IN THE MATTER OF

CHARLES E. WELLER

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Dkt. C-3149. Complaint, Dec. 24, 1984—Decision, Dec. 24, 1984

This Consent Order, among other things, requires Charles E. Weller to cease misrepresenting the value or potential value of oil and gas rights or other investments offered; the degree of risk involved in such investments; or the value or potential for increase in value of any mineral right or other investment offering. The respondent is also required to substantiate any representation or claim concerning the value or potential earnings of any investment; make prescribed disclosures in sales brochures and oral sales presentations advising consumers that oil and gas lease rights are high risk investments; and place $60,000 into an escrow account to be used for consumer redress.

Appearances

For the Commission: *David J. Federbush* and *Arthur B. Cornell.*

For the respondent: *Stephen V. Wilson, Hochman, Salkin and DeRoy,* Beverly Hills, California.

COMPLAINT

The Federal Trade Commission ("Commission"), pursuant to the provisions of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 41 *et seq.*, as amended, and by virtue of the authority vested in it by said Act, having reason to believe that Charles E. Weller ("respondent") has violated the provisions of said Act, and believing that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows:

RESPONDENT AND RESPONDENT'S BUSINESS

PARAGRAPH 1. Respondent Charles E. Weller was, until April 1983, a Director and President of Alaska Land Leasing, Incorporated ("ALL"), an Alaska corporation with its principal office currently located at 11726 San Vicente Boulevard, Los Angeles, California, and previously located at 28990 Pacific Coast Highway, Malibu, California. He was also, until April 1983, General Counsel and Executive Vice President of Federal Lease Filing Corporation ("FLFC"), a California corporation with its principal office located at 28990 Pacific Coast Highway, Malibu, California. Individually or in concert wit

others, he was directed, controlled, or formulated business practices of ALL and FLFC.

PAR. 2. Beginning around August 1982 and continuing thereafter, ALL has maintained a substantial course of trade in the sale of leases to the oil and gas exploration and development rights to public lands located in the state of Alaska. ALL has purchased or had related companies or third persons purchase, and resold such leases pertaining to tracts of federal lands managed by the United States Bureau of Land Management ("BLM lands"), including leases pertaining to substantial acreage in the Minchumina and Denali leasing blocks in central Alaska. ALL has also purchased or had related companies purchase, and resold such leases pertaining to tracts of Alaska state lands, including leases pertaining to substantial acreage made available through state sale 34 in the Prudhoe Bay Uplands. ALL subdivided these leases to pertain to smaller tracts, often as small as 40 to 640 acres, and has promoted the sale of these leases to consumers across the United States through telephone sales presentations and written promotional material. FLFC, a filing service for the federal lottery for leases to BLM lands in the lower 48 states, has similarly promoted the sale of such leases to consumers, and during the time of Weller's employment there sold such leases pursuant to an agreement with ALL.

PAR. 3. Defendant's course of trade is in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. 44.

RESPONDENT'S VIOLATIONS OF SECTION FIVE OF THE FTC ACT

PAR. 4. Respondent, personally or through the actions of ALL and FLFC, has falsely represented to their customers, expressly or by implication, that leases to BLM lands in the Minchumina and Denali blocks they have offered for sale are leases to lands which have good or high potential for oil and gas production. In fact, these lands have little or no potential for oil and gas production.

PAR. 5. Respondent, personally or through the actions of ALL and FLFC, has falsely represented to their customers, expressly or by mplication, that the leases to state sale 34 lands in the Kavik and Kemik areas of the Prudhoe Bay Uplands they have offered for sale re leases to lands which have good or high potential for oil and gas roduction. In fact, these lands have little or no potential for oil and ıs production.

PAR. 6. Respondent, personally or through the actions of ALL and .FC, has falsely represented to their customers, expressly or by plication, that their leases to the lands described in paragraphs ır and Five were selected or recommended for purchase by their logist or team of geologists, experts, or analysts for their oil

gas production potential. In fact, no geologist or team of geologists, experts or analysts selected or recommended that ALL or FLFC purchase leases in those areas.

