agreement which authorized it, is certainly sufficient to demonstrate the existence of material fact issues regarding International's conduct at Midvale. Summary judgment in ARCO's favor on this issue should therefore be denied.

## G. The Evidence Before the Court Demonstrates that the Trust Should be Liable as UV's Successor

The facts and law applicable to the United States' position on the liability of the Trust as the successor to UV have, as the Trust points out, already been put before the Court. The parties' extensive briefing on the assumption issue, including this Court's capacity to determine as a matter of law what the meaning of the Trust's assumption language is, is adequate to present the issues for decision.

## H. The Defendants' Affirmative Defenses Should be Stricken

The United States rests upon the lengthy argument presented in its initial memorandum on these matters.

## CONCLUSION

For the reasons set forth in the United States' initial memorandum, and amplified here, there is no genuine issue as to these defendants' liability under Section 107(a)(2) and (3) of CERLCA for reimbursement of the United States' costs in responding to releases and threats of releases of hazardous substances at and from the Midvale site and, if an imminent and substantial endangerment is found as a result of those releases or threats of releases, for abatement of that endangerment.

Respectfully submitted,

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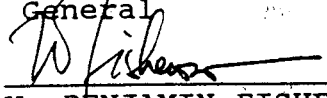

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LIST OF EXHIBITS

TO

UNITED STATES' REPLY IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT AND IN OPPOSITION TO CROSS-MOTIONS FOR SUMMARY JUDGMENT

| EXHIBIT NO. | |
|---|---|
| 1. | Deposition of James Lape |
| 2. | Deposition of Michael Lowe |
| 3. | Deposition of Paul Chrostowski |
| 4. | Deposition of William Harned |
| 5. | Deposition of Warren Bone |
| 6. | Deposition of Daniel Grundvig |
| 7. | Deposition of Robert Strand |
| 8. | Letter from Utah Water Pollution Control Board |
| 9. | Videotape |
| 10. | Affidavit of William Tumpowski |
| 11. | 1977 ARCO/Anaconda Merger documents |
| 12. | 1972 Anaconda/International documents |
| 13. | Deposition of Gregory Chlumsky |
| 14. | Unreported Cases |

EXHIBIT 1

# TRANSCRIPT OF PROCEEDINGS

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

| | |
|---|---|
| UNITED STATES OF AMERICA,<br><br>Plaintiff,<br><br>v.<br><br>SHARON STEEL CORPORATION,<br>UV INDUSTRIES, INC., and<br>UV INDUSTRIES, INC.<br>LIQUIDATING TRUST,<br><br>Defendants. | Civil Action Number<br><br>86-C-924-J |

DEPOSITION OF JAMES F. LAPE, JR.

Washington, D. C.

Thursday, March 23, 1989

ACE-FEDERAL REPORTERS, INC.
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Q On the tailings themselves?

A Much to my dismay. Especially since the wind was blowing and the dust was incredibly thick at times, so, yes, we were on the tailings, walked around the perimeter of them as well as across several areas, visited where the new wells had gone in.

Q Did you wear protective clothing?

A No, not at that time.

Q Did you have a respirator?

A No.

Q Did you observe any crusting at the site?

A Crusting? In the form of the type of crusting that would take place due to wetting and then drying, no, I did not observe that type of crusting. What I observed was a layer over the top of the soil, but it was part of the polymerization that had taken place in order to mitigate the emissions.

Q Did you observe any asphalt residue?

A Yes, I did.

Q Who were you at the site with?

A Myself, Drs. Chrostowski and Lowe, Mr. Fisher and a gentleman from the EPA in Denver, I believe he is the site

manager whose name I can't recall at this time. And another gentleman from the Utah state agency, I believe is from the Bureau of Solid and Hazardous Wastes. I have their names written down but I don't have it here.

Q What did you do up at the slag piles. Are you referring to the slag piles north of the tailings site?

A Yes.

Q What were you doing there?

A Just looking at the piles, looking at -- trying to get more of a -- for me it was trying to get more of kind of an aerial extent of the -- of the piles and their impacts and kind of a feeling of the lay of the land, if you will.

Q How strong was the wind blowing when you were at the tailing site?

A Qualitatively on the site, I estimated them to be about between 10 and 15 miles an hour with gusts upwards of 25 miles an hour.

And when I arrived at the Cottonwood met station, that was indeed what they were recording, average wind speeds between 10 and 15 miles an hour.

Q When we visited last summer, you mentioned that -- when we were talking about what you might rely on, you made

mention of some eyewitness reports. Have you looked at, if any exist, additional reports by eyewitnesses since your last deposition?

A No, I have not.

Q Have you done any work since your last deposition to confirm whether the eyewitness reports to which you referred at that time were indeed accurate and reliable?

A No. I have not. However, I would say that my site visit certainly substantiates what they did indicate, that in fact there is transport of soil particles from the pile off site. The observations that I referred to as eyewitness observations were secondhand type of observation that was in the Utah Bureau of Air Quality memo that I gave you a copy of, where they said that at times the dusts were much worse than the incident that -- that was observed on December 16th.

And in fact, being there with those winds at 10 to 15 miles an hour and with the polymers sprayed over the site itself, which is really, did in some places really inhibit dust but for the most part the dust was really quite substantial, so it led me to believe that in fact their observations were correct, especially if the site were not in

the state that it was at that point in time when I was there, that being that it had the polymers to inhibit the entrainment.

Q Do you know if Utah is still collecting monitoring data at the --

A When we were at the site, we went to the Woodgate Apartments and there was a monitoring station located just south of the Woodgate Apartments itself. Whether or not it was operating the state personnel could not tell me. It seemed to be in a condition that would certainly allow it to operate. But whether or not it was operating, I do not know.

Q And you haven't -- can you recall what the most recent Utah monitoring data is that you have reviewed then?

A I have, as I mentioned to you earlier, instructed someone to speak with the Utah Bureau of Air Quality and they have sent me results that, of their particle measurements from that area, and I believe they go up to as late as 1988.

However, those results I scanned through them, because they really weren't the exact kinds of data that I wanted to get. However, there were incidents where appreciable measurements or detections of PM-10 were

have no -- I have no strong opinion basically one way or the other, whether they would be appropriate or not. I don't see why they wouldn't be appropriate.

MR. DAVIS: Fair enough.

BY MR. DAVIS:

Q I would like to talk to you a little bit about your March 16 visit to the site. I wasn't in Salt Lake because I was in Denver taking Mr. Maxwell's deposition so I didn't get a chance to experience the wind event firsthand. You mentioned that the site manager from EPA accompanied you on that visit. Would his name be Sam Vance?

A Yes.

Q Was Barry Levine also present?

A I don't believe so.

Q Anyone else from EPA besides Sam Vance?

A No.

Q Did you observe particular areas from which the dust appeared to be greater, emanating from that was greater than other areas of the tailings?

A Well, the most visible dust cloud was at the northern end of the tailings pile but that was strictly because of the wind was from the south and so as it passed

over the -- over the tailings pile, it just -- that emissions picked up with distance. That is one of the things that happens in wind erosion is the cascading effect. That is, as it is initiated, the larger particles roll along and it liberates smaller particles which can then be suspended. So from that standpoint, the dust cloud was much higher at the northern end.

However, it seemed to me that emissions were coming rather uniformly from every place we stopped on the site, except there were some areas where -- especially where there was slight depressions that had received the polymers where there seemed to be less, much less emissions.

Q Did you observe dust emanating from the road beds surrounding and within the tailings?

A Not really, because at that point in time the road beds were really pretty rutted and wet and were most treacherous.

Q Were EPA or CDM personnel or their contractors currently working on the ground water wells when you were there?

A No, they were not.

Q That project as near as you could tell was

EXHIBIT 2

# TRANSCRIPT OF PROCEEDINGS

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF UTAH

CENTRAL DIVISION

| | |
|---|---|
| UNITED STATES OF AMERICA,<br><br>Plaintiff,<br><br>v.<br><br>SHARON STEEL CORPORATION, UV INDUSTRIES, INC., and UV INDUSTRIES, INC. LIQUIDATING TRUST,<br><br>Defendants. | Civil Action Number<br><br>86-C-924-J |

DEPOSITION OF MICHAEL C. LOWE (CONTINUED)

Washington, D. C.

Tuesday, March 28, 1989

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adequate.

Q Did you have any discussions with Dr. Chrostowski or Mr. Lape during the site visit?

A Yes, we had various discussions.

Q Do you recall at this time any of the details of what you talked about?

A I think many of the discussions were incidental to what we were observing at the site. I know we talked about the stabilization efforts that had been made to prevent the tailings from becoming entrained. We discussed the air monitoring and how the weather on that particular day may have been reflected in previous testing. Those are the primary recollections I have about those discussions.

Q What was the weather on that particular day? You mean on March 16, I assume?

A On March 16th, when we drove down to the site, I think it was stated that it was an unusually clear day, that the visibility was quite good and that you could see the mountains that formed the valley, the Salt Lake and Midvale City. We had discussions about the breeziness, the wind. It was really quite windy that day.

Q Now, did you experience any wind events at the

site? I mean, were there any blowing of tailings at the site during the day you were there?

A Just visually. You could see material being blown on the site, and it was coming off the site when we were down -- excuse me, I think the street is 7800 South Street, the street that bisects the two sites, and you could see dust coming across that area.

Q Dust was coming across from the tailing site to the sites north of 7800 South; is that your testimony?

A There was visible dust from the site, from the southern side of 7800, that was coming across the street. I don't know how far it was getting.

Q Did you experience any tailings being blown or any dust being blown from the site to the apartments when you went to the apartments?

A I don't specifically recall seeing any dust clouds there. It was a windy day. It was very gritty. I recall while we were at the apartments in the parking lot adjacent to the fence that my teeth felt gritty, like I had, you know, sand or something in my mouth. So I assume there was material being blown into that area.

Q Did you experience -- did you witness or see or

EXHIBIT 3

# TRANSCRIPT OF PROCEEDINGS

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF UTAH

CENTRAL DIVISION

| | |
|---|---|
| UNITED STATES OF AMERICA,<br>Plaintiff,<br>v.<br>SHARON STEEL CORPORATION, UV INDUSTRIES, INC., and UV INDUSTRIES, INC. LIQUIDATING TRUST,<br>Defendants. | Civil Action Number<br>86-C-924-J |

DEPOSITION OF PAUL C. CHROSTOWSKI (CONTINUED)

Washington, D. C.

Friday, March 31, 1989

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A That was the only time that they measured during one of these wind events, yes.

Q And if that event was in some way dissimilar from the usual event that you would expect, then the data that you are basing your opinion on would also be wrong, would they not?

A Well, most I am basing this opinion on my site visit. It was very windy when we were out at the site. I think these conditions were pertaining. There was a large cloud of dust that was over the site. The dust was being transported over to the east of the site. So it is not only that one sampling event. I did see this with my own eyes. I doubt that it is a freak of nature.

Q Okay, excuse me a moment.

I show you what is marked in the RI report as plate 4-B, titled "Off-site Soil Meteorological and Air Quality Sampling Locations," and that indicates four sites, does it not?

A Yes, it does.

Q Is it your understanding that it is site 4 that was used to obtain the data and information on the December 16th episode?

COPY

EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

* * *

| | | |
|---|---|---|
| UNITED STATES OF AMERICA, | : | |
| Plaintiff, | : | Civil No. 86-C-924J |
| vs. | : | Deposition of: |
| SHARON STEEL COMPANY, UV INDUSTRIES, UV INDUSTRIES INC., LIQUIDATING TRUST and ATLANTIC RICHFIELD COMPANY, | : | WILLIAM B. HARNED |
| Defendants. | : | |

* * *

BE IT REMEMBERED that on the 10th day of May, 1990, the deposition of WILLIAM B. HARNED, was taken before Linda Van Tassell, a Certified Shorthand Reporter (License No. 83), Registered Professional Reporter and Notary Public in and for the State of Utah, commencing at the hour of 8:30 a.m. of said day at the law offices of Parsons, Behle & Latimer, 185 South State Street, Suite 800, Salt Lake City, Salt Lake County, State of Utah.

* * *

Reporter: Linda Van Tassell

A December 16 --

Q It was on December 16 that you think you spoke with him?

A Yes.

Q Do you recall --

A As to I guess -- I need to ask you -- well, go ahead. I've lost my train of thought.

Q You think you spoke with Mr. Whitaker on December 16 about whether to take an episode sample, correct?

A Yes.

Q What did he say and you say in the conversation?

A I can only speak in generalities because I don't know the specific words.

Q Okay.

A I was there -- well, actually putting the sample on or as to thinking about putting the sample on? That's what I was going to ask you before. As to actually putting the sample on, I was at Woodgate, if the wind was blowing, the dust was blowing. I went to a convenience store and made a phone call to Bryan Whitaker to ask him if I should put a sample on, if he thought it would be pertinent to do so. He said, Yes, by all means, go ahead. Then I went back and put a sample on.

Q Does the filter card that you have in front of you there, in Bone Exhibit 2, show what time you put on the filter on December 16?

A Yes, it does.

Q What time did it say?

A 11:15 a.m.

Q How long was the filter in the sampler before it was removed?

A I believe it was probably removed the next day.

Q Does the card indicate?

A I don't see that on there.

Q Describe what you saw on December 16 at the Woodgate station at the time you put the filter in the sampler for the sample shown on the card.

A The wind was gusting hard that day. The dust was blowing quite a bit and it was blowing -- the air was filled so much that I could actually feel the grit in my teeth at the time.

Q This was at the Woodgate station?

A Yes, it was. And the dust was even noticeable at the convenience store over in Midvale.

Q What convenience store did you go to?

A I don't remember specifically.

Q Where is it?

A It's on the main drag there in Midvale on the north side of the street.

Q What procedure did you go through to install the filter in the sampler for the December 16 episode sample?

A Same procedure that was always followed according to the quality assurance manual.

Q Did you put the filter in the cassette inside an automobile?

A I don't remember.

Q You don't recall one way or another?

A No, I don't.

Q Did you make any judgments about where the dust in the air was coming from, if anyplace in particular, at the Woodgate station?

A As far as to who the judgment -- to myself?

Q Yes.

A It was pretty obvious where it was coming from.

Q How was it obvious?

A You could see where it was coming off of the tailings pond or the tailings pile.

Q What can you see of the tailings pile while you're standing at the Woodgate station? I've never been there and I understand there are apartment buildings around. Can you describe the view from the station as you saw it on that day.

A I believe the direction you can see mainly from the southwest and --

Q You can see in the direction of the southwest?

A Southwest. I believe that's -- I don't know how far either way you can see. What I saw was out in the tailings

area, wind gusts were kicking up dust.

Q How long were you there at Woodgate on December 16?

A Specific length of time, I don't know.

Q How long does it typically take to install a filter and set up the machine?

A Probably -- well, depends on the person. Me, it usually took around 15 minutes, approximation.

Q Was that the only time you were at the Woodgate station on that day?

A I was there enough to make the phone call and then went back so -- but other than that, yes.

Q Other than the December 16 episode sample, were you involved in any way in taking any other episode samples?

A I don't know how many episode samples there were, but I was involved in trying to guess -- to put a sample if they thought there was going to be a strong south wind in which case there might have been an episode.

Q How many times did that occur?

A I don't know.

Q You went out to initiate it, but the wind wasn't blowing so you didn't conduct an episode sample; is that the scenario you had in mind?

A Going around and putting a sample on in anticipation of the machine actually running, but not an episode sample being taken, just a regular sample being taken.

COPY EXHIBIT 5

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

* * *

| | | |
|---|---|---|
| UNITED STATES OF AMERICA, | : | |
| Plaintiff, | : | Civil No. 86-C-924J |
| vs. | : | Deposition of: |
| SHARON STEEL COMPANY, UV INDUSTRIES, UV INDUSTRIES INC., LIQUIDATING TRUST and ATLANTIC RICHFIELD COMPANY, | : | WARREN J. BONE |
| Defendants. | : | |

* * *

BE IT REMEMBERED that on the 9th day of May, 1990, the deposition of WARREN J. BONE, was taken before Linda Van Tassell, a Certified Shorthand Reporter (License No. 83), Registered Professional Reporter and Notary Public in and for the State of Utah, commencing at the hour of 1:15 p.m. of said day at the law offices of Parsons, Behle & Latimer, 185 South State Street, Suite 800, Salt Lake City, Salt Lake County, State of Utah.

* * *

Reporter: Linda Van Tassell

available to the general public, we talk to the National Weather Service and, as a matter of course, we will ask about wind conditions. They informed me that the winds were going to be quite high that day from the south.

Q What time of day was it or is it, typically, that you get the weather forecast?

A Around eight o'clock in the morning. Plus, I looked at computer printouts for real-time data from existing stations in the area -- Magna, Salt Lake beaches and Cottonwood -- and saw high winds on all of those. So obviously there was a wind occurrence which could possibly mean dust occurrence and, therefore, I went down and installed an episode sample.

Q Do you recall what the wind was that morning when you made the decision to go to the Woodgate station?

A I only remember that it was in excess of 20 miles an hour steady.

Q What time did you get to the Woodgate station?

A Around ten o'clock, ten thirty.

Q Was there a regular sample going on at that time?

A No.

Q Did you discuss with anyone whether you should take an episode sample that day?

A No.

Q That's purely a matter of your own discretion?

A Yes.

Q What did you do, then, after you got to the Woodgate station?

A I installed a filter and started the sampling immediately and set the timer to operate for a 24-hour period.

Q Did you see dust?

A Yes.

Q Can you describe what you saw in the area of the Sharon Steel site at that time on December 6?

A The dust was lifting off of the tailings pond and blowing off site from south to north. Apparently the most dense of the material was passing over the Sharon Steel buildings rather than over our sampling station.

Q What do you mean by the most -- what did you say, the most dense of the material?

A The most dense-looking part of the cloud coming from the tailings appeared to be blowing over the Sharon Steel buildings rather than over our station.

Q Where were you when you saw what you are describing now?

A At our sampling station.

Q Did you go anywhere else and look at dust in the area of the Sharon Steel site that day, other than the Woodgate station?

A I did not.

Q How long were you there?

EXHIBIT 6

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

* * *

| | | |
|---|---|---|
| UNITED STATES OF AMERICA, | : | |
| Plaintiff, | : | Civil No. 86-C-924J |
| vs. | : | Deposition of: |
| SHARON STEEL COMPANY, UV INDUSTRIES, UV INDUSTRIES INC., LIQUIDATING TRUST and ATLANTIC RICHFIELD COMPANY, | : | DANIEL E. GRUNDVIG |
| Defendants. | : | |

* * *

BE IT REMEMBERED that on the 9th day of May, 1990, the deposition of DANIEL E. GRUNDVIG, was taken before Linda Van Tassell, a Certified Shorthand Reporter (License No. 83), Registered Professional Reporter and Notary Public in and for the State of Utah, commencing at the hour of 9:30 a.m. of said day at the law offices of Parsons, Behle & Latimer, 185 South State Street, Suite 800, Salt Lake City, Salt Lake County, State of Utah.

* * *

Reporter: Linda Van Tassell

EXHIBIT 6

A Nothing on 1-11, 1-12. 1-13 and 1-14 depict an area where it appeared that children would very easily be able to climb over that shorter fence present in the photo shown in the photos, and so that the fencing there was not an effective barrier.

Q You didn't see any children; that's just your judgment?

A That's my judgment. Just based on the height of the short fence there it appeared that it would be easy for them to get over. And also, I came to that conclusion, too, from the fact that the barbed wire -- not the barbed wire, but the chain link fence that has been on the shorter portion there has been peeled back away from it and that led me to believe that people had done it, done that.

Nothing in 1-15, 1-16. Nothing on 1-17, 1-18, 1-19 or 1-20 nor on 1-21, 1-22. Okay. On photograph 1-23, that is the first of some photos which I took of areas where riverbank erosion had occurred. Without my map in front of me I don't know exactly the area, what this entails, but it appeared that the river had swung up against the bank there, the east side of the bank and had undercut the toe of the starter dike and tailings had sloughed into the river in that location. And photograph 1-23 is looking upstream on the Jordan River and 1-24 is looking downstream on the Jordan River or looking north toward 7800 South.

Q So at the time you took photos 1-23 and 1-24 you didn't actually see tailings sloughing into the river; you saw what is depicted in those two photographs, correct?

A That's correct. I do not see the physical process of sloughing.

Q Okay. And your map will show exactly where the photographs were taken.

A My map will show the approximate locations where the photographs were taken. Because of the scale of the map it is sometimes difficult to exactly locate yourself on a topographic map.

Q Okay.

A Photograph 1-25 shows where the Bingham Creek enters the Jordan River and where it enters the Jordan River it produces a delta into the river and forces the river to divert away from the delta toward the east side. Photograph 1-25 is just a follow-up of 1-23 and 1-24. And then we believe that this delta was the cause for the river to impinge upon the tailings dike area.

Q When you say we, you're referring to --

A The Bureau of Reclamation.

Q Okay.

A Nothing on 1-26 nor on 1-27 or 1-28, nothing on 1-29. 1-30 I just need to clarify that that was the photograph which was pulled to be used in our May 1988 report. Photograph

1-31, nothing to add to that one. 1-32 is an interesting photograph because it shows depressions which were common in many of the areas on the site. This photograph in particular shows an asphalt cover, an asphalt cover which is visible on the right and left side of the photo and a depression which occupies the center of the photograph. And this feature that you see is normally attributed to wind inflation or wind erosion which has taken out the material in the center of the photograph and deposited it somewhere else.

Q What is the basis for the conclusion that you just gave about wind erosion?

A When the tailings are placed they're usually ponded and that creates a horizontal surface. That surface was later covered, to my understanding, with an asphalt cover, which you can see in the right and left sides of the photograph. In order for the material in the center to be removed it would have to be either physically removed by equipment, and I see no equipment tracks or anything like that, or it has to be removed by some other process, and it was my conclusion that it was due to wind erosion.

Q Is that an area in which you believe you have expertise as to evaluation of this type of topography and determination of what the mechanism is that created it.

A I would not consider myself an expert in that, no.

Q And, for the record, in case we didn't indicate it,

we are discussing photograph 1-32, correct?

A That's correct. Nothing to add to 1-33 or 1-34, 1-35 or 1-36. I would also note that photograph 1-36 is not labeled. It does not have a photo number. I assume that it is 1-36.

Q So the one on the page with 1-35?

A That's correct.

Q Okay.

A Nothing on 2-1-or 2-2. Nothing to add to 2-3. 2-4 shows an area that we were concerned about. We felt that the debris which is in the river channel, the trees that are present there divert the flow of water toward the starter dike and results in oversteeping of the bank when the river erodes out the toe.

Q Is this the Jordan River that's shown in 2-4?

A That's correct. Photograph 2-5 is a close-up of the same area that was described in 2-4. It shows some of the erosion which has taken place in the riverbank and also in the starter dike. You can also see portions of tailings which have dropped into the river, the iron-stained material that's dropped into the river.

Q Which is the material that you're referring to? You said iron-stained; is that what you said?

A The iron-stained would be the yellowish material in the photograph there.

Q Did you yourself do any type of an analysis of any of the material you found along the riverbanks or in the river?

A No, I did not.

Q Nothing to add?

A Nothing to add for 2-7 or 2-8. Nothing to add for 2-9 or 2-10. 2-12 shows a condition which I found in several areas where the asphalt covering had been covered with sand, I assumed from blowing sand.

Q And on 2-12 you're referring to the line that runs roughly diagonally from the upper left corner to the lower right corner?

A No. I'm referring to the area that is left of that. This surface which is left of that, the line which you just described was asphalt-covered to prevent erosion of the dike material and in portions it is now covered with sand.

Q Okay.

A Nothing to add for 2-13 and 2-14.

Q 2-13 is looking -- shows an area off the site, does it not? The cattle there are not on the site?

A That's correct. That's looking across the Jordan River to the south.

Q Okay.

A Photograph 2-16.

MS. HULSE: For the record, that's not marked, but it follows 2-14 and it's prior to 2-17.

Q Well, let's see, it follows 2-15?

A The photograph which follows 2-15 is a ph
some footprints which I made the previous day, which
drifted full of sand on 4-23-88, one day after the fo
were made. Nothing to add for 2-17 or 2-18.

Q On 2-17, when you say "Used in report", tha
reference, I take it, to the May 1988 draft report?

A That's correct. The figure number that is l
there is the figure number within that report also. Not
add for 2-19 or 2-20. Nothing to add for 2-21. The pho
which follows 2-21 is a photograph of some children which
playing on the south end of the site and that was during
time I was mapping. I just happened to walk by and notice
they were fishing there and I did ask them how they obtaine
access to the site and they indicated that they had come fr
an area almost due east where there was a pipe type fence wh
was very easily circumvented to get onto the site.

Q You didn't see them come through the fence; you sa
them fishing as they're shown in the photograph.

A That is correct. Nothing to add for 2-23 or 2-24.
Photograph 2-25 shows the east perimeter fence, the area where
the children said they could climb over the fence or go through
the gate. 2-26 shows a pallet that has been placed along the
fence and which I assumed was to make the access easier. The
top of the chain link there has been pulled down or it appears

that someone has climbed over the fence onto the pallet. Nothing to add to 2-27 or the photograph which follows 2-27. Photograph 2-29, I have nothing to add to that one. 2-30 shows an area that also provides easy access to the site. All that it required is to walk around the end of the fence on the right-hand side of the photograph to obtain access to the site. Nothing to add for 2-31 or 2-32. 2-33 and 2-34 show individuals who were on the site during the time that I was mapping.. Nothing to add to 2-35 or 2-36. Nothing to add for 3-1 or 3-2 or 3-3 or 3-4. Photograph 3-6 shows another view of an area that was previously photographed showing where the river has taken a meander up against the east bank of the river and has resulted in oversteeping of the slope and sloughing of the material into the river. And 3-7 is a close-up of that.

Q And, again, you did not, I assume, see any material sloughing; you saw what is depicted in photographs 3-6 and 3-7.

A That's correct.

Q Let me ask you, is riverbank erosion something that you deal with regularly in the course of your responsibilities with the Bureau of Reclamation?

A It is one of the earth processes that geologists just normally deal with, yes.

Q But you, particularly, is it the process that you regularly deal with?

