Civil Action No. 96–0328, Sec. A, Mag 2, was lodged on January 26, 1996, with the United States District Court for the Eastern District of Louisiana.

The Consent Decree between the United States and Shell Oil Company resolves violations of the Clean Air Act (''CAA''), New Source Performance Standards (''NSPS'') and National Emission Standards for Hazardous Air Pollutants (''NESHAP''); the Safe Drinking Water Act (''SDWA''); the Emergency Planning and Community Right to Know Act (''EPCRA''); the Clean Water Act (''CWA'') and the company's National Pollutant Discharge Elimination System (''NPDES'') Permits; and the Resource Conservation and Recovery Act (''RCRA'') and the state and federal hazardous waste regulations. These violations occurred at the company's refinery and chemical facilities in Norco, Louisiana. The Consent Decree includes a requirement that Shell Oil Company pay a civil penalty of $1,000,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Shell Oil Company*, DOJ Ref. No. 90–7–1–629A.

The proposed Consent Decree may be examined at the office of the United States Attorney, Hale Boggs Building, Room 201, 501 Magazine Street, New Orleans, Louisiana 70130; the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $4.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–2661 Filed 2–7–96; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

United States of America vs. Pacific Scientific Company; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia In *United States* vs. *Pacific Scientific Company*, Civ. No. 96–0165. The proposed Final Judgment is subject to approval by the Court after the expiration of the statutory 60-day public comment period and compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h).

On January 30, 1996, the United States filed a Complaint seeking to enjoin a transaction by which Pacific Scientific agreed to acquire Met One, Inc. Pacific Scientific and Met One are major manufacturers of drinking water particle counters. The Complaint alleged that the proposed acquisition would substantially lessen competition in the manufacture and sale of drinking water particle counters in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1.

The proposed Final Judgment orders defendant to sell all of Pacific Scientific's U.S. assets and rights relating to the research and development, manufacture and sale of Pacific Scientific's Drinking Water Quality Monitoring Systems, other than real property, and Met One's software relating to Drinking Water Quality Monitoring Systems, and other assets if necessary to make an economically viable competitor in the manufacture and sale of drinking water particle counters. The Stipulation effects a hold separate agreement that, in essence, requires Pacific Scientific to ensure that, until the divestiture mandated by the Final Judgment has been accomplished, Met One's operation will be held separate and apart from, and operated independently of, Pacific Scientific's assets and businesses. A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and remedies available to private litigants.

Public comment is invited within the statutory 60-day comment period. Such comments, and the responses thereto, will be published in the Federal Register and filed with the Court. Written comments should be directed to Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, Room 3700, 1401 H Street NW., Washington, D.C. 20530 (202–307–5779). Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection in Room 207 of the U.S. Department of Justice, Antitrust Division, 325 7th Street NW., Washington, D.C. 20530 (telephone: (202) 514–2481), and at the office of the Clerk of the United States District Court for the District of Columbia, Third Street and Constitution Avenue NW., Washington, D.C. 20001.

Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations, Antitrust Division.

United States District Court for the District of Columbia

In the matter of: United States of America, Plaintiff vs. Pacific Scientific Company, a corporation; Defendant Docket No.: 96–0165.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

(1) The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the District for the District of Columbia.

(2) The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendant and by filing that notice with the Court.

(3) Pacific Scientific shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment, and shall, from the date of the signing of this Stipulation, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

(4) Pacific Scientific shall prepare and deliver reports in the form required by the provisions of paragraph B of Section VII of the proposed Final Judgment commencing no later than February 29, 1996, and every thirty days thereafter pending entry of the Final Judgment.

(5) In the event plaintiff withdraws its consent, as provided in paragraph 2 above, or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever, and the making of this stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: January 26, 1996.

For Plaintiff United States of America.

Craig W. Conrath,

Attorney, U.S. Department of Justice, Antitrust Division, Merger Task Force, 1401 H Street NW., Washington, D.C. 20005, (202) 307–5779.

