Findings, Opinions, and Orders

IN THE MATTER OF

NUTRITION 21, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3758. Complaint, July 11, 1997--Decision, July 11, 1997

This consent order prohibits, among other things, the two California-based companies and their officer from making unsubstantiated advertising claims for their weight loss and health care products containing chromium picolinate and requires competent and reliable scientific evidence to substantiate any representation concerning the benefits, performance, efficacy or safety of any food, dietary supplement or drug they advertise or sell. The consent order also prohibits misrepresentations of the results of any study, test or research. In addition, the consent order requires the company to send its customers a notice of the Commission's allegations and a request to stop using sales materials that make the challenged claims.

Appearances

For the Commission: *Beth Grossman, Loren G. Thompson* and *C. Lee Peeler.*

For the respondents: *Stephen McNamara, Hymans, Phelps & McNamara,* Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that Nutrition 21, a limited partnership; Selene Systems, Inc., a corporation and general partner of Nutrition 21; and Herbert H. Boynton, individually and as President of Selene Systems, Inc., a corporation ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Nutrition 21 is a California limited partnership with its principal office or place of business at 1010 Turquoise St., Suite 335, San Diego, CA.

2. Respondent Selene Systems, Inc. is a California corporation and a general partner of Nutrition 21. Its principal office or place of business is the same as that of Nutrition 21.

3. Respondent Herbert H. Boynton is President of Selene Systems, Inc., a corporation. Individually or in concert with others, he formulates, directs, and controls the acts and practices of Nutrition 21 and Selene Systems, Inc., including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of Nutrition 21.

4. Respondents have manufactured, advertised, offered for sale, sold, and distributed Chromium Picolinate for use in dietary supplements. Chromium Picolinate is a product subject to the provisions of Sections 12 and 15 of the Federal Trade Commission Act. The United States Department of Agriculture holds the patent on Chromium Picolinate, and Nutrition 21 holds the exclusive license to manufacture and sell Chromium Picolinate.

5. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

6. Respondents have disseminated or have caused to be disseminated advertisements and promotional materials for Chromium Picolinate, including but not necessarily limited to the attached Exhibits A-G. These advertisements and promotional materials contain the following statements:

A. Lose the Fat but Keep the Muscle . . .

Chromium Picolinate

At last there is a safe nutritional supplement that helps you lose unwanted fat more easily and quickly, while retaining vital muscle tissue. Now you can have a trimmer, firmer, leaner body.

LOSE THE FAT BUT KEEP THE MUSCLE

Most dieters who achieve significant weight loss lose far too much lean body mass (muscle and organ tissue). . . . Even worse, this lessened lean body mass lowers your metabolic rate, making it that much harder to keep the fat off permanently -- the yo-yo syndrome!

There is now excellent scientific evidence that Chromium Picolinate can accelerate fat loss while helping to preserve or even increase muscle.

CONVINCING NEW EVIDENCE

Overweight adults were recruited by a prominent San Antonio weight loss clinic to participate in a weight loss study. About half of the volunteers received supplemental Chromium Picolinate (200 or 400 micrograms chromium daily), while the others received placebos. Neither the participants nor the doctors evaluating them knew who was getting the chromium (a "double- blind" study). The volunteers were not placed on any specific diet or exercise regimen, although most of them were motivated to lose weight. After only 60 days, these were the impressive results:

The changes in the placebo group were negligible. But the Chromium Picolinate group, on average, lost over 4 pounds of fat while gaining nearly a pound and a half of lean muscle for a Net Physique Enhancement of 5.6 pounds.

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Another double blind-study was conducted in young off- season football players participating in a six-week weight-training program. The results were much the same: more muscle, less fat with Chromium Picolinate. Chromium Picolinate more than doubled the net benefits of exercise alone.

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LEANER AND FIRMER

Because many people gain muscle with Chromium Picolinate, their weight loss in pounds doesn't accurately reflect the benefits of chromium. Most users report that event [sic] a modest weight loss as shown on the bathroom scale is accompanied by lost inches and smaller clothing sizes. They look and are leaner and firmer. Chromium Picolinate promotes fat loss, while enhancing the muscle that assures a trim athletic physique.

HOW DOES CHROMIUM PICOLINATE WORK?

Controls Hunger Many people report that Chromium Picolinate helps to control appetite, especially sugar cravings. It is believed that chromium sensitizes the "glucostat" in the brain that monitors blood sugar availability and "tells" you when you're hungry or not hungry.

"Spares" Protein . . . By "sensitizing" muscle to insulin, Chromium Picolinate helps to preserve muscle in dieters so that they "burn" more fat and less muscle. Preservation of lean body mass has an important long-term positive effect on metabolic rate, helping dieters keep off the fat they've lost.

Stimulates Metabolism It promotes efficient metabolism by aiding the thermogenic (heat producing) effects of insulin. Insulin levels serve as a rough index of the availability of food calories, so it's not at all surprising that insulin stimulates metabolism.

HOW MUCH CHROMIUM PICOLINATE SHOULD I TAKE FOR OPTIMAL WEIGHT LOSS?

Clinical trials with 200 to 400 micrograms of chromium daily produced significant benefits. Larger individuals and those engaged in strenuous work or exercise may see better results with higher levels -- up to a maximum of 400 micrograms daily.

PUTTING IT ALL TOGETHER

The best thing about Chromium Picolinate is that it makes other sensible weight control efforts more effective. Many people report that they have tried diet and exercise before, but say that they didn't get good results until they added Chromium Picolinate. . . .

Chromium Picolinate, all by itself, isn't likely to make a fat person thin. But it can be the decisive component of an overall strategy for long-term weight control and, in the bargain, make an important contribution to good health.

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(Exhibit A) (references omitted)

B. WEIGHT LOSS, FAT LOSS AND MUSCLE LOSS

or "How to Break the String of Yo-Yo Diets"

CLEARLY, THE KEY TO BREAKING THIS DISCOURAGING CYCLE OF EVER MORE FAT, EVER LESS MUSCLE, IS LOSING FAT WHILE PRESERVING--OR EVEN INCREASING--MUSCLE. . . .

This is precisely what Dr. Gilbert Kaats and his colleagues achieved in a recently completed study . . . .

One hundred fifty men and women were asked to join in a weight loss study. Roughly half were given supplemental Chromium Picolinate (200 or 400 micrograms chromium daily), while the others got a placebo. They were not placed on any specific diet or exercise regimen, although most were trying to lose weight. . . . After 72 days, these were the impressive results:

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The changes in the placebo group were insignificant. However the Chromium Picolinate group, on average, lost over 4 pounds of fat while gaining nearly a pound and a half of lean muscle!

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The review of clinical trials reported that supplementation with Chromium Picolinate:

-- reduced total serum cholesterol and LDL, the "bad" cholesterol
-- reduced elevated blood sugar levels and glycosylated hemoglobin in diabetics
-- significantly reduced body fat and increased muscle in exercising individuals.

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Chromium is an essential nutrient that is in short supply in 90% of typical U.S. diets. . . .

CHROMIUM PICOLINATE: Take daily, 200 to 400 micrograms to preserve muscle while you lose weight

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Chromium Picolinate has other important attributes:

-- preserving or enhancing muscle; it maintains or increases the metabolic rate making weight loss easier.
-- significantly lowering elevated serum cholesterol
-- significantly lowering elevated blood sugar
-- helping to control appetite. A great many people report reduced appetite, especially sugar cravings.

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(Exhibit B)

C. CHROMIUM PICOLINATE:

The yeast-free BioActive Chromium with Important Clinically Proven Benefits

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Chromium is vitally important to good health because it is essential to the efficient function of the hormone insulin. Poor responsiveness to insulin is very common and is linked with increased risk for overweight, heart disease, elevated blood fat, high blood pressure, and diabetes.

Yet chromium's nutritional status in the U.S. is very poor: 90% of American diets provide less than the minimal amount recommended by the National Academy of Sciences, and most nutritional forms of chromium are poorly absorbed.

Chromium Picolinate is well absorbed and highly bioactive. In clinical trials at major hospitals and universities it has been shown to:

significantly reduce body fat
help build lean, strong muscles
lower elevated cholesterol
reduce elevated blood sugar in diabetics

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By mechanisms that are not yet fully understood nutritional (trivalent) chromium is absolutely essential to the function of insulin.

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A great many U.S. adults have poor insulin function. They produce normal or even elevated amounts of insulin, but their body's tissues are relatively insensitive to it. Indeed, recent studies show that at least one in four adults has reduced sensitivity to insulin.

The majority of these people don't become overtly diabetic because their pancreas compensates by secreting increased amounts of insulin. In these people, insulin insensitivity is a "silent" problem that can be diagnosed only by observing increased blood insulin levels and/or modest impairments of glucose tolerance.

There is increasing evidence that this "silent" insulin insensitivity is in fact a serious medical problem.

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But there is now evidence that insulin insensitivity may itself lead to weight gain, owing to an impairment of "dietary thermogenesis. . . ."

Insulin insensitivity almost certainly also impairs the development of muscle.

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Diabetes As noted, most people can compensate for modest impairments of insulin sensitivity by producing more insulin. But in some people, as insulin sensitivity continues to decline, the pancreas is unable to keep up with the increased need for insulin, and "adult-onset" (Type II) diabetes results. In this syndrome, there is a significant net reduction in insulin activity, resulting in persistent elevations of blood sugar even after an overnight fast. Adult-onset diabetes . . . is responsible for a tremendous toll in premature death and disability. Long-term diabetes can lead to heart disease, arterial disease (often requiring leg amputation), blindness, kidney failure, and nerve damage.

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POOR CHROMIUM NUTRITION AND METABOLISM

Diets that are too high in fats and too low in fiber-rich unrefined foods, inadequate exercise, as well as overweight, are all major factors contributing to poor insulin responsiveness. Poor chromium nutrition also plays a vitally important role.

Refined American diets are very poor sources of chromium. The National Academy of Sciences has recommended a daily chromium intake of 50 to 200 micrograms. Yet studies by the U.S. Department of Agriculture indicate that 90% of Americans receive less than 50 micrograms daily--and 25% receive less than 20 micrograms!

This problem is compounded because most sources of chromium are not efficiently absorbed. . . .

In addition, there is evidence that many people may have defective chromium metabolism. . . . Diabetics also tend to have lower chromium levels.

In brief, impaired insulin sensitivity is very prevalent and is associated with increased risk for overweight, heart disease, diabetes, and high blood pressure.

Chromium, which is crucial for proper insulin function, is in short supply in most American diets, is often inefficiently absorbed, and may not be efficiently metabolized by many people.

THE SOLUTION: BIOACTIVE CHROMIUM

These considerations emphatically suggest the desirability of dietary chromium supplementation. But not all chromium supplements are equally effective. In clinical studies, inorganic chromium (*e.g.* chromic chloride) has been beneficial for mild impairments of glucose tolerance, but has not proven useful in overt diabetes or for lowering elevated cholesterol. In contrast, large intakes of brewer's yeast, a rich source of organically bound chromium, have been found useful for treating diabetes and high cholesterol. . . .

The most likely explanation is that some organic chromium complexes are more readily taken up by cells than is inorganic chromium.

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CHROMIUM PICOLINATE

Scientists at the U.S. Department of Agriculture have developed an excellent, perhaps an ideal organic complex of chromium. . . . Chromium Picolinate thus proves exceptionally effective for achieving intestinal absorption and intracellular uptake of chromium.

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(Exhibit C) (references omitted)

D. CHROMIUM PICOLINATE -- THE CLINICAL PROOF. . .

The initial studies with Chromium Picolinate have yielded exciting results:

Physique Enhancement for Athletes

Young male athletes engaged in an exercise program at Bemidji State University (Minnesota) received daily doses of Chromium Picolinate (200 micrograms chromium) or a matching placebo. After 6 weeks, the chromium group gained 44% more lean body mass than the placebo group. Even more striking, the chromium group lost 23% of its body fat as compared to only 7% in the placebo group. These differences were highly statistically significant.

A similar study has been conducted at Louisiana State University with men and women beginning weight-training students. A preliminary report indicates that Chromium Picolinate accelerated the increase in muscle size in both men and women, and, in the women, nearly doubled the increase in lean body mass.

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Cholesterol Reduction In a double-blind crossover study conducted by the medical staff of San Diego's Mercy Hospital, people with elevated cholesterol received a daily dose of Chromium Picolinate providing 200 micrograms chromium, alternating with a matching placebo. After 6 weeks of chromium, LDL cholesterol . . . had dropped 10% . . . . Inorganic chromium has not been reported to lower elevated cholesterol.