A No.

Q Do you consider yourself to have expertise in the study of riverbank erosion and the determination of what forces caused the erosion?

A That is not my area of expertise.

(Off the record.)

(Counsel conferred with the witness.)

MS. HULSE: The deponent, I think, would like to clarify some of his last answers. There may have been a misunderstanding on what you were actually asking, the last few questions that you had about the sloughing of the tailings. I'll let him speak, though.

Q Well, Mr. Grundvig, you've had an opportunity to talk to your counsel and do you have something now that you want to add to your previous answers?

A Not to add, but to clarify. You had asked me a question about whether my area of expertise included being able to identify or determine riverbank processes like erosion and my answer was that that was not my area of expertise. I need to clarify the answer in that there are geologists who are specialists in fields of sedimentary processes, erosional processes, and I'm not one of those people. However, I am qualified to determine the effects of riverbank erosion just by my almost 13 years experience as an engineering geologist and having mapped very similar features in many other areas.

Q Is that something you do on a regular basis, that is

EXHIBIT 7

UNITED STATES DISTRICT COURT, DISTRICT OF UTAH
CENTRAL DIVISION

Civil Action No. 86-C-924J

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

SHARON STEEL CORPORATION, UV INDUSTRIES, INC., and UV INDUSTRIES, INC., LIQUIDATING TRUST, and THE ATLANTIC RICHFIELD COMPANY,

Defendants.

---

DEPOSITION OF ROBERT I. STRAND, M.S.

April 13, 1989

Pursuant to Agreement taken on behalf of Defendants UV Industries, Inc., and UV Industries, Inc., Liquidating Trust at 1700 Lincoln Street, Suite 4000, Denver, Colorado 80290, at 9:04 a.m., before Linda K. Check, Registered Professional Reporter and Notary Public within Colorado.

A. Yes.

Q. And your middle conclusion, the last conclusion on page 6, is that "The perimeter slopes will be subject to erosion from direct rainfall on the embankments." And I assume that this conclusion is based on information Mr. Sveum gave you, or did you reach this through your own research?

A. I reached that conclusion myself.

Q. Okay. "This erosion has occurred in the past, and some of the tailings have been carried into the Jordan River." Do you have any estimate as to the amount of tailings that have been carried into the Jordan River in the past?

A. I do not.

Q. I guess that question was a very general question. Let me be more specific. Do you have any idea as to the amount of tailings which have been carried into the Jordan River in the past?

A. I will have to qualify that by saying that the computation that was made to arrive at the number in here would not be all that different for a past situation.

Q. That number would be, say, 3,000 tons a year for--

A. Or some part of that that would escape the

berm.

Q. And this conclusion is the conclusion for which you are actually offering some statistical probability that an event will occur; am I correct?

A. In grossest terms, yes.

Q. In grossest terms. And this conclusion is not simply a statement of the means by which it would be possible for tailings to reach the river, but actually states that there is some likelihood that they are doing so, and assigns a value to that likelihood?

A. Yes.

Q. On page 4 of your report, there is the statement in the last sentence of the last whole paragraph that any direct rainfall on the slopes of the tailings dams will subject the material to sheet erosion and additional erosion due to the formation of rills and gullies. Did you write that sentence?

A. I assume I did.

Q. Is it consistent with your analysis?

A. I can see where there's a--it could have been better stated.

Q. Can you--perhaps you would state it better now, rather than having me pick at you and ask questions about it.

A. Right. Any rainfall of an intensity

greater than the infiltration rate of the embankment would result in erosion from the embankment.

Q. And it was your testimony earlier, wasn't it, that you did not know the infiltration capacity of the slopes?

A. That's correct.

Q. So I guess you would not know how frequent rains would be that would exceed that capacity; am I correct on that?

A. That's correct.

Q. In terms of runoff--and it's runoff that is carrying the tailings in the erosion process; am I correct?

A. Yes.

Q. In terms of runoff, you've said that the amount of rain that falls on the site is important and the intensity of the rain. Suppose snow falls on the site? Would that affect the amount of runoff?

A. Amount of runoff or erosion?

Q. The amount of runoff when the snow melts.

A. Depending upon the rate of snowmelt, yes.

Q. Do you have any idea what the typical rate of snowmelt is at the site?

A. I'm not sure there would be a typical. It would depend upon the weather conditions that--

Q. Weather conditions, though, have been kept in records for many years. You ought to be able to arrive at some very gross estimate, don't you think? Or not you, but one could do that? Would you agree on that?

A. You might end up--to answer your question, yes, somebody could make an estimate.

Q. But am I correct that that was not done for this analysis?

A. That's correct.

Q. Did you calculate in your analysis any--did you make any determination as to the amount of snow that would be--that would fall on the site, and what percentage of the precipitation of that snow would be over the course of the year?

A. I did not. I think there was something back in the precipitation data that gave some indication of that.

Q. You said that the amount of runoff you'll get is related to the infiltration capacity of the soil materials, right?

A. Yes.

Q. Is the infiltration capacity of the materials related to the density of the soil materials?

A. Yes.

Q. Is it related to the texture of the materials?

A. Yes.

Q. Could it be related to the dampness of the materials?

MR. ALLRED: Excuse me. Repeat that question.

MR. AGAR: Could the infiltration capacity of soil be related to its dampness?

A. Yes.

Q. (BY MR. AGAR) Could the erosive--the erosion that soil is likely to be subject to be related to its dampness?

A. Yes, it could.

Q. Would you agree that saturation of soil affects its shear strength?

A. Yes.

Q. And shear strength is related to its likelihood of eroding?

A. More to its likelihood of failing, of mass wasting.

Q. Which is a kind of erosion also?

A. It is a kind, yes.

Q. But if soil is saturated, is it more likely to erode in the sense that you're using the

term, not mass failure, than if it were not saturated?

A. I have to give you some caveats on that, in that if it--there is--if the soil contains clay, it would make it cohesive. And if it were wet, it would be more cohesive than it were if it were totally dry.

Q. Does the tailings soil contain clay?

A. Very little.

Q. So if the tailings soil were saturated, probably it would tend more to erode; is that correct?

A. If it were saturated, it would tend more to erode?

Q. Yes, if there were sheet flow over it.

A. Probably, because the infiltration rate would be less.

Q. Suppose the soil were parched, very dry, to, say, 3 or 4 or 5 inches, and you then had rain? Would the soil tend to erode fairly rapidly there, more rapidly than if it were damp?

A. No, because the infiltration, the initial infiltration rate would be greater, and you would get more absorption in the first period of the rainfall event.

Q. Is that the case if the soil is so dry that it's powdery and dusty?

A. Well, infiltration rate is usually its

maximum when water is first applied, and it decays with time.

Q. In the last paragraph of page 4 of your report, you say that the tailings on the slopes on the south and west boundaries have an existing rill and gully pattern, which is evidence of erosion. And you also say that there are tailings deposits on the berm at the foot of the slopes. Would you just very briefly define rills and gullies.

A. I can--I'll give you my impression.

Q. Did you write that part that I'm referring to?

A. I'm sorry, I don't know exactly where you referred to.

MR. FLETCHER: Bottom paragraph, first sentence.

A. Yes.

Q. (BY MR. AGAR) Okay. Can you very briefly explain what you understand by those terms.

A. Rills are the first channels that form in the erosion process. It would be a matter of degree, gullies being larger ones, probably formed by a headcutting process.

Q. And what is headcutting?

A. Erosion that progresses from a downstream

Q. (BY MR. ALLRED) Did you make any attempt to try to quantify the rate of erosion of the east bank of the Jordan River caused by the erosive action of the water in the river?

A. I did not.

Q. At page 7 of your statement, you conclude that "The lateral movement of the riverbank can be expected to continue eroding into the tailings deposits unless additional protection is provided." And I take it, from what you testified to earlier, that you are not saying what the rate of that erosion will be, or anything about how much soil or tailings might fall into the river as a result of that action, or at what frequency; is that correct?

A. That's correct.

Q. But whatever those factors may be, I take it you also conclude that that erosion can be substantially reduced by taking some sort of action, which you refer to as protection. What did you have in mind?

A. Similar to what's been done at the various sites along there presently.

Q. And what is that?

A. The riverbank--the right bank of the river has been armored in several locations, extensive

reaches in some places.

Q. For all practical purposes, would that eliminate the hazard of erosion of the tailings by the action of the Jordan River?

A. Yes.

(A pause occurred in the proceedings.)

Q. I believe, in one of your answers, you described your role as, in part, to determine the potential release of toxic materials to the--into the environment from the tailings pond. I take it you don't imply you're a toxicologist and really going to testify about whether these materials, in fact, are toxic or not; is that correct?

A. No. I don't think I said "toxic," just escapement of the materials from the site.

Q. Okay.

(A pause occurred in the proceedings.)

Q. Have you done any erosion studies in the Salt Lake Valley before?

A. Yes.

Q. When was that?

A. Six or seven years ago.

Q. Where was it?

A. On the Spanish Fork River, down near Provo.

Q. Who was that?

A. Mr. Lasson.

Q. Anyone else?

A. Mr. Fisherow.

Q. Did Mr. Lasson make any changes to your work?

A. Of an editorial nature, yes.

Q. What did he--do you recall in particular what he did?

A. Primarily, the introduction, as to how we were--how we got involved.

Q. He didn't--did he modify or change any conclusions or assumptions which you had in your report?

A. None.

Q. Do you expect to testify at trial as to the stability of the Jordan River channel?

A. I don't know.

Q. Do you recall what Mr. Taylor said in his memorandum of December 1988 regarding the stability of the Jordan River channel?

A. Several things that he said, yes.

Q. Do you recall his statement to the general effect that there's been very little movement in the Jordan River channel since it was changed over 30 years

ago, and in view of the particularly wet years we've had the last four to six years, that lack of movement suggests that the channel is fairly stable?

A. I recall that.

Q. Would you agree with that conclusion?

A. It's all a matter of degree.

Q. Could you explain your answer.

A. The very high rates of flow in '83 through '86 certainly accelerated the erosion process, which was ongoing prior to that time.

Q. And I take it the protection that you previously testified to just a few moments ago would stabilize that channel, for all practical purposes?

A. Yes, it would.

Q. Do you have any estimate about how often a channel, stabilized in that fashion, would have to be attended to for maintenance?

A. Channel stabilization requires a constant operation and maintenance program. Our experience has shown that on several of the rivers. These are not major, but by taking care of small problems that develop, a minimal amount of maintenance maintains the integrity of a channel-stabilization program.

Q. Would it be fair to say that if the channel was protected in the way that you've just

EXHIBIT 8



UTAH WATER POLLUTION CONTROL BOARD
122A State Capitol
Salt Lake City 1, Utah

December 20, 1955

COPY

U.S.Smelting, Refining, & Mining Co.
Midvale Smelter
97 North Holden
Midvale, Utah

Gentlemen:

This letter will serve as a record of the meeting which was held between W. L. Latshaw, C. F. Starr, C. A. Nelson of your Company and Grant E. Berg, Chairman, Utah Water Pollution Control Board, Mr. C. H. Stutz, Director, Sanitary Engineering, Utah State Department of Health, and Lynn M. Thatcher, Executive Secretary, Utah Water Pollution Control Board.

The industrial wastes of the Midvale Plant consist of mill wastes and smelter wastes. The mill wastes have a volume of 2 to 2.5 cubic feet per second and are presently being discharged into tailings ponds with an overflow into the Jordan River. The wastes at the smelter have a volume of approximately 17 cubic feet per second and consist principally of cooling water from the slag pulverizer. The source of water for all operations is the Jordan River through the Caleum Canal.

Data will be provided the Water Pollution Control Board by the Company on the solids contents in the waste water being discharged to the Jordan River. It was indicated during the discussion that most of the discharged waste would be from the mill ponds and there is a possibility that these wastes can be held and evaporated so as to prevent them from reaching the Jordan River. A chart was handed us indicating the total suspended solids content of the river at 90th South, 64th South and at Center Street and also at Bingham Creek extending over a period from 1945 to the present. The chart indicated a rather high fluctuation in the total solids content of the Jordan River at these sampling stations. It was indicated at the meeting that additional information could probably be secured from the Soil Conservation Service at Murray.

Most of the domestic sewage at the plant is discharged into the Midvale City sewer system. However there is a septic tank which discharges into a drainage ditch at the Lead Plant. Approximately 30 men use the toilet facilities connected to this septic tank.

We appreciate this opportunity of meeting with you and discussing the industrial wastes problem at your plant and hope that we will be able to work with you on the improvements which can be made to improve the condition of the Jordan River.

Yours Truly,

UTAH WATER POLLUTION CONTROL BOARD

Lynn M. Thatcher (Signed)

Lynn M. Thatcher
Executive Secretary

30153

CMS:br

cc: Salt Lake Co. Health Dept.

EXHIBIT 10

# AFFIDAVIT OF BILL TUMPOWSKY

1. My name is Bill Tumpowsky.

2. I am employed by television station KUTV as a television cameraman. I have been so employed for six and one half years.

3. I recently viewed approximately 12 minutes of videotape depicting the Sharon Steel tailings site located in Midvale, Utah. The tape is contained in an unmarked black plastic video cassette. After viewing it, in order that I could recognize the cassette again, I affixed a small square of paper to the cassette with my signature on it, and I also scratched my initials in to the plastic of the cassette.

4. Upon viewing the tape, I recognized it as one that I filmed. While I do not remember the precise date, I have been advised that records maintained by KUTV place the date on which the tape was filmed in May, 1986. After hearing this, I believe this is consistent with my refreshed recollection.

5. Attached to this affidavit is a map of a portion of Midvale, Utah, including the tailings site. In filming the tape, I stood to the west of the tailings on a railroad embankment. I have marked the map with an "X" to show the approximate filming location. The river can be seen in the foreground. The abondoned mill buildings are visible to the east. The thoroughfare shown in the tape that is running west to east is 7800 South. I periodically panned the camera across from the north -- which is to the left side of picture -- to south during the time I photographed the site.

6. There were no aircraft, helocopters or other machines above the tailings which caused or contributed in any way to the wind shown in the videotape.

I certify that the foregoing is true to the best of my knowledge, information and belief.

BILL TUMPOWSKY

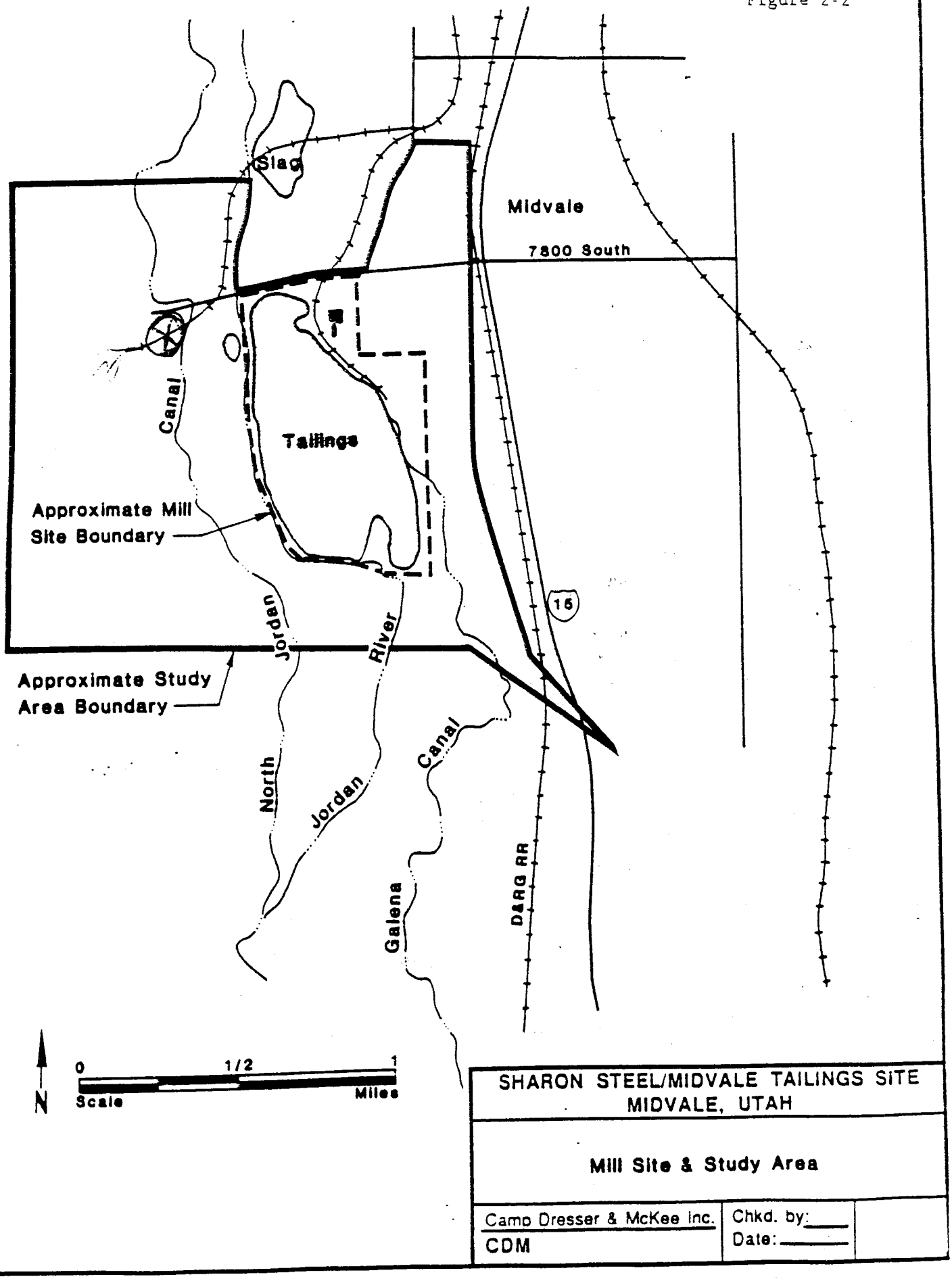
Subscribed to before me this 5th day of March, 1990.

NOTARY

My Commission expires: 2/1/91 Residing in Salt Lake City, Utah

abt35
3590

Figure 2-2




SHARON STEEL/MIDVALE TAILINGS SITE
MIDVALE, UTAH

Mill Site & Study Area

Camp Dresser & McKee Inc.
CDM

Chkd. by:
Date:

(11)

EXHIBIT 11

CERTIFICATE OF OWNERSHIP AND MERGER

MERGING

THE ANACONDA COMPANY

INTO

ATLANTIC RICHFIELD COMPANY

(Pursuant to Section 253 of the General Corporation Law of the State of Delaware)

ATLANTIC RICHFIELD COMPANY, a Pennsylvania corporation (hereinafter called "the Company"),

DOES HEREBY CERTIFY THAT:

FIRST: The Company was organized and exists under the laws of the Commonwealth of Pennsylvania and is subject to the Business Corporation Law of the Commonwealth of Pennsylvania, the provisions of which permit the merger of a subsidiary corporation of another state into a parent corporation organized and existing under the laws of the Commonwealth of Pennsylvania.

SECOND: The Company owns all the outstanding shares of The Anaconda Company, a corporation organized and existing under the laws of the State of Delaware.

THIRD: The Company, by the following resolution of its Board of Directors, duly adopted at a meeting held on October 26, 1981, determined to merge into itself The Anaconda Company (which merger is intended to constitute a liquidation as described in Section 332 of the Internal Revenue Code of 1954, as amended) effective on December 31, 1981:

RESOLVED, That Atlantic Richfield Company, pursuant to Section 253 of the General Corporation Law of the State of Delaware and Sections 901 and 902.1 of the Business Corporation Law of the Commonwealth of Pennsylvania, merge into itself, effective on December 31, 1981, The Anaconda Company, a Delaware corporation, and as a condition of such merger hereby assumes, as of such date, all the obligations of the said corporation.

FOURTH: The Company agrees that it may be served with process in the State of Delaware in any proceeding for enforcement of any obligation of The Anaconda Company as well as for enforcement of any obligation of the Company arising from the merger, and it does hereby irrevocably appoint the Secretary of State of the State of Delaware as its agent to accept service of process in any such proceeding.

The address to which a copy of such process shall be mailed by the Secretary of State is 515 South Flower Street, Los Angeles, California 90071, until the Company shall have hereafter designated in writing to the Secretary of State a different address for such purpose. Service of such process may be made by personally delivering to and leaving with the Secretary of State duplicate copies of such process, one of which copies the Secretary of State shall forthwith send by registered mail to the Company at the most recent address designated hereunder.

IN WITNESS WHEREOF, Atlantic Richfield Company has caused its corporate seal to be affixed and this certificate

to be signed by F. X. McCormack, its Senior Vice President, and by H. H. Lewis, its Secretary this 17th day of December, 1981.

ATLANTIC RICHFIELD COMPANY

BY _____
F. X. McCormack, Senior Vice President

ATTEST: BY _____ CORPORATE SEAL
H. H. Lewis, Secretary

STATE OF CALIFORNIA )
: SS.:
COUNTY OF LOS ANGELES )

BE IT REMEMBERED that on this 17th day of December, 1981, personally came before me, Barbara M. Hinds, a Notary Public in and for the County and State aforesaid, F. X. McCormack a Senior Vice President of Atlantic Richfield Company, a Pennsylvania corporation, being the corporation described in and which executed the foregoing certificate, known to me personally to be such, and he, the said F. X. McCormack as such Senior Vice President, duly acknowledged the said certificate to be the act and deed of said corporation and the facts stated therein to be true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office the day and year aforesaid.

OFFICIAL SEAL
BARBARA M HINDS
NOTARY PUBLIC - CALIFORNIA
LOS ANGELES COUNTY
My comm. expires JUL 20, 1984

Barbara M. Hinds

NOTARIAL SEAL

521

Filed this 24th day of December 19 81
Commonwealth of Pennsylvania
Department of State
Effective: 12:00 Midnight
December 31, 1981
William L. Davis
Secretary of the Commonwealth

81-81 1657
(Line for numbering)
21933
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
CORPORATION BUREAU

(Box for Certification)

In compliance with the requirements of section 903 of the Business Corporation Law, act of May 5, 1933 (P. L. 364) (15 P. S. §1903), the undersigned corporations, desiring to effect a merger, hereby certify that:

1. The name of the corporation surviving the merger is

ATLANTIC RICHFIELD COMPANY

2. (Check and complete one of the following):

☒ The surviving corporation is a domestic corporation and the location of its registered office in this Commonwealth is (the Department of State is hereby authorized to correct the following statement to conform to the records of the Department):

1500 Market Street
(number)
Philadelphia Pennsylvania 19101
(city) (state) (zip code)

☐ The surviving corporation is a foreign corporation incorporated under the laws of _____ (name of jurisdiction) and the location of its office registered with such domiciliary jurisdiction is:

(number)
(city) (state) (zip code)

The location of its registered office in this Commonwealth is:

(number)
(city) Pennsylvania (zip code)

3. The name and the location of the registered office of each other domestic business corporation and qualified foreign business corporation which is a party to the plan of merger are as follows:

The Anaconda Company
c/o C T Corporation System
123 South Broad Street
Philadelphia, Pennsylvania 19109

The name and the location of the registered office of each other foreign business corporation, not qualified in Pennsylvania and party to the merger are as follows:

(PA. - 1983 - 10/28/76)

521

81-01 1658

DSCB:BCL—803 (Rev. 8-72)-2

4. (Check, and if appropriate, complete one of the following)

☐ The plan of merger shall be effective upon filing these Articles of Merger in the Department of State

☒ The plan of merger shall be effective on December 31, 1981 at 12 midnight
(DATE) (HOUR)

5. The manner in which the plan of merger was adopted by each domestic corporation is as follows

Atlantic Richfield Company
(NAME OF CORPORATION)

Adopted by action of the Board of Directors Pursuant to Section 902.1 of the Business Corporation Law.

6. (Strike out this paragraph if no foreign corporation is party to the merger.) The plan was authorized, adopted or approved, as the case may be, by the foreign corporation (or each of the foreign corporations) in accordance with the laws of the jurisdiction in which it was formed

7. The plan of merger is set forth in Exhibit A, attached hereto and made a part hereof

[redacted]



(PA. - 1883)

521

81 - 81 1659

IN TESTIMONY WHEREOF, each undersigned corporation has caused these Articles of Merger to be signed by a duly authorized officer and its corporate seal, duly attested by another such officer, as by law unto affixed this 17th day of December, 19 81.

Atlantic Richfield Company

By: [signature]

Senior Vice President

Attest:

[signature]

Secretary

The Anaconda Company

By: [signature]

Senior Vice President

Attest:

Barbara M. Hoole

Assistant Secretary

(PA. - 1883)

521

81-81 1660

PLAN OF MERGER EXHIBIT A

OF

THE ANACONDA COMPANY
(a Delaware Corporation)

WITH AND INTO

ATLANTIC RICHFIELD COMPANY
(a Pennsylvania Corporation)

## ARTICLE I

## GENERAL

1.01. General. THE ANACONDA COMPANY (hereinafter called "Anaconda") a corporation duly organized and validly existing under the laws of the State of Delaware and ATLANTIC RICHFIELD COMPANY (hereinafter called "Atlantic Richfield" and sometimes called the "Surviving Corporation"), a corporation duly organized and validly existing under the laws of the Commonwealth of Pennsylvania, shall effect a merger subject to the terms and conditions of this Plan of Merger (which merger is intended to constitute a liquidation as described in Section 332 of the Internal Revenue Code of 1954, as amended).

1.02. Merger. On the Effective Date, as defined in Section 2.03 hereof, Anaconda shall be merged with and into Atlantic Richfield and Atlantic Richfield shall be the Surviving Corporation.

## ARTICLE II

## TERMS AND CONDITIONS

2.01. Effect of Merger. On the Effective Date, the separate existence of Anaconda shall cease and it shall be merged with and into Atlantic Richfield. The

corporate existence of Atlantic Richfield with all its purposes, powers and objects shall continue unaffected and unimpaired by the merger, and, as the Surviving Corporation, it shall be governed by the laws of the Commonwealth of Pennsylvania and shall possess all of the rights, privileges, powers and franchises, as well of a public as of a private nature, and shall be subject to all the restrictions, disabilities and duties of both Atlantic Richfield and Anaconda. All rights of creditors and all liens upon the property of Anaconda shall be preserved and unimpaired, and all debts, liabilities and duties of Anaconda shall thereafter attach to Atlantic Richfield as the Surviving Corporation and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it. However, none of such debts, liabilities and obligations shall be extended, increased, broadened or enlarged by virtue of this Plan of Merger and the effectuation hereof.