For the Defendant Pacific Scientific Company.

Donald I. Baker,

Baker & Miller, PLLC, 700 Eleventh Street, NW., Suite 615, Washington, D.C. 20004, (202) 637–9499, Attorney For Pacific Scientific Company.

In the United States District Court for the District of Columbia

In the matter of: United States of America, Plaintiff v. Pacific Scientific Company, a corporation Defendant. Civil Action No.: 96–0165.

Final Judgment

Whereas plaintiff, United States of America (hereinafter ''United States'') having filed its Complaint herein, and defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And whereas, defendant has agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, prompt and certain divestiture of certain assets is the essence of this agreement;

And whereas, the parties intend to require defendant to divest, as a viable line of business, the Drinking Water Quality Monitoring Assets so as to ensure, to the sole satisfaction of the plaintiff, that the Acquirer will be able to manufacture and sell Drinking Water Quality Monitoring Systems as a viable, ongoing line of business;

And whereas, defendant has represented to plaintiff that the divestitures required below can and will be made and that defendant will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ordered, adjudged, and decreed as follows:

I. Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against the defendant under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. Definitions

As used in this Final Judgment:

A. ''Drinking Water Quality Monitoring Systems'' means water particle detection systems used in the evaluation of potable water, including but not limited to: (1) on-line systems, such as the ''Water Particle Counting System'' (WPCS™), (2) portable systems, such as the VersaCount LV™/LogEasy™ integrated water sample particle counting system, and (3) laboratory-based systems, such as stationary liquid batch sample particle counting systems.

B. ''Pacific Scientific'' means defendant Pacific Scientific Company, a California corporation with its headquarters in Newport Beach, California, and includes its successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents and employees.

C. ''Met One'' means Met One, Inc., a California corporation with its headquarters in Grants Pass, Oregon, and its successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents and employees.

D. ''Drinking Water Quality Monitoring Assets'' means all of Pacific Scientific's U.S. assets and rights relating to the research and development, manufacture and sale of Pacific Scientific's Drinking Water Quality Monitoring Systems, other than real property, and Met One's software relating to Drinking Water Quality Monitoring Systems. Drinking Water Quality Monitoring Assets include, but are not limited to, all Pacific Scientific rights to patents, trade secrets, technology, know-how, specifications, designs, drawings, processes, production information, manufacturing information, testing and quality control data, servicing information, research materials, technical information, distribution information, information stored on management information systems (and specifications sufficient for the Acquirer to use such information), software specific to drinking water qualify monitoring systems, inventory sufficient for the Acquirer to complete all safety and efficacy studies, studies or tests necessary to obtain EPA or other governmental approvals, and all data, contractual rights, materials and information relating to obtaining EPA approvals and other government or regulatory approvals within the United States, and certain rights to brand or trade names (excluding the HIAC/Royco, Royco, Pacific Scientific, and Met-One trade names). Drinking Water Quality Monitoring Assets also include all Pacific Scientific customer lists, customer information, prospects, mailing lists, quotations and proposals for Drinking Water Quality Monitoring Systems and their applications, service contracts for Drinking Water Quality Monitoring Systems and their applications, advertising materials, advertising assistance, marketing training, and marketing assistance for Drinking Water Quality Monitoring Systems and their applications, and copies of and rights to software and technical information for Drinking Water Quality Monitoring Systems and their applications. Drinking Water Quality Monitoring Assets shall include assets sufficient, to the sole satisfaction of the plaintiff, to ensure that the Acquirer will be able to manufacture and sell Drinking Water Quality Monitoring Systems as a viable, ongoing line of business.

E. ''Divestiture Assets'' means the Drinking Water Quality Monitoring Assets, or such lesser portion thereof as is sufficient to ensure, to the sole satisfaction of the plaintiff, that the Acquirer will be able to manufacture and sell Drinking Water Quality Monitoring Systems as a viable, ongoing line of business.