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Adult-Onset Diabetes A similar double-blind crossover trial was conducted at Mercy Hospital with Type II (adult-onset) diabetics. After 6 weeks of Chromium Picolinate (200 micrograms of chromium), fasting blood sugar was lowered by 18% . . .

This is the first time that a nutritional intake of chromium *per se* has been reported to improve glucose metabolism in overt diabetes. (Exhibit D) (references omitted)

E. Chromium Picolinate --The Results Speak For Themselves

Two well designed, well executed studies prove that Chromium Picolinate accelerates muscle growth and reduces body fat. Such a statement cannot be made for any other chromium compound.

A recent issue of MUSCLE & FITNESS presented an article calling attention to the newly proven anabolic role of chromium. Body builders have believed for

a long time that chromium helps build muscle. What is new is that scientists now have measured, during a clinical study, the actual gains that chromium produces.

It no longer makes any difference what people "think" about chromium or about the different forms of chromium because the facts are in -- facts determined by clinical tests conducted according to acceptable scientific standards. And they have shown that one form of chromium --Chromium Picolinate--does accelerate muscle growth. (Exhibit E)

F. Lose The Fat; Keep The Muscle With Chromium Picolinate.

Here's Why You Need Chromium Picolinate.

Like iron, calcium, and zinc, chromium is a nutritionally essential mineral. Its most biologically available form, Chromium Picolinate, can have nutritionally helpful effects on your health and fitness. Combining it with a lifestyle of low-fat eating and everyday exercise can improve both health and fitness.

Lose Fat and Keep Muscle with Chromium Picolinate.

Nine confirming scientific studies with humans and animals demonstrate a significant reduction in body fat when Chromium Picolinate is added to the diet. These studies also show a consistent trend toward increased lean muscle. Muscle burns calories, fat merely stores calories.

Chromium Picolinate Helps Maintain A Normal Healthy Metabolism.

Insulin has very important functions: It maintains the normal nutritional metabolism of protein (muscle building), carbohydrate (major energy source), and fat (energy storage). It also influences appetite control and calorie-burning. Insulin simply can't perform normally without an adequate supply of chromium.

Chromium is Undersupplied in 90% of Adult Diets.

The National Academy of Sciences recommends 50 to 200 micrograms of chromium daily. U.S. Department of Agriculture studies show that men get only 33 micrograms and women get only 25 micrograms, on average, from their food. So, help yourself stay lean and healthy. Choose low-fat meals; choose exercise that you enjoy; and choose Chromium Picolinate to supplement your daily diet. Do it for the healthy edge. Do it for life!

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(Exhibit F)

G. "Lose the Fat; Keep the Muscle" with Chromium Picolinate. Millions of Americans are trying to lose weight and many succeed -- but only temporarily.

Typically, up to 30% of lost weight is muscle. This lowers your metabolic rate and slows calorie burning. Muscles burn calories even while you sleep; fat merely stores calories. This lowered metabolic rate makes it hard to keep lost pounds from creeping back. Result: the "yo-yo" syndrome in which weight is repeatedly lost and then regained. After each lose-gain cycle the proportion of fat increases. This can result in a permanently depressed metabolic rate, persistent overweight. . . and utter frustration.

To break this vicious cycle it is important to lose only fat while maintaining, or even increasing muscle.

Most diet plans not only don't work, they're counterproductive. Permanent weight loss requires a permanent commitment. Steps 1, 2, and 3 in the box [below] are endorsed by nearly all weight loss experts. Studies show that optimal chromium nutrition, Step 4, is also an effective part of long-term fat loss programs. Chromium is in short supply in 9 out of 10 American diets and it's absolutely essential for normal insulin function. Normal insulin activity is crucial for hunger control and

calorie-burning. Studies show that 200-400 micrograms of chromium daily, as Chromium Picolinate, results in significant fat loss while muscle tissue is maintained or even increased. Dr. Gil Kaats of San Antonio reports, "During six weeks on Chromium Picolinate, overweight volunteers lost more than four pounds of fat, while muscle increased by nearly a pound and a half."

FOUR STEPS TO A LEANER FIRMER BODY

1. Reduce Dietary Fat Consumption to No More Than 20% of Calories--Eating Fat Makes You Fat
2. Increase Dietary Fiber--Low in Calories; High in Nutrients
3. Get Regular Aerobic Exercise--and Burn Fat Calories!
4. Take Chromium Picolinate Daily--Lose the Fat; Keep the Muscle

(Exhibit G)

7. Through the means described in paragraph six, respondents have represented, expressly or by implication, that:

A. Chromium Picolinate significantly reduces body fat.
B. Chromium Picolinate causes significant weight loss.
C. Chromium Picolinate causes significant weight loss without dieting or exercise.
D. Chromium Picolinate causes long-term or permanent weight loss.
E. Chromium Picolinate increases lean body mass and builds muscle.
F. Chromium Picolinate significantly increases human metabolism.
G. Chromium Picolinate controls appetite and craving for sugar.
H. Chromium Picolinate significantly reduces total and LDL serum cholesterol.
I. Chromium Picolinate significantly lowers elevated blood sugar levels.
J. Chromium Picolinate is effective in the treatment and prevention of diabetes.
K. Ninety percent of U.S. adults do not consume diets with sufficient chromium to support normal insulin function, resulting in increased risk of overweight, heart disease, elevated blood fat, high blood pressure, and diabetes.

8. Through the means described in paragraph six, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph seven, at the time the representations were made.

9. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph seven, at the time the representations were made. Therefore, the representation set forth in paragraph eight was, and is, false and misleading.

10. Through the means described in paragraph six, respondents have represented, expressly or by implication, that scientific studies demonstrate that Chromium Picolinate:

A. Significantly reduces body fat.
B. Causes significant weight loss.
C. Causes significant weight loss without dieting or exercise.
D. Causes long-term or permanent weight loss.
E. Increases lean body mass and builds muscle.
F. Significantly reduces total and LDL serum cholesterol.
G. Significantly lowers elevated blood sugar levels.
H. Is effective in the treatment and prevention of diabetes.

11. In truth and in fact, scientific studies do not demonstrate that Chromium Picolinate:

A. Significantly reduces body fat.
B. Causes significant weight loss.
C. Causes significant weight loss without dieting or exercise.
D. Causes long-term or permanent weight loss.
E. Increases lean body mass and builds muscle.
F. Significantly reduces total and LDL serum cholesterol.
G. Significantly lowers elevated blood sugar levels.
H. Is effective in the treatment and prevention of diabetes.

Therefore, the representations set forth in paragraph ten were, and are, false or misleading.

12. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

EXHIBIT A

[redacted]

Lose the Fat

but Keep the

Muscle . . .

Chromium Picolinate

At last there is a safe nutritional supplement that helps you lose unwanted fat more easily and quickly, while retaining vital muscle tissue. Now you can have a trimmer, firmer, leaner body.

NUTRITION 21

1010 Turquoise Street, Suite 335
San Diego, CA 92109 619/488-1021 FAX 619/488-7316

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EXHIBIT A

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Complaint

EXHIBIT A

LOSE THE FAT BUT KEEP THE MUSCLE

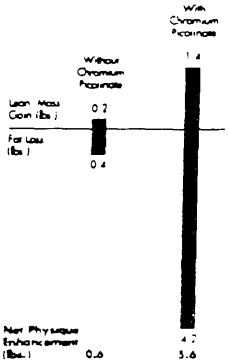
Most dieters who achieve significant weight loss lose fat too much lean body mass (muscle and organ tissue). This not only diminishes strength and agility but also affects appearance. With less muscle, pleasing curves flatten, chests sink, arms and legs look spindly. Even worse, this lessened lean body mass lowers your metabolic rate, making it that much harder to keep the fat off permanently - *the yo-yo syndrome!*

There is now excellent scientific evidence that Chromium Picolinate can accelerate fat loss while helping to preserve or even increase muscle.

CONVINCING NEW EVIDENCE

Overweight adults were recruited by a prominent San Antonio weight loss clinic to participate in a weight loss study (1). About half of the volunteers received supplemental Chromium Picolinate (200 or 400 micrograms chromium daily), while the others received placebos. Neither the participants nor the doctors evaluating them knew who was getting the chromium (a "double-blind" study). The volunteers were not placed on any specific diet or exercise regimen, although most of them were motivated to lose weight. After only 60 days, these were the impressive results:

The changes in the placebo group were negligible. But the Chromium Picolinate group, on average, lost over 4 pounds of fat while gaining nearly a pound and a half of lean muscle for a Net Physique Enhancement of 5.6 pounds.



The effect in men alone was even more striking, with an average fat loss of [illegible] pounds. Interestingly, the greatest enhancement of muscle mass was seen in the older subjects, those above age 40, who gained 2.1 pounds of muscle while losing 4.4 pounds of fat. This is especially important since muscle tissue typically declines with age.

Another double blind-study was conducted in young off-season football players participating in a six-week weight-training program (2). The results were much the same: *more muscle, less fat* with Chromium Picolinate. Chromium Picolinate more than doubled the net benefits of exercise alone.

These findings are also confirmed by animal studies. Scientists at Louisiana State University recently reported that young pigs receiving Chromium Picolinate achieved 7% more muscle with 21% less body fat as compared to pigs on an identical diet not receiving Chromium Picolinate (3).

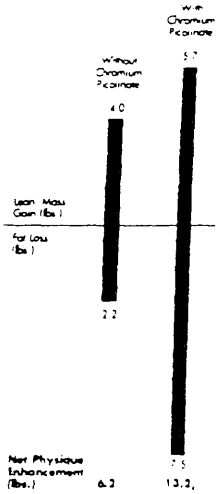


EXHIBIT A

LEANER AND FIRMER

Because many people *gain* muscle with Chromium Picolinate, their weight loss in pounds doesn't accurately reflect the benefits of chromium. Most users report that even a modest weight loss as shown on the bathroom scale is accompanied by *lost inches and smaller clothing sizes.* They look and are leaner and firmer. Chromium Picolinate promotes *fat loss* while enhancing the muscle that assures a trim athletic physique.

WHAT IS CHROMIUM PICOLINATE?

Chromium Picolinate is an exceptionally bioactive source of the essential mineral chromium. Chromium plays a *vital role* in "sensitizing" the body's tissues to the hormone insulin. Weight gain in the form of fat tends to impair sensitivity to insulin and thus, in turn, makes it harder to lose weight (4).

HOW DOES CHROMIUM PICOLINATE WORK?

Controls Hunger Many people report that Chromium Picolinate helps to control appetite, especially sugar cravings. It is believed that chromium sensitizes the "glucostat" in the brain that monitors blood sugar availability and "tells" you when you're hungry or not hungry.

"Spares" Protein Insulin directly stimulates protein synthesis and retards protein breakdown in muscles (5, 6). Thus "protein-sparing" effect of insulin tends to fall off during low-calorie diets as insulin levels decline, resulting in loss of muscle and organ tissue. By "sensitizing" muscle to insulin, Chromium Picolinate helps to preserve muscle in dieters so that they "burn" more fat and less muscle. Preservation of lean body mass has an important long-term positive effect on metabolic rate, helping dieters keep off the fat they've lost.

Stimulates Metabolism It promotes efficient metabolism by aiding the thermogenic (heat producing) effects of insulin. Insulin levels serve as a rough index of the availability of food calories, so it's not at all surprising that insulin stimulates metabolism. [illegible]

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HOW MUCH CHROMIUM PICOLINATE SHOULD I TAKE FOR OPTIMAL WEIGHT LOSS?

Clinical trials with 200 to 400 micrograms of chromium daily produced significant benefits. Larger individuals and those engaged in strenuous work or exercise may see better results with higher levels - up to a maximum of 600 micrograms daily.

MORE IMPORTANT DIET ADVICE

Excellent chromium nutrition is an essential component of weight control. Here are other important keys to a trimmer body:

Avoid Dietary Fat. Remember this *fat makes you fat.* Dieticians traditionally have recommended overall calorie restrictions for weight control, but it's now clear that fat calories should be specifically avoided (9, 10). Why? Most ingested fat is quickly stored in your adipose (fatty) tissue. Once absorbed, it doesn't provide feedback control to "tell" you that you're not hungry. That's because it isn't directly available as an energy source for the brain. And, unlike carbohydrate or protein, it doesn't trigger the insulin-dependent thermogenic mechanisms that produce a compensatory, and therefore fat reducing increase in your metabolic rate.