2.02. Articles of Incorporation. On the Effective Date, the Articles of Incorporation of Atlantic Richfield shall be and remain the Articles of Incorporation of Atlantic Richfield as the Surviving Corporation.

2.03. Filing and Effective Date. Upon approval of this Plan of Merger by the respective Boards of Directors of Anaconda and Atlantic Richfield, the Articles of Merger,

incorporating this Plan of Merger, shall be executed to comply with the applicable filing requirements of the Pennsylvania Business Corporation Law. The Articles of Merger shall be filed with the Department of State of the Commonwealth of Pennsylvania. Having complied with all of the above provisions and in accordance with Section 905 of the Pennsylvania Business Corporation Law, this merger shall become effective at 12 midnight on December 31, 1981.

2.04. Termination. This Plan of Merger may be terminated and the merger abandoned by the Board of Directors of either Anaconda or Atlantic Richfield at any time prior to the filing of the Articles of Merger with the Department of State. In the event of termination and abandonment, this Plan of Merger shall become wholly void and of no effect, and there shall be no liability on the part of either Anaconda or Atlantic Richfield, their Boards of Directors, officers or shareholders.

## ARTICLE III

## MANNER AND BASIS OF CONVERTING SHARES OF STOCK

3.01. Stock of Atlantic Richfield. Each share of capital stock of Atlantic Richfield issued and outstanding immediately prior to the Effective Date shall remain unaffected by the merger.

3.02. Stock of Anaconda. Each issued and outstanding share of the capital stock of Anaconda shall be surrendered,

cancelled and extinguished upon the Effective Date of the merger and no shares of stock or other securities of Atlantic Richfield shall be issued therefor.

# Commonwealth of Pennsylvania

January 22, 1982

## To All to Whom These Presents Shall Come: Greeting:

IN RE: "ATLANTIC RICHFIELD COMPANY"

I, WILLIAM R DAVIS, Secretary of the Commonwealth of the Commonwealth of Pennsylvania do hereby certify that the foregoing and annexed is a true and correct photocopy of Articles of Merger and Certificate which appear of record in this Department.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of the Secretary's Office to be affixed the day and year above written

William R. Davis

Secretary of the Commonwealth

DSCB:40 (Rev. 2 79)

81 - 81 1664

# Commonwealth of Pennsylvania

## Department of State

**To All to Whom These Presents Shall Come, Greeting:**

**Whereas**, Under the provisions of Article IX of the Business Corporation Law (Act of May 5, 1933, P. L. 364), as amended, the Department of State is authorized and required

### CERTIFICATE OF MERGER

**Whereas**, [illegible] that law relating to the merger of [illegible] been fully complied with by the ANACONDA COMPANY, a business corporation, and ATLANTIC RICHFIELD COMPANY, a Pennsylvania corporation,

**It is, Therefore**, Certified from the Articles of Merger filed with the Department of State, Corporation Bureau, that the ANACONDA COMPANY, the Delaware corporation, and the ATLANTIC RICHFIELD COMPANY, the Pennsylvania corporation,

**Therefore, Know Ye**, that subject to the Constitution of the Commonwealth [illegible] business corporation Law, I DO BY THESE PRESENTS, as [illegible]

(Given [illegible]

[illegible]

Secretary [illegible]

# 387996

STATE OF MONTANA
COUNTY OF SILVER BOW } SS.

I hereby certify that the within instrument was filed for record in my office on the 2nd day of MAY A.D. 19 92 at 55 min. past 3 o'clock P M. and recorded on card 521 of Book 48 of Misc Records of Silver Bow County, Montana. Attest my Hand and seal of said County

CLERK & RECORDER

By Mark Grigg Deputy

Fee 28.00

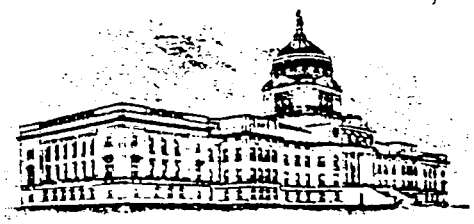
ANACONDA Minerals Company
555 Seventeenth Street
Denver, Colorado 80202
Telephone 303 575 4000

ATTN IVA M ARMSTRONG

Send Mail To

25--2M--10-71--97342

# Office of the Secretary of State



## OF THE

# STATE OF MONTANA

I, FRANK MURRAY, do hereby certify that I am the duly elected, qualified and acting Secretary of State of the State of Montana; that by virtue of my office and the Constitution and laws of said State I am the Keeper of the Great Seal and the Custodian of the records pertaining to the incorporation of companies in said State; that the seal hereto affixed is the Great Seal of the State of Montana and I am the proper official to make this Certificate; and that this Certificate is in due form of law and entitled to full faith and credit as to the matters herein set forth.

I further certify that the annexed is a full, true and correct copy of the Articles of Merger of ANACONDA ALUMINUM COMPANY, a Montana corporation, INTERNATIONAL SMELTING AND REFINING COMPANY, a Montana corporation, ANACONDA AMERICAN BRASS COMPANY, a Connecticut corporation, and ANACONDA WIRE AND CABLE COMPANY, a Delaware corporation, into

THE ANACONDA COMPANY

a Montana corporation, the surviving corporation, as received and filed in this office on January 1, 1973, with all endorsements and the Certificate issued thereon.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of Montana, at Helena, the Capital, this first day of January A.D. 1973.

Frank Murray

FRANK MURRAY
Secretary of State

P 00000068

STATE OF MONTANA
FILED
JAN 1 1973
FRANK MURRAY
SECRETARY OF STATE
By Deputy

ARTICLES OF MERGER

OF

ANACONDA ALUMINUM COMPANY,
INTERNATIONAL SMELTING AND REFINING COMPANY,
ANACONDA AMERICAN BRASS COMPANY, AND
ANACONDA WIRE AND CABLE COMPANY

INTO

THE ANACONDA COMPANY

Pursuant to the provisions of Section 15-2268, Revised Codes of Montana, 1947, as amended, The Anaconda Company, a corporation organized and existing under the laws of the State of Montana (hereinafter sometimes called the "Surviving Corporation"), and owning at least ninety-five percent of the shares of each class of Anaconda Aluminum Company and International Smelting and Refining Company, both Montana corporations, Anaconda American Brass Company, a Connecticut corporation, and Anaconda Wire and Cable Company, a Delaware corporation (hereinafter sometimes called the "Constituent Subsidiaries"), hereby executes the within Articles of Merger:

1. The following Plan of Merger was approved by resolution of the Board of Directors of The Anaconda Company adopted on November 2, 1972.

P 0000061

"WHEREAS, The Anaconda Company, a Montana corporation (hereinafter called 'the Surviving Corporation'), owns all the outstanding shares of each class of Anaconda Aluminum Company, a Montana corporation, International Smelting and Refining Company, a Montana corporation, Anaconda American Brass Company, a Connecticut corporation, and Anaconda Wire and Cable Company, a Delaware corporation (hereinafter collectively called 'the Constituent Subsidiaries' and individually a 'Constituent Subsidiary'); and

"WHEREAS, the Board of Directors of the Surviving Corporation has determined that it would be in the best interests of the Surviving Corporation to merge each Constituent Subsidiary into the Surviving Corporation;

"NOW THEREFORE, pursuant to the laws of the States of Montana, Connecticut and Delaware,

1. Effective at the opening of business on January 1, 1973 (such date and time being hereinafter called 'the effective date of the merger'), the Surviving Corporation hereby merges into itself each Constituent Subsidiary and assumes all the liabilities and obligations of each Constituent Subsidiary;

2. Every share of each class of the Constituent Subsidiaries which shall be outstanding immediately prior to the effective date of the merger shall, by virtue of the merger and without any action on the part of the Surviving Corporation, be extinguished and cease to exist and shall not be or become shares of the Surviving Corporation, and no shares of the Surviving Corporation shall be issued as a result of the merger; and

3. The Certificate of Incorporation of the Surviving Corporation as heretofore amended shall be and remain the Certificate of Incorporation of the Surviving Corporation after the effective date of the merger until further amended as provided therein or by law."

2. The number of outstanding shares of each class of the Constituent Subsidiaries, all of which are owned by the Surviving Corporation, are as follows:

| Constituent Subsidiary | Class | Number of Shares Outstanding - All Owned by Surviving Corporation |
|---|---|---|
| Anaconda Aluminum Company | Capital Stock | 7,599,971 |
| International Smelting and Refining Company | Capital Stock | 200,000 |
| Anaconda American Brass Company | Capital Stock | 150,000 |
| Anaconda Wire and Cable Company | Capital Stock | 250 |

3. The Surviving Corporation, as sole shareholder of each Constituent Subsidiary, has waived mailing of the Plan of Merger to shareholders of the Constituent Subsidiaries.

4. The laws of the States of Connecticut and Delaware, under which Anaconda American Brass Company and Anaconda Wire and Cable Company, respectively, are organized,

permit the merger of said companies into the Surviving Corporation in the manner provided in the Plan of Merger.

IN WITNESS WHEREOF, the undersigned corporation has caused these Articles of Merger to be executed in its name by H. L. Edwards, its Vice President and L. T. Houser, its Assistant Secretary this 12th day of December, 1972.

THE ANACONDA COMPANY

By _____
Vice President

and _____
Assistant Secretary

THE ANACONDA COMPANY
CORPORATE
SEAL
1895
MONTANA
*

STATE OF NEW YORK )
: ss.:
COUNTY OF NEW YORK )

I, Mildred M. Nelson, a Notary Public in and for the County and State aforesaid, hereby certify that on the 12th day of December, 1972, personally appeared before me L. T. Houser, who being by me first duly sworn, declared that he is the Assistant Secretary of The Anaconda Company, a Montana corporation, that he, as such Assistant Secretary, duly executed the foregoing Articles of Merger and acknowledged said Articles of Merger to be his act and deed and the act and deed of said corporation, and that the statements contained therein are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office the day and year aforesaid.

Mildred M. Nelson

Notary Public
MILDRED M. NELSON
Notary Public, State of New York
No. 43-8117575 - Qual. in Richmond Co.
Cert. Filed in New York County
Commission Expires March 30, 1974

MILDRED M. NELSON
NOTARY
PUBLIC
STATE OF NEW YORK
(Notarial Seal)

EXHIBIT 13



UNITED STATES DISTRICT COURT, DISTRICT OF UTAH
CENTRAL DIVISION

Civil Action No. 86-C-924J

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

SHARON STEEL CORPORATION; UV INDUSTRIES, INC., and UV INDUSTRIES, INC. LIQUIDATING TRUST; and THE ATLANTIC RICHFIELD COMPANY,

Defendants.

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# DEPOSITION OF GREGORY F. CHLUMSKY

December 6, 1989

Pursuant to Agreement taken on behalf of the Plaintiff at 999 18th Street, Suite 501, Denver, Colorado 80202, at 9:15 a.m., before Mary Susan Parker, Registered Professional Reporter and Notary Public within Colorado.

species of lead ore that you are milling.

A. Yes.

Q. The processes that you outlined for us; do they apply to lead sulfide-bearing ores?

A. Yes.

Q. How would they differ if the ores of interest were lead oxide-bearing ores, for example?

A. If there was lead oxide present, there would be a separate step where you would sulfidize the oxide material. You would add a sodium sulfide, as an example, a soluble sulfide material. It would, in a chemical reaction, would stick to the--convert the oxide, lead oxide, to a sulfide on the surface of the particle, making it floatable in the same process that we've described.

Q. In your experience, is it possible to mill ore without creating tailings from those operations?

MR. FARRELL: I'm sorry. I couldn't hear the question.

(The last question was read back.)

A. Not normally.

MR. FARRELL: Thank you.

Q. (BY MR. FISHEROW) Would this be true for the period in the 20th century from 1906 to 1970, in your experience?

A. Yes.

Q. Again, in your experience, and talking about the period from, let's say, 1900 to 1970, would it have been possible to mill ore without disposing of the tailings created from those operations?

A. No, something would have to be done with the tailings.

Q. Have you ever read about a milling operation in the United States during the period of time we have been talking about that did not create tailings?

A. In general, no.

Q. Do you have some specific exception in mind?

A. I don't have a specific, but if the ore is high-enough grade and the tailings product might contain an ore and the waste product from one given operation may contain something that is not recoverable at that particular mill, it could go off to another site, where it might be smelted or whatever. There are possibilities.

Q. I understand that. In your experience in talking about ores that are being milled for purposes of extracting lead sulfide, let us say, would you have in mind any specific exceptions to the general rule

that we have discussed?

A. No.

Q. Similarly, have you ever read or heard about a milling operation in the United States during the period 1900 to 1970 where tailings were created that did not also involve the disposal of those tailings?

A. No.

Q. You mentioned previously that you have been involved in assessing the effectiveness of milling operations; am I correct?

A. That's correct.

Q. Would you tell me what factors you consider in assessing the effectiveness of milling operations.

A. There are two basic facts that you look at, or I look at. That is grade of the product and overall recovery of the material, and you then evaluate whether or not you can change those by either adjusting the reagents or the grind or some of the unit operations, reagent additions, flotation times, et cetera. It's a process of laboratory and pilot-plant study for evaluation.

Q. Is an assessment of the composition of metals in tailings a part of the process of deciding

upon the effectiveness of milling operations?

A. It's part of it, yes.

Q. Based upon your earlier answers, would it be fair for one to characterize tailings creation and tailings disposal as an unavoidable part of the process of milling lead-bearing ores?

A. In most cases, yes.

Q. Do you have any specific exceptions--

A. No.

Q. --to that?

A. No.

Q. Have you had specific experience in assessing tailings disposal operations?

A. Would you clarify that, please.

Q. You mentioned earlier that you have assessed the effectiveness of milling operations, and I believe you also mentioned earlier that part of the process involved in milling involves the creation and disposal of tailings, so I ask whether, in the part of assessing the effectiveness of milling operations, generally, you have been called upon to assess the process involved in disposing of tailings.

A. I'm not a geotechnical engineer by any means. I don't design tailings systems, or whatever. I look at tailings to determine what is going on in the

EXHIBIT 14



comprehensive regulatory plan precludes us from maintaining a compensatory scheme of federal common law remedies. Accordingly, we grant summary judgment to defendant on Count VI to the extent that Count VI may encompass a federal common law claim for negligence *per se*. The remaining claims in Count VI are pendant state law claims.

E. PENDANT STATE LAW CLAIMS — Count VI Through XIII

Plaintiffs' remaining claims under Counts VI through XIII are based on state and common law causes of action. As a general rule, "if the federal claims are dismissed before trial, even though not insubstantial in the jurisdictional sense, the state claims should be dismissed as well." *United Mine Workers v. Gibbs*, 383 U.S. 715, 726 (1966). However, having reserved judgment on Count II of the complaint, we likewise reserve judgment on Counts VI through XIII.

An order follows.

ORDER

AND NOW, October 18, 1989, the defendant's motion for summary judgment is granted with regard to Counts I, III, IV, V and VI of plaintiffs' complaint. Judgment is reserved on Counts II, VII through XIII and the remaining state common law claim under Count VI.

Plaintiffs are granted 15 days from the date hereof in which to file an amended Count II to plead cognizable response costs under CERCLA, if any.

Defendant may file a motion for summary judgment within 15 days of the filing of the amended Count or may renew the motion in default of an amended Count.

Plaintiffs' request for a continuance under Rule 56(f) of the Federal Rules of Civil Procedure is denied as moot.

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## STATES v. BFG ELECTROPLATING AND MANUFACTURING CO.

F.Supp. 1055, 1069 [17 ERC 1994] (D.N.J. 1981)."

*City of Philadelphia v. Stepan Chemical Co.*, 544 F.Supp. 1135, 1148 (E.D. Pa. 1982).

U.S. District Court
Western District of Pennsylvania

JOHN and BRIDGET STATES, husband and wife, and PHILLIP and JEREMEY STATES, by and through their parents, JOHN and BRIDGET STATES, Plaintiffs, v. BFG ELECTROPLATING AND MANUFACTURING COMPANY, INC., Defendant. No. 87-1421. February 2, 1990

**Comprehensive Environmental Response, Compensation, and Liability Act**

**Liability — Owners, operators, and transporters (▸170.2510)**

**Enforcement — Citizen suits — Private cost recovery actions (▸170.8020.25)**

[1] Federal district court will not reconsider prior ruling allowing individuals to sue electroplating company under Comprehensive Environmental Response, Compensation, and Liability Act to recover costs of cleaning up contaminated cinder blocks company sold to individuals, because court determined that sale of cinder blocks was "arrangement for disposal" resulting in "release" of hazardous substances. Remaining elements of CERCLA liability will be determined at trial.

---

On defendant electroplating company's motion for reconsideration in suit by individuals to recover for personal injuries and costs of cleanup associated with contaminated cinder blocks sold by company to individuals; denied.

Kenneth J. Warren, Philadelphia, Pa., for plaintiffs.

Richard J. Federowicz, Kenneth S. Komoroski, and Peter T. Stinson, Pittsburgh, Pa., for defendants.

Before Barron P. McCune, senior district judge.

*Full Text of Opinion*

We consider the motion for reconsideration by defendant BFG of our Memorandum and Order dated October 18, 1989 ("October Opinion"). Specifically contested is the disposition of a portion of count II wherein we held that BFG's sale of the cinder blocks constitutes a "disposal" and consequently a "release" of hazardous substances within the meaning of

§107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §9607(a). For reasons set forth below, the motion will be denied.

## FACTS

Reference is made to our October Opinion wherein the facts of this case are set forth in detail. Briefly, plaintiffs John and Bridget States and their children allege that 450 used cinder blocks purchased from BFG's electroplating business in July 1985 were contaminated with hazardous substances causing personal injuries and response costs to plaintiffs. We granted BFG's motion for summary judgment on all federal common law and statutory claims set forth in counts I, III, IV, V and VI. We reserved judgment on count II as well as various state and common law causes of action set forth in counts VI through XIII of the complaint.

Count II is brought under §107(a) of CERCLA, 42 U.S.C. §9607(a). An essential element of plaintiff's *prima facie* case in a §107(a) private cost recovery action is establishing that a release or threatened release of hazardous substances occurred. 42 U.S.C. §9607(a). In the October Opinion we found BFG potentially liable as a current owner or operator of a facility under CERCLA §107(a)(1), 42 U.S.C. §9607(a)(1). Since plaintiffs did not aver that their property was a "facility", we did not consider whether BFG was potentially liable as a "generator" under CERCLA §107(a)(3), 42 U.S.C. §9607(a)(3).

## DISCUSSION

BFG's motion for reconsideration of count II is two-pronged: (1) the sale of the used cinder blocks did not constitute "arranging for disposal" since the sale was for a useful purpose, i.e., home improvement and modification; and (2) even if the cinder block sale were considered an "arrangement for disposal", a "sale" does not constitute a "disposal" as defined under CERCLA and thus the sale was not a release or threatened release of hazardous substances.

While there is an absence of authority under §107(a)(1) interpreting whether a "sale" is an "arrangement for disposal", the issue is discussed when considering liability as a generator under §107(a)(3).

It is true that there is authority that when one sells a contaminated product there is no release.[1] However, these are cases where a new product was sold in the ordinary course of defendants' business. The product contained some hazardous substance perhaps, but the defendant had merely sold it. A sale is not therefore always a release.

[1] A sale may sometimes be a release. Where the sale was merely a means to get rid of the hazardous substance or where ownership was retained, the courts found liability.[2]

In *United States v. A & F Materials Co., Inc.*, 582 F.Supp. 842 [20 ERC 1957] (S.D. Ill. 1984) McDonnel Douglas Corporation in the manufacture of jet aircraft generated a caustic solution which it sold to A & F. McDonnel Douglas argued that it was not liable because it had merely *sold* the caustic solution. The court rejected the argument and held that the relevant inquiry was *who decided* to place the material into the hands of a particular facility. *A & F Materials* has been followed in *United States v. Conservation Chemical Co.*, 619 F.Supp. 162 (W.D. Mo. 1985) and *New York v. General Electric*, 592 F.Supp. 291 (E.D.N.Y. 1984).

The instant action is more like *A & F Materials*. While the blocks were sold, they were not new and they were not sold in the normal course of BFG business. By way of a sale it was BFG's decision to place the cinder blocks on the property of plaintiffs.

We recognize that intent to dispose is not a requirement under CERCLA. *Unit-*

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[1] *See, e.g., Edward Hines Lumber Co. v. Vulcan Material Co.*, 685 F.Supp. 651 [27 ERC 1904] (N.D. Ill. 1988), *aff'd.*, 861 F.2d 155 [28 ERC 1457] (7th Cir. 1988); *Florida Power & Light Co. v. Allis-Chalmers Corp.*, 27 Env't Rep. Cas. (BNA) 1558 (S.D. Fla. Mar. 22, 1988); *U.S. v. Farber*, 27 Env't Rep. Cas. (BNA) 1978 (D.N.J. Mar. 16, 1988); *Jersey City Redevelopment Authority v. PPG Industries, Inc.* 655 F.Supp. 1257 (D.N.J. 1987); *United States v. Westinghouse Electric Corp.*, 22 Env't Rep. Cas. (BNA) 1230 (S.D. Ill. June 29, 1983).

[2] *See, e.g., United States v. Aceto Agricultural Chemical Corp.*, 872 F.2d 1373 [29 ERC 1529] (8th Cir. 1989); *Jersey City Redevelopment Authority v. PPG Industries, Inc.*, 18 E.L.R. 20364, *aff'd.*, 866 F.2d 1411 [28 ERC 1873] (3d Cir. 1988); *United States v. Conservation Chemical Co.*, 619 F.Supp. 162 [24 ERC 1008] (W.D. Mo. 1985); *United States v. A & F Materials*, 582 F.Supp. 842 (S.D. Ill. 1984); *New York v. General Electric*, 592 F.Supp. 291 [21 ERC 1097] (N.D.N.Y. 1984); *United States v. Ward*, 618 F.Supp. 884 [23 ERC 1391] (E.D. N.C. 1985).

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*Corp.*, 27 Env't Rep. Cas.
D. Fla. Mar. 22, 1988); *U.S. v.*
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D.N.J. 1987); *United States v.*
*Corp.*, 22 Env't Rep. Cas.
D. Ill. June 29, 1983).
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*tes v. Conservation Chemical Co.*,
2 [24 ERC 1008] (W.D. Mo.
*States v. A & F Materials*, 582
S.D. Ill. 1984); *New York v.*
592 F.Supp. 291 [21 ERC
Y. 1984); *United States v. Ward*,
84 [23 ERC 1391] (E.D. N.C.

*ed States v. Conservation Chemical Co.*, 619 F.Supp. at 241. Nevertheless, courts do not hesitate "to look beyond defendants' characterizations to determine whether a transaction in fact involves an arrangement for disposal of a hazardous substance." *United States v. Aceto Agricultural Chemical Corp.*, 872 F.2d 1373, 1381 (8th Cir. 1989).

Turning to the character of the transaction, we resolved in plaintiffs' favor that the cinder blocks were part of the Consent Agreement and Order ("CA&O") and contaminated with hazardous substances. October Opinion at 8. As part of the CA&O, the cinder blocks were to be disposed of at an approved disposal facility. We find that since the cinder blocks were to be disposed of at a facility, the sale was clearly an "arrangement for disposal" as defined under §107(a)(3) of CERCLA notwithstanding that the blocks were a useful substance for construction.

BFG argues that retained ownership of the disposed waste or exercise of some control over the manner or place of disposal is pivotal in determining whether or not a sale is an arrangement for disposal. However, there is no such requirement under CERCLA §107(a)(3). *See New York v. General Electric*, 592 F.Supp. 291 (E.D.N.Y. 1984).

It is clear from CERCLA's legislative history that "persons cannot escape liability by 'contracting away' their responsibility or by alleging that the incident was caused by the act or omission of a third party." *Id.* at 297 (citation omitted). Thus BFG's argument that it did not decide to dispose of the cinder blocks, but rather sold them with the expectation that they would be used for a useful purpose must fail. It was BFG's duty to dispose of the cinder blocks at an approved facility. They cannot so facilely circumvent liability by characterizing the disposal as a sale resulting in a release of hazardous substances into the environment by means of plaintiffs' actions.

The second prong of BFG's argument is that "arranged for disposal" under CERCLA §107(3) is not dispositive of whether a sale constitutes a release under CERCLA §107(a)(1).

As outlined in the October Opinion, "'[r]elease' is defined as 'any spilling, leaking, . . . , dumping or *disposing* into the environment . . .'" October Opinion at 9 *quoting* CERCLA §101(22), 42 U.S.C. §9601(22). We found that since a disposal constitutes a release, when a sale constitutes an arrangement for a disposal that sale is also a release. *Id.*

BFG stresses that "disposal" refers to the physical discharge or placing of a solid or hazardous waste on land or water such that the solid or hazardous waste may enter the environment. 42 U.S.C. §9601(29); 42 U.S.C. §6903(3). BFG interprets an "arrangement for disposal" to refer to the situation wherein the person who created the hazardous substance arranged for its transport to a waste facility.

We concur with defendant's definitions. However, because arranging for disposal results in placing the solid waste or hazardous waste in a position such that it may enter the environment, we find "arrangement for disposal" is a subset of "disposal." Since BFG's sale of the cinder blocks was an arrangement for disposal, we conclude that the sale was also a disposal and therefore a "release" as defined in §101(22) of CERCLA.

Accordingly, the motion for reconsideration of BFG is denied.

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## U.S. v. MARISOL INC.

**U.S. District Court**
**Middle District of Pennsylvania**

UNITED STATES OF AMERICA, Plaintiff v. MARISOL, INC., *et al.*, Defendants, No. 88-1640, October 31, 1989

**Comprehensive Environmental Response, Compensation, and Liability Act**

**Liability — In general (▸170.2501)**

[1] Federal government properly stated claim under Comprehensive Environmental Response, Compensation, and Liability Act to recover hazardous waste site cleanup costs from four companies, because complaint alleged that: (1) waste site was facility under act, (2) release or threatened release of hazardous substance had occurred, (3) government had incurred response costs, and (4) companies were responsible parties under act.