F. ''Acquirer'' means the entity or entities to whom Pacific Scientific shall divest the Divestiture Assets.

III. Applicability

A. The provisions of this Final Judgment apply to the defendant, its successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Pacific Scientific shall require, as a condition of the sale or other disposition of all or substantially all of the Divestiture Assets other than as provided in this Final Judgment, that the acquiring party or parties agree to be

bound by the provisions of this Final Judgment.

IV. Requirement to Hold Separate

Prior to the divestiture contemplated by this Final Judgment:

A. Pacific Scientific shall preserve, hold, and continue to operate the business of Pacific Scientific and the business of Met One as ongoing businesses, with their assets, management, and operations separate, distinct, and apart from one another. Pacific Scientific shall use all reasonable efforts to maintain the business of Pacific Scientific and the business of Met One as viable and active competitors.

There shall be no exchange between Pacific Scientific or Met One of any confidential business information (other than accounting information required in the ordinary course of business) or any technology or know-how.

B. Pacific Scientific shall not, without the consent of the United States, sell, lease, assign, transfer, or otherwise dispose of, or pledge as collateral for loans (except such loans and credit facilities as are currently outstanding or replacements or substitutes therefor) the Divestiture Assets or any business assets of Met One, except that any such asset that is replaced in the ordinary course of business with a newly purchased asset may be sold or otherwise disposed of, provided the newly purchased asset is identified as a replacement for an asset to be divested.

C. In its efforts to preserve and maintain the business of Pacific Scientific and the business of Met One as viable and active competitors, the obligations of Pacific Scientific shall include, but are not limited to: preserving all equipment, all rights to brand or trade names, patents, trade secrets, technology, know-how, specifications, designs, drawings, processes, production information, manufacturing information, testing and quality control data, servicing information, research materials, technical information, distribution information, customer lists, information stored on management information systems (and specifications sufficient for the Acquirer to use such information), software specific to Pacific Scientific's or Met One's divestiture assets, inventory sufficient for the Acquirer to complete all safety and efficacy studies, studies or tests necessary to obtain EPA or other governmental approvals, and all data, contractual rights, materials and information relating to obtaining EPA approvals and other government or regulatory approvals within the United States. These obligations do not preclude sales in the ordinary course of business.

D. Pacific Scientific shall provide and maintain sufficient working capital to maintain the Divestiture Assets business and the business of Met One as viable, ongoing businesses.

E. Pacific Scientific shall provide and maintain sufficient lines and sources of credit to maintain the Divestiture Assets business and the business of Met One as viable, ongoing businesses.

F. Pacific Scientific shall preserve the business assets of Pacific Scientific and Met One in a state of repair equal to their state of repair as of the date of Pacific Scientific's acquisition of Met One.

G. Pacific Scientific shall maintain on behalf of the businesses of Pacific Scientific and Met One in accordance with sound accounting practice, separate, true and complete financial ledgers, books and records reporting the profit and loss and liabilities of the businesses on a monthly and quarterly basis.

H. Pacific Scientific shall refrain from terminating or reducing any current employment, salary, or benefit agreements for any management, engineering, or other technical personnel employed by Met One or by Pacific Scientific in connection with the Divestiture Assets business of Pacific Scientific, except in the ordinary course of business, without the prior approval of the United States.

I. Pacific Scientific shall refrain from taking any action that would have the effect of reducing the scope or level of competition between the businesses of Pacific Scientific and Met One without the prior approval of the United States.

J. Pacific Scientific shall refrain from taking any action that would jeopardize its ability to divest the Divestiture Assets as a viable ongoing line of business.

K. When an agreement has been reached for the sale of the Divestiture Assets that is satisfactory to the plaintiff in its sole discretion, Pacific Scientific may be released from the restrictions of this Part IV once the divestiture sale has been consummated, in the sole discretion of the plaintiff. Such release shall become effective when plaintiff so notifies the Court.