In contrast, complex carbohydrates (as in bread, potatoes, fruits and vegetables) provide good feedback control of hunger while stimulating an increased metabolic rate - *mechanisms that are enhanced by Chromium Picolinate.*

For best results, keep dietary fat *below 20%* of total calories consumed. Olives, avocados, nuts, vegetable oil, and margarine are all extremely high in fat. However most other foods *not* of animal origin are quite low in fat and are great for dieters. Among animal foods, skinless white meat poultry and fish (prepared without frying!) are good, as are non-fat and low-fat yogurt and cottage cheese, skim and 1% milk, and egg whites (not yolks). When you must use oil, use it very sparingly.

Regular Exercise. Most people believe that the weight control benefits of exercise result merely from calories burned during exercise. But in fact, exercise also produces a [illegible]

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your metabolic rate that is quite important for weight control (11, 12). Chromium Picolinate helps this effect because insulin plays an important role in increasing the metabolic rate (12). Regular aerobic exercise is best for enhancing metabolism and burning fat, while weight-lifting has a beneficial effect on metabolism by increasing muscle mass. Muscle cells use energy; fat cells merely store it.

Calorie Restriction with Adequate Protein

By avoiding fatty foods, getting regular exercise, and supplementing with Chromium Picolinate, some people can lose fat and substantially improve their physiques, even without any special effort to control their calorie intake. However, people who want to lose weight quickly, or who have a lot of fat to lose, or who have slow metabolisms, may wish to accelerate the process by restricting their calorie intake (that is, going on a diet). If you do substantially reduce your calorie intake, make sure that you get ample protein by including high-protein/low-fat foods in your diet - this is important along with Chromium Picolinate for minimizing loss of muscle. If you are severely restricting calories for weeks at a time, a doctor's supervision is essential. Remember that "quick fix" diets aren't likely to do you any permanent good unless you follow up with an abiding commitment to low-fat foods and exercise.

PUTTING IT ALL TOGETHER

The best thing about Chromium Picolinate is that it makes other sensible weight control efforts more effective. Many people report that they have tried diet and exercise before, but say that they didn't get good results until they added Chromium Picolinate. Now they're enthusiastic about low-fat eating plus exercise and are ever-so-proud of their beautiful new bodies! When your efforts are rewarded by good results, you're more likely to keep trying.

Chromium Picolinate, all by itself, isn't likely to make a fat person thin. But it can be the decisive component of an overall strategy for long-term weight control and, in the bargain, make an important contribution to good health.

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EXHIBIT B

Nutrition 21

December 1991 1010 Turquoise • San Diego, California 92109 • (619) 488-1021

WEIGHT LOSS, FAT LOSS AND MUSCLE LOSS
or
"How to Break the String of Yo-Yo Diets"

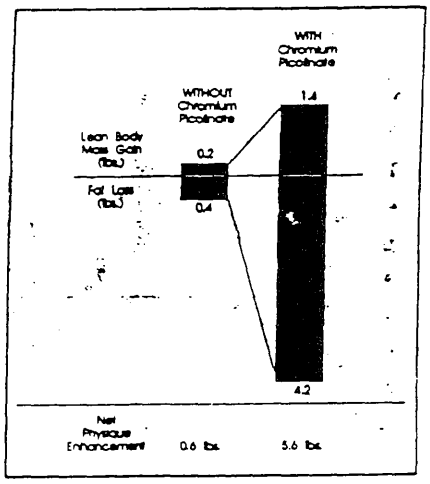
In his syndicated column *Nutrition News* dated October 16, 1991, the eminent nutritionist Dr. Jean Mayer states,

> "Evidence shows that the amount of fat stored in the body increases with each cycle of up-and-down dieting. When a person loses weight, both fat and muscle tissue are shed. When the weight is put back, however, it tends to be made up of a greater proportion of fat and less muscle, leaving the person 'fatter' than ever.
>
> "Consider a 5-foot-5 woman weighing 145 pounds, of which 51 pounds are fat, or 35 percent of her total body weight. After dieting for a few months, she loses 20 pounds — 13 in the form of fat and the rest as muscle tissue and water. She now weighs 125 pounds, including 38 pounds (30 percent) of fat. During the next six months, however, all the lost weight creeps back. But the regained weight is composed of 17 pounds of fat and only three pounds of muscle tissue and water. Thus, the woman weighs what she did originally, but she's carrying more fat— 55 pounds, or 38 percent. Each time the cycle is repeated, she's likely to become 'fatter'."

CLEARLY, THE KEY TO BREAKING THIS DISCOURAGING CYCLE OF EVER MORE FAT, EVER LESS MUSCLE, IS LOSING FAT WHILE PRESERVING—OR EVEN INCREASING—MUSCLE. (A more accurate term is lean body mass which includes not only muscle, but also organ tissue such as heart, liver, kidney, etc.)

This is precisely what Dr. Gilbert Kaats and his colleagues achieved in a recently completed study that was reported on October 11 at the annual meeting of the American Aging Association.

One hundred fifty men and women were asked to join in a weight loss study. Roughly half were given supplemental Chromium Picolinate (200 or 400 micrograms chromium daily), while the others got a placebo. They were not placed on any specific diet or exercise regimen, although most were trying to lose weight. Neither the volunteers nor their doctors knew who was getting the chromium which made it a "double-blind" study. After 72 days, these were the impressive results:



The changes in the placebo group were insignificant. However the Chromium Picolinate group, on average, lost over 4 pounds of fat while gaining nearly a pound and a half of lean muscle! A Net Physique Enhancement of 5.6 pounds.

The older people in this study (average age 55) did even better than the younger people (average

Continued on page 3

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EX 6

1 Complaint

EXHIBIT B

NOTED PHYSICIAN RECOMMENDS CHROMIUM PICOLINATE FOR DIABETIC PATIENTS

"I advise my diabetic patients to supplement their diet with a 200 microgram a day tablet of chromium picolinate, a supplement available at health food stores and pharmacies. It may help make it easier to control sugar levels."

With those words, Isadore Rosenfeld, M.D., joined the growing list of medical authorities who endorse the health benefits of Chromium Picolinate. The quote is from his new book, THE BEST TREATMENT (Simon & Schuster — 1991).

Dr. Rosenfeld is a clinical professor of medicine at the New York Hospital-Cornell Medical Center. He was a commentator on the long-running, popular, nationally syndicated television series "Hour Magazine" and author of several top-selling books on nutrition and health.

Other authors who endorse the superior qualities of biologically active Chromium Picolinate include Jeffrey Fisher, M.D., THE CHROMIUM PROGRAM (Harper & Row Publishers—1990); Sheldon Saul Hendler, M.D., Ph.D., THE DOCTORS' VITAMIN AND MINERAL ENCYCLOPEDIA (Simon & Schuster—1990); Edwin Heliniak, M.D., THE PRINCETON PLAN (St. Martin's Press—1990); Ronald Hoffman, M.D., THE DOCTORS BOOK OF HOME REMEDIES (Rodale Press—1990); Julian M. Whitaker, M.D., HOW TO LOSE WEIGHT WITHOUT DIETING and 99 SECRETS FOR A LONGER HEALTHIER LIFE (Phillips Publishing, Inc.—1991); and Richard A. Passwater, Ph.D., THE NEW SUPERNUTRITION (Pocket Books—1991).

NUTRITION JOURNAL REVIEWS CHROMIUM PICOLINATE

THE JOURNAL OF APPLIED NUTRITION presented an extensive review of the clinical studies with Chromium Picolinate in its October issue (Vol. 43, No. 1, 1991). The Journal is the official publication of the International Academy of Nutrition and Preventive Medicine.

This publication is of special importance to the health food industry because it is the first scientific journal dedicated to the concept that increased dietary intakes of nutritional factors are efficacious against numerous human diseases.

Dr. Brian Leibovitz, editor, says, "The new focus of THE JOURNAL OF APPLIED NUTRITION is on supplementary macro- and micro-nutrients in the prevention and treatment of disease as well as in the maintenance of optimal health. An enormous, and ever-increasing volume of data supports this concept."

The review of clinical trials reported that supplementation with Chromium Picolinate:

- reduced total serum cholesterol and LDL, the "bad" cholesterol
- reduced elevated blood sugar levels and glycosylated hemoglobin in diabetics
- significantly reduced body fat and increased muscle in exercising individuals.

Because of its ability to enhance the activity of insulin, the article in the Journal suggests that additional clinical applications for Chromium Picolinate might be found, such as:

- improved wound healing
- improved immune response
- improved brain function
- reduced risk of heart disease.

PIGS ON CHROMIUM PICOLINATE LOSE FAT AND GAIN MUSCLE

Chromium Picolinate supplemented piglets had 21% less carcass fat and 7% more muscle than unsupplemented pigs according to a report delivered to the American Association of Animal Science in August. All other factors were the same. Same breed of pigs. Same feed. Same living conditions. And, yes, they all ate like pigs. The Chromium Picolinate supplemented piglets also had lower cholesterol levels than controls. (Journal of Animal Science, Vol. 69, Supp. 1)

Dr. Lee Southern, Tim Page, and T.L. Ward conducted the study of carcass characteristics at the Department of Animal Science at Louisiana State University. In the trial they used chromium chloride, picolinic acid, and Chromium Picolinate. Only those animals supplemented with Chromium Picolinate showed favorable results.

Three separate carefully controlled studies have now been conducted with piglets, two at Louisiana State University and one at Oregon State University. It is reassuring to know that virtually the same beneficial effects demonstrated for humans are confirmed in animal studies.

EXHIBIT B

DRAMATIC IMPROVEMENT IN TYPE II DIABETICS

American Indians are especially vulnerable to Type II diabetes. The incidence of the disease has increased dramatically during the past 50 years.

Because Chromium Picolinate reduced elevated blood sugar in clinical studies at Mercy Hospital in San Diego, Dr. Gary Evans conducted an informal trial with five Chippewa Indians in northern Minnesota. Normal non-diabetic blood sugar readings range between 80 and 120 milligrams/deciliter. Supplementation with 200 micrograms a day of chromium from Chromium Picolinate produced these impressive results:

The potential health benefits are so striking that a full scale study will be undertaken in January. The results of the preliminary study are scheduled for publication in *WESTERN JOURNAL OF MEDICINE* in November.

IMPORTANT NOTE: Since Chromium Picolinate may reduce the requirement for insulin or diabetic drugs, all diabetics, whether Type I or Type II, should take Chromium Picolinate ONLY under the direction of their physician.

SEX	BLOOD SUGAR (mg/dl) START	END	BENEFICIAL CHANGE	PERCENT CHANGE
Male	245	197	- 48	19.5%
Female	268	212	- 56	20.8%
Female[a]	357	137	220	61.6%
Female[b]	136	89	- 47	34.5%
Female[c]	282	203	- 79	28.0%

a) This subject was a diabetic taking 50 units of insulin in the morning and 25 units more later in the day. Her insulin intake has been adjusted downward.

b) This subject has been taking a diabetic drug which has now been discontinued.

c) This subject had dropped to 147 after two weeks. She predicted this reading would be high because she had been "eating a lot of cookies."

BREAKING THE STRING OF YO-YO DIETING

(continued from page 1)

age 36) which is why this study was reported at the American Aging Association meeting.

Chromium is an essential nutrient that is in short supply in 90% of typical U.S. diets. So try these simple rules to break the yo-yo syndrome:

CHROMIUM PICOLINATE: Take daily, 200 to 400 micrograms to preserve muscle while you lose weight

FAT: Stop storing it . . . by cutting daily consumption to less than 20% of daily calories

FAT: Start burning it . . . by exercising at least 30 minutes per day at least four days per week

CARBOHYDRATE: Eat fresh fruits, vegetables and whole grain products high in dietary fiber. Cut way down on foods that contain sugar.

PROTEIN: Eat moderate amounts but make sure it's very low fat or no fat as in skim milk or non-fat yogurt.

Although preserving muscle is of overriding importance in solving the yo-yo diet problem, Chromium Picolinate has other important attributes:

—preserving or enhancing muscle; it maintains or increases the metabolic rate making weight loss easier.

—significantly lowering elevated serum cholesterol

—significantly lowering elevated blood sugar

—helping to control appetite. A great many people report reduced appetite, especially sugar cravings.