# SUPREME COURT OF THE UNITED STATES

Syllabus

## GENERAL MOTORS CORP. v. UNITED STATES

### CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 89-369. Argued March 21, 1990—Decided June 14, 1990

The Clean Air Act was amended in 1970 to deal with a perceived national air-pollution emergency. The amendments required that the Administrator of the Environmental Protection Agency (EPA) promulgate national ambient air quality standards (NAAQS) within 30 days and that each State thereafter submit a state implementation plan (SIP) within nine months. Section 110(a)(2) of the Act required the Administrator to approve a SIP within four months of its submission if the SIP met various substantive requirements. Section 110(a)(3) authorizes a State to propose a SIP revision and requires the Administrator to approve that revision if he determines, among other things, that it "meets the requirements of [§ 110(a)(2)]." In 1980, EPA approved Massachusetts' proposed SIP governing certain emissions from automobile-painting operations. The SIP permitted petitioner GMC—whose automobile plant's painting operation is a source of ozone—to meet emissions limits in stages, but required full compliance by December 31, 1985. In June 1985, GMC sought an extension of that deadline until summer 1987. Massachusetts approved the revision and submitted it to EPA on the day before the existing SIP's deadline, but EPA did not reject it until September 1988. In the meantime, EPA sent GMC a Notice of Violation of the existing SIP and filed an enforcement action in the District Court. In May 1988, the District Court entered summary judgment for GMC, holding that § 110(a)(3) imposed a 4-month time limit on EPA review of a SIP revision, and that EPA was therefore barred from enforcing the existing SIP from the end of the 4-month period until it finally acted on the revision. Although agreeing that the Act imposed a 4-month deadline, the Court of Appeals reversed, concluding that the failure to meet that deadline did not preclude EPA from enforcing the existing SIP.

# SUPREME COURT OF THE UNITED STATES

No. 89-369

## GENERAL MOTORS CORPORATION, PETITIONER v. UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

[June 14, 1990]

JUSTICE BLACKMUN delivered the opinion of the Court.

This case concerns a Clean Air Act enforcement action by the Environmental Protection Agency (EPA) against petitioner General Motors Corporation (GMC). We are asked to decide whether the 4-month time limit on EPA review of an original state implementation plan (SIP) also applies to its review of a SIP revision, and whether, if EPA fails to complete its review of a SIP revision in a timely manner, EPA is prevented from enforcing an existing SIP.

I

What is known as the Clean Air Act, 77 Stat. 392, became law on December 17, 1963. Twenty years ago, Congress enacted the Clean Air Act Amendments of 1970, 84 Stat. 1676, a comprehensive national program that made the States and the Federal Government partners in the struggle against air pollution. The threats to human health were regarded as urgent, and the 1970 Amendments were designed to result in the expeditious establishment of programs to deal with the problem. The Amendments specified a detailed timetable for Federal and State action to accomplish this objective. They required the EPA Administrator, within 30 days of the passage of the Amendments, to promulgate national ambient air quality standards (NAAQS). § 109(a)(1), 42 U. S. C. § 7409(a)(1). Within nine months thereafter, each State was

to submit a state implementation plan (SIP) to implement, maintain, and enforce the NAAQS. § 110(a)(1), 42 U. S. C. § 7410(a)(1). As the final step in this start-up phase of the program, EPA was to act on a proposed SIP within four months: "The Administrator shall, within four months after the date required for submission of a plan under paragraph (1), approve or disapprove such plan or any portion thereof." § 110(a)(2), as amended, 42 U. S. C. § 7410(a)(2). The Administrator was directed to approve the SIP if he determined that it was adopted after reasonable notice and hearing and that it met various substantive requirements, including emissions limitations, devices for monitoring air-quality data, and enforcement mechanisms.

The integrated timetable established by the 1970 Amendments reflected the urgency of establishing air-pollution controls. But the Amendments also recognized that local needs and control strategies could evolve over time, and that SIPs would have to change as well. The States therefore were authorized to propose SIP revisions, and the EPA Administrator was directed to approve any such proposed revision "if he determines that it meets the requirements of paragraph (2) and has been adopted by the State after reasonable notice and public hearings." § 110(a)(3), 42 U. S. C. § 7410(a)(3)(A).

The 1970 Amendments also specified certain enforcement mechanisms. The Act empowered EPA to order compliance with an applicable implementation plan, § 113(a), 42 U. S. C. § 7413(a), and to seek injunctive relief against a source violating the plan or an EPA order. § 113(b), as amended, 42 U. S. C. § 7413(b). In addition, Congress prescribed criminal penalties for knowing violations of plans and orders, § 113(c), 42 U. S. C. § 7413 (c), and authorized citizen suits for injunctions against violators, in the absence of Government enforcement. § 304, as amended, 42 U. S. C. § 7604.

Congress further amended the Clean Air Act by the Clean Air Act Amendments of 1977. 91 Stat. 685. It added to the

Act the concept of a "nonattainment area"—an area where air quality falls short of the NAAQS. § 171(2), 42 U. S. C. § 7501(2). The deadline for attainment of the primary NAAQS in a nonattainment area was December 31, 1982. §§ 172(a)(1), 42 U. S. C. § 7502(a)(1). Further extensions were permitted for "photochemical oxidants" (ozone) or carbon monoxide, but only if the State demonstrated that attainment was not possible before 1983 "despite the implementation of all reasonably available measures" and that attainment would be achieved "as expeditiously as practicable, but not later than December 31, 1987." § 172(a)(2), 42 U. S. C. § 7502(a)(2).

II

A

The entire Commonwealth of Massachusetts is a nonattainment area for NAAQS with respect to ozone. See 40 CFR § 81.322, p. 126 (1989). Petitioner GMC owns and operates an automobile assembly plant in Framingham, Mass. The plant's painting operation is a source of volatile organic compounds that contribute to ozone. In 1980, EPA approved Massachusetts' proposed nonattainment area SIP governing volatile organic compound emissions from automobile-painting operations. The SIP permitted GMC to meet emissions limits in stages, but required full compliance by December 31, 1985. In 1981, EPA published a policy statement suggesting that new technology in automobile-painting operations might justify deferral of industry compliance until 1986 or 1987. 46 Fed. Reg. 51386. Three years later, in November 1984, GMC sought an extension from the December 31, 1985, compliance date imposed by the existing SIP, not for the new technology, but rather for additional time to install emission controls on its existing lines. App. 38. In June 1985, GMC proposed converting to the new technology and requested a summer 1987 deadline. *Id.*, at 41. The Commonwealth approved the revision and submitted the pro-

posal to EPA on December 30, 1985, one day before the existing SIP compliance deadline. *Id.*, at 50.

GMC began construction of a new painting facility but continued to operate its existing plant. On August 14, 1986, EPA sent GMC a Notice of Violation informing GMC that it was in violation of the applicable SIP. *Id.*, at 75. Approximately one year later, on August 17, 1987, respondent filed an enforcement action under § 113(b) of the Act, 42 U. S. C. § 7413(b), alleging violations of the existing SIP's 1985 deadline. On September 4, 1988, the agency made its final decision to reject the revision. 53 Fed. Reg. 36011.

B

The District Court construed § 110(a)(3) as imposing a 4-month time limit on EPA review of a SIP revision, App. 123–124, and concluded that when EPA failed to complete its review within four months, it was barred from enforcing the existing SIP during the interval between the end of the 4-month period and the time EPA finally acted on the revision. *Id.*, at 125. Because EPA had not issued a Notice of Noncompliance until well after the 4-month period had elapsed and, at the time of the court's ruling, had yet to make a final decision on the Commonwealth's SIP revision, summary judgment was entered for GMC.

The Court of Appeals for the First Circuit reversed that judgment and remanded the case for further proceedings. 876 F. 2d 1060 (1989). The Court of Appeals agreed with the District Court that the Act imposed a 4-month deadline on EPA review of a SIP revision, but concluded that the failure to meet that deadline did not preclude EPA from enforcing the existing SIP.

Reasoning that an enforcement bar was too drastic a remedy for agency delay, the court concluded that the appropriate remedies for agency inaction were those provided by the Act itself: a suit to compel agency action under § 304(a)(2), 42 U. S. C. § 7604(a)(2), or a request pursuant to § 113(b), 42

U. S. C. § 7413(b), for reduction or elimination of penalties during the period in which unreasonable agency delay resulted in prejudice. 876 F. 2d, at 1067–1068. We granted certiorari because of a disagreement among the Circuits as to whether EPA is barred from enforcing an existing SIP if the agency fails to take action on a proposed SIP revision within four months.[1] —— U. S. —— (1989).

III

To assure that some form of pollution-control requirements were put in place quickly, the 1970 Amendments established a series of deadlines. One of these was the requirement that EPA act on a proposed SIP within four months after the State submits its plan. § 110(a)(2), 42 U. S. C. § 7410(a)(2). Specifically, the provision requires EPA to act within "four months after the date required for submission of a plan." This seems to us to refer only to the action required on the original SIP. Section 110(a)(2), by its terms, therefore does not impose such a time restraint on EPA review of a SIP *revision*.

Petitioner nevertheless claims that § 110(a)(3) requires EPA to act on a proposed SIP revision within four months. That provision requires the Administrator to approve "any revision of an implementation plan . . . if he determines that it meets the requirements of paragraph (2) [§ 110(a)(2)] and has been adopted by the State after reasonable notice and public hearings." Petitioner contends that the reference to § 110(a)(2) was intended to incorporate both the substantive and the procedural requirements of that provision. Brief for Petitioner 13.

We are not persuaded. The Administrator is to approve the proposed revision if he determines that "it"—that is, the revision—meets the substantive requirements imposed on a

[1] See *e. g.*, *American Cyanamid Co. v. U. S. Environmental Protection Agency*, 810 F. 2d 493 (CA5 1987); *Duquesne Light Co. v. EPA*, 225 U. S. App. D. C. 290, 698 F. 2d 456 (1983).

another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.'" quoting *United States* v. *Wong Kim Bo*, 472 F. 2d 720, 722 (CA5 1972)).

Petitioner's final contention is that § 110(g) imposes a 4-month limitation on EPA's action on a proposed SIP revision. That section provides:

> "(1) In the case of any State which has adopted and submitted to the Administrator a proposed plan revision which the State determines—
>
> "(A) meets the requirements of this section, and
>
> "(B) is necessary (i) to prevent the closing for one year or more of any source of air pollution, and (ii) to prevent substantial increases in unemployment which would result from such closing, and
>
> which the Administrator has not approved or disapproved under this section *within the required four month period*, the Governor may issue a temporary emergency suspension of the part of the applicable implementation plan for such State which is proposed to be revised with respect to such source. . . .
>
> "(2) A temporary emergency suspension issued by a Governor under this subsection shall remain in effect for a maximum period of four months . . . ." (Emphasis added.)

According to petitioner, § 110(g) on its own terms "require[s]" the Administrator to process a proposed revision within a "four month period." Reply Brief for Petitioner 7.

This is petitioner's strongest claim, but we are constrained to reject it. Section 110(g) does not, by its terms, *require* the Administrator to take any action. It merely authorizes the Governor to suspend the existing SIP if certain action has occurred. True, it *presupposes* that some "four month period" is "required," but the incorporation of that mistaken presupposition does not, of itself, create a general requirement that the Administrator process all proposed revisions

within four months.[2] Whatever may be the correct interpretation of § 110(g)'s "required four month period," we do not think this passing mention can be inflated into a requirement that the Administrator process each and every proposed revision within four months.

IV

Although the 4-month deadline does not apply, EPA remains subject to the Administrative Procedure Act's (APA's) statutory requirements of timeliness. The APA requires agencies to conclude matters "within a reasonable time," 5 U. S. C. § 555(b), and provides a remedy for agency action "unreasonably delayed." 5 U. S. C. § 706(1). Respondent concedes, as we think it must, that its action on a proposed SIP revision is subject to that mandate. Brief for United States 19–20.

Petitioner's main claim is that any delay over four months is categorically unreasonable because it violates EPA's statutory duty to process a revision within that period. We have rejected that claim above, but we nevertheless must consider petitioner's alternative contention that EPA may not bring an action to enforce an existing SIP if it unreasonably delays in acting on the proposed revision. Without deciding whether the delay in this case was unreasonable, we now address this claim. Because the statute does not reveal any

[2] Even supposing, moreover, that § 110(g) does create some new requirement, it is not at all clear that the requirement is a general obligation on the part of the Administrator to process every proposed revision within four months. That section says only that the Governor may suspend the SIP if the State has submitted a proposed revision which, among other things, "the Administrator has not approved or disapproved under this section within the required four month period." The "required four month period" simply could impose a waiting period on the Governor; before he suspends the existing SIP, he must give the Administrator four months to consider the proposed revision. The Administrator is not always obliged to process a proposed revision within four months, although he may be constrained to act on certain proposals in that period if he wants to prevent the Governor from exercising his prerogative under § 110(g).

congressional intent to bar enforcement of an existing SIP if EPA delays unreasonably in acting on a proposed SIP revision, we agree with the Court of Appeals that such an enforcement action is not barred.

The language of the Clean Air Act plainly states that EPA may bring an action for penalties or injunctive relief whenever a person is in violation of any requirement of an "applicable implementation plan." § 113(b)(2), 42 U. S. C. § 7413(b)(2). There can be little or no doubt that the existing SIP remains the "applicable implementation plan" even after the State has submitted a proposed revision. The statute states: "For purposes of this chapter, an applicable implementation plan is the implementation plan, or most recent revision thereof, which has been approved under [§ 110(a), 42 U. S. C. § 7410(a)] or promulgated under [110(c), 42 U. S. C. § 7410(c)] and which implements the requirements of this section." § 110(d), 42 U. S. C. § 7410(d). Both this Court and the Courts of Appeals have recognized that the approved SIP is the applicable implementation plan during the time a SIP revision proposal is pending. See, *e. g.*, *Train* v. *Natural Resources Defense Council, Inc.*, 421 U. S. 60, 92 (1975); *United States* v. *Alcan Foil Products Division*, 889 F. 2d 1513, 1519 (CA6 1989), cert. pending, No. 89–1104; *United States* v. *Wheeling-Pittsburgh Steel Corp.*, 818 F. 2d 1077, 1084 (CA3 1987); *Duquesne Light* v. *EPA*, 225 U. S. App. D. C. 290, 305, 698 F. 2d 456, 471 (1983). The commentators agree with this conclusion. See D. Currie, Air Pollution § 8.07, n. 14 (Supp. 1990); 1 W. Rodgers, Jr., Environmental Law: Air and Water § 3.39(c) (1986 and Supp. 1988).

There is nothing in the statute that limits EPA's authority to enforce the "applicable implementation plan" solely to those cases where EPA has not unreasonably delayed action on a proposed SIP revision. Moreover, we find it significant that Congress expressly enacted an enforcement bar elsewhere in the statute. See § 113(d)(10); 42 U. S. C. § 7413(d)(10) ("During the period of the order . . . no Federal

enforcement action pursuant to this section and no action under section 304 of this Act shall be pursued against such owner. . . ."). The fact that Congress explicitly enacted an enforcement bar similar to the one proposed by petitioner in one section of the statute, but failed to do so in the section at issue in this case reinforces our refusal to import such a bar here. See *Russello* v. *United States*, 464 U. S. 16, 23 (1983).[8]

We note that other statutory remedies are available when EPA delays action on a SIP revision.[9] Although these statutory remedies may not appear to be so strong a deterrent to EPA delay as would an enforcement bar, these are the remedies that Congress has provided in the statute.[10] Cf. *Brock* v. *Pierce County*, 476 U. S. 253, 260 (1986) ("We would be most reluctant to conclude that every failure of an agency to observe a procedural requirement voids subsequent agency action, especially when important public rights are at stake. When, as here, there are less drastic remedies available for failure to meet a statutory deadline, courts should not assume that Congress intended the agency to lose its power to

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[8] Our conclusion is further supported by the language of § 110(g), 42 U. S. C. § 7410(g), discussed above. Section 110(g) grants certain authority to a State's governor to suspend the existing SIP after four months. As the Court of Appeals discerned, 876 F. 2d, at 1069, n. 6, there would have been no reason for Congress to add that section if the existing SIP automatically became unenforceable after some period of EPA delay. The existence of this explicit exception indicates that in all other circumstances the existing SIP remains in effect.

[9] As the Court of Appeals observed, the statutory remedies for EPA inaction include a suit to compel agency action under § 304(a)(2), 42 U. S. C. § 7604(a)(2), and a request pursuant to § 113(b), 42 U. S. C. § 7413(b), for reduction or elimination of penalties during any period in which unreasonable agency delay results in prejudice. 876 F. 2d, at 1067–1068.

[10] The Commonwealth of Massachusetts, the State whose interests are involved here, in a brief joined by 12 other States, asserts that its interest is better served by preserving EPA's ability to enforce the Act. See Brief for Massachusetts, et al., as *Amici Curiae* 10–12.

Exhibit 11

BEFORE THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF UTAH

IN AND FOR THE CENTRAL DIVISION

BEFORE THE HONORABLE BRUCE S. JENKINS, CHIEF JUDGE

* * *

Civil Action No. 86-C-924J
AND Civil Action No. 89-C-136J
MOTIONS FOR SUMMARY JUDGMENT
Tuesday, August 14, 1990
Salt Lake City, Utah

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SHARON STEEL CORPORATION, UV INDUSTRIES, INC. and UV INDUSTRIES, INC. LIQUIDATING TRUST, and THE ATLANTIC RICHFIELD COMPANY,

Defendants.

SHARON STEEL CORPORATION,

Counterclaimant,

v.

UNITED STATES OF AMERICA,

Counterdefendant.

UV INDUSTRIES, INC. LIQUIDATING TRUST,

Cross-Claimant,

v.

SHARON STEEL CORPORATION,

Cross-Defendant.

86-C-924

in CERCLA Litigation to only address instances where there are health risks, when they spend money on site and then seek to recover it; do not have a hazard ranking system, like EPA does, to address those sites that are at greatest risk; don't have a National Priorities List to deal with those sites that present the greatest risk.

So in short, to the extent that the Amoco Opinion has any vitality, at all, it ought to be limited to the circumstances that were before The Court; and that's a private cost recovery action.

That concludes my discussion of those elements of the Statute that pertain to the site, itself. I'd like to turn now to those portions of the Statute that relate to the Defendants' connection to the site and why they're responsible for it:

Four types of Parties are listed within CERCLA as liable parties or potentially liable Parties. Both the Trust and ARCO are successors in interest to Parties whom we argue fit under one or more of these provisions of the Statute.

We say that the Trust succeeded to the liabilities of The United States Company by expressly assuming them in the documents that create the Trust.

We say ARCO succeeded to the liabilities of the International Company through a series of mergers in which each of the succeeding entities expressly assumed the

liabilities of its predecessor.

On this Motion for Summary Judgment, we argue that the Trust's liability falls under part (2) of Section 107(a): The Trust succeeded to an owner or operator of the facility at the time the hazardous substances were disposed of there. Those facts are not disputed.

On this Motion we argue that ARCO is responsible pursuant to subpart (3) of the Statute. Its predecessor, International, arranged for the disposal of the tailings at the Midvale Mill.

Before getting more specific particularly about ARCO, I want to address a potential Argument that the Defendants have made--in fact, they have made it; it's not a potential Argument, it's a real one; and that's--that CERC- -- that successors as a Class are not liable under CERCLA.

Your Honor's familiar with the Argument. You've heard it before, from the Trust, in the context of its responsibility as a successor to UV Industries.

This is a broader Argument premised on the simple fact, they say that Congress did not include the word "successors" to those Parties in 107 that were liable; and therefore, Congress did not intend that successors be liable.

We disagree. The essence of the matter is straightforward: These Defendants expressly assumed their liabilities.

The Trust says they only assume them to the extent provided by Maine Law. We've argued extensively, over the past few years, why the Maine Corporate Survival Statute should be preempted by CERCLA. It's the only thing that stands in the way of the Trust's liability.

ARCO had -- ARCO has no Argument, except its general position that even though it expressly assumed Anaconda's liabilities, that it shouldn't be liable. What do they rely on? They have one District Court Opinion, Anspec versus Johnson Controls, currently on Appeal to the Sixth Circuit.

On the other hand, there is substantial Authority in support of the proposition that successors should be held liable, and that Authority begins with Title 1 of The United States Code. Title 1 says, in Section 1:

> "The words 'person' and 'whoever' include corporations, companies, associations, firms..." and others.

And in Section 5 of Title 1, the following appears:

> "The word 'company' or 'association', when used in reference to a corporation, shall be deemed to embrace the words 'successors and assigns of such company or association', in like manner as if these last-named words, or words of similar import, were expressed."

The general rule is that successors and assigns will be

covered in Federal Statutes.

Here we have the United States Smelting & Refining Company, a Corporation, and we have the International Smelting & Refining Company, a Corporation. Both of those words, pursuant to those Statutes, should be deemed to include successors.

I think that's pretty clear, at least if a Party is going to argue that in CERCLA, Congress intended to depart from this general proposition, It would have said so; and It did not.

Of course, the result of what the Defendants are saying is that we would be dealing with situations in which, to avoid in li- -- environmental liability, Companies would simply merge with another entity; and even though that other entity expressly assumed the liabilities of its predecessor, it would walk away.

Is that what the Congress rationally could have intended to result from this Environmental Statute? In our Reply Brief, we've cited a number of Opinions to The Court, including an important Opinion from the Third Circuit Court of Appeals, in the Smith Land Case. I'd like to quote a few sentences of it, for The Court, because I think it makes the important point:

"Congressional intent supports the conclusion that, when choosing between the taxpayers or a successor

corporation, the successor should bear the cost. Benefits from use of the pollutant as well as savings resulting from the failure to use non-hazardous disposal methods inured to the original corporation, its successors, and their respective stockholders and accrued only indirectly, if at all, to the general public. We believe it in line with the thrust of the legislation to permit--if not require--successor liability under traditional concepts."

Recently, after the Filing of The United States' Reply Brief, the Ninth Circuit Court of Appeals weighed in on this matter, and in a Case which I will provide a copy of for the Record--I just have a Slip Opinion, at this point--entitled Louisiana Pacific versus L-Bar Products, that was Filed on the 3rd of July, the Ninth Circuit joined the nearly unanimous group of Reports, that has Ruled that successor liability applies under CERCLA. And the Ninth Circuit expressly adopted the reasoning of the Third Circuit in Smith Land.

I will say no more about successors, at this point. I think the issue is clear enough, that The Court need not hear from me any further on it.

Having arrived here, it can be said that all issues with respect to the Trust's liability under the Statute are resolved. The Trust is the successor to The United States Smelting, Mining & Refining Company which owned, operated this

site for decades. It fits within (a)(2) of Section 107 as an owner and operator of a facility at the time hazardous substances were disposed of.

Let me turn now to ARCO: We allege in our Complaint, that ARCO is liable under Section 107(a)(3) of the Statute, as one who arranged for the disposal of hazardous substances at the Midvale site. We have also alleged in the Complaint, that ARCO is liable under Section 107(a)(2)--that is, that it was an operator, a giant operator, of the Midvale Mill--at the time hazardous substances were disposed of there.

In our Motion, we ask only that The Court address Itself to the range of the Count, in (a)(3). We left the (a)(2) Count for Trial.

We believe that disputed issues of material fact exist with respect to ARCO's role as a joint operator, and we believe it's inappropriate for Summary Judgment. ARCO has cross-moved as to the above issues.

I'm going to address, at this point, in arrangement for disposing a Count. As I said earlier, based upon the Deposition testimony of ARCO's own expert, with which it has no disagreement, you cannot mill ore without creating tailings. It cannot be done.

If International had milled its ore at its own facility, we wouldn't be here arguing about whether it disposed of tailings. The only difference is that here, International

respect to each and every bill that the Government is going to present us.

So it's really kind of meaningless to say, "Well, the Government's going to get to present some bills," because when they present a bill for this Court to endorse, what they're going to have to show is, "This is money. It was well spent. It was justified based on the conditions at the site, and our analysis of the conditions at the site; and it is proportionate to the conditions which we found."

A Ruling in the air, that, "Gee, we needed to respond," doesn't accomplish anything, doesn't save this Court time, and doesn't save anybody any proof; but it does seem to me, that the Government is not entitled to a Ruling in the air, because that word "cause" means something.

That's all that the Amoco Court said, and we think the Government needs to be put to more, proof before it's entitled to a Ruling on that point.

I want to touch very briefly, Your Honor, on successor liability. I admit to being somewhat handicapped since, certainly, many aspects of this issue have been argued for Your Honor on two previous occasions, and you have made Rulings which touch on some aspects of this. I will not belabor The Court with rearguing that, and I'm not going to try to replow old ground.

I would simply point out, Your Honor, with respect to

the Trust, that we do disagree with the Government's characterization that we are a successor in Law, as that term is commonly understood. The Government has yet to cite a single Case in which a Liquidating Trust was found to be a successor.

We didn't continue in the business. The Liquidating Trust was set up for the sole and exclusive purpose of turning things into cash, and getting them out to the unit holders as quickly as possible. That is not what successor liability is about.

We are, however -- we have crossed that bridge a couple of times already, and again, I won't -- I won't burden The Court.

I would -- I am deferring a portion of this Argument relating to Anspec, to my co-Counsel, David Tundermann, by pre-arrangement. We've divided up some issues, so that we don't bore Your Honor to death; and he will address the other aspect of successor liability relating to the vitality or validity of the Anspec Ruling.

The other aspect of our Motions today, Your Honor, deal pretty much with the claims that ARCO raises in its Cross Motion for Summary Judgment; and obviously, it's best for me to wait for Mr. Tundermann to address that, before I respond.

So if there are no further questions.

THE COURT: Okay. Thank you. (11:35 a.m.)

instance in which either Company says to the other, "That's none of your business. That's my prerogative. Under the Agreement in question, that is reserved exclusively to me."