PAR. 7. Respondent, personally or through the actions of ALL and FLFC, has falsely represented to their customers, expressly or by implication, that the leases they have offered for sale to lands described in paragraphs Four and Five are low-risk investments or that these leases are likely to increase in value and produce substantial income. In fact, these leases are high-risk investments and are unlikely to increase in value or produce income.

PAR. 8. Respondent, personally or through the actions of ALL and FLFC, has represented to their customers, expressly or by implication, that the leases they have offered for sale have good or high potential for oil and gas production. Respondent, through the actions of ALL and FLFC, has deceptively failed to disclose to their customers that subdividing leases into interests pertaining to 640 or fewer acres in itself makes it unlikely that the lease property will be explored or developed for oil and gas production.

PAR. 9. Each of respondent's misrepresentations of or failures to disclose material facts, as described in paragraphs Four through Eight above, was deceptive in violation of section 5(a) of the FTC Act.

CONSUMER INJURY

PAR. 10. Respondent's misrepresentations of and failures to disclose material facts have induced consumers to spend substantial sums of money to purchase leases offered for sale by ALL and FLFC. The leases described in paragraphs Four and Five are of little or no value and ALL's and FLFC's customers have therefore lost virtually all the money they invested to purchase those leases.

Commissioner Azcuenaga abstained.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, his attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said

agreement is for settlement purposes only and does not constitute an admission by respondent that the facts as alleged in the complaint are true or that any law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comment filed thereafter by an interested person pursuant to Section 2.34 of its Rules, and having thereafter accepted a modification to the consent agreement, approved by respondent and counsel for the Commission, which permits the Commission to transfer funds paid by respondent for redress purposes to the receiver appointed in the Commission's related federal district court action to be disbursed appropriately by the receiver under court supervision, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues it complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Charles E. Weller was, until April 1983, a Director and President of Alaska Land Leasing, Incorporated, an Alaska corporation with its principal office then located at 28990 Pacific Coast Highway, Malibu, California. He was also executive vice president and general counsel of Federal Lease Filing Corporation, a California corporation with its principal office located at 28990 Pacific Coast Highway, Malibu, California, until April 1983.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

Order

I.

It is hereby ordered, That respondent Charles E. Weller, his successors and assigns, and respondent's agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or promotion of any mineral right, including any oil and gas lease right, or other investment offering in or affecting commerce, as "com-

merce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Misrepresenting, directly or by implication,

(a) the value, or potential for increase in value, of any mineral right or other investment offering, including, but not limited to, the potential for oil or gas discovery or production on any property, the proximity of any property to a proven oil or gas reserve, the geologic structure of any property, or the existence of, or access to, any pipeline to transport oil or gas from any property;

(b) the past or likely future success of anyone in realizing profits, obtaining income, or gaining anything of value from any mineral right or other investment offering, including, but not limited to, the resale value of any oil and gas lease right or the royalty income from any oil and gas lease right;

(c) the degree of risk in any investment offering or in the acquisition of any mineral right;

(d) the findings, conclusions or substance of any report, analysis, recommendation or other advice by defendant or anyone else, including a geologist, concerning the geologic potential, value or potential for increase in value of any mineral right or other investment offering;

(e) any purchase, offer to purchase or bid by anyone, including an oil company, for any mineral right or other investment offering;

(f) any mineral exploration, discovery or production, including drilling, on any property or the production status of any dry, capped, suspended or abandoned oil or gas well;

(2) Representing, directly or by implication, the value or potential for increase in value of any mineral right or other investment offering either by reference to any land or fixtures thereon, by reference to any earnings, profits or income anyone has made or may make, or by any other reference, or representing, directly or by implication, any other of the matters referred to in part (1)(a)-(f) above, unless at the time such representation is made respondent or his successors and assigns possess and rely upon competent and reliable evidence that substantiates the representation.