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1 Complaint

EXHIBIT B

4 *Promotional Materials Available*

CHROMIUM PICOLINATE
Lose the Fat; Keep the Muscle

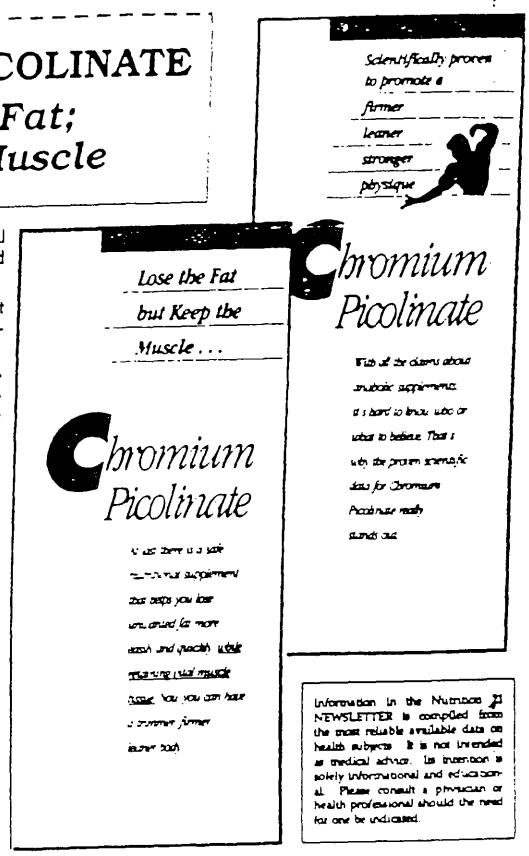
Three new "point-of-sale" promotional pieces are now available to distributors and retailers of Chromium Picolinate products:

1. A vivid yellow-and-black shelftalker that proclaims CHROMIUM PICOLINATE—"Lose the Fat Keep the Muscle."

2. A "Weight Loss" folder that picks up the theme of "Lose the Fat but Keep the Muscle." Designed to fit into a regular business envelope or literature rack, the folder explains how Chromium Picolinate works to help reduce body fat while retaining and building muscle.

3. A "Muscle" folder describes the scientific tests that show significant gains in muscle mass result from supplementation with Chromium Picolinate. With the continuing concern about health hazards of anabolic steroids, a safe and effective nutrient is an important asset to athletes or anyone interested in maintaining a strong, lean physique. The folders and shelftalker are available in reasonable quantities free from Nutrition 21.

Chromium Picolinate is a biologically active form of trivalent chromium that is patented by the U.S. Department of Agriculture. It is licensed exclusively to Nutrition 21.



NUTRITION 21
1010 Turquoise, Suite 335
San Diego, CA 92109

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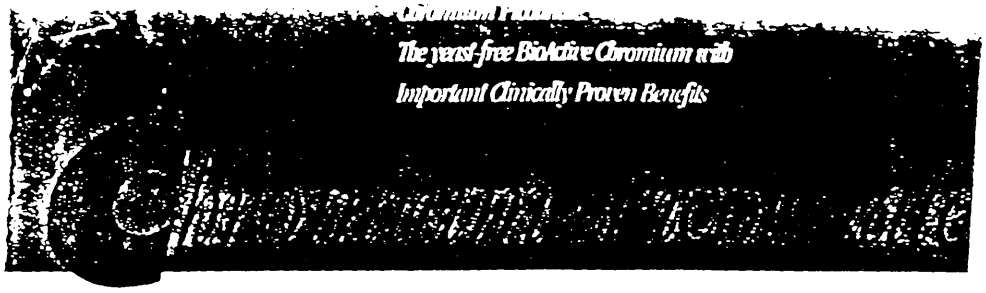
EXHIBIT C



Chromium is vitally important to good health because it is essential to the efficient function of the hormone insulin. Poor responsiveness to insulin is often corrective and is linked with increased risk for overweight, heart disease, elevated blood fat, high blood pressure, and diabetes.

Yet chromium's nutritional status in the U.S. is such that over 90% of American diets provide less than the minimal amounts recommended by the National Academy of Sciences' and most nutritional surveys document chromium deficiencies.

Chromium Picolinate is well absorbed and in over 14 years of clinical trials at many hospitals and universities it has been shown to:

significantly reduce body fat
help build lean, strong muscles
lower elevated cholesterol
reduce elevated blood sugar in diabetics

No other chromium supplement has shown these benefits. Chromium Picolinate is patented in the U.S. Department of Agriculture and is distributed under an exclusive license in Nutrition 21.

THE INSULIN-CHROMIUM CONNECTION

The term chromium is crucially important to the efficient function of the hormone insulin. Insulin plays an essential role in regulating the metabolism of all important food energy sources — carbohydrates, proteins and fats. It is secreted by the pancreas in response to absorption of sugar, such as glucose, and it tells the body's tissues to take up blood sugar (glucose) as an energy source. It also stimulates protein synthesis and returns glucose to storage in skeletal muscle and other tissues. In effect, it serves as the body's chief anabolic hormone, carbohydrate energy is available to support bodily tissue and structural activity.

When insulin activity is seriously impaired, whether owing to reduced insulin secretion or reduced tissue responsiveness, the resulting syndrome is known as diabetes. This is characterized by persistently elevated levels of blood sugar and increased risk for serious vascular disease, kidney failure, and blindness. The cause of diabetes remains unknown, but there is evidence that impaired glucose tolerance is due to poor utilization of chromium.

Chromium deficiency also results in glucose intolerance similar to that found in diabetes. Impaired glucose tolerance is associated with serious health problems, including atherosclerosis, increased risk for heart attacks, abnormal growth, and increased risk for infections. Other factors, such as stress, have been related to these problems, but impaired tissue responsiveness to insulin is clearly to blame.

THE "GLUCOSE TOLERANCE FACTOR"

Recent studies at the Earth [illegible] and at the Univ. of Wisconsin have identified chromium as one of the components of the "glucose tolerance factor" (GTF), a substance that enhances the action of insulin. Chromium is thought to function by helping insulin bind to cell membranes and by increasing the number of insulin receptors to permit the body's insulin to work more effectively.

THE PROBLEM — INEFFICIENT INSULIN FUNCTION

A great many U.S. adults have poor insulin function. They produce normal or even elevated amounts of insulin, but their body tissues are resistant or insensitive to it. Indeed, recent studies show that at least one in four adults has reduced sensitivity to insulin.

The [illegible] of these people is [illegible] because their pancreas is [illegible] to secrete increased amounts of insulin. Over time, the pancreas [illegible] and [illegible] problems that can be alleviated with increased blood insulin levels and [illegible].

There is increasing evidence that the world's [illegible] is a major health problem.

Overweight and Poor Physique [illegible] overweight is a common cause of poor insulin responsiveness. But there is now evidence that [illegible] may lead to weight gain. [illegible] Other causes of poor physique [illegible] the fat is [illegible] [illegible] the [illegible] [illegible] [illegible] [illegible] [illegible]

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Ex C

EXHIBIT C

Insulin insensitivity almost certainly also impairs the development of muscle. Efficient insulin activity promotes protein synthesis and reduces protein degradation in skeletal muscle and other tissues. Muscle wasting is a prominent feature of diabetes. Thus, efficient insulin function is important for optimal anabolic activity.

Heart Disease A growing number of studies show that impaired insulin sensitivity, even in the absence of overt diabetes, is associated with a significantly increased risk for cardiovascular disease and premature death (7-10). Insulin insensitivity is an independent risk factor (not dependent on correlations with cholesterol, blood pressure, etc.), and is often associated with elevated triglycerides and high blood pressure (Reaven's syndrome). Since it usually doesn't cause symptoms that lead to its diagnosis, it is truly a silent killer.

Diabetes As noted, most people can compensate for modest impairments of insulin sensitivity by producing more insulin. But in some people, as insulin sensitivity continues to decline, the pancreas is unable to keep up with the increased need for insulin, and "adult-onset" (Type II) diabetes results. In this syndrome, there is a significant net reduction in insulin activity, resulting in persistent elevations of blood sugar even after an overnight fast. Adult-onset diabetes is by far the most common type of diabetes in the Western world, and is responsible for a tremendous toll in premature death and disability. Long-term diabetes can lead to heart disease, arterial disease (often requiring leg amputation), blindness, kidney failure, and nerve damage.

Hypertension Essential hypertension (the most common type of high blood pressure) is often associated with impaired insulin sensitivity (5,11). It is not yet known whether this impaired sensitivity is in fact a contributing cause of hypertension. But it is interesting to note that many measures which improve insulin sensitivity —weight loss, exercise, and high-fiber diets — also tend to lower elevated blood pressure.

POOR CHROMIUM NUTRITION AND METABOLISM

Diets that are too high in fats and too low in fiber-rich unrefined foods, inadequate exercise, as well as overweight, are all major factors contributing to poor insulin responsiveness. Poor chromium nutrition also plays a vitally important role.

Refined American diets are very poor sources of chromium. The National Academy of Sciences has recommended a daily chromium intake of 50 to 200 micrograms. Yet studies by the U.S. Department of Agriculture indicate that 90% of Americans receive less than 50 micrograms daily — and 25% receive less than 20 micrograms (12).

This problem is compounded because most sources of chromium are not efficiently absorbed. The trivalent chromium ion, in its inorganic, unbonded form, as in chromic chloride (the form most commonly used in supplements and clinical studies), has a strong positive electrical charge and does not readily pass through biological membranes. Within the nutritional range of 50 to 200 micrograms, only about 1/2 of 1% of chromic chloride is absorbed (13), and intracellular uptake of the free chromic ion is poor.

In addition, there is evidence that many people may have defective chromium metabolism. Studies show that people with coronary artery disease have substantially lower serum chromium levels than those with healthy arteries (14,15). The observed differences are too large to be explained by dietary differences alone; evidently, there is a flaw in the metabolism of chromium in these people — perhaps associated with a deficit in intestinal absorption and/or intracellular transport of chromium. Diabetics also tend to have lower chromium levels (15).

In brief, impaired insulin sensitivity is very prevalent and is associated with increased risk for overweight, heart disease, diabetes, and high blood pressure.

Chromium, which is crucial for proper insulin function, is in short supply in most American diets, is often inefficiently absorbed, and may not be efficiently metabolized by many people.

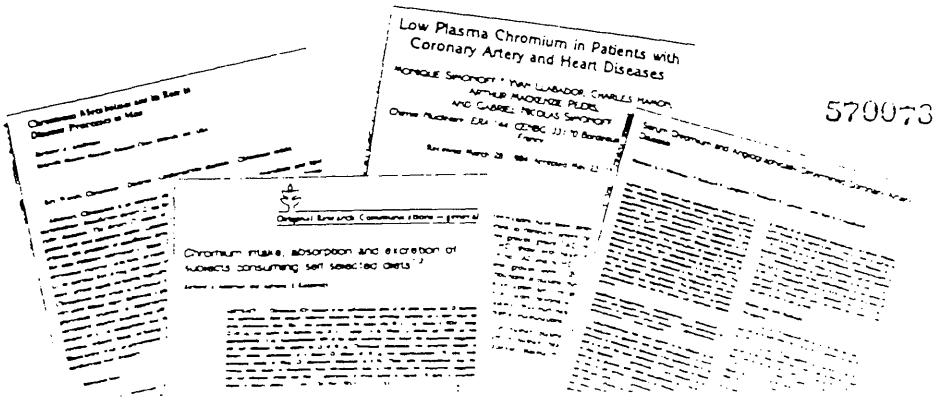


EXHIBIT C

THE SOLUTION: BIOACTIVE CHROMIUM

These considerations emphasize [illegible] the desirability of [illegible] chromium supplementation. But [illegible] chromium supplements [illegible] effective. In clinical studies, inorganic chromium [illegible] has been beneficial for mild impairment of glucose tolerance but has not proved useful in overt diabetes or for lowering elevated cholesterol. [illegible] In contrast, large intakes of brewer's yeast, a rich source of organically bound chromium, have been found useful for treating diabetes and high cholesterol (18-20). The greater effectiveness of the organic chromium complexes found in yeast may account for these beneficial results.

[illegible] inorganic trivalent chromium does not readily pass across [illegible] membranes. However, some organic [illegible] found in chelated forms of chromium have much greater membrane permeability because they neutralize the positive charge of the chromium and are more fat soluble. When scientists studied the effects of chromium compounds on insulin function in chromium-depleted rat tissue slices, they reported that many organic complexes of chromium were more effective than inorganic chromium in promoting insulin action (21). The most likely explanation is that some organic chromium complexes are more readily taken up by cells than is inorganic chromium.