These people operated as a team. In the end, we think that the Record is more than sufficient to support potential liability under either the generator or the operator theory. We think that the Record establishes that International's relationship both to the output of the Mill and the operation of the Mill was significant and satisfies the requirements of 107(a)(2) and 107(a)(3).

ARCO's attempts to raise questions about ownership of the tailings and control, at best, amount to saying there are disputed issues of material fact. In fact, we submit, Your Honor, that those are not much more than quibbles that are wide of the mark, and don't undermine the substantial bases that we've advanced for finding liability.

We think that ARCO has failed to meet its burden it's entitled to Summary Judgment on either theory; and therefore, their Motion must be denied.

If there are any questions, I'd be happy to address them.

RESPONSE (4:08 p.m.)

BY MR. DAVIS: Your Honor, John Davis, on behalf of Sharon Steel Corporation. Given the lateness of the hour, my comments will be very brief.

First, as Mr. Fisherow mentioned, The United States and Sharon Steel Corporation have reached a settlement, subject to Your Honor's approval, of course, on both the Mill site Case and the Smelter Case; and we are also currently working very hard on settling our differences with UV.

In light of that, my Argument will be limited to strictly the Memorandum in Opposition that we Filed against ARCO; and further, those Arguments will be limited to primarily the joint venture Argument and the issue of ownership of the tailings by International.

Much of that has been discussed, and I don't intend to rehash those Arguments, but there are several points I would like to make: We, turning first to the ownership of tailings by International, the ownership issue in general, under 107(a)(3), the arrange for disposal Argument:

We agree with Mr. Fisherow's analysis and that of UV's, that other Courts have looked at the ownership issue and determined that 107(a)(3) satisfies -- is satisfied if there is sufficient relationship to the wastes -- sufficient relationship of -- of that individual who is being charged with -- with that provision, to be considered responsible.

In addition, however, we also believe that International must concede, and I believe that -- that it was conceded today, that it owned the ore and all of its constituents at all times while at -- that that ore was in process.

International poses the theory that upon final separation of the last concentrate, whether it was lead concentrate, or zinc concentrate, or the iron pyrite concentrate, what was left was automatically and immediately owned by U.S. Company.

Although Counsel for ARCO couldn't advise The Court where, exactly, it becomes the property of the miller in that process, the Cases and the Treatises cited by ARCO also simply do not support where, or if, that tailings byproduct or waste becomes the property of the miller during the process. Those Cases --

THE COURT: Isn't it --

MR. DAVIS: Those cases only deal -- excuse me, Your Honor?

THE COURT: Does it really make any difference?

MR. DAVIS: Well, we would -- we would first submit that it doesn't, under the line of Cases that Mr. Fisherow pointed out in his Argument.

Second, if it does matter, if the ownership requirement is to be upheld under 107(a)(3) and applied to ARCO, then we submit that ARCO had to have owned those tailings at least at some point in the process. Whether title eventually passed to UV by the -- either the Termination Agreement, or abandoned by them.

THE COURT: What if the contract simply expressly

said, "The ores are mine, going in. The concentration is mine, going out. At the end, what's left is yours": What difference does it make?

MR. DAVIS: "Yours" meaning whom, Your Honor? The miller?

THE COURT: The miller.

MR. DAVIS: Well, in that case, Your Honor, because of the -- the contact and because of the capacity for control and the actual control that -- that the International exercised over the process, they would still be liable because of their closeness to that arrangement and because of the fact that they didn't sell those ores.

THE COURT: Let me give you a garbage can full of bottles and papers, and I say, "Separate the bottles and the paper, and put the bottles over here and give them back to me; and you take the paper and put them out for the garbage man": Well, who's the generator?

MR. DAVIS: The generator in that -- in that case, Your Honor, whose -- whose bottles and paper were they? Were they International's bottles and paper?

THE COURT: Going in, theirs.

MR. DAVIS: Okay. They would be the generator. They arranged for the disposal of that paper and for the bottles.

THE COURT: And we agree--we expressly agree--that, "Put them out for the garbage man, or if you want to keep

them, keep them."

MR. DAVIS: Under that circumstance, they would have arranged for disposal of that paper product, or that paper waste, or that paper byproduct, whatever you want to call it.

I guess the only point I want to make with regard to the -- the mill ownership Cases is that they're not applicable in this Case. In those Cases the Courts were looking at controversies over impounded tailings that had been there for a long period of time. In this Case we're not looking at that. So I'll leave that point, at that.

THE COURT: Gee, from what I read in the Paper, you might be looking at that. Isn't somebody trying to buy those tailings?

MR. DAVIS: Well, we've had a lot of offers, Your Honor, but not many have been bona fide, if any.

THE COURT: Okay.

MR. DAVIS: Your Honor, one other point with regard to its -- to International's arrangement with the U.S. Company: International, as has been pointed out, had its own separate circuit for processing its ores, and therefore, could control that process at any point. It agreed to pay its share of costs associated with the disposal of the tailings and the maintenance of the tailings.

And as Mr. McDermott pointed out, we have an Exhibit, he -- he provided you with an Exhibit, and Sharon also has an

Exhibit in its Memorandum, and that's Exhibit Number 5, if Your Honor cares to look.

Third, there could be no confusion or no comingling of International's tailings with U.S. Company's tailings until disposal.

And finally, International didn't relinquish its ownership of any of the constituents of its ore.

Finally, Your Honor, with regard to --

THE COURT: Are you telling me that International now has the ownership interest in their share of that pile of stuff out there?

MR. DAVIS: No, I don't believe that that would be the conclusion if that was the issue at this point, because of the Termination Agreement. I think they split it down the middle, at that point. But the reference for inquiry is -- is during the arrangement.

THE COURT: Okay.

MR. DAVIS: Let me turn quickly to, I think -- I think we've beat the issue of ownership, to death; don't you?

Let me turn quickly to an area that we haven't discussed before Your Honor today, and that is the issue of joint venture and whether or not this arrangement constituted a classical joint venture between the Parties:

UV has argued that it does. Sharon has argued that the elements are sufficient for a Partnership. I'm here to

tell you today, Your Honor, that it's probably not sufficient in a classical sense.

However, the Milling and Smelting Agreements, as Mr. McDermott noted, were two integral parts to a single combination of business enterprises. The resulting enterprise had the effect, if not all the classic elements of a joint venture.

We have, I believe, beat to death, also, the factors; but let me quickly list them, and then I'll move on to something else: U.S. Company and International each bore their pro rata share of costs and expenses, each donated their respective facilities in furtherance of the venture's purpose and, in reliance upon the arrangement, each closed down their duplicative Mill and Smelter.

And all this was done contemporaneously, Your Honor. Each realized the profits, their own profits, based upon the resulting decreased costs and increased efficiencies of those Plants. Each specifically brought their technical expertise and abilities to the venture.

And finally, though not legally controlling, it is significant that the Parties refer to the arrangement as a joint venture; and this provides at least some evidence of the Parties' intent.

All of these factors, in our view, point to a joint economic and operational interdependence which clearly satis-

fies the requirements for a finding of "operator," under the Act.

Your Honor, those are the only comments I have today, unless you have some questions regarding those matters.

THE COURT: I don't have any.

MR. DAVIS: Thank you. (4:16 p.m.)

THE COURT: Anybody want to say anything else?

MR. FISHEROW: I've got a few comments, Your Honor.

THE COURT: Mr. Fisherow? Okay. We'll get back to you. I was just wanting to see if there was anyone else.

MR. FISHEROW: I will be brief, as well.

THE COURT: I should indicate for those of you who are staying over, that Mr. Manning is going to show some pictures tomorrow night at five o'clock, at his walk-up at the big mountain.

MR. FISHEROW: Maybe we'll catch them another time.

MR. MANNING: (Pausing for general laughter:) Maybe we can move it to tonight.

RESPONSE

BY MR. FISHEROW: Let me make a few brief comments, Your Honor, about some of the issues that have been discussed today. I think Your Honor has the drift of what's going on, here:

As to ARCO's operator liability Motion for Summary Judgment, The United States subscribes to the views that have been expressed by UV and Sharon Steel, we subscribe to the

documents that they put before The Court; we subscribe to their Arguments: This was not an arm's-length transaction between International and the U.S. Company.

THE COURT: Yeah, I take it --

MR. FISHEROW: Your Honor's recognized that.

THE COURT: I take it, you're limiting this to their Arguments in reference to operator and generator. I take it, you don't subscribe to their Arguments relating to exception.

MR. FISHEROW: I do -- you're right. I do not subscribe to those. You're more awake than I am. (Pausing for general laughter:) I think Your Honor's recognition of the 'no cost' aspect of this transaction is quite telling.

ARCO has pointed The Court to the Edward Hines Lumber Case. It likes that Case. I like it, too; not so much for the result, but for some language that the Court of Appeals used in describing the operator, or the putative operator, who was found not to be liable. They said "He hovered in the background."

After seeing all of this today, and listening to all of this Argument, it seems to me those words are important: Did International hover in the background with respect to operations at the Midvale Mill? I don't think it can fairly be said that they did.

The Trust submitted to The Court, on the 3rd of August, some supplemental documents for the Record, and I want to

take a moment, and it will only be a moment, to read for The Court just one of them. It was authored by an International employee who visited the Midvale Mill. It's contained in the UV Industries Liquidating Trust's Supplement to the Factual Record that I believe was Filed with The Court on August 3rd, and I'm reading from one of the documents, at the third tab. It's a handwritten note dated August 29th, 1961, and it reads as follows:

"Memo:

"Pat and I visited H. Johnson at Midvale this afternoon to discuss his proposals to impound and reclaim tailings water at a point near the south end of the tailings pond. On a direct question re the need for 4,000 gallons per minute at the Mill, Hugo said the only place they would use this extra water would be at the flotation mill. We figure they don't need that much for any foreseeable milling operation (1,000 to 1500 gallons per minute). The balance must be for their new coke process plant?"

As an example: These people were involved. Under the Legal tests that have been articulated by Counsel for the other Defendants, I believe, at a minimum, The Court can Find that there are disputed issues of material fact with respect to International's joint operation of the Midvale Mill and, as a consequence, I think Your Honor ought to deny their Motion for

Partial Summary Judgment on that matter.

With respect to the generator Count, I think Your Honor's hit the nail on the head: Look to the purpose of this transaction.

Mr. Tundermann did not refute my characterization of his Expert Witness's statement, which Your Honor, I think, has recognized: You can't mill ore without creating tailings. Simply cannot be done. And arranging to have your ore milled, you're arranging to have your tailings disposed of.

This Case, if anything, is stronger than the Pesticide Cases Aceto Agricultural and Velsicol. There, the generation of waste was more or less incidental to the processing. Here, it was the purpose of the arrangement. It was the fundamental reason that the ore was sent: To separate the concentrate from the tailings.

International had responsibility for it, and I think The Court ought to support and conclude that there's no genuine issue of disputed fact with respect to ARCO's responsibility as a generator.

I do dispute both the Trust's and ARCO's comments with respect to the mining waste exception; and, with respect to the issue of bureaucracy run amok, and the quantity of hazardous substances, --

THE COURT: I thought that was colorful.

MR. FISHEROW: (Pausing for general laughter:) I'll

try and be a little colorful, too.

First, as to quantity: I think quantity does count. And I don't want The Court to be of the view that it is The United States' position that quantity does not matter. A listed substance pursuant to Section 102 of CERCLA is a hazardous substance under Section 102, in any amount. I answered that question that Your Honor asked me earlier today, and I adhere to that answer. There is no threshhold in the Law, and liability may attach.

But the quantity of the hazardous substance released may still matter. It may be so small, that an endangerment to health or the environment may not exist. It may be so small, that a remedial action is not necessary.

Fundamentally, I return to what I said before: Questions of quantity are questions that go to matters of relief, and not to matters of liability.

There was some suggestion from Mr. McDermott, and I think also from Mr. Tundermann, of a fatal inconsistency between what EPA has done under RCRA and what it has done under CERCLA. The suggestion was --

THE COURT: Well, ordinarily, ordinarily, when you're dealing with relief, in whatever form, the question of liability is ordinarily tied in with a consequence. I mean, ordinarily, you don't find someone liable and say, "But you don't have to do anything about it."

MR. FISHEROW: We wouldn't bring a Lawsuit to allege liability, if we weren't going to do something about it.

THE COURT: No, what I'm a little troubled with, here, even assuming you get around their exception Arguments, is the suggestion that it's appropriate to find liability in the absence, really, the absence of the context of the consequence for making a Finding of that kind.

You say, "Judge, as a practical matter, the Congress has determined that a list of substances of any quantity equals liability."

And you say, "All right, well, liable for what? I mean, to what do you really respond? How can one make a Finding of liability regardless of what Congress has acquiesced in somebody putting on a list, until you're acquainted with the context of the location--the site, the facility - whatever you want to call it--as well as the consequence?"

I'm troubled with that Process. You say, "Judge, make a Finding of liability, and after we find liability, we find liability based not on what's there, but on what Congress has Decreed in reference to a particular list of substances."

MR. FISHEROW: That's right, Your Honor. And Congress did not determine that Your Honor, in determining whether these individuals are responsible for what is there, that Your Honor has to conclude that some threshhold amount was deposited or that some particular adverse consequence would ensue.

I return to what I said before: We would not initiate a Process, a Litigation, simply to ask a Court to Find liability in the abstract. For convenience' sake, we have asked The Court to bifurcate this Proceeding into two phases: First, to establish that these Defendants are responsible for relief; and then to address what the appropriate nature of relief is.

We're not going to stop this Case, after we gain a Finding of liability or gain a Finding of imminent and substantial endangerment. That's not what we're about. What we're about is cleaning this site up. And questions of quantity are only addressed, and can only really be legitimately addressed, when you look at what to do.

All I'm saying to you is: Those are not issues that Congress determined to be addressed as matters of liability; they are matters that Congress determined to be addressed in terms of response, in terms of relief.

THE COURT: Well, there's a suggestion here, however, that of these 12 million tons plus, that some contributed more to the pile than others; and there's a suggestion that this may be an appropriate Case for something other than joint and several liability; this may be a Case involving apportionment, in some way.

And then you say, "Well, okay. Liable? Liable because Congress says, 'Any quantity equals hazard'--any

quantity: hazard--liability": Well, liability for what?

MR. FISHEROW: Liability for response costs incurred in a fashion not inconsistent with the National Contingency Plan; liability for abating an imminent and substantial endangerment that we will prove to Your Honor exists. We're not working in the abstract, Your Honor; --

THE COURT: Well, I --

MR. FISHEROW: -- what we're doing is dealing with the way the Case has been set up.

THE COURT: I understand that, and we're sequencing, here, --

MR. FISHEROW: That's right.

THE COURT: -- and we're saying, "At this particular sequence, Judge, we're interested in your making this particular Finding."

And I say, "Well, I'm a little uncomfortable with that, because I'm not interested in simply making a Finding because Congress has decreed that particular materials in any quantity on a particular list equal hazard."

I'm perhaps more comfortable in looking at a particular problem within the context of what's physically there, and the kinds of contributions that people may have made to that particular pile; enlarged or diminished, depending on the winds, and the rains, and the rivers, and the talk - and all that.

And I'm concerned, as I say, even if you get around this exception concept, as to how one may legitimately at this point, at this point, absent a full context, make a Finding of liability, other than just go through the exercise and say, "Congress has decreed."

MR. FISHEROW: We've pled these issues to you on Summary Judgment in advance of Trial, as we have on numerous other occasions to other Courts, in the same context. We ask Courts to Rule that the, in effect, cookbook requirements of the Statute, which no one disputes--yes, they dispute whether they satisfy them, or not; but they're there--whether those requirements are satisfied, and we get them out of the way.

If I were in Your Honor's shoes, I'd feel exactly the same. What's important to you is not some abstract discussion of liability, or not, but what we're going to do about it.

And that's why we have to try: We have to demonstrate to you, to get injunctive relief in this Case, that the wastes that are out there, that have blown off the site, or have leached into the groundwater, or that exist in the impoundment, themselves, may present an endangerment to the people who live near by, or who use that water.

We will not ask you to render Judgment that these people are liable for anything, without that context. What we're asking you now to do is to tell us that the basic predicates for moving forward are satisfied. And it's as

simple as that.

Yes, it has an element of abstraction to it; but it's an element of abstraction that's inherent in the Process. We are living in it -- we are dealing with a two-stage Process where we deal with questions of liability in the abstract, because they're presented in the Statute that way.

Questions of relief obviously are far more significant. They're the whole purpose of the Superfund Program. And as I say, it's the purpose of the Trial.

Let me turn to the suggested inconsistency between what EPA has done under the Resource Conservation and Recovery Act, RCRA, and what it's done under CERCLA, in listing these substances as hazardous substances:

I believe the suggestion was made earlier--perhaps by Mr. McDermott, perhaps by Mr. Tundermann--that EPA had decided, under RCRA, that mine wastes are not hazardous in the common sense that that term is used.

It didn't decide that. What EPA decided was that mining waste need not be regulated as a RCRA-hazardous waste. That's a different concept. Hazardous waste is a term of art, defined in RCRA.

To decide that something need not be regulated as a hazardous waste does not mean it cannot be hazardous in common parlance. Under RCRA, hazardous waste is regulated under a full panoply of very stringent, highly detailed Regulatory

Standards contained in part 264 in Title 40 of the Code of Federal Regulations.

It's been described as a cradle-to-grave management system for hazardous wastes--documents of all kinds, manifests of all kinds--regarding the transport, the inspection requirements, the treatment, the storage, the disposal--regulation to the enth degree--is prescribed for RCRA hazardous wastes.

EPA decided it wasn't necessary, as a rule--as a rule--to subject tailings and other kinds of beneficiation wastes to this kind of a regime. But in our Opening Brief, we made the point, and I repeat it here, that EPA reserved, and Congress permitted EPA to reserve, the Right to address and to remedy specific problems with mining wastes, if they are proven to be an endangerment to human health or the environment.

There's no blanket determination that mining wastes are not hazardous. What we're talking about is RCRA, not CERCLA; we're talking about a Regulatory System.

THE COURT: Okay. Under that Regulatory System, would it be permissible to transport these materials without any degree of regulation?

MR. FISHEROW: Absolutely not.

THE COURT: What?

MR. FISHEROW: Absolutely not. It is not permissible to transport hazardous wastes without any degree of regulatory control. That's precisely my point: There's a very high

degree of regulatory control over those wastes.

THE COURT: Well, maybe I misunderstood you. I thought you had suggested, that under RCRA, that 'tailings', in quotation marks, were not hazardous wastes.

MR. FISHEROW: That's -- that's -- they're not regulated as hazardous wastes.

THE COURT: And if they're not regulated as hazardous wastes, then my query was: Is it permissible, under RCRA, to transport it?

MR. FISHEROW: Your Honor, I cannot answer in detail. My understanding of the non-hazardous waste Regulations under RCRA is not good. I believe that there are requirements that govern how you manage those wastes, even though they are not hazardous.

I believe there are requirements on how you transport them, how you treat them, and how you store them; but it must be clear that they are less rigorous than if they were hazardous wastes. That has to be true. But it's another Statute; and it's rating and managing the creation of these wastes prospectively.

CERCLA does not look prospectively; CERCLA looks retrospectively and remedies hazardous waste problems that have already occurred. If a waste is a hazardous waste under RCRA, yes, it can be a CERCLA hazardous substance; but if it's not a hazardous waste under RCRA, that doesn't mean it cannot be a

CERCLA hazardous substance.

We've got two portions of this definition that are applicable. Either one suffices.

THE COURT: Now, Counsel suggested that a Study may have been undertaken pursuant to the exception.

MR. FISHEROW: Indeed, there was, Your Honor, and you're absolutely right, and Counsel is right; and that Study is taken under the Resource Conservation and Recovery Act to come to a determination as to whether EPA ought to regulate these kinds of wastes, beneficiation wastes; as hazardous wastes or non-hazardous wastes.

And the conclusion is, as has been stated: Based upon that study, the conclusion was that you did not need to regulate them prospectively as hazardous wastes. It was not the conclusion that they were not hazardous. There's a difference.

As to the Legislative History, and the Cases, and the proper interpretation of this mine waste exclusion Argument, my basic question is this: Who agrees with them? For ten years, they've been trying this Argument through two Sessions of the Congress that have enacted CERCLA and reauthorized CERCLA; through every Court that will listen.

No one has agreed. They'll have another chance in 1991, when the Superfund Statute is again reauthorized. And I submit to The Court, if they're successful, the world will

know; but until then, this Court should not be the one to depart from settled Law.

I want to conclude with a reaction to the Defendants' concern that CERCLA is too tough, and that we have a bureaucracy run amok because of the absence of some quantitative threshhold for action under the Superfund Law.

THE COURT: Well, I would guess the Petroleum people would agree with that.

MR. FISHEROW: They were successful, apparently, Your Honor. The Mining Industry was not.

When you impose an adverse effects requirement into a strict liability Statute--be it the Superfund Law, be it the Federal Trade Commission Act, which proscribes unfair or deceptive acts or practices that have only the tendency or the capacity to deceive--when you impose an effects test, you gut the Statute. You require proof of actual deception, under the FTC Act, you require proof of harm, under CERCLA, and you gut the Statute because you inhibit the vigorous enforcement of the Law.

Congress gave EPA very strong tools. We admit it. CERCLA is a very tough Statute. But EPA didn't make it tough, and I didn't make it tough; Congress made it tough. And Congress knew exactly what It was doing, because It didn't want Lawsuits dragging on for years; it wanted people to come to the settlement table and agree to clean these things up.

What's the evil that we're worried about, from this tipped Statute in favor of the Government? It's nice to have a copper penny example to use as an extreme case to test the Government's logic; but until we have evidence--and we don't--that EPA is abusing this awesome Power, as the Defendants would claim, by being too tough, or moving too fast, or abusing Defendants, then the copper penny example is just that: It's an abstract extreme example, and it's only that.

Mr. Tundermann's examples indeed support that theory - but let's use it anyway: Copper penny. On the beach. Ocean. Release. Incurrence of response costs. Liability.

And as Your Honor said, "Liability for what?"

And that's where their Argument breaks down. EPA only gets its costs, only gets relief, to the extent that its costs and its actions are not inconsistent with the National Contingency Plan.

Now, what is the National Contingency Plan? A broadly-focused Regulation adopted pursuant to Notice and Comment, pursuant to Statute, that governs how and when EPA will assess, investigate and respond to the releases of hazardous substances. EPA's costs are recoverable only to the extent that they're consistent with the provisions of that Plan.

The NCP provides substantial protection for Defendants against the kind of abstract abuse that they're talking about. It's precisely because of the existence of the NCP,

that Congress was as comfortable with the tough liability provisions in the Statute, as It was.

We have an Administrative Agency vested by the Congress, and exhorted by the Public, to deal with this problem of hazardous wastes in our Country. EPA's actions are entitled to a presumption, a regularity, and propriety. If the Program is too zealous, EPA is overreaching too much, it's for the Congress to rein it in; not for Defendants in hazardous waste Cases.

I have nothing further, Your Honor. Thank you.

MR. TUNDERMANN: If I might make a closing point or two, Your Honor. (4:42 p.m.)

THE COURT: Yes. Yes. Sure.

RESPONSE

BY MR. TUNDERMANN: The NCP--and I just want to follow up, on Mr. Fisherow's concluding comments--the NCP defines the measure of damages; it does not define the standard of liability. The standard of liability is defined in the words of Section 107, that we've been discussing.

And I think that the linkage that Your Honor was looking for, its discomfort with the abstract list, is found in the definitions of "remedy" and "removal" in Section 101:

"Remedy or removal means the taking of such actions as may be necessary to prevent, minimize or mitigate damage to the public health or welfare or to the

environment. Remedy means those actions consistent with permanent remedy to prevent or minimize the release of hazardous substances so that they do not migrate or cause substantial danger to present or future public health or welfare or the environment."

A release of hazardous substance must cause the need for a response. The causal link, there, is not just one; in fact, the question of liability is not whether the Government in fact incurred response costs; the question of liability is whether the Government was warranted in undertaking response costs necessary to prevent substantial danger to present or future public health or the environment.

I think that is the missing link, Your Honor; and Your Honor doesn't have to look anywhere but to the words of Congress, to find that link.

The only other comment I would make, Your Honor, is that when I went over the U.S. Exhibit some time ago, I did intend to leave Your Honor and Counsel a hard copy of that; and I will pass that around now.

The reason I would like to make that available is that under the Standards for granting Summary Judgment Motions, the question whether disputed issues on material facts exist is important.

ARCO contends, Your Honor, that when you cut through all this smoke, and the pounds and pounds of paper that have

been given to Your Honor in connection with this Motion, when you look at what International did at the Mill, you will find, although there are disputes over whether disputed facts exist, when you look at the Record, you will not find disputed issues of fact sufficient to deny ARCO Summary Judgment on its Motions.

Thank you. (4:45 p.m.)

MR. ALLRED: Your Honor, there were some other Motions pending: Motions of ARCO to strike portions of the Affidavits of Steinbach and Kastelic, I believe. We would like to submit those on the Briefs.

RULINGS AND ORDERS

THE COURT: Okay. Okay.

In dealing with your Motion as to the exemption or the exception, we're not writing, really, on a clean slate. We have had a history. We have had an interesting Case, the Eagle-Picher Case.

Is that one the Solicitor General wrote when he was on that Court?

MR. TUNDERMANN: That's correct, Your Honor.

THE COURT: Gee, I'm wondering if he regretted writing anything.

(Pausing for general laughter:) But Eagle-Picher is there; and while it's not necessarily binding here, it is of some moment, and it does, indeed, contribute to the whole

history. There have, indeed, been Others who have followed it without doing a lot more than following it, but They did, indeed, follow it.

I think the more telling aspect of history, however, is the action or inaction on the part of Congress; and in that whole context, it seems to me, that it makes sense to follow what appears to be the tenor of Congress - namely, to acquiesce in the construction put forward by Eagle-Picher, recognizing, again, that we're not writing on an absolutely clean slate, and that the problem presented in context in 1990 is, in a sense, a different problem than existed at the time that the matter was first presented for construction.

So as to the Motion for Summary Judgment footed upon the exception, I think at this juncture we'll deny that Motion.

I'm genuinely troubled in dealing with the suggestion that We ought to Find liability essentially footed on the existence of a list authorized to be constructed by Congress, without a more thorough appreciation of the context of the problem itself.