V. Divestiture of Assets

A. Pacific Scientific is hereby ordered and directed, within 30 days of the date this Order is entered, to divest the Divestiture Assets. Plaintiff, in its sole discretion, may agree to an extension of this time period, and shall notify the Court in such circumstances.

B. Divestiture of the Divestiture Assets under Section V.A shall be accomplished in such a way as to satisfy the United States that the Divestiture Assets can and will be operated by the Acquirer as a viable, ongoing line of business.

Divestiture of the Divestiture Assets under Section V.A shall be made to a purchaser for whom it is demonstrated to the sole satisfaction of the United States that (1) the purchase is for the purpose of competing effectively in the manufacture and sale of Drinking Water Quality Monitoring Systems, and (2) the Acquirer has the managerial, operational, and financial capability to compete effectively in the manufacture and sale of Drinking Water Quality Monitoring Systems.

C. Pacific Scientific shall take all reasonable steps to accomplish quickly the divestitures contemplated by this Final Judgment.

D. Pacific Scientific agrees that, if it fails to divest the Divestiture Assets within the time specified in Section V.A, it shall not oppose nor contest in any way a civil contempt penalty of not more than $100,000 as may be recommended and moved for by the United States. Pacific Scientific further agrees that, if it fails to divest the Divestiture Assets within the time specified in Section V.A, it shall not oppose nor contest in any way civil contempt penalties of not more than $10,000 per day, for each day after the date the United States moves for the appointment of a trustee pursuant to Section VI.A until the date it consents to appointment of a trustee pursuant to Section VI, as may be recommended and moved for by the United States.

VI. Appointment of Trustee

A. In the event that Pacific Scientific has not divested the Divestiture Assets within 30 days of the date this Order is entered, the Court shall, on application of the United States, appoint a trustee selected by the United States to effect the divestiture of the Divestiture Assets. Unless plaintiff otherwise consents in writing, the divestiture shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer as a viable on-going line of business. The Divestiture shall be made to an Acquirer for whom it is demonstrated to plaintiff's sole satisfaction that the Acquirer has the managerial, operational, and financial capability to compete effectively, and that none of the terms of the divestiture agreement interfere with the ability of the purchaser to compete effectively.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Section VII of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. The trustee shall have the power and authority to hire at the cost and expense of defendant any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals and agents shall be solely accountable to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to plaintiff, and shall have such other powers as this Court shall deem appropriate. Defendant shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance, or on the grounds that the sale is contrary to the express terms of this Final Judgment. Any such objections by defendant must be conveyed in writing to plaintiff and the trustee within ten (10) days after the trustee has provided the notice required under Section VII.

C. The trustee shall serve at the cost and expense of Pacific Scientific, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Pacific Scientific and the trust shall then be terminated. The compensation of such trustee and that of any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Pacific Scientific shall use its best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel books, records, and facilities of Pacific Scientific and Met One, and defendant shall develop financial or other information relevant to such assets as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendant shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee shall thereupon promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

F. The Acquirer shall not, without the prior written consent of the United States, sell any of the acquired assets to, or combine any of the acquired assets with those of, Pacific Scientific during the life of this decree. Furthermore, the Acquirer shall notify plaintiff 45 days in advance of any proposed sale of all or substantially all of the assets, or control over those assets, acquired pursuant to this Final Judgment.

VII. Notification

A. Pacific Scientific or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify plaintiff of any proposed divestiture required by Section V or VI of this Final Judgment. If the trustee is responsible, it shall similarly notify Pacific Scientific. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same. Within fifteen (15) days after receipt of the notice, plaintiff may request additional information concerning the proposed divestiture, the proposed purchaser, and any other potential purchaser. Pacific Scientific or the trustee shall furnish the additional information within fifteen (15) days of the receipt of the request. Within thirty (30) days after receipt of the notice or within fifteen (15) days after receipt of the additional information, whichever is later, the United States shall notify in writing Pacific Scientific and the trustee, if there is one, if it objects to the proposed divestiture. If the United States fails to object within the period specified, or if the United States notifies in writing Pacific Scientific and the trustee, if there is one, that it does not object, then the divestiture may be consummated, subject only to Pacific Scientific's limited right to object to the sale under Section VI.B. Upon objection by the United States or by Pacific Scientific under Section VI.B, the proposed divestiture shall not be accomplished unless approved by the Court.