(3) Failing to disclose clearly and conspicuously (as set forth below) in every sales brochure given or shown to any prospective purchaser (other than one of the top 200 oil and gas producing companies as ranked by total assets in the then current *U.S.A. Oil Industry Directory* published by the PennWell Publishing Company of Tulsa, Oklahoma) of any mineral right or other investment offering statements (a)-(e) below, and failing to disclose clearly and conspicuously (as set forth below) in every sales contract and sales or service agreement

given or shown to any of those prospective purchasers statements (a)-(f) below:

(a) "The [partnerships in (where applicable)] oil and gas leases we offer are extremely speculative and very high risk investments. Do not invest unless you can afford and are prepared to lose all the money invested."

(b) When any geologist has reported to respondent that respondent's lease property or the area in which that lease property is located has little or no potential for oil or gas reserves,

"(A) [g]eologist(s) report(s) to us that this area has little or no potential to contain oil or gas. A copy of (all) the geologist report(s) on this area is (are) available upon request."

(c) When offering lease rights to 640 or fewer contiguous acres of property that contain no proven oil or gas reserves,

"Even if oil or gas were located on our lease property, a lease property size in this area of 640 of fewer acres will make it unlikely that oil or gas drilling will occur."

(d) When making any reference to oil company ownership of, bidding for or attempts to purchase leases to property that is nearby, or in the same leasing block as, respondent's lease property,

"Oil company ownership of or attempts to acquire other leases in this area don't mean that oil or gas is likely to be found on or anywhere near our lease property. In fact, no oil company attempted to acquire the lease(s) we're offering to you" (when such is the case).

(e) When making any reference to any oil or gas discovery, production or exploration on property that is nearby or in the same leasing block as respondent's lease property,

"Oil or gas found nearby, or in the same leasing block as, our lease property doesn't assure that oil or gas is located on our lease property. The likelihood of reserves depends on geologic structure, which can be different even for adjoining areas."

(f) "This agreement [or contract] shall not be deemed valid or complete unless the customer has signed and dated the required declaration of understanding printed herein."

The statements required above shall be disclosed in sales or service agreements and sales contracts in print at least as large as the capitalized corporate name within the text of the contract or agreement, but in no event smaller than 10 point type. Such statement shall be printed in 100% black ink against a white background, and boxed. The copy of the foregoing statements included on each sales or service agreement or sales contract shall also include a signature line for the

customer preceded by a declaration that the customer has read and understands the statement. The statement required by part 3(a) above shall also be disclosed, in the size and format described above, on the front cover of every sales brochure. The statements required by parts 3(b)-(e) shall be disclosed in sales brochures in the same size and format described above on the first page of the brochure.

(4) Failing to disclose orally in every oral sales presentation given to any prospective purchaser (other than one of the top 200 oil and gas producing companies as ranked by total assets in the then current *U.S.A. Oil Industry Directory* published by the PennWell Publishing Company of Tulsa, Oklahoma) of any mineral right or other investment offering the statements required by parts (3)(a)-(e) above.

II.

It is further ordered, That respondent Charles E. Weller shall deposit, no later than five (5) days after his attorney is served with a copy of a notice of the acceptance of the Consent Agreement containing this Order by the Commission pursuant to section 2.34(1) of its Rules of Practice, a certified check for $60,000 into an escrow account established and managed by the United States Treasury for the Federal Trade Commission, such funds to be used for such consumer redress purposes as the Commission shall decide upon after final disposition of the action against Alaska Land Leasing, Incorporated and Federal Lease Filing Corporation and other officers, directors and salesmen of those corporations, *FTC v. Alaska Land Leasing Inc.,* Civ. No. 84–5416 AWT(Px) (C.D. Cal., filed July 23, 1984); *provided, however,* that the Commission may transfer these funds to the receiver appointed in the above-mentioned federal district court action, such funds to be disbursed under court supervision pursuant to the Order Appointing a Permanent Receiver in that case, entered October 31, 1984.

III.

It is further ordered, That respondent shall, within sixty (60) days after the date of service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with the Order.

Commissioner Azcuenaga abstained.