While brewer's yeast is a good source of bioactive chromium, yeast chromium is not ideal as a supplemental source because of the large volume of yeast required, and because of the possibility of yeast allergy. That's why an effective yeast-free organic chromium complex is an attractive alternative.

CHROMIUM PICOLINATE

Scientists at the U.S. Department of Agriculture have developed an excellent, perhaps an ideal organic complex of chromium: Chromium Picolinate. Picolinic acid is a natural metabolite produced in the human liver and kidney. Because of its unique chemical structure, it forms strong chelates with transition metals such as zinc, manganese, and chromium (22). In addition to being very stable (even in acidic gastric juice, which breaks down most chelates), these picolinate complexes are electrically neutral (no positive charge) and fat-soluble, which means that they can pass through cell membranes efficiently. Chromium Picolinate thus proves exceptionally effective for achieving intestinal absorption and intracellular uptake of chromium.

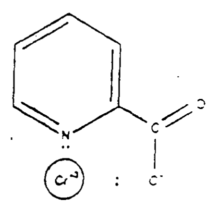
THE REMARKABLE SAFETY OF CHROMIUM PICOLINATE

[illegible] of the [illegible] nutrients [illegible] and [illegible] chromium, which is the form found in nutritional supplements, is [illegible] the least [illegible]. An FDA document entitled TOXICITY OF THE ESSENTIAL MINERALS states that the acute single dose [illegible] of an organic complex of chromium was [illegible] micrograms [illegible] compared to the recommended 50 to 200 micrograms. Test animals fed approximately [illegible] micrograms of organic chromium daily throughout their entire lifespans experienced no adverse effects.

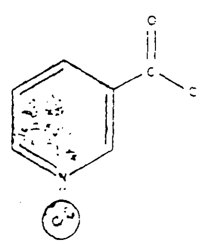
PRESENT KNOWLEDGE IN NUTRITION [illegible] states that the [illegible] for chromium is [illegible]. RECOMMENDED DIETARY ALLOWANCES (10th edition, 1989) [illegible] show that there is a substantial margin of safety between amounts normally consumed and those considered to have harmful effects.

Chromium Picolinate is no exception to this general rule. In [illegible] studies, it was not possible to feed rats an amount of Chromium Picolinate sufficient to produce death or any evident sickness. The [illegible] milligram dose which the rats tolerated without incident would be equivalent, when adjusted for relative body surface area, to a dose of about [illegible] grams ([illegible] million micrograms) in a normal-sized human — over ten thousand times the nutritional amount.

Despite the remarkable safety of Chromium Picolinate, [illegible] recommends a daily intake of 50 to 200 micrograms of chromium daily and cautions against the use of more than 600 micrograms daily.



A molecule of picolinic acid binds to chromium in 2 positions and thus forms a strong "bidendate" chelate



A molecule of nicotinic acid (niacin) binds to chromium in only 1 position and thus forms a less stable complex

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EXHIBIT D

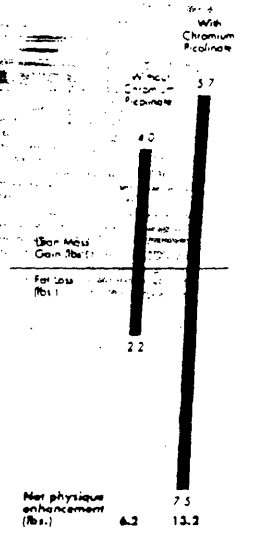
Chromium Picolinate
The yeast-free Bioactive Chromium with
Important Clinically Proven Benefits

CHROMIUM PICOLINATE — THE CLINICAL PROOF

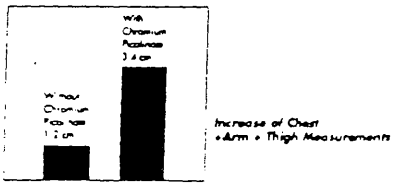
Since so little is known about chromium's metabolism and transport in the body, the only reasonable way to evaluate the effectiveness of any chromium supplement is by objective data from properly controlled clinical studies. The [illegible] studies with Chromium Picolinate have yielded exciting results...

Physique Enhancement for Athletes

Young male athletes engaged in an exercise program at [illegible] Bemidji State University (Minnesota) received daily doses of Chromium Picolinate (200 micrograms chromium) or a matching placebo. After 8 weeks, the chromium group gained 4% more lean body mass than the placebo group. Even more striking, the chromium group lost 25% of its body fat as compared to only 7% in the placebo group. These differences were highly statistically significant.(23)



A similar study has been conducted at Louisiana State University with men and women beginning weight-training students. A preliminary report indicates that Chromium Picolinate accelerated the increase in muscle size in both men and women, and, in the women, nearly doubled the increase in lean body mass.



For Animals Scientists at USC have reported that Chromium Picolinate, added to diets of growing pigs at 100 - 200 ppm chromium, yielded animals with 21% less fat and 13% larger pork chops.(24) Studies are now underway in other types of livestock. Chromium Picolinate may offer an effective natural alternative to the use of synthetic hormones in the livestock industry.

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EXHIBIT D

Cholesterol Reduction In a double-blind crossover study conducted by the medical staff of San Diego's Mercy Hospital, people with elevated cholesterol received a daily dose of Chromium Picolinate providing 200 micrograms chromium, alternating with a matching placebo. After 6 weeks of chromium, LDL cholesterol (the dangerous kind) had dropped 10%, apolipoprotein B (a component of LDL) dropped 16%, while apolipoprotein A-1 (a component of protective HDL) rose 11%-25%. Apolipoprotein B correlates with increased heart risk, whereas increased apolipoprotein A-1 is associated with lower risk. Thus, all of the observed changes suggest a lessened risk for heart disease. Inorganic chromium has *not* been reported to lower elevated cholesterol.

Total and low-density lipoprotein cholesterol of 14 subjects given placebo followed by chromium picolinate supplements. The values depicted with the open squares are for total cholesterol and the units are on the left vertical axis. The values depicted with the closed squares are for low-density lipoprotein (LDL) cholesterol and the units are on the right vertical axis.

Reports from Consumers A great many users of Chromium Picolinate report a marked reduction of sugar cravings. Many note an enhancement of mental energy levels. Others have noted improved gum health. These remarks are frequent enough that we believe they represent genuine effects. These possibilities will be addressed in future clinical studies. They are credible owing to the fact that insulin influences the function of most of the body's tissues.

Cell Culture Studies The insulin-potentiating action of Chromium Picolinate has also been documented in cell cultures. When rat muscle cells are pre-incubated with Chromium Picolinate, insulin-stimulated uptake of glucose and amino acids increases dramatically. As does insulin binding, pre-incubation with chromium nicotinate or chromic chloride has no statistically significant effect on insulin function in these studies (3b).

Uptake of Glucose and Leucine into Skeletal Muscle Cells Cultured with Various Forms of Chromium

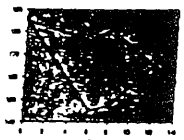
	Chromium Compound in Culture Medium			
	None	Chloride	Nicotinate	Picolinate
Substrate	Radioactivity (CPM)			
Glucose	[illegible]	[illegible]	[illegible]	[illegible]
Leucine	[illegible]	[illegible]	[illegible]	[illegible]

Effect of Various Chromium Compounds on Total [illegible]

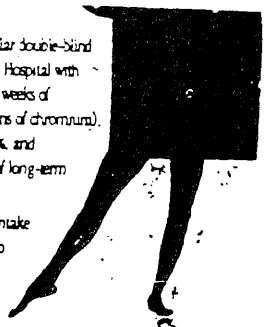
	Chromium Compound in Culture Medium			
	[illegible]	[illegible]	[illegible]	[illegible]
Total receptor bound insulin (CPM)	[illegible]	[illegible]	[illegible]	[illegible]

Adult-Onset Diabetics A similar double-blind crossover trial was conducted at Mercy Hospital with Type II (adult-onset) diabetics. After 6 weeks of Chromium Picolinate (200 micrograms of chromium), fasting blood sugar was lowered by 18%, and glycosylated hemoglobin (a measure of long-term glucose control) dropped 10%(23).

This is the first time that a nutritional intake of chromium per se has been reported to improve glucose metabolism in overt diabetes.



Fasting blood glucose of eleven adult-onset diabetics during supplementation with chromium picolinate and placebo. The values depicted with the solid squares were obtained with the patients who started the study with placebo. The values depicted with the open squares were obtained with the patients who started the study with chromium picolinate (Cr Pic).



Clinical trials conducted by Deborah Hasten, award-winning bodybuilder and doctoral candidate at Louisiana State University, confirmed the physique enhancing effect of Chromium Picolinate.

Additional exciting clinical and animal studies with Chromium Picolinate – including one at a major diet center – have been completed or are in progress. The results of these studies must be kept confidential until they can be published in appropriate biomedical journals.

1 Complaint

EXHIBIT D

CHROMIUM PICOLINATE IN THE MEDIA

The results of these exciting studies with Chromium Picolinate have been widely reported in the press.

Books Chromium Picolinate has been recommended as the preferred supplement of choice in recent books by leading physicians and authors.

The Doctors Vitamin and Mineral Encyclopedia —
Sheldon Saul Hendler, M.D., Ph.D. (Simon & Schuster)

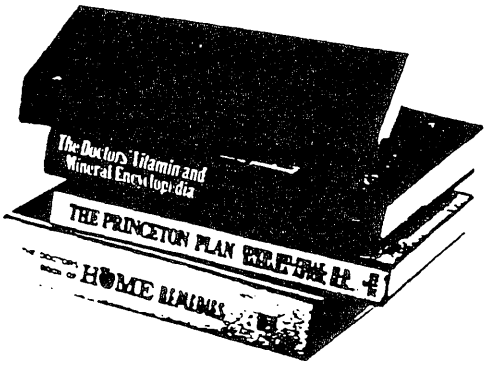
The Chromium Program — Jeffrey A. Fisher, M.D. (Harper & Row)

The Princeton Plan — Edwin Helenuik, M.D. (St. Martin's Press)

The Doctors Book of Home Remedies —
Ronald Hoffmann, M.D. (Rodale Press)

The Purification Prescription —
Sheldon Saul Hendler, M.D., Ph.D. (William Morrow & Co.)

The New Super Nutrition —
Richard Passwater, Ph.D. (Simon & Schuster)



Magazines The three million readers of *Cosmopolitan* (May '90) read a discussion of Chromium Picolinate's value for dieters under the headline "A Miracle Mineral?" The cholesterol-reducing effect of Chromium Picolinate was highlighted in *The Ladies Home Journal*. *Longevity* has praised Chromium Picolinate as a safe alternative to anabolic steroids. *American Druggist* ran a similar article, while *Drug Store News* reported the findings on diabetes. Numerous publications for athletes and for health food shoppers have run feature articles on Chromium Picolinate, including *Prevention, Better Nutrition, Whole Foods, Today's Living, Total Health, Muscular Development, Runner's World*, and *Velo News*.

Newspapers Many of the nation's most respected and widely read newspapers have devoted articles to Chromium Picolinate including LOS ANGELES TIMES, WASHINGTON POST, USA TODAY, SAN DIEGO UNION, SAN DIEGO TRIBUNE, SAN FRANCISCO CHRONICLE, DETROIT FREE PRESS, PHOENIX GAZETTE, and HOUSTON POST.

The tide of publicity should continue to roll as additional provocative clinical findings are published in the months and years to come.

This widespread favorable media attention translates into a broad and growing market for Chromium Picolinate products.

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EXHIBIT D

SOME FREQUENTLY ASKED QUESTIONS

Q: Is Chromium Picolinate "GTF"?

A: As previously noted, there is no good evidence for the existence of a specific chromium complex, or GTF, that mediates chromium's physiological effects. However, certain organic chromium complexes might reasonably be said to have "GTF activity" in the sense that they are more efficient than inorganic chromium in achieving intestinal absorption, intracellular uptake and insulin potentiation. Chromium Picolinate certainly has superb GTF activity in this sense. However, to avoid confusion we prefer to refer to Chromium Picolinate as "Bioactive Chromium."

It is interesting to note that brewer's yeast cells make picolinic acid. Perhaps picolinic acid is a constituent of the highly bioactive chromium complexes found in brewer's yeast.