B. Thirty (30) days from the date when this Order becomes final, and every thirty (30) days thereafter until the divestiture has been completed or a trustee is appointed, Pacific Scientific shall deliver to plaintiff a written report as to the fact and manner of compliance with Section V of this Final Judgment. Each such report shall include, for each person who during the preceding thirty (30) days made an offer, expressed an interest or desire to acquire, entered into negotiations to acquire, or made an inquiry about acquiring any ownership interest in the Divestiture Assets or any of them, the name, address, and telephone number that person and a detailed description of each contact with that person during that period. Pacific Scientific shall maintain full records of all efforts made to divest all or any portion of the Divestiture Assets.

VIII. Financing

Pacific Scientific shall not finance all or any part of any purchase made pursuant to Sections V or VI of this Final Judgment without the prior written consent of the United States.

IX. Compliance Inspection

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States, including consultants and other persons retained by the plaintiff, shall, upon the written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Pacific Scientific made to its principal offices, be permitted:

1. access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda,

and other records and documents in the possession or under the control of defendant, which may have counsel present, relating to any matters contained in this Final Judgment; and

2. subject to the reasonable convenience of Pacific Scientific and without restraint or interference from them, to interview Pacific Scientific directors, officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, made to Pacific Scientific at its principal offices, Pacific Scientific shall submit written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information nor any documents obtained by the means provided in this Section IX shall be divulged by any representative of the United States to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Pacific Scientific to plaintiff, Pacific Scientific represents and identifies in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Pacific Scientific marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then plaintiff shall give ten (10) days notice to Pacific Scientific prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Pacific Scientific is not a party.

X. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XI. Termination

This Final Judgment will expire on the tenth anniversary of the date of its entry.

XII. Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16

_____

United States District Judge

United States District Court for the District of Columbia

In the matter of: United States of America, Plaintiff, v. Pacific Scientific Company, Defendant. *Case Number* 1:96CV00165. *Judge:* James Robertson. *Deck Type:* Antitrust. *Date Stamp:* 01/30/96.

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The United States filed a civil antitrust Complaint on January 30, 1996, alleging that the proposed acquisition of all of the outstanding shares of Met One, Inc. (''Met One'') by Pacific Scientific Company (''Pacific Scientific'') would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1. Pacific Scientific and Met One are the nation's two leading manufacturers of drinking water particle counters.

The Complaint alleges that the combination of these major competitors would substantially lessen competition in the manufacture and sale of drinking water particle counters in the United States. The prayer for relief seeks: (1) a judgment that the proposed acquisition would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1; and (2) a preliminary and permanent injunction preventing Pacific Scientific and Met One from carrying out the proposed merger, or any similar agreement, understanding or plan.

Shortly before that suit was filed, a proposed settlement was reached that would permit Pacific Scientific to complete its acquisition of Met One's stock, yet preserve competition in the market in which the transaction would raise significant competitive concerns. A Stipulation and a proposed Final Judgment embodying the proposed settlement were filed as well.

The Stipulation effects a hold separate agreement that, in essence, requires Pacific Scientific to ensure that, until the divestiture mandated by the Final Judgment has been accomplished, Met One's operations will be held separate and apart from, and operated independently of, Pacific Scientific's assets and businesses.

The proposed Final Judgment orders defendant to sell all of Pacific Scientific's U.S. assets and rights relating to the research and development, manufacture and sale of Pacific Scientific's Drinking Water Quality Monitoring Systems, other than real property, and Met One's software relating to Drinking Water Quality Monitoring Systems, and other assets if necessary, to make an economically viable competitor in the manufacture and sale of drinking water particle counters.