Manufacturing of polypropylene using propylene as a feedstock constitutes "petrochemical processing" and is an "oil and gas related asset" within the meaning of the Consent Order issued against respondent. (104 F.T.C. 597 (1984))
[*Gulf Oil Corporation, Dkt. C-3147*]

Nov. 8, 1984

Dear Mr. Whitman:

The Commission has considered your request for advice as to whether the proposed sale of Gulf's Cedar Bayou, Texas, polypropylene plant to Amoco Chemical Company, a subsidiary of Standard Oil Company (Indiana), is subject to the prior approval of the Commission under the order in this case, issued October 24, 1984.

The order requires Chevron and Gulf to obtain the prior approval of the Commission before selling any of Gulf's "oil and gas related assets," until the properties identified in Schedule A of the order have been divested. As defined in the order, "oil and gas related assets" include, among other things, assets and operations relating to "petroleum and petrochemical processing."

According to Gulf's request for advice, Gulf's Cedar Bayou plant produces polypropylene, a plastic. Polypropylene is made by polymerizing propylene, a petrochemical, into solid form.

On the basis of the information submitted and other relevant information, the Commission has determined that because the Cedar Bayou plant manufactures polypropylene using propylene as a feedstock, the plant is engaged in "petrochemical processing" and is an "oil and gas related asset" within the meaning of the order. Accordingly, the Commission has determined that the proposed sale of Gulf's Cedar Bayou polypropylene plant is subject to the prior approval of the Commission under the terms of the order.

Gulf's request was placed on the public record on October 25, 1984, and will be on the public record for thirty days until November 26, 1984. After the public comment period has ended, the Commission will consider the request, the comments received and other information, and will determine whether to approve the proposed sale.

By direction of the Commission.

Letter of Request

GULF OIL CORPORATION'S REQUEST FOR ADVICE AS TO COMPLIANCE WITH A COMMISSION ORDER OR, IN THE ALTERNATIVE, APPLICATION FOR APPROVAL TO DIVEST POLYPROPYLENE ASSETS

Parties and Jurisdiction

1. Gulf Oil Corporation (hereinafter "Gulf") is a wholly-owned subsidiary of Chevron Corporation (hereinafter "Chevron"), formerly Standard Oil Company of California (hereinafter "Socal").

2. On March 5, 1984, Gulf's then 100% parent, Gulf Corporation, and Socal entered into a Merger Agreement whereby Socal would acquire Gulf Corp. and its subsidiary, Gulf. A copy of the Merger Agreement is contained in the Appendix as Exhibit A.*

3. The Merger Agreement was amended on May 15, 1984 by a First Amendment which changed none of the substance of the Merger Agreement, but did correct minor errors in form. A copy of the First Amendment is contained in the Appendix as Exhibit B.

4. The Federal Trade Commission (hereinafter "the FTC" or "the Commission") initially approved the merger—subject to certain conditions—in an April 26, 1984 Agreement Containing Consent Order (hereinafter "the Consent Order"). A copy of the Consent Order is contained in the Appendix as Exhibit C.

5. The Consent Order incorporated in Paragraph II(C) a distinct Agreement to Hold Separate (hereinafter "the Hold Separate Agreement") affecting principally Gulf's domestic oil and gas assets. A copy of the Hold Separate Agreement is contained in the Appendix as Exhibit D.

6. Gulf wishes to proceed with its agreement to sell its polypropylene business, including the plant located in Gulf's Cedar Bayou facility approximately thirty (30) miles east of Houston, Texas, to Amoco Chemicals Company (hereinafter "Amoco"), a subsidiary of Standard Oil Company (Indiana). A copy of the December 19, 1983 letter of intent is contained in the Appendix as Exhibit E. A copy of the Inventory Sale and Interim Manufacturing Arrangements dated September 10, 1984 is contained in the Appendix as Exhibit F. A copy of the September 10, 1984 definitive agreement of sale (minus attached exhibits and schedules) is contained in the Appendix as Exhibit G.