Q: Isn't picolinic acid toxic?

A: When administered in very high doses to experimental animals, picolinic acid *per se* can exert toxic effects, possibly including a mutagen antagonist effect. This has no relevance whatever to any amounts of picolinic acid complexed with nutritional amounts of essential metals. An effective level of Chromium Picolinate providing 200 micrograms chromium is complexed to only 1.4 milligrams of picolinic acid — *far less than the human body makes every day*. As noted earlier, picolinic acid is a natural protein metabolite produced in the human liver and kidney. Furthermore, it should be noted that the characteristics and physiological effects of mineral picolinate complexes will be distinct from those of the picolinic acid. Neither we nor anyone else advocates the use of free picolinic acid as a nutritional supplement.

In pharmacological doses, nicotinic acid (niacin) tends to cause flushing, side effects and sometimes induces liver failure. But it would be unfair and certainly ridiculous to use this fact to call into question the safety of nutritional doses of chromium nicotinate. By the same token, the effects of high dose picolinic acid clearly have no bearing on the safety of nutritional doses of Chromium Picolinate.

Q: I've heard that some forms of chromium are toxic. What about Chromium Picolinate?

A: Hexavalent chromium is an unstable form of chromium that is extremely active as an oxidizing agent. In living cells, hexavalent chromium damages DNA and other vital components.

In contrast, trivalent chromium—the nutritional form of chromium—is very stable and is not associated with nutritional excess or toxicity even in amounts far beyond the nutritional range. Chromium Picolinate contains only the trivalent nutritional form of chromium. In short, none of the components of Chromium Picolinate, or the amounts in which they are present, are associated with any toxicity. Indeed, it would be impossible to consume enough of Chromium Picolinate that could feasibly be administered (many thousands of times higher than the nutritional dose) without any discernible adverse effects.

Q: Why haven't I've heard more about chromium?

A: Chromium is one of the newer essential trace elements. Unlike iron and iodine which have been known to be essential for over 150 years, the essentiality of chromium was discovered barely 30 years ago. Nevertheless, it is every bit as important as iron, iodine, or zinc for proper nutrition and good health.

Most previous clinical studies with chromium have used chromium chloride which isn't very well absorbed or utilized. Now that Chromium Picolinate is available as a much more bioactive supplemental source, you'll be hearing a lot about chromium in coming years.

Q: Why is chromium underemphasized in typical American diets?

A: Most minerals and trace elements that are essential for humans are also essential for plants; plants will contain adequate levels of these minerals because otherwise they couldn't grow. But iodine, selenium and chromium are *not* required by plants, and crops grown on soils depleted of these minerals will supply minimal amounts.

The refinement of flour strips it of much of this chromium content. The prominence of high calorie, low nutrition junk foods in typical American diets also dilutes daily chromium intake.

This brochure is intended solely for the information of nutritional manufacturers and distributors, and is not intended for the general public. Nutritional supplement distributors are advised to consult their own legal counsel before using any of the information or claims or promote products made with Chromium Picolinate.

NUTRITION 21

NUTRITION 21

1010 Turquoise Street, Suite 333

San Diego, CA 92109 (619) 488-1233 FAX (619) 488-7454

570075

EXHIBIT D

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BULK RATE
US POSTAGE
PAID
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NUTRITION 21

NUTRITION 21

1010 Turquoise Street, Suite 335

San Diego, [illegible]

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EXHIBIT E

Nutrition 21

1010 Turquoise • San Diego, California 92109 • (619) 488-1021

February 1990

Chromium Picolinate—The Results Speak for Themselves

Two well designed, well executed studies prove that Chromium Picolinate accelerates muscle growth and reduces body fat. Such a statement cannot be made for any other chromium compound.

by Richard Passwater, Ph.D.

A recent issue of MUSCLE & FITNESS presented an article calling attention to the newly proven anabolic role of chromium. Body builders have believed for a long time that chromium helps build muscle. What is new is that scientists now have measured, during a clinical study, the *actual* gains that chromium produces.

It no longer makes any difference what people "think" about chromium or about the different forms of chromium because the *facts* are in—facts determined by clinical tests conducted according to acceptable scientific standards. And they have shown that one form of chromium—Chromium Picolinate—does accelerate muscle growth.

This article will discuss the studies showing that Chromium Picolinate is specifically effective for building muscle and promoting fat loss.

THE FIRST STUDY

Two clinical studies examined the effects of Chromium Picolinate on body composition in young male athletes. They were conducted recently at Bemidji (Minnesota) State University under the direction of Dr. Muriel Gilman and Guy Otte. Ten male students enrolled in a weight training course were randomly divided into two groups of five each. All of them worked out for 40 minutes twice a week.

One group received Chromium Picolinate (200 micrograms of chromium daily) while the other got a placebo, a similar looking capsule but without any active ingredients. It was a "double-blind" study. That is, the supplements were coded so neither the students nor the scientists evaluating them knew who was getting the chromium. Body content of fat and muscle, as well as biceps and calf circumferences, were recorded at the start of the study and again after two weeks and six weeks of supplementation.

At the end of the study the changes in the students' muscle size and body fat were measured. Then the code was broken and the scientists learned for the first time which of the students had been taking Chromium Picolinate and which had received placebos.

In six weeks, the Chromium Picolinate group gained an average of 3.5 pounds of lean body mass, compared to only 1/10 of a pound in the placebo group. This difference was highly statistically significant.

When the researchers analyzed all the differences between the two groups, they felt the results warranted further study with a larger number of participants.

THE SECOND STUDY

The second study involved 31 football players during the off-season. They all engaged in a weight training program, four times a week, one hour per session. The athletes were divided randomly into two groups; one received Chromium Picolinate and the other a placebo. Again, it was a double-blind study. Body composition was determined before and after six weeks of supplementation.

When the study was completed, it was found that the group taking Chromium Picolinate gained an average of 5.7 pounds of

1 Complaint

EXHIBIT E

Chromium Picolinate —The Results Speak for Themselves

lean body mass, compared to 3.9 pounds in those getting a placebo. This 44% greater increase is statistically *very* significant.

BODY FAT LOSS

Even more intriguing was the effect on body fat. The group that had been taking Chromium Picolinate averaged a fat loss of 7.5 pounds. That was 22% of their total body fat. The other group lost an average of 2.2 pounds, only 6% of their total body fat. This difference also had a very high statistical significance.

The anabolic effect of good chromium nutrition can readily be attributed to the known anabolic effects of the hormone insulin. But the fat burning result with Chromium Picolinate, as demonstrated in Dr. Gilman's study, is not so readily predictable.

A likely possibility is that Chromium Picolinate enhances metabolism in "brown fat". This type of adipose tissue is found on the back and near many internal organs. It is activated after a carbohydrate-rich meal by a chain of events that requires insulin action on a portion of the brain known as the hypothalamus. Probably Chromium Picolinate makes the hypothalamus more sensitive to insulin.

Activated brown fat raises the metabolic rate by rapidly burning fatty acids and generating heat. Thus, Chromium Picolinate may promote fat burning while aiding the synthesis and retention of protein in muscle—certainly an ideal state of affairs for body builders!

HOW IT WORKS

Picolinic acid is a mineral binder—a chelator—that is produced in the human body from protein. It is exceptionally effective for promoting the absorption and cellular uptake of minerals such as zinc, iron, manganese, and chromium. Dr. Gary Evans, formerly a research scientist for the United States Department of Agriculture and now a chemistry professor at Bemidji State University, is primarily responsible for demonstrating the superb nutritional value of mineral picolinates.

Chromium Picolinate is of special interest. Inorganic sources of chromium such as chromic chloride are very poorly absorbed, only about 1/2 of 1% of an oral dose. Animal studies conducted by Dr. Evans showed that Chromium Picolinate was five to 10 times better absorbed *and* retained than other forms of chromium tested.

The Chromium Picolinate molecule is highly stable and passes across cell membranes much more readily than inorganic chromium. This is in contrast to the compound of chromium and niacin which Dr. Walter Mertz has reported to be unstable. Animal studies also show that Chromium Picolinate is exceptionally safe. Fears that Chromium Picolinate might prove toxic because of an antagonism between niacin and picolinic acid are groundless. The standard daily dose of Chromium Picolinate provides only 1.4 milligrams of picolinic acid—less than 1/10 of the amount produced in the human body every day!

Weight Control Results With Chromium Picolinate

The sharp reduction in body fat noted in the Bemidji State study was remarkable and unanticipated, and suggests that Chromium Picolinate may have value as a diet aid. The following outstanding and unequivocal case results were reported by Julia Ross, Executive Director of Recovery Systems:

L——: Mid-thirties, with a long history of obesity. She weighed 250 lbs. most of her adult life. She was not a dieter although she did Weight Watchers seriously three times.

(1) Refined carbohydrates and fats were the mainstays of her diet.

(2) She went on massive and frequent binges. High alcohol and tobacco consumption as an adult. These symptoms worse before meals.

(3) She had a long history of clinical hypoglycemia with associated severe and chronic headaches, dizziness and sugar cravings. These symptoms persisted even during the past nine years of stable weight loss (through the Overeaters Anonymous program) and a protein and vegetables (only) diet.

The first dose of Shape-Up (Chromium Picolinate) eliminated the headaches within 20 minutes. Within three days, the shakiness before meals was gone at 200 mcg. in AM. and 200 mcg. in PM.

Continued on last page

EXHIBIT F

Lose The Fat; Keep The Muscle With Chromium Picolinate.

Here's Why You Need Chromium Picolinate.

Like iron, calcium and zinc, chromium is a nutritionally essential mineral. Its most biologically available form, Chromium Picolinate, can have nutritionally helpful effects on your health and fitness. Combined with a lifestyle of low-fat eating and every-day exercise can improve both health and [illegible]

Lose Fat and Keep Muscle with Chromium Picolinate.

Nine confirming scientific studies with humans and animals demonstrate a significant reduction in body fat when Chromium Picolinate is added to the diet. These studies also show a consistent trend toward increased lean muscle. Muscle burns calories [illegible] stores calories.

Chromium Picolinate Helps Maintain A Normal Healthy Metabolism.

Insulin has very important functions. It maintains the normal nutritional metabolism of protein - muscle building; carbohydrate - major energy source; and fat - energy storage. It also influences appetite control and calorie-burning. Insulin simply can't perform normally without an adequate supply of chromium.

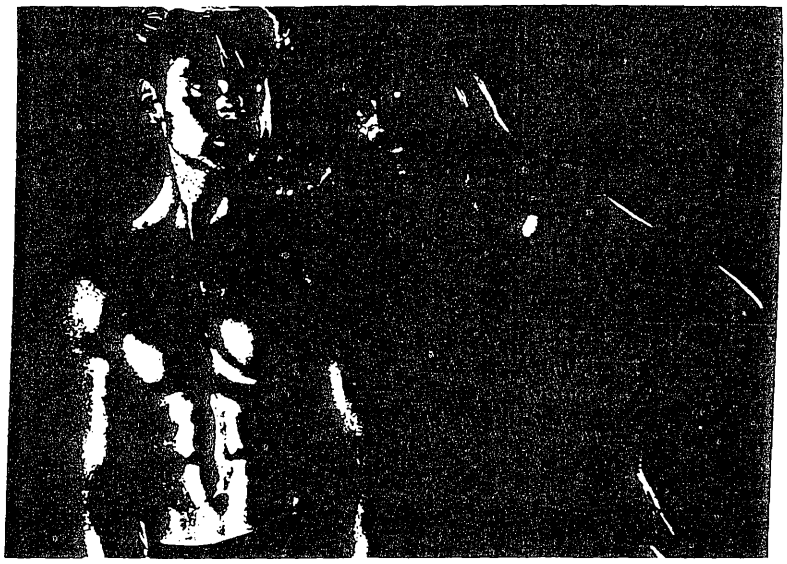
Chromium is Undersupplied in 90% of Adult Diets.

The National Academy of Sciences recommends 50 to 200 micrograms of chromium daily. U.S. Department of Agriculture studies show that men get only 33 micrograms and women get only 25 micrograms on average from their food. So help yourself stay trim and healthy. Choose low-fat meals, choose exercise that you enjoy, and choose Chromium Picolinate to supplement your daily diet. Do it for the health of it. [illegible] life.