The United States and Pacific Scientific have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendant and the Proposed Transaction

Defendant Pacific Scientific Company is a California corporation with its headquarters in Newport Beach, California. Pacific Scientific Company reported annual sales in 1994 of approximately $234,700,000. HIAC/ROYCO, the division of Pacific Scientific that manufactures and sells drinking water particle counters, reported 1994 sales of $13,011,000, of which $1,270,000 came from drinking water particle counter sales.

Met One, Inc. is a California corporation with its headquarters in Grants Pass, Oregon. Met One reported net sales in 1994 of approximately $11,800,000, of which approximately $1,180,000 came from drinking water particle counter sales. Louis J. Petralli, Jr. is the majority and controlling owner of Met One.

Pacific Scientific proposes to acquire all outstanding stock of Met One for Pacific Scientific stock, and merge Met One into a newly created acquisition subsidiary.

B. The Drinking Water Particle Counter Market

Drinking water particle counters are devices sold largely to municipalities for the purpose of protecting against contamination of public drinking water

supplies. The drinking water particle counters made and sold by defendant are capable of detecting particles the size of potentially deadly microorganisms that may exist in public drinking water supplies. Drinking water particle counters such as those made by defendant generally include four components: a sensor, which directs a laser beam from a laser diode through the water being tested; a sampler, which provides a means to transport a sample of the water in which the particles are being counted undisturbed through the sensor; a counter, which sorts the signals from the sensor by voltage and assigns a particle size to the signals; and software, which translates data into a readable format.

Because drinking water particle counters are able to detect potentially harmful contaminants in public drinking water with greater sensitivity and efficiency than other technologies, such as turbiditymeters and microscopes, municipalities purchase them to satisfy their concerns for the purity and safety of their drinking water. For example, in 1993, 28 people in Milwaukee died as a result of drinking water contamination by one such microorganism—*Cryptosporidium*. At the time of that tragedy, Milwaukee had installed turbiditymeters but had not installed drinking water particle counters. Since 1993, Milwaukee has installed drinking water particle counters.[1]

Municipalities generally purchase drinking water particle counters through formal bid procedures. Although price is an important factor, municipalities also consider quality, reliability, service, and the reputation of the qualifying firms. Municipalities routinely request from each firm as part of that firm's bid package a list of references from past successful bids. Municipalities also routinely invite drinking water particle counter competitors to demonstrate the capabilities of their respective devices prior to the municipality's determination of the bid winner.

[1] Turbiditymeters are not part of the relevant market. Turbidity is an optical measurement of solid contamination suspended as particles in a fluid. Turbiditymeters have significantly different attributes than drinking water particle counters. For example, turbiditymeters cannot detect small quantities of microorganisms such as *Cryptosporidium*, as particle counters can. And, unlike drinking water particle counters, turbiditymeters do not provide exact data for the size and number of particles in a given medium. Municipalities do not consider turbiditymeters to be substitutes for drinking water particle counters.

C. Competition Between Pacific Scientific and Met One

Pacific Scientific and Met One compete directly in the manufacture and sale of drinking water particle counters. Pacific Scientific's Water Particle Counting System and Met One's on-line particle counting systems are regarded by municipalities as close substitutes, for they offer similar functionality, performance and features.

Pacific Scientific and Met One recognize the rivalry between their products in the relevant geographic market. Each firm has engaged in comparative selling techniques and competitive pricing strategies against the other firm in order to increase the likelihood of successful sales. Through these activities, Pacific Scientific and Met One have each operated as a significant competitive constraint on the other's prices and have each provided impetus for technological improvements in the other's systems. For example, when Met One was awarded the 1994 contract for particle counters provided to the City of San Francisco, Pacific Scientific wrote the city reminding it that Pacific Scientific rather than Met One was the low bidder. In its letter, Pacific Scientific also provided the city a detailed comparison of the Pacific Scientific product versus the Met One product. It has been common practice for municipalities to conduct side by side evaluations or demonstrations of the Pacific Scientific and Met One drinking water particle counters in considering the merits of each product's software and hardware capabilities.