7. Gulf and Amoco have previously made Hart-Scott-Rodino premerger notification filings with the Commission, including responses to second requests for information. The Commission staff has advised Gulf, however, that even if the proposed sale were to be found acceptable under Section Seven of the Clayton Act, 15 U.S.C. § 18, a second

* Not reproduced herein. Copies of all Exhibits are available for inspection in Room 130, Public Reference Branch, Federal Trade Commission, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

Commission approval would be needed under the terms of the Consent Order and Hold Separate Agreement. All efforts to resolve the matter informally at the Staff level have been unavailing, and Gulf now applies to the full Commission pursuant to FTC Rule of Practice 2.41(d) for an expedited order advising that neither Commission approval of the sale under the Consent Order and Hold Separate Agreement nor a period for public comment is needed. Should the Commission advise that the agreement of sale is one covered by the Consent Order and Hold Separate Agreement, then Gulf applies under FTC Rule of Practice § 2.41(f) for approval to divest its polypropylene business, subject only to a favorable decision on Section Seven grounds.

The Product and Its Uses

8. Polypropylene is one polymer in the polyolefin family of thermoplastic resins. All thermoplastic resins are derived by polymerizing petrochemicals into solid form. All thermoplastic resins are capable of being resoftened, usually by the application of heat and pressure. Typically, polypropylene is used in fiber, film, wire insulation, housewares, medical wares, and molded parts. A specific example is the plastic casing of an automobile battery.

History of Gulf's Polypropylene Business

9. Gulf's Cedar Bayou chemical plant produces ethylene, propylene, several ethylene derivatives, and polypropylene, a propylene derivative. Gulf entered the polypropylene business in the mid-1970's as part of a plan to integrate downstream into another polyolefin and to utilize propylene produced as a by-product in the manufacture of ethylene. In 1975 Gulf licensed the necessary technology, began construction of a polypropylene plant at the Cedar Bayou complex, and started buying polypropylene for resale. Gulf continued to purchase polypropylene manufactured by others even after late 1978 when its own plant began commercial production. Gulf's gross investment in the plant is over $120,000,000.

10. Unfortunately, Gulf has never earned a return on that investment. Indeed, it has lost substantial sums every year of its operation. A chart showing those losses is contained in the Appendix as Exhibit H. Operating losses for 1984 are projected, and the end is not in sight. Several million dollars in additional investments in technology, plant, and equipment would be necessary to improve the chances for profitability, and Gulf's Board of Directors decided in 1983 to cut its losses and to withdraw from the polypropylene business. While the execution of that decision was left to others, the message was clear. The plant was to be sold or closed by the end of 1984.

The Search for a Buyer

11. Gulf then identified companies whose existing businesses might fit well with Gulf's or foreign companies which might be interested in a toe-hold acquisition in the United States. All fifteen companies so identified were approached by Gulf with offers. Some received offers to sell all Gulf's olefin and olefin derivatives business. Others were offered polypropylene. Only Amoco gave a positive response. No other potential buyer exists.

The Agreement with Amoco

12. Gulf and Amoco entered into the letter of intent dated December 19, 1983 (Exhibit E, above). The Board of Directors of Gulf approved the sale to Amoco at a February 14, 1984, board meeting. Somewhat later, Amoco's board approved the transaction, and an interim agreement (Exhibit F, above) was signed on September 10, 1984. A final agreement (Exhibit G, above) was signed September 10, 1984 calling for the sale by Gulf of

(a) the polypropylene production facilities at Gulf's Cedar Bayou, Texas complex,
(b) approximately nine million pounds of polypropylene inventories,
(c) a warehouse and four shop buildings,
(d) a license for the technology used in the plant,
(e) polypropylene patents (none of which are used in production) and incidental know-how,
(f) leases for 398 hopper cars,
(g) polypropylene marketing records, and
(h) certain of Gulf's polypropylene contract obligations.

On October 1, 1984, Gulf would have commenced to dedicate the output of its polypropylene plant to Amoco under a toll processing arrangement. A closing for the sale of the plant facilities, *i.e.,* the "hardware," is scheduled for January 1, 1985.

The Commission Was Advised of the Proposed Sale

13. Gulf has kept the Commission fully informed of Gulf's intent to sell its polypropylene business to Amoco. Treating the sale as the separate transaction that it is, Gulf made its first Hart-Scott-Rodino filing as to this polypropylene transaction on February 1, 1984. A second Gulf filing in response to a request for additional information about the proposed sale was made on September 4, 1984. Gulf also notified the Commission during the course of the Socal/Gulf merger proceedings. Documents relating to the impending sale of the polypropylene business were produced by April 2, 1984, in response to specifi-

The December 19, 1983 letter agreement in particular bears production numbers GC 00110023–56 and should be located in FTC Box 24.