CHROMIUM PICOLINATE

Call or write Nutrition 21 for a FREE brochure, "Hidden Fat in the American Diet". Nutrition 21, 1010 Turquoise Street-Pp2, San Diego, CA 92109. (619) 488-7423.

EXHIBIT G



"Lose the Fat; Keep the Muscle"

with Chromium Picolinate

FOUR STEPS TO A LEANER FIRMER BODY

1. **Reduce Dietary Fat Consumption to No More Than 20% of Calories – Eating Fat Makes You Fat**
2. **Increase Dietary Fiber – Low in Calories; High in Nutrients**
3. **Get Regular Aerobic Exercise – and Burn Fat Calories!**
4. **Take Chromium Picolinate Daily – Lose the Fat; Keep the Muscle**

lose only fat while maintaining, or even increasing muscle.

under a variety of brand names in all health food stores and selected drug stores and supermarket-

EXHIBIT G

DECISION AND ORDER

The Federal Trade Commission, having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of the 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 respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than the jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that a 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 comments received, now in further conformity with the procedure described in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1.Respondent Nutrition 21 is a limited partnership organized, existing, and doing business under and by virtue of the laws of the State of California with its office and principal place of business at 1010 Turquoise St., Suite 335, San Diego, CA.

2.Respondent Selene Systems, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California with its office and principal place of business at 1010 Turquoise St., Suite 335, San Diego, CA. It is a general partner of Nutrition 21.

3.Respondent Herbert H. Boynton is President of Selene Systems, Inc., a corporation. He formulated, directed, and controlled the acts

and practices of Nutrition 21 and Selene Systems, Inc. His address is the same as that of Nutrition 21.

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

ORDER

DEFINITIONS

For the purposes of this order:

1. *"Competent and reliable scientific evidence"* shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

2. *"Purchaser for resale"* shall mean any purchaser or other transferee of Chromium Picolinate, or of the right or license to sell Chromium Picolinate, either as Chromium Picolinate or as an ingredient of any other product, other than respondents, who sells, or who has sold, Chromium Picolinate, either as Chromium Picolinate or as an ingredient of any other product, to other purchasers or to consumers.

3. Unless otherwise specified, *"respondents"* shall mean Nutrition 21, a limited partnership, Selene Systems, Inc., a corporation, their successors and assigns and their officers; and Herbert H. Boynton, individually and as an officer of Nutrition 21 and Selene Systems, Inc.; and each of the above's agents, representatives, and employees.

4. *"Commerce"* shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

I.

It is ordered, That respondents, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Chromium Picolinate or any food, dietary supplement, or drug, as "food" and "drug" are defined in Section 15 of the Federal Trade Commission Act, in or affecting

commerce, shall not make any representation, in any manner, expressly or by implication, that:

A. Such product reduces body fat;
B. Such product causes weight loss;
C. Such product causes weight loss without dieting or exercise;
D. Such product causes long-term or permanent weight loss;
E. Such product increases lean body mass or builds muscle;
F. Such product increases human metabolism;
G. Such product controls appetite or craving for sugar;
H. Such product reduces serum cholesterol;
I. Such product lowers elevated blood sugar levels;
J. Such product is effective in the treatment or prevention of diabetes; or
K. Ninety percent or any number or percentage of U.S. adults do not consume diets with sufficient chromium to support normal insulin function, resulting in increased risk of overweight, heart disease, elevated blood fat, high blood pressure, diabetes, or any other adverse effect on health, unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

II.

It is further ordered, That respondents, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Chromium Picolinate or any food, dietary supplement, or drug, as "food" and "drug" are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, regarding the benefits, performance, efficacy, or safety of such product, unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

III.

It is further ordered, That respondents directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or program, in or

affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

IV.

It is further ordered, That respondents shall send by certified mail, return receipt requested, a copy of the attached Exhibit A to:

A. Each purchaser for resale of Chromium Picolinate with whom respondents have done business since January 1, 1993, within thirty (30) days of the date this order becomes final, to the extent that such purchasers are known to respondents through a diligent search of their records, including but not limited to computer files, sales records, and inventory lists. The mailing shall not include any other documents; and,

B. For a period of three (3) years following service of this order, each purchaser for resale with whom respondents do business after the date of service of this order who has not previously received the notice. Such notices shall be sent no later than the earliest of: (1) the execution of a sales or licensing agreement or contract between respondents and the prospective purchaser for resale; (2) the receipt and deposit of payment from a prospective purchaser for resale of any consideration in connection with the sale or licensing of chromium picolinate; or (3) the date on which respondents first ship chromium picolinate to the purchaser for resale.

V.

It is further ordered, That respondents, and their successors and assigns, shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and promotional materials containing the representation;

B. All materials that were relied upon in disseminating the representation; and

C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the

representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

VI.

It is further ordered, That respondents shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the partnership or corporation(s), that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the partnership or corporation name or address. Provided, however, that with respect to any proposed change in the corporation about which respondents learn less than thirty (30) days prior to the date such action is to take place, respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

VII.

It is further ordered, That respondents shall deliver a copy of this order to all current and future principals, partners, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VIII.

It is further ordered, That respondent Herbert H. Boynton, for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business

or employment or of his affiliation with any new business or employment. The notice shall include respondent's new business address and telephone number, and a description of the nature of the business or employment and his duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

IX.

It is further ordered, That respondents shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

X.

This order will terminate on July 11, 2017, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

ATTACHMENT A

[To be printed on Nutrition 21 Stationery]

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED

[Date]

Dear [purchaser for resale]:

This letter is to inform you that Nutrition 21 recently entered into a consent agreement with the Federal Trade Commission ("FTC") concerning certain claims we made for chromium picolinate, which the FTC has alleged to be deceptive. Although Nutrition 21 does not admit the FTC's allegations, we have agreed to have substantiation for any future claims about the effectiveness of chromium picolinate at the time we make those claims, and to stop making claims that scientific studies demonstrate the effectiveness of chromium picolinate unless those claims are true.

As a part of our settlement with the FTC, we also agreed to send this letter notifying our distributors, wholesalers and others to whom we sell chromium picolinate to stop using or distributing advertisements or promotional materials containing the challenged claims.

The FTC alleged that we made unsubstantiated claims relating to the effectiveness of chromium picolinate. Specifically, the FTC alleged that we did not have a reasonable basis for claims that:

-- Chromium Picolinate significantly reduces body fat;
-- Chromium Picolinate causes significant weight loss;
-- Chromium Picolinate causes significant weight loss without dieting or exercise;
-- Chromium Picolinate causes long-term or permanent weight loss;
-- Chromium Picolinate increases lean body mass and builds muscle;
-- Chromium Picolinate significantly increases human metabolism;
-- Chromium Picolinate controls appetite and craving for sugar;
-- Chromium Picolinate significantly reduces total and LDL serum cholesterol;
-- Chromium Picolinate significantly lowers elevated blood sugar levels;
-- Chromium Picolinate is effective in the treatment and prevention of diabetes; and
-- Ninety percent of U.S. adults do not consume diets with sufficient chromium to support normal insulin function, resulting in increased risk of overweight, heart disease, elevated blood fat, high blood pressure, and diabetes.

The FTC considers a reasonable basis for these types of claims to consist of competent and reliable scientific evidence.

In addition, the FTC alleged that we falsely claimed that scientific studies demonstrated many of the above claims about chromium picolinate.

We request your assistance by asking you to discontinue using, relying on or distributing any advertising or promotional materials for chromium picolinate that make any of the above claims unless and until you possess competent and reliable scientific evidence that substantiates the claims. Please also notify any of your retail or wholesale customers that they should follow the same procedures.

Thank you very much for your assistance.

Very truly yours,

HERBERT H. BOYNTON
Chairman of the Board
Nutrition 21

IN THE MATTER OF

COLUMBIA/HCA HEALTHCARE CORPORATION

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3619. Consent Order, Oct. 3, 1995--Modifying Order, July 14, 1997

This order reopens a 1995 consent order -- that permitted Columbia/HCA and Healthtrust, Inc., to merge and required the divestiture of the lease agreement -- and this order modifies the consent order by terminating Columbia/HCA's obligation to divest a commercial lease (the Infusamed Lease) for office space in a building in Utah.

ORDER REOPENING AND MODIFYING ORDER

On February 18, 1997, Columbia/HCA Healthcare Corporation ("Columbia") filed its Petition Of Columbia/HCA Healthcare Corporation To Reopen And Modify Order ("Petition") pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice and Procedure, 16 CFR 2.51. Respondent asks that the Commission reopen the proceeding in Docket No. C-3619 and modify the order to terminate the requirement that Columbia divest the commercial lease identified in Item 6 of Part II of Section A of Schedule B of the order ("the Infusamed Lease"). The Petition was placed on the public record for thirty days, until March 24, 1997, and no comments were received. For the reasons discussed below, the Commission has determined to grant Columbia's Petition.

Columbia states that this Petition is the second step of two procedural steps to remedy a minor error in the order. On December 5, 1995, Columbia filed a petition to reopen and modify the order to terminate the Utah Hold Separate requirements upon its completion of the divestiture of the Part I assets listed on Schedule B of the order, *i.e.*, the Utah hospitals themselves. The Part II assets listed on Schedule B consist of certain assets and businesses that were identified by Columbia during consent negotiations with Commission staff as being related to each of the listed Utah hospitals,[1] and included the Infusamed Lease. On May 15, 1996, the Commission

[1] The only distinction that the order expressly makes between the Part I and Part II assets is that the acquirer of a divested Part I hospital need not give the Commission prior notification of the re-sale of a Part II asset to anyone who also owns a hospital in the relevant market. *See* order, paragraph IV.F.

granted Columbia's December 5, 1995 petition. In addition, as of May 17, 1996, Columbia completed the divestitures of all of the Utah hospitals and related assets and businesses required by the order except for the Infusamed Lease Asset.

As explained in the Petition,[2] the leased space in question is used by Infusamed, a home health care company providing infusion and pharmacy services that was owned by Healthtrust, Inc. when it was acquired by Columbia. The order does not require Columbia to divest the Infusamed business. It also appears that the lease was not part of the business of Pioneer Valley Hospital, with which it was identified as a relevant asset. Specifically, Columbia explains that, although the Infusamed program was located temporarily at Pioneer Valley Hospital to enable it to register with the state of Utah and secure necessary licenses, it was subsequently separately incorporated and was not in fact part of the competitive package comprising the Pioneer Valley Hospital Assets.

Columbia claims that the order should be reopened and modified on the grounds of changed conditions of fact. Specifically, Columbia asserts that there was a mutual mistake of fact during consent negotiations. According to Columbia, during consent negotiations, both Columbia and the Commission were under the impression that the Infusamed Lease Asset was intrinsically related to Pioneer Valley Hospital, one of the Schedule B hospital assets. In reality, Columbia claims, the Infusamed Lease Asset was not "related" to Pioneer Valley Hospital in any sense that is competitively meaningful in terms of that hospital specifically or the relevant acute care inpatient hospital services market in Utah generally. As a result of this mistake, Columbia asserts that there has been a "constructive change of fact" which warrants correction by reopening and modifying the order to eliminate the requirement that Columbia divest the Infusamed Lease Asset.[3]

Columbia also asserts that reopening and modifying the order to eliminate its obligation to divest the Infusamed Lease Asset is in the public interest. Columbia states that forcing it to divest the Infusamed Lease will not further the original purposes of the order. Columbia also states that it will be burdened by unnecessary compliance obligations that will impede its ability to compete in the relevant Utah

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[2] Petition at 3 & Exhibit D.

[3] In support, Columbia cites the Commission's decision in Saint-Gobain/Norton Industrial Ceramics Corporation, Docket No. C-3673, Order Reopening and Modifying Order (November 19, 1996) (mutual mistake caused a "constructive change of fact" justifying a modification).

acute care hospital market. Further, Columbia states that a forced divestiture will cause significant and unforeseen harm to competition for the provision of home health services by interfering with the ongoing business of the Infusamed regional home health care company.