The Argument is, that these are really a condition or a status, and what we're really concerned with is what may be appropriate to do about it; but it seems to me, that in order to get to the point where you have to determine what may be appropriate to do, that one needs a genuine appreciation as to

the nature of the contribution of the alleged offender to the condition that may exist.

And I believe I would be hard-pressed to grant the Government's Motion as to liability, and at this juncture, I think it's best that I deny it, which I will do at this point.

In passing, I think it probably will make sense, even though it deals with one aspect of, or one phase, I should say, or one element--whatever--of the larger question, I think it's only fair to indicate to you at least my current feeling in reference to the limited Motions as to the status of operator and as to the status of generator, even though that may be subsumed in the larger question; but I think that as long as We're in the Process, We might as well deal with what We can deal with.

It seems to me, that a predecessor of ARCO--International--is a generator, and that's assuming all of the needed things; and I think, in part, because of the peculiar circumstances of the arrangement of the two Parties to the contracts, I'm much more comfortable in dealing with the question of generator, under the circumstances, than I am with the question of operator.

And that may be academic, I don't know. But as to the status of operator, I think that there, there are far more factual questions that need to be resolved in order for one to comfortably draw an inference of an operator.

I think a smaller factual footing is required in dealing with the status of ARCO's predecessor as a generator; and to the extent that we're dealing with the Motion, that subdivision of the Motion as to the status, and generator to that extent, I'll grant the Motion as to the -- as to the Motion of ARCO's predecessor, of ARCO.

As to the other side of the coin in reference to operator, I'm not prepared at this time to make a Finding that they are, or were not, an operator; thus, I'll agree with the position of The United States, that there are unresolved questions of fact in that particular area.

As to the liability of successors, it would be a, in my Opinion, an emasculation of the Statute to suggest that successors can succeed to the benefits and not succeed to the detriments. I'm convinced, personally, that successors are liable not only to achieve the Public Purposes of the Statute, as a Statute, but in this particular instance, as well, you had special undertakings on the part of at least predecessors of ARCO, and ARCO itself.

So I should indicate that ARCO's status as a successor in no way relieves ARCO of the obligations that may have been created by the predecessor; and do, indeed, as well, as I say, point to the document, where there was an express undertaking.

What haven't I dealt with?

MR. ALLRED: Implicitly, Your Honor, I take it, you have dealt with ARCO's Cross Motion for Summary Judgment on generator and operator liability, but you haven't expressly stated so.

THE COURT: Yeah, I've indicated that as far as I'm concerned, you're a generator. To that extent, I have granted the Motion of The United States. I've denied your Motion in reference to operator. I think we're in contest, as far as facts are concerned, in reference to that.

And I've made that Finding without -- let's say, where I have assumed, but haven't Found, certain other conditions.

We've talked about, we've talked about, for example, the concept of release, and there is a -- there has been a suggestion that there needs to be something more than simply placing the item at a particular location. There needs to be, oh, the assistance of the winds, or the rains, or the ground-water, and matters of that kind; and there's a suggestion made, an assertion made, that if simply placing isn't sufficient, that the other things are there, as well; the erosion on the Jordan River, and the dust wafted through the air, the migration of the elements into the ground, into the aquifer - whatever.

I'm interested, I'm interested, in a question of release, and haven't made any Finding in reference to release,

though I believe that the concept is a very, very broad concept; and when one speaks of environment, it's an interesting suggestion that one speaks of something other than one's own tank, or one's own property, or one's own bin, one's own location; and we'll have an opportunity of discussing release in more detail, when we pre-try the matter; and in the interim, I may, or may not, discuss it in intermim, depending on what needs to be done.

But other than, in effect, reserving on the question of release and denying the Motion other than in reference to the question of generator, I think I've covered it, at this point; and in doing so, I should --

Yes, Mr. Fisherow?

MR. FISHEROW: Excuse me, Your Honor. You have spoken on the question of successor liability, but your comments were directed to ARCO. I know Your Honor has, on two occasions before, considered the issue of successor liability with respect to the Trust.

THE COURT: Yeah.

MR. FISHEROW: Did Your Honor want to express a Conclusion today in that regard?

THE COURT: Well, I've expressed my Conclusions in reference to the Trust, on prior occasions; and I have indicated that I'm willing to discuss that. There's an effort to revisit that the third time; but I have indicated that we will

revisit that at Pretrial, if at all.

Generally, I'd indicated, that in times past, that the shareholders' interests are residual interests. They get paid after all the creditors get paid. Ordinarily, if we have assets that are transmuted into money, the money rides with the burden. It's not free money until we make sure that the creditors are taken care of.

And that's essentially what we talked about before; but, and I didn't really feel constrained to deal with that again today, but I did promise people I would deal with that in context of Pretrial, and am willing--and am willing--to do that.

MR. FISHEROW: Thank you, Your Honor.

THE COURT: And I might indicate, as well, that I felt that it made sense to at least indicate to you the Rulings and Holdings today. In doing so, I don't want to suggest that I have exhausted the reasons nor do I -- and I should indicate that I reserve the Right to expand on the subject, if I feel inclined and if I have the time and energy, and reserve the Right to write on the subject, if time permits.

But I thought, that because of the nature of what we've been doing, that it would be well to at least indicate to you the Rulings today.

We do have the matter set down for a fairly extended Pretrial commencing on the 10th of September, at 9:30 in the

morning; and if I remember it correctly, -- well, there was a target date when you were going to get me a suggested form of Pretrial Order before then.

MR. ALLRED: August 31st.

MR. FISHEROW: August 31st, Your Honor.

THE COURT: So that I could at least have a chance to read it. I hope it doesn't comprise the 700 pages these Motions comprise; but three or four pages ought to be enough - other than your witness list, I guess.

Anything else we can accomplish?

(Pause:) Maybe it's an undesirable assignment, but to the extent that you have prevailed, if you would be kind enough to send me a suggested form of Order. To the extent that you haven't prevailed, don't. You know. If you could get that to me within ten days, if that's convenient.

Okay. Thank you, then.

MR. FISHEROW: Thank you very much, Your Honor.

MR. TUNDERMANN: Thank you, Your Honor.

MR. ALLRED: Thank you, Your Honor.

MR. TUNDERMANN: Thank you, Your Honor.

(Proceedings Concluded 5:09 p.m.)

* * *

Exhibit 12

**IN THE UNITED STATES DISTRICT COURT**
**DISTRICT OF UTAH, CENTRAL DIVISION**

| | |
|---|---|
| UNITED STATES OF AMERICA,<br><br>Plaintiff,<br><br>v.<br><br>SHARON STEEL CORPORATION, UV INDUSTRIES, INC., UV INDUSTRIES, INC. LIQUIDATING TRUST, and THE ATLANTIC RICHFIELD COMPANY, INC.,<br><br>Defendants. | Civil Action Nos. 86-C-924J |
| UNITED STATES OF AMERICA,<br><br>Plaintiff,<br><br>v.<br><br>SHARON STEEL CORPORATION, UV INDUSTRIES, INC., UV INDUSTRIES, INC. LIQUIDATING TRUST, VALLEY MATERIALS CORPORATION, LITTLESON, INC., CENTURY TERMINALS, INC., and BLACKHAWK SLAG PRODUCTS, INC.,<br><br>Defendants. | Civil Action Nos. 89-C-136J |

**PARTIAL CONSENT DECREE**

This Partial Consent Decree ("Decree") is made and entered into by and among the Plaintiff United States of America

("United States" or "Plaintiff"), on behalf of the United States Environmental Protection Agency ("EPA"); the Defendant UV Industries Inc. Liquidating Trust ("the Trust"), on behalf of itself and, to the extent required or permitted by law, UV Industries, Inc. ("UV"); and the State of Utah ("the State"), pursuant to the applicable provisions of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9101 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) ("CERCLA");

WHEREAS, the United States, on behalf of the Administrator of EPA, filed complaints in the above captioned actions pursuant to Sections 104, 106 and 107 of CERCLA, 42 U.S.C. §§ 9604, 9606 and 9607, for injunctive relief alleging imminent and substantial endangerments to public health, welfare or the environment at two facilities located in Midvale, Utah, and for reimbursement of costs incurred by the United States in response to the alleged release or threatened release of hazardous substances from these facilities, which have been named by EPA as the "Sharon Steel/Midvale Tailings Site" ("Tailings Site") and the "Midvale Slag Site" ("Slag Site") (collectively, the "Sites");

WHEREAS, the Tailings Site and the Slag Site both have been nominated for inclusion, pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, on the National Priorities List ("NPL");

WHEREAS, the United States alleges that, from approximately 1906 to 1971, UV (then known as "United States Smelting Refining and Mining Company" and hereinafter referred to as "USSRM") owned and operated certain ore beneficiation and processing establishments at the two Sites;

WHEREAS, the Tailings Site (as hereinafter defined) is located approximately twelve miles southwest of Salt Lake City and contains an estimated fourteen million tons of tailings generated from milling operations and processing conducted between approximately 1906 and 1971;

WHEREAS, the tailings from the operations at the Tailings Site remain in the form of piles, ponds and impoundments, which measure up to forty or fifty feet in height and allegedly contain elevated levels of such hazardous substances as arsenic, cadmium, chromium, lead and zinc;

WHEREAS, during the period from approximately 1906 to 1971, USSRM owned and operated various milling facilities at the Tailing Site;

WHEREAS, the Slag Site is located to the north of the Tailings Site, is comprised of approximately three hundred nineteen (319) acres formerly owned and operated by USSRM, and was used for smelting, refining, and other metals processing operations and for the disposal of slag and other waste products of such operations;

WHEREAS, USSRM operated a metal smelter at the Slag

Site which, until 1958, refined copper, gold, lead and silver and from which wastes were disposed of on the Slag Site;

WHEREAS, the United States alleges that each of the Sites is a "facility," as defined in Sections 101(9) and 101(20) of CERCLA, 42 U.S.C. §§ 9601(9) and 9601(20), at or from which hazardous substances, as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been released;

WHEREAS, the shareholders of UV voted on March 26, 1979 to adopt a Plan of Liquidation and Dissolution (the "Plan") and, as a part of that Plan, authorized the establishment of the Trust for the purpose of receiving on their behalf, prior to dissolution, a distribution of any remaining assets of UV not then reasonably susceptible to pro rata distribution to them;

WHEREAS, liquidation of UV was accomplished by the sale of all of UV's businesses and other transferable assets in three separate transactions, culminating in the sale of all then remaining transferable assets (including the Tailings Site and a portion of the Slag Site) to Sharon Steel Corporation on November 26, 1979, pursuant to the terms of an Agreement for Purchase of Assets bearing that date;

WHEREAS, on March 24, 1980, UV distributed, within the meaning of applicable provisions of the Internal Revenue Code, all its remaining assets to the Trust;

WHEREAS, the Trust is a person, as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21);

WHEREAS, the United States alleges that hazardous substances at or from the Sites have been or are being released, or threatened to be released, as defined in Section 101(22) of CERCLA, 42 U.S.C. { 9601(22), into the environment through, inter alia, ground water flow, surface water flow, direct deposition into soils, and wind dispersion into the air;

WHEREAS, the United States alleges that it has responded and will continue to respond to the release and threatened releases of hazardous substances at the Sites and thereby has incurred and will continue to incur response costs within the meaning of Sections 101(25) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(25) and 9607(a);

WHEREAS, the United States alleges that the Trust has succeeded to the liabilities of UV;

WHEREAS, the United States alleges that the Trust and UV are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. { 9607(a), and thereby liable under Sections 106 and 107 of CERCLA, 42 U.S.C. {{ 9606 and 9607, for releases and threatened releases of hazardous substances at or from the Sites into the surface water, ground water, land surface, subsurface strata, and the ambient air in the vicinity of the Sites;

WHEREAS, the Trust contends that the Plan which was adopted by UV's shareholders was designed to satisfy, and did in all respects satisfy, the requirements of federal and state law governing liquidations and dissolutions of this type, including Section 337 of the Internal Revenue Code of 1954, as it then

existed, and the Maine Business Corporation Act, which the Trust contends applied because UV was a Maine corporation;

WHEREAS, the Trust contends that, pursuant to the Plan, UV wound up its business affairs and liquidated by means of the sale of its businesses and other assets during the succeeding twelve month period and, on March 24, 1980, distributed all of its remaining assets to its shareholders in a final liquidating distribution by transferring those assets to the Trust;

WHEREAS, the Trust contends that since March 25, 1980, the date on which UV was legally dissolved, UV has not existed, has had no assets, has conducted no business, and has had no corporate organization, officers, directors, or employees;

WHEREAS, the Trust contends that, under governing principles of Federal and Maine law, no actions could be brought against UV unless commenced within two years of its legal dissolution;

WHEREAS, the Trust contends that any responsibility or liability which it might have for the acts of omissions of UV would be entirely derivative and would not be valid or enforceable unless an action thereon was commenced within two years of UV's dissolution;

WHEREAS, the Trust contends that it is not liable in these actions by reason of the fact, among others, that no proceeding of any kind was initiated by the United States against UV or the Trust until more than five years after UV dissolved;

WHEREAS, the Trust has raised numerous other defenses and has contested, and continues to contest, allegations made by the United States;

WHEREAS, a victory by the United States on the principal defenses raised by the Trust would, in all likelihood, ultimately result in judgments which would completely exhaust the remaining assets of the Trust;

WHEREAS, a victory by the Trust on the principal defenses which it has raised would bar recovery by the United States and third parties in the present actions and in any other pending or future actions brought under environmental statutes;

WHEREAS, the United States and the Trust each recognize and acknowledge that continuing litigation not only imposes significant litigation risks but also would inevitably increase costs, delay resolution, and substantially diminish the effective worth of victory to the party which ultimately prevails;

WHEREAS, the United States and the Trust wish to compromise and settle all claims relating to these actions, without admitting or conceding the validity of the allegations, claims, and contentions advanced by the other party, and to do so in a way which will permit an immediate recovery of substantial monies by the United States while at the same time permitting a distribution, after payment of Trust expenses, of the remaining monies to beneficial unitholders of the Trust and a final winding up of the affairs of the Trust and termination of the Trust's existence;

WHEREAS, the Trust and the United States agree to undertake all activities and complete all actions required of them respectively by this Decree;

WHEREAS, in consideration of, and in exchange for, the promises and covenants herein, and intending to be legally bound hereby, the Trust, the United States, and the State, by their authorized representatives, have agreed to entry of this Decree, subject to the provisions of Section XIII.A. hereof and 28 C.F.R. § 50.7;

WHEREAS, settlement of these matters governed by this Decree is in the public interest and an appropriate means of resolving these matters;

THEREFORE, without adjudication of any issue of law or fact and upon the consent of the parties thereto, it is hereby ORDERED, ADJUDGED AND DECREED, as follows:

## I.

## DEFINITIONS

In this Decree, the following terms shall have the following meanings:

A. "Actions" means Civil Nos. 86-C-924J and 89-C-136J, presently pending in this Court.

B. "Cash" means United States dollars in immediately available funds.

C. "Court" means the United States District Court for the District of Utah, Central Division.

D. "Tailings Site" means the mill site (including tailings and mill buildings), as described in Exhibit "A" annexed hereto, and soils and ground water beneath and down gradient of the mill site, any impacted area adjacent to and in the vicinity of the mill site, and any other areas necessary for the performance of the remedy.[1]

E. "Slag Site" means the former smelting and refinery site (including smelting and refining waste piles, buildings and other structures), as described in Exhibit "B" annexed hereto, and soils and ground water beneath and down gradient of the smelting and refinery site, the impacted areas adjacent to and in the vicinity of the smelting and refinery site, and any other areas necessary for the performance of the remedy.[2]

F. "Non-Settling Defendants" means Atlantic Richfield Company, Inc., Valley Materials Corporation, Littleson, Inc., Century Terminals, Inc., and Blackhawk Slag Products, Inc.

G. For purposes of Section IV C. 2. of this Decree, the phrase "legal fees and expenses incurred by the Trust in

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[1] The vertical and lateral extent of the Tailings Site and the impacted area of the Tailings Site will be determined in one or more Records of Decision for the Tailings Site, to be issued in the future.

[2] The vertical and lateral extent of the Slag Site and the impacted area of the Slag Site will be determined in one or more Records of Decision or Action Memoranda for the Slag Site, to be issued by EPA in the future.

obtaining such payment" shall include any payment to Sharon Steel Corporation to obtain a release of its actual or potential claims against the insurance carriers who are parties in Civil Action Nos. C-87-2306 and C-88-04792 in the Third Judicial District Court of Salt Lake County, Utah.

H. "Person" shall have the meaning set forth in Section 101(22) of CERCLA, 42 U.S.C. { 9601(22).

I. "Remedial Action" means those actions consistent with permanent remedy(ies) at the Tailings Site and the Slag Site, to be set forth in the final Records of Decision for each of the Sites, as described in Section 117 of CERCLA, 42 U.S.C. { 9617, or any modifications thereof consistent with CERCLA.

J. "Response" shall have the meaning set forth in Section 101(25) of CERCLA, 42 U.S.C. { 9601(25).

K. "Response Costs" means any costs which the United States has sought in the Actions.

L. "State" means the State of Utah and its agencies.

M. "Trustees" means the Liquidating Trustees of the UV Industries, Inc., Liquidating Trust.

N. "UV Industries, Inc. Liquidating Trust" ("the Trust") means that entity the creation of which was authorized by a vote of the shareholders of UV Industries, Inc. on March 26, 1979, and the creation of which was effectuated by the UV Industries, Inc. Liquidating Trust Agreement executed on March 24, 1980; provided, however, that for purposes of Sections

VI and VII of this Decree, it shall also mean the Liquidating Trustees and the employees, agents and beneficial unitholders of the Trust, solely in their respective capacities as such. This definition of the term "the Trust" shall not include any past or present parent, subsidiary, or business affiliate of UV Industries, Inc., or of the Trust.

O. "UV Industries, Inc." ("UV") means UV Industries, Inc. as it existed on March 24, 1980; provided, however, that for purposes of Sections VI and VII, it shall also mean the former officers, directors, employees, agents and shareholders of UV, solely in their respective capacities as such. This definition of the term "UV" does not include any past or present parent, subsidiary, or business affiliate of UV Industries, Inc., or of the Trust.

## II.

## JURISDICTION

This Court has jurisdiction over the subject matter herein, and over the parties consenting hereto, pursuant to Sections 106, 107 and 113 of CERCLA, 42 U.S.C. {{ 9606, 9607 and 9613, and 28 U.S.C. {{ 1331 and 1345.

## III.

## PARTIES BOUND

This Decree applies to and is binding upon the Trust, UV, the State, and the United States. Each undersigned

representative certifies that he or she is or will be, on or before the effective date of this Decree, fully authorized by the party whom he or she represents to enter into the terms and conditions of this Decree and to execute and legally bind the party hereto. The Trust, UV, and the State agree not to contest the jurisdiction of the United States to maintain the Actions.

## IV.

## PAYMENT OF THE UNITED STATES' RESPONSE COSTS

In full and complete satisfaction of all of UV's and the Trust's alleged liabilities, duties, and responsibilities arising out of or relating to the Actions and the Sites (except as limited by Section VII B., C., and D and in consideration of the Covenant not to Sue set forth in Section VII A. hereof, the United States shall receive the following consideration:

A. Subject to the provisions of paragraph B. of this Section, on the first business day following the day sixty (60) days after the date of entry of this Decree, the Trust shall pay to the United States an amount equal to sixty (60) percent of the "adjusted value" of all cash, direct United States Treasury Obligations, accumulated interest receivable on such United States Treasury Obligations, and any cash equivalents under the control of the Trustees.[3]

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[3] It is agreed by the Parties that monies held in Account no. 101-65E by the Mellon Bank Trust Department, as Exchange Agent for the Trust, are not under the control of the Trustees

B. For purposes of calculating the amount of the payment required by paragraph A. of this Section, the "adjusted value" of cash, direct United States Treasury Obligations, accumulated interest receivable on such United States Treasury Obligations, and cash equivalents shall be determined as provided in this paragraph and in paragraph C.

1. If this Decree receives final approval and is not subject to further challenge or appeal prior to the expiration of sixty (60) days from the date of entry by the Court, the "adjusted value" of cash, direct United States Treasury Obligations, accumulated interest receivable on such United States Treasury Obligations, and cash equivalents shall be the total value of such assets, fixed as of the day twenty-five (25) business days from the date of entry of this Decree, minus the sum of $750,000, and payments shall be made as provided in sub-paragraph D.1. of this Section.

2. If this Decree receives final approval and is subject to further challenge or appeal prior to the expiration of sixty (60) days from the date of entry by the court, and provided that any such challenge or appeal is finally resolved prior to the expiration of twelve (12) months from the date of entry by the Court, the "adjusted value" of cash, direct United States Treasury Obligations, and cash equivalents shall be the total

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and shall not be considered a part of the Trust estate for any purposes related hereto.

value of such assets, fixed as of the day twenty-five (25) business days from the date of entry of this Decree, minus the sum of $750,000, and payments shall be made as provided in sub-paragraph D.2. of this Section.

3. If, because of the pendency of litigation initiated or maintained by a Non-Settling Defendant or any intervenor or other party or third party, this Decree does not receive final approval and remains subject to further challenge or appeal on or after the expiration of twelve months from the date of entry by the Court, then the "adjusted value" as set forth in sub-paragraph B.2. of this Section, shall also be deemed to exclude the additional sum of $50,000 for each month subsequent to the first anniversary date of the entry of the Decree by this Court, until final approval, and payments shall be made as provided in sub-paragraph D.2. of this Section.

C. Following the payment required by paragraph A. of this Section, the Trust shall make or cause to be made further payments to the United States pursuant to the provisions of this paragraph C.

1. Within ten (10) business days of the date that any additional cash is deposited with any financial institution, into any account under the control of the Trustees or for the benefit of the Trust, the Trust shall pay or cause to be paid to the United States in cash an amount equal to sixty (60) percent of such deposited amount; provided, however, that no such payment shall be made upon the deposit or accrual of

interest paid to or earned by the Trust on assets which have already been subject to the valuation and payment provided for in paragraphs A, B, and C of this Section, and provided further that no such payment shall be made upon (a) monies received pursuant to sub-paragraphs B.3. and D.2 of this Section; or (b) monies received from any insurance carrier in reimbursement of the Trust's defense costs in the Actions or any other actions, unless such costs had been paid by the Trust prior to the calculation of the "adjusted value" pursuant to sub-paragraphs B.1. and B.2. of this Section.

2. In the event that any cash deposited into any such account constitutes a payment to the Trust by Sharon Steel Corporation or by one or more insurance carriers that issued comprehensive general liability policies to UV, then prior to calculating the amount equal to sixty (60) percent of such deposited amount to be paid to the United States, the Trust may subtract the reasonable costs of collection, including legal fees and expenses incurred by the Trust in obtaining such payment.

D. Payments required under the provisions of paragraphs A, B, and C of this Section shall be made by the Trust as follows:

1. If this Decree receives final approval by the Court and is not subject to further challenge or appeal prior to the expiration of sixty (60) days from the date of entry by the Court, then the Trust shall make the required payments by wire transfer to the "Hazardous Substances Superfund." The wire

transfer shall reference the name UV Industries, Inc. Liquidating Trust and the Sites, and shall be directed to the following address:

Mellon Bank
EPA Region VIII
ATTN: Superfund Accounting
P. O. Box 360859M
Pittsburgh, PA 15251

2. If this Decree receives final approval by the Court, but is subject to further challenge or appeal prior to the expiration of sixty (60) days from the date of the entry by the Court, then, until all challenges or appeals are finally resolved, the Trust shall make required payments into an interest-bearing escrow account with a financial institution to be named in writing by the United States. The instructions to the escrow account trustee, which shall be signed by representatives of the United States and the parties, shall provide, inter alia, (i) that in the event the Decree is upheld after all challenges and appeals are exhausted, the entire balance of the account, including accrued interest, shall be delivered to the Hazardous Substances Superfund, at the address set forth in sub-paragraph D.1. of this Section; (ii) that in the event the order of this Court entering this Decree is finally reversed and set aside, the entire balance in the account, including accrued interest, shall be delivered to the Trust, at the address and in the manner the Trust shall direct; (iii) that in the event that any appeal or challenge continues beyond twelve

(12) months from the date of entry of this Decree, the escrow account agent shall withdraw $30,000 on the first day of the month following the anniversary date of the entry of this Decree, and on the first day of each month thereafter until such appeal or challenge is finally resolved, and shall deliver this sum to the Trust at the address and in the manner the Trust shall direct, in accordance with the provisions of sub-paragraph B.3. of Section IV; and (iv) such other terms as the United States and the Trust shall agree to in writing.

3. Whenever any payment is made by the Trust pursuant to sub-paragraphs 1 or 2 of this Paragraph, the Trust shall simultaneously send or deliver documents evidencing such transfer to EPA at:

USEPA Region VIII (8RC)
999 - 18th Street, Suite 500
Denver, CO 80202-2405
ATTN: Assistant Regional Counsel
Sharon Steel Midvale Tailings
and
Remedial Cost Recover Coordinator (8HWM-SR)
999 - 18th Street, Suite 500
Denver, CO 80202-2405

and to the Department of Justice at:

Chief, Environmental Enforcement Section
P. O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

E. The Trust shall have the right to distribute to its unitholders, or to expend in any other manner consistent with the purposes of the Trust and the powers and duties of the Trustees, any and all monies not subject to payment to the United

States under this Section. The Trust may exercise this right at such time and in such manner as it chooses, on any date after entry of this Decree.

F. Should the Trust fail to make any payment to the United States required by this Decree on the date due, interest on the amount of such payment shall accrue and be payable to the United States on such amount at a rate equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the accepted auction price for the last auction of 52-week United States Treasury Bills settled immediately prior to the date when interest begins to accrue. In addition, should the Trust fail to make any required payment, the Trust shall pay in addition to amount required plus interest, stipulated penalties in the amount of $5,000 per day for each day that any payment required by Paragraph A. of this Section is past due and in the amount of $2,500 per day for each day that any other payment required by this Decree is past due; provided, however, that such penalty shall not accrue if the Trust is prohibited from making such payment by any order or law.