The Commission Staff's Position

14. By letter dated September 21, 1984, the Commission staff advised that "Although the Commission has not decided the issue . . . ," Gulf's proposed sale of its polypropylene plant might well be the sale of an "oil and gas asset" under Paragraph 2(h) of the Agreement to Hold Separate that would require specific Commission approval prior to sale. A copy of the Staff's letter is contained in the Appendix as Exhibit I.

The Polypropylene Business Sale Is Not Covered by the Consent Order

15. The Commission should advise that the proposed sale of the polypropylene business without prior FTC approval is in compliance with the Consent Order, *i.e.,* does not violate the Consent Order, because the proposed sale is not covered by the Consent Order. The Consent Order clearly covers the sale of the properties listed in Schedule A of the Order. Those properties must be divested as part of the agreement with the Commission. The FTC Staff is *not* contending that the sale of the polypropylene business is a sale of a Schedule A property.

16. Rather, the Staff is contending that the agreement to sell the polypropylene plant *may* be an agreement to sell an asset that requires prior Commission approval under Paragraph 2(h) of the Hold Separate Agreement. Paragraph 2(h) reads as follows:

> Nothing herein shall prevent the current Gulf Board or the New Board from negotiating or entering into agreements to dispose of Gulf's assets, provided that any such agreements with respect to oil and gas related assets and businesses are conditioned on and not consummated prior to final approval by the Commission.

The term "oil and gas related assets and businesses" is defined in Paragraph I(b) of the Consent Order which states:

> "Oil and gas assets and businesses" means all Gulf's domestic crude oil and gas, and assets and operations relating to oil and gas exploration, production and transportation, as well as petroleum and petrochemical processing, refining, transportation and marketing activities, and any similar foreign activities to the extent involved in imports into the United States.

The Staff seems to have focused its attention only on seeking a determination from the Commission whether the polypropylene business is an oil and gas related asset or business. Whether it is or not becomes irrelevant if the agreement to sell is not covered by Paragraph 2(h) of the Hold Separate Agreement.

17. The language used in Paragraph 2(h) shows that the parties to the Hold Separate Agreement all contemplated a prospective application of the restrictive proviso of Paragraph 2(h). The words "negotiating or entering into agreements" clearly contemplate new agreements from the date of the Consent Order forward in time until the provisions of the Consent Order have been satisfied. Just as clearly, the language does not apply retrospectively to a proposed sale of assets already negotiated and approved by the Gulf Board of Directors. There is no question that the proposed sale to Amoco to dispose of the polypropylene business pre-dated the Consent Order and Agreement to Hold Separate. There is equally no doubt that the Federal Trade Commission was fully aware of the agreement to sell the business. As noted above in Paragraph 12, the December 19, 1983 letter of intent with Amoco was signed before the Merger Agreement with Socal. Gulf's first Hart-Scott-Rodino filing regarding this polypropylene sale had been made before the Merger Agreement with Socal. Gulf's Board of Directors had approved the sale to Amoco before the merger agreement. The proposed sale was brought to the Commission's attention a second time within the responses to specifications requesting additional information. All this occurred before the Commission entered its Consent Order and Hold Separate Agreement.

18. Equally important, the polypropylene business is not and should not be considered an oil and gas related asset or business. After the decision was made to sell the business, it could not reasonably be considered to be part of Gulf's ongoing operations. See the September 21, 1984 letter and memorandum from Bernard J. McNamee to Gordon Youngwood contained in the Appendix as Exhibit J. The polypropylene business was an asset only in the sense that it represented potential sale proceeds. It was a claim against a proposed buyer's cash. It was not considered an oil and gas related asset or business, but rather an account receivable.