D. Anticompetitive Consequences of the Acquisition

The Complaint alleges that the acquisition of Met One, Inc. by Pacific Scientific Company would reduce substantially or eliminate competition in the drinking water particle counter market in the United States and decrease incentives to maintain high levels of quality and service and to keep prices low.

Specifically, the Complaint alleges that the acquisition would increase concentration significantly in what is already a highly concentrated market.[2]

After the acquisition, the combined Pacific Scientific/Met One entity would dominate the drinking water particle counter market. Based on 1994 sales, the market share of the combined entity would be 65% of drinking water particle counters sold in the United States.

The complaint also alleges that entry into the market by a new firm selling drinking water particle counters would not likely be either timely or sufficient to prevent the harm to competition caused by Pacific Scientific's acquisition of Met One.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve competition in the manufacture and sale of drinking water particle counters in the United States. Within 30 days after entry of the Final Judgment, defendant will divest certain of Pacific Scientific's U.S. assets and rights relating to the research and development, manufacture and sale of Pacific Scientific's Drinking Water Quality Monitoring Systems, other than real property, and Met One's software relating to Drinking Water Quality Monitoring Systems, and other assets if necessary, to create an economically viable new competitor in the manufacture and sale of drinking water particle counters (in general, the ''Divestiture Assets'').

The proposed Final Judgment provides for the imposition of civil contempt penalties as an additional incentive for defendant to carry out the prompt divestiture of the Divestiture Assets and maintain competition in the drinking water particle counter market.

If defendant fails to divest the Divestiture Assets within 30 days after entry of the Final Judgment, the Court, upon application by the United States, shall appoint a trustee nominated by the United States to effect the divestiture of the Divestiture Assets. If a trustee is appointed, the proposed Final Judgment provides that Pacific Scientific will pay all costs and expenses of the trustee. The proposed Final Judgment also provides that the compensation of the trustee and of any professionals and agents retained by the trustee shall be both reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished. After appointment, the trustee will file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under the proposed Final Judgment. If the trustee has not accomplished the divestiture within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2)

[2] The Herfindahl-Hirschman Index (''HHI'') is a widely-used measure of market concentration. Following the acquisition, the appropriate post-merger HHI, calculated from 1994 dollar sales, would be 4842, an increase of 2108 from the premeger HHI.

the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. At the same time the trustee will furnish such report to the parties, who will each have the right to be heard and to make additional recommendations consistent with the purpose of the trust.

The proposed Final Judgment requires that Pacific Scientific and Met One be maintained separate and apart as independent entities prior to the divestiture contemplated by the Final Judgment.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendant.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendant have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to: Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, United States Department of Justice, 1401 H Street NW., Suite 3700, Washington, D.C. 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its Complaint against Pacific Scientific. The United States is satisfied, however, that the divestiture of the assets and other relief contained in the proposed Final Judgment will preserve viable competition in the manufacture and sale of drinking water particle counters that would otherwise be adversely affected by the acquisition. Thus, the proposed Final Judgment would achieve the relief the government would have obtained through litigation, but avoids the time, expense and uncertainty of a full trial on the merits of the government's Complaint.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination,

> The court *may* consider—
> (1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;
> (2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e) (emphasis added). As the United States Court of Appeals for the D.C. Circuit recently held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft*, 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

In conducting this inquiry, ''the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [3] Rather,

> Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) *quoting United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981); *see also Microsoft*, 56 F.3d at 1460–62. Precedent requires that—

> The balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[4]

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[3] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9, *reprinted in* (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[4] *United States* v. *Bechtel*, 648 F.2d at 666 (citations omitted) (emphasis added); *see United States* v. *BNS, Inc.*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.*, 406 F. Supp. at 716. *See also Microsoft*, 56 F.3d at 1461 (whether ''the remedies [obtained in the

Continued

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted).''[5]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: January 30, 1996.