G. The Trust shall provide to the United States every two months, commencing with the month after entry of this Decree, financial statements disclosing the assets, liabilities, expenses, and cash flow of the Trust for such months.

## V.

## THE STATE

In full and complete satisfaction of all of UV's and the Trust's alleged liabilities, duties, and responsibilities arising out of or relating to the Actions and the Sites, the State hereby releases and agrees to hold UV and the Trust harmless for (i) any and all claims relating to the Tailings Site or the Slag Site, including, but not limited to, any claim for Response Costs incurred by the State, any claim or costs incurred by the State pursuant to any contract or cooperative agreement with the United States pursuant to Section 104(e)(3) of CERCLA, and any claim for damage to natural resources belonging to, managed by, appertaining to, or otherwise controlled by the State or under its trusteeship pursuant to Section 107(f)(2) of CERCLA, and (ii) any and all other claims regarding environmental matters as to the Sites or any other sites, regardless of whether such claims exist at the effective date of this Decree or come into existence after such effective date.

## VI.

## EFFECT OF SETTLEMENT

A. The compromise and settlement contained in this Decree was reached after extensive negotiations among the parties. This Decree represents a compromise between the parties with respect to the alleged liability of the Trust and UV arising out of or relating to the Actions.

B. By virtue of the payment of the amounts identified in Section IV of this Decree, the Trust and UV shall have finally and completely resolved all alleged liabilities of the Trust and UV to the United States for the matters covered by the Covenant Not to Sue in Section VII A. hereof and are hereby released therefrom. With regard to claims for contribution against the Trust or UV by the Non-Settling Defendants and Non-Settling Third Party Defendants in the Actions, and any other Person entitled to bring a claim against the Trust or UV under Section 107(a) of CERCLA relating to the matters covered by Section VII.A hereof, the parties hereto agree, and this Court hereby finds and concludes, that the statutory provisions of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), shall govern.

C. If the Trust fails to make any payment required by Section IV of this Decree, then, upon the expiration of 30 days from the date of the Trust's receipt of written notice of such failure, if such required payment then remains outstanding and unpaid, the Trust and UV shall lose the benefit of this Section VI; provided, however, that if the Trust fails to make a required payment as a result of the fact that the making of such payment would violate a law, rule of law, or an order applicable to the Trust or Trustees, then, subject to the provisions of Paragraph D. below, the Trust and UV shall not lose the benefit of this Section VI. If the Trust or Trustees believe that the making of any payment required pursuant to this Decree would violate a law, rule of law, or an order applicable to the Trust

or Trustees, then the Trust shall notify the United States as soon as the Trust learns of the circumstance leading to such impediment to such payment. The provisions of Section X on Dispute Resolution shall then apply.

D. If, as the result of the dispute resolution process referred to in Paragraph C., the Court finds that any payment required by this Decree would violate a law, rule of law, or order applicable to the Trust or Trustees, then the Trust shall lose the benefit of this Section VI and the Covenant Not to Sue contained in Section VII A. hereof, but only to the extent of any required payments not made as a result of such finding.

E. Nothing herein shall be deemed to adversely affect the Trust's or UV's rights against any Non-Settling Defendant, or any other potentially responsible party, other than the State.

F. Subject to the terms and conditions of this Decree, and upon this Decree becoming final and effective: (i) the complaint of the United States against UV and the Trust and the counterclaim asserted by UV and the Trust against the United States in Civil Action No. 86-C-924J shall be dismissed; and (ii) the complaint of the United States against UV and the Trust in Civil Action No. 89-C-136 shall be dismissed.

G. The United States and the State expressly reserve the right to bring actions or continue to proceed with the present actions, against any Person other than UV or the Trust who or which has not resolved its liability to the United States or the State respecting the Tailings Site or the Slag Site.

H. The Trust agrees that with respect to any suit or claim for contribution brought against it for matters covered by this Decree, it will timely notify the United States, in conformance with Section VIII hereof, of the institution of such suit or claim.

I. No previous ruling of this Court in the Actions on any issue of law or fact shall be deemed to be binding upon the parties hereto for any purpose in any other action or legal proceeding of any type or kind.

## VII.

## COVENANT NOT TO SUE

A. Except as specifically provided hereafter in Section VII C. and D. hereof, the United States and the State hereby covenant not to sue UV, the Trust, or any Trustee thereof (in their capacity as trustee) regarding the following matters:

1. Any matter alleged in either or both of the Actions, including any future liability with regard to the Tailings Site or the Slag Site and any liability which might arise as a result of the redisposal of any hazardous substances as required by Remedial Action conducted at either of the Sites;

2. Any matter relating to the Re-Solve, Inc. Superfund site located in North Dartmouth, Massachusetts.

B. Beyond the matters addressed in Paragraphs A.1. and 2. of this Section, the United States is unaware of any other

claims against UV or the Trust which it now or in the future may assert on behalf of the Environmental Protection Agency pursuant to the following statutes: Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.; Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; Clean Air Act, 42 U.S.C. § 7401 et seq.; Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; and Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et seq. Beyond the matters addressed in Paragraphs A.1. and 2. of this Section, the United States is also unaware of any claims against UV or the Trust for damages to natural resources which it now or in the future may assert on behalf of the Department of the Interior pursuant to Section 107(a)(4) (C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C). Accordingly, to allow for the orderly liquidation and termination of the Trust in accordance with this Consent Decree, the United States agrees not to assert any such claims in the future on behalf of the Environmental Protection Agency or the Department of the Interior or to otherwise object to or oppose the distribution of assets remaining in the Trust to the unitholders thereof.

C. This Section shall not be construed as a Covenant not to Sue any other Person, other than UV, the Trust, or any Trustee thereof. This Covenant not to Sue applies only to UV, the Trust, the Trustees, the United States, and the State.

D. This Covenant not to Sue shall not apply to the following:

1. Claims based on criminal liability;

2. Claims based on the failure to comply with this Decree;

E. For and in consideration of the covenants and promises made herein, UV, the Trust and the Trustees covenant not to sue or otherwise assert any cause of action, claim or demand against the United States or the State, including any claim pursuant to Section 112 of CERCLA, 42 U.S.C. § 9612, or any other provision of law, directly or indirectly, or against the Hazardous Substance Superfund established by 26 U.S.C. § 9507, or other claims against the United States or the State related to the Sites, the Actions, or this Decree; provided, however, that this Covenant not to Sue shall not apply to claims based on the failure of the United States to comply with this Decree.

F. Nothing in this Decree shall constitute preauthorization of a CERCLA claim within the meaning of 40 C.F.R. § 300.25(d).

## VIII.

## NOTICES

Unless otherwise stated in this Decree, whenever the terms of this Decree require that notice be given, it shall be directed in writing, by certified or registered mail, return receipt requested, to the following individuals at the addresses

specified below, or to such other individual or address as such individual may from time to time designate by notice:

A. If to the United States:

1. United States Department of Justice
Chief, Environmental Enforcement Section
Land and Natural Resources Division
Room 1541 (EES DOCKETS)
10th and Pennsylvania Avenue, N.W.
Washington, D.C. 20044

2. Assistant Regional Counsel for the
Sharon Steel / Midvale Slag Sites 8RC
United States Environmental Protection Agency
999 18th Street, Suite 500
Denver, CO 80202-2405

3. Remedial Cost Recovery Coordinator (8HWM-SR)
United States Environmental Protection Agency
999 18th Street, Suite 500
Denver, CO 80202-2405

4. EPA Regional Project Manager --8HWM-SR
Sharon Steel/Midvale Tailings Site
United States Environmental Protection Agency
999 18th Street, Suite 500
Denver, CO 80202-2405

5. EPA Regional Project Manager -- 8HWM-SR
Midvale Slag Site
United States Environmental Protection Agency
999 18th Street, Suite 500
Denver, CO 80202-2405

B. If to the State:

1. Fred G. Nelson, Esq.
Assistant Attorney General
State of Utah
124 State Capitol
Salt Lake City, UT 84114

C. If to the Trust:

1. Paul Kolton
Chairman
UV Industries, Inc. Liquidating Trust
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

2. Kenneth A. Leach
Trust Officer
UV Industries, Inc. Liquidating Trust
1370 Avenue of the Americas
New York, N.Y. 10019

3. Norton F. Tennille, Jr.
Jones, Day, Reavis & Pogue
Metropolitan Square
1450 G Street, N.W.
Washington, D.C. 20005

4. Roger D. Feldman
Gaston & Snow
1 Federal St.
Boston, MA 02110

## IX.

## MODIFICATION, SECTION HEADINGS

A. Except as specifically provided in this Decree or by the Federal Rules of Civil Procedure, no modifications shall be made to this Decree without notice to and prior written approval of the United States, the Trust, the State, and the Court.

B. All headings herein are for convenience only and are in no way to be construed as a part of this Decree or a limitation of the scope of the provisions to which they may refer.

X.

DISPUTE RESOLUTION

If any dispute arises between the parties with respect to any matter provided for by this Decree, such dispute shall in the first instance be the subject of good faith informal negotiations between the parties in an attempt to resolve such dispute. If such discussions fail to resolve the dispute, then the disputed matter shall be submitted to the Court for resolution.

XI.

RESPONSE AUTHORITY

Nothing in this Decree shall be deemed to limit the response authority of the United States under Section 104 of CERCLA, 42 U.S.C. § 9604, or any other law or regulation, or to alter the applicable legal principles governing judicial review of any action taken by the United States pursuant to that authority.

XII.

WITNESSES AND DOCUMENTS

Notwithstanding any other provision of this Decree, the Trust agrees to make adequate provision to maintain all records

relevant to the Actions and to cooperate fully with requests from the United States to provide access to such nonprivileged documents and to use its best efforts to encourage cooperation and testimony by the former employees, contractors, and potential witnesses of UV, and the Trust, that is relevant to the Actions and the Sites until both Actions have been fully resolved through the entries of final judgments and the resolution of any and all appeals therefrom. The Trust agrees that sixty days prior to any disposal or destruction of such nonprivileged documents, the Trust will notify the United States in writing and provide the opportunity to the United States to take custody of such documents.

## XIII.

## ENTRY, EFFECTIVE AND TERMINATION DATES

A. If determined to be appropriate, consistent with the provisions of 28 C.F.R. § 50.7, entry of this Decree by the Court shall be sought as soon as practicable after the expiration of the public notice and comment period provided with respect to this Decree.

B. This Decree shall not become final or effective until it has been unconditionally approved and finally entered by this Court.

C. After all of the Trust's payments to the United States have been made pursuant to Section IV above, the Trust shall notify the United States of its completion of such payments

and its intention to (i) finally liquidate and distribute all remaining assets in the Trust corpus after providing for such expenses as shall be necessary, and (ii) terminate its existence in accordance with applicable laws. Within thirty days after receipt of such notice this Decree shall terminate without further action by this Court or the parties unless the United States invokes the Dispute Resolution provisions of this Decree. Termination shall not affect the provisions of Sections I, III, IV, V, VI, VII, VIII, IX, XII, XIV, and XV hereof. Nothing in this Section shall limit the Trustees' authority to make distributions to unitholders prior to such termination, as provided in Section IV.

XIV.

COSTS

Each party hereto shall bear its own costs and attorney's fees except as otherwise provided herein.

XV.

RETENTION OF JURISDICTION

A. This Court shall retain jurisdiction of this Decree as it relates to the Actions for purposes of ensuring compliance with its terms and conditions.

B. The United States, the State and the Trust each retains the right to seek enforcement of the terms of this Decree and to take any action authorized by Federal Law not inconsistent

and its intention to (i) finally liquidate and distribute all remaining assets in the Trust corpus after providing for such expenses as shall be necessary, and (ii) terminate its existence in accordance with applicable laws. Within thirty days after receipt of such notice this Decree shall terminate without further action by this Court or the parties unless the United States invokes the Dispute Resolution provisions of this Decree. Termination shall not affect the provisions of Sections I, III, IV, V, VI, VII, VIII, IX, XII, XIV, and XV hereof. Nothing in this Section shall limit the Trustees' authority to make distributions to unitholders prior to such termination, as provided in Section IV.

XIV.

COSTS

Each party hereto shall bear its own costs and attorney's fees except as otherwise provided herein.

XV.

RETENTION OF JURISDICTION

A. This Court shall retain jurisdiction of this Decree as it relates to the Actions for purposes of ensuring compliance with its terms and conditions.

B. The United States, the State and the Trust each retains the right to seek enforcement of the terms of this Decree and to take any action authorized by Federal Law not inconsistent

with the terms of this Decree to achieve compliance with the terms and conditions of this Decree.

THE PARTIES ENTER INTO THIS PARTIAL CONSENT DECREE AND SUBMIT IT TO THE COURT, THAT IT MAY BE APPROVED AND ENTERED.

FOR UV INDUSTRIES, INC.
LIQUIDATING TRUST

By _____
PAUL KOLTON, Trustee as Trustee
of the UV Industries, Inc.
Liquidating Trust and not
individually

FOR THE STATE OF UTAH*

By _____
FRED G. NELSON
Assistant Attorney General
State of Utah
236 State Capitol
Salt Lake City, Utah 84114

By _____
KRIS D. BICKNELL
Greengard & Senter
400 S. Colorado Boulevard
Suite 700
Denver, Colorado 80222

By _____
KENNETH L. ALKEMA, Director
Department of Health
Division of Health
288 North, 1460 West
P.O. Box 16690
Salt Lake City, Utah 84116-0690

* The State of Utah's agreement is conditioned upon the U.S. Environmental Protection Agency's execution of an Administrative Order on Consent, the unexecuted version of which is dated August 20, 1990, that has been negotiated between the U.S. Environmental Protection Agency and the State of Utah.

FOR THE UNITED STATES:

RICHARD B. STEWART
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice
10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530

W. BENJAMIN FISHEROW
JOEL M. GROSS
DAVID E. STREET
GARY J. FISHER
LESLIE A. HULSE
Environmental Enforcement Section
Environment and Natural Resources Division
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This Decree is approved & is hereby Entered by the Court.

11/13/90

United States District Judge

mw

United States District Court
for the
District of Utah
November 14, 1990

* * MAILING CERTIFICATE OF CLERK * *

Re: 2:86-cv-00924

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Exhibit 13

BEFORE THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF UTAH
IN AND FOR THE CENTRAL DIVISION
BEFORE THE HONORABLE BRUCE S. JENKINS, CHIEF JUDGE

* * *

Civil Action No. 86-C-924J
PRESENTATION OF SETTLEMENT DECREES

Civil Action No. 89-C-136J
STATUS CONFERENCE

Tuesday, November 13, 1990
Salt Lake City, Utah

---

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SHARON STEEL CORPORATION, UV INDUSTRIES, INC. and UV INDUSTRIES, INC. LIQUIDATING TRUST, and THE ATLANTIC RICHFIELD COMPANY,

Defendants.

* * *

SHARON STEEL CORPORATION,

Counterclaimant,

v.

UNITED STATES OF AMERICA,

Counterdefendant.

* * *

UV INDUSTRIES, INC. LIQUIDATING TRUST,

Cross-Claimant,

v.

SHARON STEEL CORPORATION,

Cross-Defendant.

* * *

SHARON STEEL CORPORATION, a Pennsylvania corporation,

Third-Party Plaintiff,

v.

THE STATE OF UTAH, NEWPARK RESOURCES, INC., a corporation, PARK CITY CONSOLIDATED MINES, a corporation, CHIEF CONSOLIDATED MINING COMPANY, a corporation, JOHN DOES 1 through 100, individuals, companies and corporations,

Third-Party Defendants.

* * *

ATLANTIC RICHFIELD COMPANY, INC.,

Third-Party Plaintiff,

v.

UNITED PARK CITY MINES COMPANY, ARUNDEL MINING COMPANY, and DEER TRAIL DEVELOPMENT CORPORATION,

Third-Party Defendants.

* * *

UNITED PARK CITY MINES COMPANY,

Third-Party Plaintiff,

v.

ASARCO, INC.,

Third-Party Defendant.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SHARON STEEL CORPORATION, UV INDUSTRIES, INC., UV INDUSTRIES, INC., LIQUIDATING TRUST, VALLEY MATERIALS CORPORATION, LITTLESON, INC., CENTURY TERMINALS, INC., BLACKHAWK SLAG PRODUCTIONS, INC.,

Defendants.

* * *

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* * *

Tuesday, November 13, 1990 1:35 p.m.

P R O C E E D I N G S

THE COURT: Let's see, this is in the matter of The United States of America versus Sharon Steel and others, 89C136, and related matter of 86C924, and here today on Motions relative to three pending Consent Decrees.

And those who are making Appearances, again, if you'll be kind enough to make a Record for Us.

MR. FISHEROW: Good afternoon, Your Honor. Benjamin Fisherow, for The United States. I am accompanied this afternoon by David Street and Gary Fisher, from the Department of Justice; and by Matthew Cohn, from the Environmental Protection Agency.

MR. DAVIS: Your Honor, John Davis, on behalf of Sharon Steel. I'm accompanied today by Mr. Steven Pesner, Mr. Larry DeMase, and this is Peter Friedman.

MR. MANNING: Your Honor, Brent Manning, on behalf of UV Industries, Inc., Liquidating Trust. With me today are Robert McDermott and Norton Tennille.

MR. PESNER: Your Honor, Dan Allred, on behalf of the Atlantic Richfield Company, and David Tundermann and Jim Butler.

MR. BICKNELL: Your Honor, Kris Bicknell, on behalf of the State of Utah, along with Fred Nelson and Laura Lockhart.

THE COURT: All right. And let me ask generally if there are those in the audience who wish to have their Appearances noted by virtue of any special status that they might have. (Pause:) We'll note the absence of requests.

And you may proceed.

MOTION

BY MR. FISHEROW: Thank you, Your Honor. With The Court's permission, I will today make a set of general comments concerning the three Settlements that are now pending before The Court for approval; and then I will ask Mr. Pesner to provide recent information to The Court regarding agreements which I understand to have recently been achieved between the Defendants in this matter, with respect to various issues both in this Case and in the Sharon Steel Bankruptcy; and then, if I may, with The Court's indulgence, ask my colleague, Mr. Street, to address himself to the two Comments that have been received by The United States on the Sharon Steel Decree.

Let me turn, then, to my brief comments regarding these agreements: We are here today to ask Your Honor's approval and entry of the three Decrees resolving all the issues raised in the Complaint of The United States against Sharon Steel Corporation, the UV Industries Liquidating Trust, UV Industries, and the Atlantic Richfield Company.

Viewed separately and collectively, we believe that these Settlements are an eminently satisfactory resolution to

this matter. The funds that we will recover will be applied to response actions at the Midvale tailings site, which was the subject of this action; the Midvale slag site, which is the subject of the companion matter; and to restore natural resources that were damaged by releases of hazardous substances from these sites.

Collectively, we anticipate recovering between $60 and $63 million from these three Settlements. That total comes about as follows:

ARCO's amount is fixed, $21 million.

Sharon Steel's is either a fixed $22 million payment, or a collection of cash, secured notes, and a general unsecured claim that we value in toto at approximately the same amount, $22 million.

UV's settlement will bring 60 percent of the UV Trust's current assets, which are currently approximately $18 million, which nets us about 11 million; plus, it will bring us 60 percent of all future assets that come into the Trust, with allowances for administrative costs and Attorneys fees. We believe that this will bring in an additional $7 to $10 million.

We currently estimate that clean-up of the Midvale tailings site will cost between $57 and $62 million. While the great majority of the money that we obtain in these Settlements will be applied towards the remedial action at the

tailings site--not all of it will; Sharon Steel Corporation and the Trust are Defendants in the slag Case--and we believe that we had to make some allocation, for purposes of analysis, if for nothing else, some allocation of the monies that we are receiving from them, for conceivable response actions at the slag site.

We do not yet know what costs at the slag site will turn out to be; but we have allocated, as I said, for purposes of analysis, the sum of $5 million from our recovery, for potential actions at the slag site; we have also allocated approximately $2 million from the total settlement, for purposes of restoring natural resources; thus, from the roughly $60 to $63 million that we anticipate taking in settlement, we will have between $53 and $56 million available to apply to the tailings site.

This is a substantial recovery. Of all of our anticipated costs, including investigative costs, Litigation costs, response costs, remedial costs of all shape and size, the calculus works out to be between 80 and 90 percent of those costs.

That is not 100 percent. We recognize that. We're sure The Court recognizes that this is a settlement and that compromises were made with each of the three Defendants; and I'd like to spend a few moments discussing with The Court what those compromises were, in general terms. Two fundamental

factors were borne in mind by The United States as we negotiated these Settlements:

First, the various Litigation risks that we needed to address in this Case. With respect to the UV Trust, we certainly support this Court's repeated Decisions to keep the Trust in the Case, and UV in the Case; but it must candidly be recognized that the Trust's corporate dissolution defense is a colorable defense. It must be recognized that the Trust, in all likelihood, would have appealed an adverse Decision and Final Judgment from this Court; and it must be recognized that there were risks in that Appeal.

Quite simply, we get 60 percent of what the Trust has now, and what the Trust will get in the future; and we consider that far preferable than a hundred-percent recovery, perhaps, down the road, of a sum that has been depleted by the costs of administration and Litigation over several years. We have received no Public Comment with respect to the UV Consent Decree, adverse or otherwise.

With respect to ARCO, an important risk that we faced was losing on the issue of joint and several liability - here, or on Appeal. If this Court found that ARCO's responsibility at the tailings site was divisible and apportionable based upon ARCO's contribution of tailings to that site, we ran the risk, even if we prevailed on liability and on endangerment issues, of recovering 8 percent or perhaps only 4 percent of

our remedial costs from ARCO.

Settlement, as embodied in the proposed Consent Decree with ARCO, is giving us approximately one-third, 30 percent, of our anticipated remedial costs at the site. As with the UV Consent Decree, we have received no Comment, adverse or otherwise, with respect to the ARCO Consent Decree.

The final element in Litigation risk, of course, and it applies to all of the Defendants, is the risk we faced in this Litigation, of losing on the merits. We think we had a strong Case. We firmly believe that we would have prevailed; but I doubt that it would shock The Court to hear me say that we were not 100-percent certain of winning. We took this general Litigation risk into account, in our negotiations with the Defendants.

Beyond these general Litigation risks, we also faced the fact that two of the three Defendants, here, have fixed resources. The Trust has fixed assets; and if we held out for 100 percent of everything the Trust had, there would have been little, if any, incentive to settle, on the part of the Trust.

Perhaps more importantly, Sharon Steel is in Bankruptcy. We perceive little benefit to The United States, to squeeze that Bankruptcy process to the point that the Company was forced to liquidate. We squeezed as hard as we could, and obtained a settlement worth $22 million.

We received two Comments on the Sharon Steel Decree:

One from ARCO, and one from the Mayor of Midvale. I have been advised by Mr. Allred, just before the Hearing, that ARCO has, I believe, withdrawn, with prejudice, its Comment opposing the Sharon Steel Decree.

And I'll ask Mr. Street, if The Court will permit, at the conclusion of Mr. Pesner's comments, to outline for The Court the substance of the Comment of the Mayor of Midvale.

In conclusion, and speaking, I think, not just for The United States, but for the State of Utah, as well--of course, Mr. Nelson and Ms. Lockhart are here, and Mr. Bicknell, and they can speak for themselves, but--taking all of these circumstances into account, we think that the three deals that we have negotiated are good ones.

The process of selecting a remedy and implementing that remedy at the tailings site will now go forward pursuant to the Superfund Statute and EPA's Regulations, entitled the National Contingency Plan.

THE COURT: That would be essentially an Administrative Proceeding.

MR. FISHEROW: That is correct, Your Honor. And that Administrative Proceeding provides for substantial and meaningful involvement on the part of the State of Utah, and on the part of the Public.

We believe that this Litigation has served its purpose, and with the small and unrelated exception that I would

like to mention at the conclusion of everything else today, we ask Your Honor to bring this Litigation to a close and to approve these Settlements.

Now I'd like to turn to Mr. Pesner.

THE COURT: All right.

RESPONSE

BY MR. PESNER: Good afternoon, Your Honor.

Your Honor, I would just briefly like to bring you up to date on the activities that transpired just earlier this morning in The United States Bankruptcy Court for the Western District of Pennsylvania, Erie Division, before the Honorable Warren bents, the Bankruptcy Judge presiding in the Sharon Steel Case.

There was a Hearing this morning attended by approximately 20 Attorneys, fundamentally by conference call that lasted approximately an hour-and-a-half. During the course of that Hearing, Your Honor, Judge Bentz was presented with, signed, and caused to be entered various Orders authorizing Sharon's Trustee, Mr. Agnew, to render performance in accordance with the terms and conditions of various agreements, including the following, sir:

Number one: The partial Consent Decree between The United States of America on behalf of the Environmental Protection Agency, the State of Utah, and Sharon Steel; and that is the matter which Mr. Fisherow has put before You today, at

least with respect to Sharon Steel.

Number two: A settlement agreement between Sharon Steel by and through its Trustee, and the Liquidating Trustees of the UV Industries, Inc., Liquidating Trust, pursuant to which their disputes arising both in this Proceeding, Your Honor, and in all other Proceedings will be resolved.

There is a separate settlement agreement between The United States and others respecting the reorganized Sharon, and what its duties and obligations will be, at least in part, on a going-forward basis.

There is an agreement between Counsel for Sharon and Counsel for Atlantic Richfield which provides for the withdrawal of their respective Cross Claims against each other in this Action, if both the Sharon and Atlantic Richfield proposed Consent Decrees are approved by You today, Sir, and entered by You today.

Sharon's agreements with The United States of America, the State of Utah, the liquidating Trustees of the UV Industries, Inc., Liquidating Trust, and Atlantic Richfield are not contingent upon a Plan of Reorganization being promulgated, confirmed and consummated in Sharon's Reorganization Proceeding.

Each of these agreements either stands on its own or has an alternative, Sir, built into it, which permits Sharon to go forward with the resolution of each of these particular

matters regardless of the consummation of its Plan of Reorganization.

And I believe Mr. Fisherow briefly referred to, in effect, the alternative that is contained in the partial Consent Decree between Sharon and the United States of America: The $22 million in cash which The United States of America will receive upon the consummation of a proposed Plan of Reorganization, or consideration in terms of cash secured notes and a general unsecured claim in Sharon's pending Proceeding, which has been determined to have equivalent value.