19. Finally, the definition of "oil and gas related assets and businesses" does not include polypropylene. The only conceivable argument to the contrary apparently arises from the inclusion in the definition of the term . . . "petrochemical processing." Polypropylene is a thermoplastic polymer, produced in solid pellet form. It is the result of polymerizing propylene with or without monomers. It is categorized under Standard Industrial Classification 2821–351. Petrochemicals, on the other hand, are classified under Standard Industrial Classification Numbers 2869 and 2911. Petrochemicals are generally thought of as the refinery processing streams resulting in the primary olefins such as ethylene, propylene, and butadiene, and in aromatics, such as benzene, toluene, and xylenes. These products are liquids or gases, not solids. Derivatives of these products, such as high and low density polyethylene, polypropylene, polystyrene, and

nylon are regarded not as chemicals or petrochemicals, but as plastics.

Sale of the Polypropylene Plant Is Consistent with the Consent Order

20. Even *assuming* that the Consent Order applies to the agreement to sell the polypropylene business, the sale of that business is perfectly consistent with the purpose of the Order. The seventh WHEREAS clause in the premises of the Agreement to Hold Separate reads:

> *Whereas,* the purpose of this Agreement and the Consent Order is to preserve Gulf as a viable, integrated petroleum company pending the divestiture of the Schedule A properties as viable, ongoing enterprises, in order to remedy any anticompetitive effects of the Acquisition and to preserve Gulf as a viable, integrated petroleum company in the event that divestiture is not achieved; . . . .

Gulf's viability is enhanced, not diminished, by the sale of the polypropylene business. Gulf's polypropylene business has been a consistent money loser. Selling the operation will stop those losses. If the Consent Order applies, Commission approval of that sale is needed. Withholding Commission approval of the sale would be directly contrary to the purpose of the Consent Order and Agreement to Hold Separate. They would have been interpreted in a way that makes Gulf less viable than it was.

21. Likewise, the fifth WHEREAS clause in the premises begins with the following language:

> *Whereas,* the Commission is concerned that if an understanding is not reached preserving the *status quo ante* of Gulf's oil and gas assets and businesses during the period prior to the divestiture of the properties described on Schedule A of the Consent Order . . . .

Clearly, the *status quo ante* with regard to the polypropylene business was that it was going to be sold or closed. Approving the sale is consistent with preserving the *status quo ante* because it preserves a decision made before the Consent Order and Agreement to Hold Separate. Withholding approval of the sale is contrary to preserving the *status quo ante* because it will reverse a prior decision.

The Polypropylene Business Is Not Needed To Aid the Saleability of Schedule A Properties

22. It was thought at the time the Agreement to Hold Separate and Consent Order were entered that it might be necessary or desirable to divest some or all of Gulf's oil and gas related assets and businesses in addition to the Schedule A properties. Both the sixth WHEREAS clause of the Agreement to Hold Separate and Paragraph II(A) of the Consent Order reflect this. Whatever the likelihood at the time that

Gulf's money-losing polypropylene plant would be needed to enhance the sale of the more desirable Schedule A properties, that likelihood has totally disappeared in light of subsequent events. Chevron and Standard Oil Company of Ohio have reached an agreement which, if approved, will result in the divestiture of the marketing assets in eight southeastern states and the Alliance refinery. Clearly, this satisfactory solution for the bulk of the Schedule A properties has been attained without including the polypropylene plant.

23. Moreover, no reasonable argument can be advanced to support the proposition that the polypropylene plant is needed to aid the sale of Gulf's interest in the West Texas Gulf Pipeline Company or in the Colonial Pipeline. West Texas is a crude line. Gulf's polypropylene plant does not process crude. Colonial is a products pipeline which transports refined products in liquid form. Gulf's polypropylene plant produces solid pellets which are shipped in boxes or hopper cars. They cannot be shipped via the Colonial Pipeline.

There Is No Synergy Between the Polypropylene Plant and Gulf's Port Arthur Refinery

24. The Staff has suggested that possible synergies between the polypropylene plant and Gulf's Port Arthur refinery be considered. Apparently, the Staff reasons that the polypropylene plant ought not be sold because it might enhance the sale of the Port Arthur refinery. The obvious counter to this reasoning is that the Port Arthur refinery need not be sold to satisfy the Consent Order. Sohio has elected to purchase the Alliance refinery.