Respectfully submitted,

John W. Van Lonkhuyzen,

Alexander Y. Thomas,

Trial Attorneys, U.S. Department of Justice, Antitrust Division, Merger Task Force, 1401 H Street, NW., Suite 3700, Washington, DC 20530, (202) 307–6355.

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BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Intelligent Processing of Materials-Physical Vapor Deposition Consortium (IPM–PVD)

Notice is hereby given that, on October 26, 1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), United Technologies Corporation and General Electric Company filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are: United Technologies Corporation acting by and through its Pratt & Whitney Government Engines and Space Propulsion, Pratt & Whitney Corporation, acting by and through its United Technologies Research Center, East Hartford, CT; and the General Electric Company, acting by and through its GE Aircraft Engines (GEAE), and through its GE Cooperative Research and Development (GE–CRD) Center, Evendale, OH.

The objective of the program being pursued by the IPM–PVD is to conduct the development of a sensor package aimed at reducing processing costs, manufacturing variability and to enable implementation of advanced TBC architectures.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–2658 Filed 2–7–96; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Aliens in Agriculture and Logging in the United States: 1996 Adverse Effect Wage Rates and Allowable Charges for Agricultural and Logging Workers' Meals

AGENCY: U.S. Employment Service, Employment and Training Administration, Labor.

ACTION: Notice of adverse effect wage rates (AEWRs) and allowable charges for meals for 1996.

SUMMARY: The Director, U.S. Employment Service, announces 1996 adverse effect wage rates (AEWRs) for employers seeking nonimmigrant alien (H–2A) workers for temporary or seasonal agricultural labor or services and the allowable charges employers seeking nonimmigrant alien workers for temporary or seasonal agricultural labor or services or logging work may levy upon their workers when they provide three meals per day.

AEWRs are the minimum wage rates which the Department of Labor has determined must be offered and paid to U.S. and alien workers by employers of nonimmigrant alien agricultural workers (H–2A visaholders). AEWRs are established to prevent the employment of these aliens from adversely affecting wages of similarly employed U.S. workers.

The Director also announces the new rates which covered agricultural and logging employers may charge their workers for three daily meals.

EFFECTIVE DATE: February 8, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. John M. Robinson, Deputy Assistant Secretary for Employment and Training, U.S. Department of Labor, Room N–4700, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: 202–219–5257 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Attorney General may not approve an employer's petition for admission of temporary alien agricultural (H–2A) workers to perform agricultural labor or services of a temporary or seasonal nature in the United States unless the petitioner has applied to the Department of Labor (DOL) for an H–2A labor certification. The labor certification must show that: (1) there are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed. 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188.

DOL's regulations for the H–2A program require that covered employers offer and pay their U.S. and H–2A workers no less than the applicable hourly adverse effect wage rate (AEWR). 20 CFR 655.102(b)(9); see also 20 CFR 655.107. Reference should be made to the preamble to the July 5, 1989, final rule (54 FR 28037), which explains in great depth the purpose and history of AEWRs, DOL's discretion in setting AEWRs, and the AEWR computation methodology at 20 CFR 655.107(a). See also 52 FR 20496, 20502–20505 (June 1, 1987).

A. Adverse Effect Wage Rates (AEWRs) for 1996

Adverse effect wage rates (AEWRs) are the minimum wage rates which DOL has determined must be offered and paid to U.S. and alien workers by employers of nonimmigrant (H–2A) agricultural workers. DOL emphasizes, however, that such employers must pay the highest of the AEWR, the applicable prevailing wage or the statutory minimum wage, as specified in the regulations. 20 CFR 655.102(b)(9). Except as otherwise provided in 20 CFR Part 655, Subpart B, the regionwide AEWR for all agricultural employment (except those occupations deemed inappropriate under the special circumstances provisions of 20 CFR

decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.' '') (citations omitted).

[5] *United States* v. *American Tel. and Tel Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983), *quoting United States* v. *Gillette Co., supra*, 406 F. Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).