The resolution of these Cases, Your Honor, pursuant to the Sharon proposed Consent Decree, is essential for the rehabilitation of Sharon in its Bankruptcy Proceeding, and we respectfully request that you grant The United States' Motion with respect to the Sharon Decree, the UV Industries Liquidating Trust Decree, and the Atlantic Richfield Decree.

Thank you, sir.

THE COURT: All right.

RESPONSE

BY MR. STREET: Good afternoon, Your Honor. Your Honor, my task has been very much reduced in terms of time, today, by the greeting we received from ARCO wherein ARCO has agreed to withdraw its opposition to entry of the Decree between The United States and Sharon Steel Corporation; and thus, I won't address ARCO's earlier objections. If Your Honor has any

questions that stem from those objections, I will be very happy to answer them.

The only matter which I need address now is the Comment of the Mayor of Midvale, Utah: The Mayor of Midvale sent a letter to me during the Public Comment period wherein he stated that it was the City of Midvale's position that the Sharon Decree ought not to be entered until a provision has been included within it, that would transfer title of the Sharon property over to the City of Midvale subject to the same covenants not to sue, that are contained within the Consent Decree between Sharon and the United States.

We, for three reasons, Your Honor, we would respectfully request that Your Honor proceed and enter the Sharon Decree:

The first is that there had been no hint from the City of Midvale, that it wanted the Sharon property eventually; so it was a matter that we weren't in any position to deal with, prior to consummating or entering into the Sharon Consent Decree.

The second is that the United States retains the Power under Section 104 (J) of CERCLA, to acquire or to condemn the property; and the President may do so whenever, in His discretion, He determines that it's needed in order to conduct a remedial action.

And finally, we understand, Sharon has indicated to

us, that it may well be interested in eventually transferring the site to another Party, at some point down the road.

Given the fact that so much turns on entry of the Sharon Consent Decree, the most significant of those things being the consummation of the Castle Harlan Plan of Reorganization, we would respectfully ask Your Honor to proceed with entry of the Sharon Decree notwithstanding the objections of the City of Midvale or the Comment of the City of Midvale.

THE COURT: Okay.

MR. STREET: Thank you, Your Honor.

THE COURT: Let's see, who's next?

RESPONSE

BY MR. CROWTHER: Your Honor, may I just make a statement? Tom Crowther, representing Century Terminals, Inc., and Littleson, Inc. in the slag site Case.

I realize this is a proposed settlement in the tailings site Case, but it does involve two Defendants who are also Defendants with my clients in the slag site Case. I would just like to make one statement, preserve one matter on the Record:

Mr. Fisherow has stated, and the Government's Memorandum in support of The Court accepting the ARCO proposed Consent Decree, refers to an allocation of approximately $5,000 of the total settlement funds, for remediation of the slag site.

The remedial investigation has not yet been completed on that site. That five --

THE COURT: You mean 5 million?

MR. CROWTHER: Right. That 5 million may or may not be an appropriate allocation. We simply don't know, yet. It's my understanding that that's not a negotiated figure between the Government and any of the settling Parties, but simply a figure that the Government is using for purposes of analysis.

We would simply like the Record to reflect, that because of lack of adequate information to reach a conclusion, yet, we do not acquiesce in that number, and reserve any and all Rights that my clients may have with respect to it.

Thank you.

THE COURT: All right.

RESPONSE

BY MR. BICKNELL: Kris Bicknell, for the State of Utah, Your Honor: Mr. Fisherow has described the trade-offs regarding the Parties involved in these Consent Decrees, and I'm not going to go over that, along with the risks of Litigation and the risks of Consent Decrees not being entered.

The State would just like to put on the Record at this point, that--and Mr. Fisherow has addressed this--regarding the future involvement in the Administrative Process regarding the remedy, aside from those two issues, the State

has no objection to the ARCO or the UV Consent Decree being entered, and would also urge this Court to enter the agreement between the Parties involving Sharon Steel.

THE COURT: Well, it's my understanding, at this juncture, We're not dealing with remedy, at all; We're simply dealing with a compromise and settlement of an existing Law-suit relating to monetary contributions dealing with the phase of liability and allocation; and, in no sense, have touched upon, in any sense, with the question of remedy, at all.

MR. BICKNELL: That's correct, Your Honor. Thank you.

THE COURT: Mr. Allred?

RESPONSE

BY MR. ALLRED: Your Honor, Dan Allred, in behalf of ARCO. We have no Argument to present to The Court. We would be pleased to respond to any questions that The Court may have.

THE COURT: Okay.

RESPONSE

BY MR. McDERMOTT: Your Honor, Robert McDermott, for the Liquidating Trust. I have nothing to add to what Mr. Fisherow said, again, unless The Court has questions specifically directed to our Consent Decree.

INQUIRY OF THE COURT

THE COURT: Let me inquire from The United States: We're dealing here primarily with what you would

ordinarily call the response costs, I guess, representing a compromise and settlement between Parties who have either acknowledged or potential liability monetarily to respond.

As I understand it, the so-called Superfund anticipates remediating that site, regardless; and that what we're talking about here is, in effect, The United States, on behalf of the Superfund, to receive in advance at least a contribution to the Fund or to The United States, representing a considered and reasonable, and "fair," in quotation marks, compromise and settlement, from these particular Defendants.

It amounts to a sum somewhere in the neighborhood of $60 to $63 million, with somewhere in the neighborhood of 50, or so, "allocated," in quotation marks, to this particular site, some of which may relate to the so-called slag site.

One inquiry that I wanted to make, and I hope I've stated that accurately--and this has to do with Sharon, and indeed, has to do with the Reorganization - and these are hypotheticals, talking back and forth--say the remedy, whatever it is, amounts to lots of money in excess of what you've received from these particular Defendants, or anticipate receiving: It's the Superfund, regardless of the cost of the remedy, that will absorb the cost.

MR. FISHEROW: That's correct, Your Honor.

THE COURT: Now, assuming that the remedy, whatever it is, costs a lot of money--a lot of money--so that there is

a large benefit to the title holder of the land, so that the land is capable of being used for a purpose other than its current use: Is that a benefit that The United States would receive by virtue of its expenditure of money?

MR. FISHEROW: Not pursuant to the Consent Decree, Your Honor.

THE COURT: Well, and that's an area that I'm interested in.

RESPONSE

BY MR. FISHEROW: But it's no different, Your Honor, at this site than it is, really, at any other Superfund site in this Country. Generally, Superfund sites may be owned by an identifiable Party. Frequently, they're insolvent, or bankrupt, or unable to pay; and the Superfund is required to pay. But basically, we are faced with that position in many situations, and we recognize that as a part of the situation.

THE COURT: Well, say you went out there and spent three- or $400 million--again, I'm just hypothecating or hypothesizing: Government get the benefit, or does Sharon Steel get the benefit?

MR. FISHEROW: The Public gets the benefit in the final analysis, in that that land is cleaned up. I think your hypothetical is somewhat extreme, with great respect.

THE COURT: Could have been.

MR. FISHEROW: With great respect. The remedies that

are being considered by EPA are the ones which led us to our calculation of $57 to $62 million of which we will recover. The vast majority.

There is a possibility of another remedy, which is still open--a reprocessing remedy, which will cost more, although not in the range of three- to $400 million--could be adopted - which would mean that the shortfall might be somewhat greater. But we are not --

THE COURT: Well, I just used those figures for fun.

MR. FISHEROW: I understand it.

THE COURT: Whatever the figure is--and it's, conceptually, it's the same concept; and what I'm concerned about, being as direct as I can be, is--Sharon says, "Here's 22."

And you say, "Gee, thanks for your 22. And we're going to use your 22, and we're going to use the 12, and we're going to use the 21; and we're going to expend 50, or 60, or 70, or 80, or a hundred, to clean up your mess, Sharon. And we're going to do that, and, in the process, we use lots of money that you didn't contribute, and we've improved your site considerably."

And you end up, as a practical matter, having somebody else pay for your improvements.

Now, if beyond, you see, if beyond their own contribution, there is some benefit to The United States, there is some benefit to the Public generally, I can understand that;

but that's a question that bothers me, a little bit.

MR. FISHEROW: Well, there is benefit to the Public, Your Honor.

THE COURT: I understand that.

MR. FISHEROW: I think you have to bear in mind, that the larger the shortfall that you hypothesize would be, that, I think, implies a type of remedy that renders the site perhaps capable of uses that we are not anticipating at this point.

THE COURT: Well, whatever may be chosen, whatever device, whatever the alternative, I'm concerned that we're not simply amplifying the current asset that has apparently a detriment of some kind, measured in tons or otherwise.

But that's something that I'm really interested in having you indicate, and apparently you did take that into consideration at the time that you were negotiating as you've been negotiating.

And you wanted to say something?

RESPONSE

BY MR. DEMASE: Yes, Your Honor, Larry DeMase, Counsel for the Trustee for Sharon Steel Corporation.

The, as Mr. Fisherow indicated in his Opening, and as Mr. Street indicated in his remarks, Sharon has indicated a willingness to consider transferring the title to this property, to the City of Midvale; and in fact, at a meeting of the

Creditors Committee, about two weeks ago, the Creditors Committee authorized such a transfer.

And in fact, during the course of the negotiations concerning the Sharon Consent Decree, Sharon offered to transfer the property to The United States. My understanding is the reason for rejecting that offer was two-fold:

One, there is a re-opener provision in the Sharon Consent Decree, that potentially under which Sharon, as the owner of the property, would retain certain liabilities; and those were liabilities that The United States did not want to, in effect, become the owner of, by holding title to the property.

Second, there are on-going responsibilities with respect to maintenance, security, other aspects of ownership of the title of the property, that The United States did not want; and frankly, I'm not certain that the City of Midvale ultimately would want them, either.

Finally, as Mr. Fisherow has indicated, the Decree allows The United States, when it finally selects the remedy, to limit the uses that can be made of the property, so that it is at least unlikely, as I view the potential remedial scenario here, that this property can be used for many commercial or industrial purposes.

THE COURT: Is it --

MR. FISHEROW: May I add a comment, Your Honor?

THE COURT: Yes.

RESPONSE

BY MR. FISHEROW: I've had a chance to think, a little bit: I don't want to quarrel with your hypothetical, because it's a good hypothetical, and I can understand how it gives rise to concern; but let me quarrel with your hypothetical, a little bit:

If a truly expensive remedy in the $300 to $400 million range--that really gives rise to, I think, legitimate concern, if it were to happen--were to arise, I think one has to play that hypothetical out, a little bit:

Why would it be necessary to spend three- or $400 million to remedy a site which EPA, today, having studied this site as well as I think it can be studied, believes can be adequately accomplished for between 57 and 62?

I think the answer is: That that type of a Cadillac remedy, if you will, would be occasioned by the discovery of information about the site, that we don't now know; and that is precisely the type of information which is covered by the re-opener provisions in the Decree.

If we were earlier in this Process than we are, if we knew less about this site than we do, I think Your Honor's hypothetical poses a risk that is far greater than it actually is. It is an interesting hypothetical, it is an important question; but I think it is -- it is a hypothetical, Your

Honor, and I don't think likely to occur.

THE COURT: Okay. Now, one area that bothers me a little, that where it may mean something entirely different than what may appear on its face, is the section in each of the Decrees, that says:

"No previous Ruling of this Court in the Actions on any issue of Law or fact shall be deemed to be binding upon the Parties hereto for any purpose in any other Action or Legal Proceeding of any type or kind."

Maybe I'm reading that more broadly than it appears. I hope that doesn't contemplate that The Court in any way has withdrawn any Finding or any Opinion or any Order, because I don't intend to do that.

MR. FISHEROW: We would not ask you to, Your Honor.

THE COURT: They exist and they're there for whatever value that they have.

MR. FISHEROW: May I simply explain the genesis of that statement, Your Honor?

THE COURT: Yes.

MR. FISHEROW: It appears, I believe, in the Trust Decree and in the ARCO Decree. It really came about, in the Trust Decree, because of the Trust's desire to preserve its position with respect to the corporate defense.

THE COURT: Well, and I can understand that; and I

can understand that that could well haunt them, down the road, and should; but there it is.

And you're really talking about, you're really talking about, the kind of use that could be used, in some fashion or another, in a Proceeding other than this Proceeding.

MR. FISHEROW: Yes.

THE COURT: Okay. Well, whatever We Found, however We've Ruled, is a historic fact. There it is.

MR. FISHEROW: And Your Honor has made that point clear again right now, if there was any doubt about it.

DISCUSSION

THE COURT: Sure. Okay. And I take it, from your silence from everybody else, that Mr. Fisherow's position is your position, as well.

MR. McDERMOTT: That's right, Your Honor, for the Trust.

MR. DAVIS: That's correct, Your Honor.

MR. ALLRED: Same for ARCO, Your Honor.

THE COURT: Okay. Let's see, you Filed earlier today, Mr. Allred, did you not, a formal Withdrawal of both the Comment and the Objection.

MR. ALLRED: That's correct, Your Honor.

THE COURT: And I want to make sure that we're in agreement that the only thing that we're dealing with, right now, is the compromise and settlement, and that The Court, in

no sense, is in any way or fashion dealing with the so-called remedy.

The Lawsuit was stopped and, I won't say in mid-stream, but it was stopped before we ever got to remedy; and the only thing that we're dealing with is money payment, compromise and settlement, and that the question of remedy, the question of remedying the site, or sites, I should say, is something that, in effect, remains for consideration in the Administrative Proceeding.

I don't know what remains of the slag Case, Mr. Fisherow, if we move forward this afternoon.

MR. FISHEROW: Yes, Your Honor, and we'll be prepared to provide The Court with a Status Report, as Your Honor had requested we do with respect to the slag site.

Let me just, in briefly responding to your question, immediately say that the slag site lags behind the tailings site in terms of its administrative development.

As I believe Mr. Crowther mentioned to The Court earlier, the remedial investigation has really yet to begin; so our understanding of the contamination there, is far less than it is at the tailings site.

Your Honor is quite correct: The Settlements have nothing to do with remedy, and Your Honor's approval of them, if you do so, is not an endorsement in any sense, or a criticism, if it could be construed as such, of whatever remedy

evolves from the Administrative Process at either the tailings site or the slag site.

THE COURT: It really deals with the monetary peace of the Parties in reference to their relative obligations to recompense the Superfund for whatever expenditures need be made.

MR. FISHEROW: That's correct.

THE COURT: Okay. Indeed, if the Superfund or The United States does whatever it does for a dollar-and-a-half, rather than 55 million, so be it.

MR. FISHEROW: Correct.

THE COURT: Or, the other side of that coin: It does whatever it does for 400 million, so be it.

MR. FISHEROW: Correct.

THE COURT: Okay. Well, I take it, The United States recommends this as both fair and reasonable, and appropriate.

MR. FISHEROW: We do, Your Honor.

THE COURT: And I take it, the State of Utah recommends it as fair and reasonable, and appropriate, and in the Public interest?

MR. BICKNELL: We do, Your Honor.

THE COURT: And I take it, that ARCO suggests, it's at least a good settlement.

MR. ALLRED: We have, indeed, Your Honor.

THE COURT: And that UV and UV Liquidating Trust

suggests, that under the circumstances, it's appropriate.

MR. McDERMOTT: That's correct, Your Honor.

THE COURT: Who have I left out? Sharon?

MR. PESNER: Yes, sir.

THE COURT: Yes.

MR. DAVIS: Yes, Your Honor.

THE COURT: And I take it, as a result of this negotiation, that you suggest it's both fair and reasonable, and appropriate under the circumstances, with your current stance in Reorganization.

MR. DAVIS: Yes, we do, Your Honor.

THE COURT: And I take it, that it's all been appropriately recommended, as well, to the Reorganization Court.

MR. PESNER: Yes, Your Honor, it has been approved, as I said before, by the Reorganization Court this morning, was approved by the Creditors Committee, and it has been accepted by the proposed subject Plan of Reorganization.

THE COURT: Okay. Do you have 22 million?

MR. PESNER: Excuse me, sir?

THE COURT: I say, do you have 22 million?

MR. PESNER: Your Honor, the answer to that is: If the, under the terms of the Sharon Partial Consent Decree, if the Plan of Reorganization is confirmed and consummated within the time parameters set forth in the Consent Decree, the Proponents have indicated to the Reorganization Court that the

answer to that is in the affirmative.

If, however, it does not happen that way, the alternative plan negotiated with the Government, by the Trustee, whereby the Trustee in the Chapter 11 Proceeding of Sharon would pay $3 million cash, execute secured notes for $9 million, and give a $70 million unsecured claim to the Government.

In the Proceeding, the Trustee has that money earmarked and available to do so; title searches have been done with respect to the property, that's going to stand as collateral; and we are ready, willing and able to perform today, Sir.

THE COURT: Okay. Now, it's simply a timing sequence, at this point, I take it, as far as the 22 goes?

MR. PESNER: It is a timing sequence, and, of course, Your Honor, all the vagaries involved with a Proponent confirming and consummating its Plan of Reorganization.

It probably comes as no surprise to You, with Your experience on this Bench and on a different Bench, that the best laid plans of Proponents and Trustees 'gang aft a-gley', at times; but we are not looking forward to that as an alternative, even though we have provided one for the protection of everybody.

THE COURT: Sure. You're telling me, assuming that the timing and the sequence is followed, that the 22 is on the table.

MR. PESNER: Yes, Sir. And that sequence includes, Sir, a Hearing before the Bankruptcy Judge as early as this Thursday, the 15th, in the Western District of Pennsylvania, likely to be continued at some time prior to Thanksgiving, on the Third Amended Plan of Reorganization and Second Amended Disclosure Statement, Disclosure Statement having already been approved.

The ballots are out, the solicitation having taken place. And we are, while I am not the Proponent, we are hopeful, on the Trustee's side, that the Proponents will be able to consummate, or confirm and consummate the Plan in the very near future.

THE COURT: And they're prepared to fund it, I take it.

MR. PESNER: Absolutely positively.

THE COURT: And they've demonstrated that, to the Reorganization Court, as I understand it.

MR. PESNER: That is absolutely correct, Sir.

THE COURT: I'd be less sanguine, if we were all speculating on something like that; but indeed, we're talking about sequence, as well as a response, evaluation, and so on.

But you see no reason, as I understand it, why the matter shouldn't march forward in the Reorganization Court in accordance with the representations made here.

MR. PESNER: With respect, Your Honor, to the perfor-

mance by Sharon, or the Proponents of the Consent Decree, the Reorganization Court has, this morning, approved it with the consent of the Creditors Committee and with no objection from any Party making an appearance.

There is a fail-safe device provided within the Partial Consent Decree, that if the Proponents do not confirm and consummate for some economic reason that presently faces the Country, or otherwise, that the alternative means which gives the Government, according to its own calculations, equivalent value, automatically--excuse my non-Legal phrase, but--'kicks in'.

THE COURT: Well, I'm kind of a great believer of the money on the table, rather than a promise down the road. That's just my own attitude, but --

MR. PESNER: Your Honor, if you're looking --

THE COURT: But it seems to me, the Government needs all the money it can get.

(Pause for general laughter.)

MR. PESNER: If you're looking to me for an Argument about money on the table, I think you picked the wrong person.

RULINGS AND ORDERS

THE COURT: Okay. All right. Anybody else want to say anything, at all? (Pause:) I take it, everybody's affirmatively recommended it.

All right. Well, based on the history of this Case,

and based upon the extensive Pretrial preparation on the part of all the Parties here, and looking at each of these three Consent Decrees in accordance with the test of fairness and reasonableness within the context of the Case as well as the Litigation risks, and based upon the consideration of Public interest, as well, it would appear to me that it makes sense in each instance to approve the provisional Consent Decrees.

It appears to The Court that they're fair under the circumstances, the result of arm's-length negotiations; that they're reasonable under the circumstances, considering the risks of Litigation; and that they're genuinely consistent with the goals of the Statute and consistent with the Public interest, as well.

And so I'll approve each of them based upon, as I have indicated, the history, the Pretrial preparation, and as well as the representations made here in open Court previously, as well as today.

PROCEEDINGS RE SLAG SITE

THE COURT: And then, Mr. Fisherow, you were going to tell me about that slag site, out there: What remains on that?

MR. FISHEROW: Yes, Your Honor. May I ask Mr. Fisher to address The Court on that matter?

THE COURT: All right.

MR. FISHER: Good afternoon, Your Honor. I'm Gary

Fisher, representing the United States.

With the negotiation and entry of the Consent Decrees existing, there are currently four Defendants left, in the Case that we refer to as the slag Case. Those are four related Defendants: Valley Materials; Littleson, Inc.; Century Terminals, and Blackhawk Slag. They are currently represented by Mr. Crowther, and Counsel from Philadelphia, I believe.

The United States has been in negotiation and has had some discussions with the Defendants regarding possible settlement of the Action against the current Defendants.

Mr. Crowther presented to The United States a settlement proposal this morning, which The United States has not yet had time to analyze.

We negotiated an access agreement between EPA and the current Defendants, within the last couple weeks, whereby the Defendants grant access to The United States for conducting removal actions, investigations and further response actions.

The United States and the Defendants, I believe Mr. Crowther agrees with the proposal that we'd like to present, which is for The Court to give the Parties two months, until approximately the 15th of January, to analyze the current Settlements and significant financial data that has been presented by the Defendants; and also give The United States the time to seek approval, which the Trial Lawyers will seek from Authority to amend the current Complaint to drop the 106 CERCLA

Counts; and then we would propose that if settlement has not been reached at that time, that we engage in approximately four months of discovery, or until approximately the 15th of May, by which time The United States would propose that any dispositive Motions we'd have on the remaining Counts in the Complaint, be presented to The Court.

THE COURT: Why don't we do this, to give you that kind of flexibility: Why don't we just have you drop back and see me on the 18th of January, at 1:30, for a Status Report. That will give you the -- is it the two months, that you're asking for, here?

MR. FISHER: Yes, Your Honor.

THE COURT: That would give you that two months. By then, your layers of people will have responded to you, or they wouldn't have; and let's see where we go from there.

MR. FISHER: Thank you very much, Your Honor.

THE COURT: If that's convenient for you, Mr. Crowther, as well, wherever you are.

MR. CROWTHER: Yes, Your Honor, that's convenient, and I agree with Mr. Fisher's statement as to the status, except there are not four Defendants, there are two: Valley Materials is a dba of Littleson, and Blackhawk is simply a dba of Century.

FURTHER ORDERS OF THE COURT

THE COURT: All right. Let's do that. And then, Mr.

Fisherow, I think it might make sense, because of our congregation, here, if you could undertake--and I'm here all afternoon, if you, in conjunction with the good offices of those you work with, could undertake--to prepare and submit a suggested form of Order, I think it would be helpful if you recited everybody who was here today, so that we have a memorial as to who's here.

And I'm happy to consider a form of Order in each of the three Cases, and with recital as to the representations that were made by everybody.

MR. FISHEROW: Very well, Your Honor. We'll be happy to do that, and attempt to get it back to The Court before close of business today.

THE COURT: That will be fine. I'm going to be here, and if not in the Courtroom, at least in Chambers.

MR. FISHEROW: In addition, Your Honor, we would ask you to sign the Decrees, themselves. As I'm sure Your Honor is aware, there is space at the --

THE COURT: There is space at the bottom, but I want, as part of the Order that I enter today, the fact that there were representations made on the Record--and you can refer generally to the Record, because the Record will be made up, but--and the fact that The Court affirmatively inquired as to the representations made by each of the Parties; and so that it's there.

And We'll make the Findings as I've indicated, as to fairness and reasonableness and Public interest.

MR. FISHEROW: Very well, Your Honor.

THE COURT: And I'm happy to affix a signature, as well, to the bottom of each of the Decrees, but I'd like to do it concurrently with the Order that We entered.

MR. FISHEROW: I'd be happy to do that, Your Honor. May I raise one unrelated point?

THE COURT: Sure.

MR. FISHEROW: I mentioned, in an off-hand fashion during part of my comments, that there was one minor exception to my request of The Court, that we bring this Litigation to a close: The matter of Dr. Needleman will not leave us, unfortunately.

THE COURT: I'm sure it won't. And why don't we both just let it sit for a day or two, or three, or four, and --

MR. FISHEROW: I simply wanted to advise The Court that we have Filed a Motion. And I do not ask The Court today to do anything except --

THE COURT: I was told that you'd Filed a Motion, and I figured, well, okay. Everybody here, if they haven't had the pleasure of dealing with domestic problems at one time or another in their lives, will appreciate the parallel.

MR. FISHEROW: Yes, Your Honor. (Pausing for general laughter:) All that we are requesting is that The Court

retain Your Jurisdiction over this matter, so --

THE COURT: In that particular aspect, and I'll be happy to do that. I don't have any trouble with that.

MR. FISHEROW: Okay. And we'll prepare our Papers and come back and see you.

THE COURT: And we'll see you later on, this afternoon.

MR. FISHEROW: Thank very much you, Your Honor.

MR. ALLRED: Thank you, Your Honor.

MR. McDERMOTT: Thank you, Your Honor.

MR. DAVIS: Thank you, Your Honor.

MR. PESNER: Thank you, Your Honor.

MR. BICKNELL: Thank you, Your Honor.

(Proceedings Concluded 2:34 p.m.)

* * *

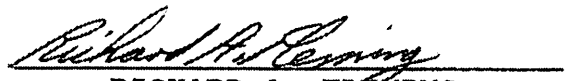
# C E R T I F I C A T E

STATE OF UTAH )
: ss
COUNTY OF SALT LAKE )

I, RICHARD A. FLEMING, do hereby Certify that I am an Official Court Reporter for the United States District Court for the District of Utah;

That as such Reporter I attended the Hearing of the foregoing matter and thereat reported in Stenotype all of the Proceedings had, and caused said notes to be transcribed into this computer-aided transcription Record; and the foregoing pages numbered from 1 to 39 constitute a full, true and correct computer-aided transcription of the same.

DATED at Salt Lake City, Utah, this 23rd day of November, 1990.



RICHARD A. FLEMING
C.S.R, R.P.R., C.P. & C.M.

I N D E X PAGE



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