25. Moreover, synergy by definition includes combined action or operation. There simply is no combined action or operation between the polypropylene plant and Port Arthur which can result in a total effect greater than the sum of the two operations taken independently. It must be remembered that the Cedar Bayou complex contains a number of plants consuming different raw materials and functioning at different levels in the creation of products. The polypropylene plant cannot be equated with the Cedar Bayou complex as a whole. That complex produced products other than polypropylene for over fifteen (15) years before the polypropylene plant was built. Gulf's Cedar Bayou plant has the capacity to produce sufficient propylene for the polypropylene plant. However, Gulf's Cedar Bayou plant is not dependent on the Port Arthur refinery for feed stocks, nor is the Port Arthur refinery dependent upon Gulf's polypropylene plant as an outlet for its propylene production. Cedar Bayou buys feed stocks from Port Arthur only when the economics are favorable to Cedar Bayou. Other suppliers exist, and for several years Cedar Bayou has not purchased its major feedstocks from Port Arthur. Thus, there is no interdependence or combined operation between the polypropy-

lene plant and Port Arthur. The feed stocks which the Cedar Bayou plant obtains from time to time from the Port Arthur refinery would be consumed in the production processes at Cedar Bayou whether or not Gulf operates the polypropylene facility. Thus, there is no direct buy-sell relationship between the polypropylene plant and Port Arthur, and Gulf's polypropylene business does not affect whatever buy-sell relationship exists from time to time between the Cedar Bayou plant and the Port Arthur refinery. Selling or closing the polypropylene plant is simply irrelevant to that relationship.

26. It is also true that there are a number of pipelines between Port Arthur, Texas and the Cedar Bayou complex. A summary description of those lines is contained in the Appendix as Exhibit K. These pipelines are irrelevant, however, when, as noted above, there is no buy-sell relationship requiring pipeline transportation.

Time Is of the Essence

27. Amoco and Gulf had set October 1, 1984 as a date for the commencement of the toll processing arrangement. Because the Commission Staff stated that Amoco's response to the second request for information was not substantially in compliance, Amoco had to supply additional materials. As a result, the twenty (20) day period in which the Commission must indicate whether it will approve the acquisition now will expire on October 19, 1984. The transaction will not proceed without the consent of the Federal Trade Commission. The market place now perceives Gulf as exiting the market, and many customers have turned to and are being solicited by other suppliers. The value of the polypropylene business as an ongoing concern with a stable customer base is obviously greater than that of the plant hardware alone. If the transaction is canceled by Amoco for want of prompt approval by the Commission, the result will be a loss to everyone. Gulf and Amoco will each have lost the benefit of their bargain. The industry will have lost the productive capacity of the Cedar Bayou polypropylene plant, and, as a result, the concentration of industry capacity will be higher than if the plant had been sold to Amoco.

Conclusion

28. Gulf is before the Commission pursuant to Rule 2.41(d), seeking an advisory ruling that the proposed sale of the Cedar Bayou polypropylene business is in compliance with and not in violation of the Consent Order and Agreement to Hold Separate. They do not apply to the agreement to sell the plant to Amoco for two reasons. First, they are prospective in their scope, and the agreement of sale was negotiated and entered into before the date of the Consent Order and Agreement to Hold Separate. Second, the polypropylene business is

not an oil and gas related asset or business in either the financial or technical sense. Even if the agreement to sell the polypropylene business were within the scope of those documents, the sale of the business is perfectly consistent with their purpose. Selling the plant helps to maintain Gulf as a viable entity and in no way subtracts from the saleability of the Schedule A assets.

Time is of the essence in this transaction. Therefore an expedited ruling under Rule 2.41(d) that the transaction is not within the scope of the Order is preferable because it does not require a thirty (30) day period to await public comment. Approval of the sale under Rule 2.41(f) would achieve the same result, but would delay the transaction during the thirty (30) day public comment period.

Respectfully submitted,

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Attorney for Gulf Oil Corporation

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