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45 (b), provides that the Commission shall reopen an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditions of law or fact" require such modification. A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of it inequitable or harmful to competition. S. Rep. No. 96-500, 96th Cong., 2d Sess. 9 (1979) (significant changes or changes causing unfair disadvantage); Louisiana-Pacific Corp., Docket No. C-2956, Letter to John C. Hart (June 5, 1986), at 4 (unpublished) ("Hart Letter").[4]

Section 5(b) also provides that the Commission may modify an order when, although changed circumstances would not require reopening, the Commission determines that the public interest so requires. Respondents are therefore invited in petitions to reopen to show how the public interest warrants the requested modification. Hart Letter at 5; 16 CFR 2.51. In such a case, the respondent must demonstrate as a threshold matter some affirmative need to modify the order. Damon Corp., Docket No. C-2916, Letter to Joel E. Hoffman, Esq. (March 29, 1983), 1979-83 Transfer Binder, FTC Complaints and Orders, (CCH) ¶22,007, p. 22,585 ("Damon Letter"), at 2. For example, it may be in the public interest to modify an order "to relieve any impediment to effective competition that may result from the order." *Damon Corp.*, Docket No. C-2916, 101 FTC 689, 692 (1983). Once such a showing of need is made, the Commission will balance the reasons favoring the requested modification against any reasons not to make the modification. Damon Letter at 2. The Commission also will consider whether the particular modification sought is appropriate to remedy the identified harm. Damon Letter at 4.

The language of Section 5(b) plainly anticipates that the burden is on the petitioner to make a "satisfactory showing" of changed

[4] *See also United States v. Louisiana-Pacific Corp.*, 967 F.2d 1372, 1376-77 (9th Cir. 1992) ("A decision to reopen does not necessarily entail a decision to modify the order. Reopening may occur even where the petition itself does not plead facts requiring modification.").

conditions to obtain reopening of the order. The legislative history also makes clear that the petitioner has the burden of showing, other than by conclusory statements, why an order should be modified. The Commission "may properly decline to reopen an order if a request is merely conclusory or otherwise fails to set forth specific facts demonstrating in detail the nature of the changed conditions and the reasons why these changed conditions require the requested modification of the order." S. Rep. No. 96-500, 96th Cong., 1st Sess. 9-10 (1979); *see also* Rule 2.51(b) (requiring affidavits in support of petitions to reopen and modify). If the Commission determines that the petitioner has made the necessary showing, the Commission must reopen the order to consider whether modification is required and, if so, the nature and extent of the modification. The Commission is not required to reopen the order, however, if the petitioner fails to meet its burden of making the satisfactory showing required by the statute. The petitioner's burden is not a light one in view of the public interest in repose and the finality of Commission orders. *See Federated Department Stores, Inc. v. Moitie*, 425 U.S. 394 (1981) (strong public interest considerations support repose and finality).

Columbia has not met its burden of showing that changed conditions of fact require reopening and modifying the order. First, the Commission disagrees with Columbia's assertion that the mistaken inclusion of the Infusamed Lease Asset was a mutual mistake by both parties to the consent negotiations. In deriving the list of related assets and businesses to be divested by Columbia along with the core divestiture assets required to be included as the Part I assets of Schedule B (*i.e.*, which Utah hospitals should be divested), the Commission relied on the representations of Columbia that each one of the three separate lease assets identified by Columbia for inclusion on Part II, Section A, of Schedule B (*i.e.*, Items 3 and 4 as well as Item 6, the Infusamed Lease Asset) was related to the business of Pioneer Valley Hospital. It was only when Columbia negotiated its divestiture agreement with Paracelsus Healthcare Corporation, which acquired, among other things, the Pioneer Valley and Davis hospitals in Utah, that Columbia realized its error and also ascertained that Paracelsus did not want the Infusamed Lease Asset. As the Commission stated in Saint-Gobain: "Oversights made unilaterally by respondents do not constitute changed conditions of fact within the meaning of Section 5(b) of the FTC ACT."[5] The

[5] Saint-Gobain/Norton Industrial Ceramics Corporation, Docket No. C-3673.

mistake in this case was made unilaterally by Columbia and was not a mutual mistake of fact.

More significantly, however, this case does not present the kind of situation that the Commission recognized as establishing a "constructive" change of fact in Saint-Gobain. Application of the "constructive" changed facts ground for reopening a final order is limited to situations where, as in Saint-Gobain, the order misnames, mislabels or misidentifies a person, place or thing, and this error incorporated in the order prevents the respondent from complying with the order as written, so that the purposes of the order cannot be achieved. In these situations, the error will typically involve a single fact, the truth or accuracy of which is easily and objectively verifiable, *e.g.*, whether an individual is or is not an officer of a particular corporation, or whether an asset is located at "105 Wright Bros. Drive" or "150 Wright Bros. Drive." In these circumstances, reopening and modification is necessary to allow achievement of the order's remedial purposes. Unlike the situation presented in Saint-Gobain, Columbia is not prevented from complying fully with the order as written, nor would divestiture of the Infusamed Lease Asset frustrate the order's purposes. Accordingly, Columbia has not demonstrated that reopening of the order is compelled on grounds of changed condition of fact.

Columbia has, however, met its burden of showing that public interest considerations warrant reopening and modifying the order to eliminate the requirement to divest the Infusamed Lease Asset. Columbia has met its burden of showing an affirmative need to reopen the proceeding caused by the continued operation of the order. Columbia has shown that in view of its divestiture of Pioneer Valley Hospital (the hospital with which the Infusamed Lease Asset was identified as a related asset), the Pioneer Valley Hospital acquirer's lack of interest in the Infusamed Lease Asset, and the lease's lack of competitive significance in the relevant acute care hospital market, continuing to require Columbia to divest the lease is burdening it with unnecessary expense in terms of achieving the order's remedial purposes, and is having a negative impact on its ability to compete. Columbia has also shown that requiring it to divest the Infusamed Lease Asset will cause harm to competition in the market for the provision of home health services. The Commission's complaint did not identify any competitive problems in the market for home health services and, accordingly, the Commission sought no relief in this

market. Requiring Columbia to divest the lease in light of a lack of interest by the acquirer of the other divested assets, and the lack of any allegation in the complaint that a competitive problem exists in the home health services market, would impede competition in that market.

Where the potential harm to the respondent outweighs any further need for the order, the Commission may modify the order in the public interest to allow the respondent to retain the relevant assets.[6] Because the Infusamed Lease Asset has been shown to have no competitive significance in the acute care hospital market in Utah, there is no need for Columbia to divest the lease. The remedial purposes identified in the order have already been achieved by the divestitures that have taken place. Further, requiring Columbia to divest the Infusamed Lease Asset will cause harm to competition for the provision of home health services. The harm and costs to Columbia associated with the continuing requirement to divest the lease appear to be significant, while there do not appear to be any benefits associated with requiring the divestiture.

Accordingly, *It is ordered,* That this matter be, and it hereby is, reopened; and

It is further ordered, That the order in Docket No. C-3619, be, and it hereby is, modified by deleting the asset identified as Schedule B, Section A, Part II, Item 6: "Lease of 7,134 sq. ft., 150 Wright Bros. Drive, Suite 540, Salt Lake City, Utah 84116" from the list of assets to be divested.

Commissioner Azcuenaga and Commissioner Starek concurring in the result only.

CONCURRING STATEMENT OF COMMISSIONER MARY L. AZCUENAGA

Today, the Commission reopens the order against Columbia/HCA Healthcare Corporation under Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), to eliminate the requirement that Columbia/HCA divest an ordinary commercial lease of a 7143 square foot office suite on the ground that reopening and modifying the order is in the public interest. I agree with the result but not with the reasoning of the majority.

[6] *See* S.C. Johnson & Sons, Inc., Docket No. C-3418, Order Reopening Proceeding and Modifying Order (November 8, 1993) (order modified on public interest grounds to eliminate requirement to divest remaining international Renuzit assets not in the relevant market and not wanted by the acquirer of the divested North American Renuzit assets); T&N plc, Docket No. C-3312, Order Reopening Proceeding and Modifying Order (November 13, 1991) (order modified on public interest grounds to permit respondent to retain inventory not wanted by the acquirer).

The majority is correct that a showing of affirmative need is required before an order will be reopened under the public interest standard, and only after such a showing of affirmative need does the Commission balance the public interest reasons for and against the modification. *See* Damon Corp., Docket No. C-2916, Letter to Joel E. Hoffman, Esq. (Mar. 29, 1983). Commission Rule 2.51(b), 16 CFR 2.51(b), provides that the petition must be supported by affidavits containing "specific facts" justifying the reopening and modification of an order and cautions against "conclusory" justifications. Because Columbia/HCA failed to make the requisite showing of affirmative need under Rule 2.51(b), I cannot agree with the majority that the petition should be granted under the public interest standard.

Finding affirmative need, the majority states: "continuing to require Columbia to divest the lease is burdening it with unnecessary expense in terms of achieving the order's remedial purposes, and is having a negative impact on its ability to compete." Order at 5. The affidavit filed in support of Columbia/HCA's petition contains the bare assertion that the expenditure of time and other resources (presumably to find a buyer for the lease) will impede its ability to compete in the hospital market.[1] It is virtually always foreseeable at the time a consent agreement is signed that a divestiture will entail "time and other resources" to accomplish. An order need not be reopened and modified on the basis of a circumstance that is foreseeable at the time that a consent order is signed. *See* Louisiana-Pacific Corp., Docket No. C-2956, Letter to John C. Hart (June 5, 1986); *United States v. Louisiana-Pacific Corp.*, 967 F.2d 1372, 1378 (9th Cir. 1992).

Columbia/HCA does not assert, much less support, a particular cost of leaving the requirement to divest the lease in the order. This omission alone is sufficient ground to deny the petition under the public interest standard. On this point, the Commission's decision is tantamount to waiving the requirements of Rule 2.51(b) that a petition must be supported with particularity. It seems to me that the requirements of Rule 2.51(b) are there for good reason, and I see no reason to waive them.

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[1] The entire explanation provided in the supporting affidavit is as follows: "Columbia/HCA will suffer unforeseen competitive harm if it is forced to divest the Infusamed Lease Asset. Columbia/HCA is extremely unlikely to find a buyer for the lease, which will terminate in five months. Meanwhile, the required expenditure of time and other resources will impede Columbia/HCA's ability to compete effectively, particularly in the Salt Lake Area acute care hospital market. Finally, a forced divestiture will interfere with the ongoing business of the Infusamed regional home health care company."

The majority's substantive discussion of affirmative need is contained in one paragraph. Order at 4-5. After stating its conclusion that the petitioner has shown affirmative need, the majority refers in one sentence to three circumstances to bolster its conclusion: the already completed divestiture of Pioneer Valley Hospital, the hospital acquirer's asserted lack of interest in the lease, and the "lack of competitive significance [of the lease] in the relevant acute care hospital market." Order at 4-5. None is explained. Pioneer Valley Hospital was divested, as required by the Commission's order, to Paracelsus Healthcare Corp., except for the lease in question, which was listed among the "Pioneer Valley Assets" to be divested. It is at best unclear why a partial divestiture justifies elimination of the remaining divestiture obligation. Surely this is not a precedent the majority would like to establish for other cases.

Second, the majority relies on "the Pioneer Valley Hospital acquirer's lack of interest" in the lease. Assuming the truth of this conclusion, it is not at all clear why it should be relevant. Columbia/HCA asserts in a single sentence that Paracelsus did not want the lease in question. Petition Para. 8. In the past, the Commission has been rigorous in probing assertions like this. Its failure to do so here is an indication that the Commission thinks the lease is competitively insignificant, which, indeed, is the next circumstance to which the majority refers as a basis for granting the petition. The majority's reliance on the "lack of competitive significance [of the lease] in the relevant acute care hospital market" amounts to a finding that the Commission made a mistake in requiring divestiture of the lease. But for the assumption that the lease was competitively significant, there would have been no possible reason to require divestiture in the first place.

Finally, the majority states that divestiture of the lease "will cause harm to competition in the market for the provision of home health services." Order at 5. This asserted harm is entirely unexplained,[2] no doubt because the market for home health services was not alleged in the complaint and is not otherwise at issue in the order that Columbia/HCA seeks to have changed. Presumably, the majority

[2] The closest the majority comes to an explanation is: "Requiring Columbia to divest the lease in light of a lack of interest by the acquirer of the other divested assets, and the lack of interest by the acquirer of the other divested assets, and the lack of any allegation in the complaint that a competitive problem exists in the home health services market, would impede competition in that market." Order at 5. The complaint also lacks any allegation that a competitive problem exists in the market for commercial real estate in Salt Lake City, just to take one of any number of examples, but that hardly justifies changing an order that addresses the market for acute care hospital services.

would not so lightly assume harm to competition in a market it has not studied or previously identified if the majority were deciding liability. To do so in this context undermines the Commission's analytical standards.

The petitioner asserts that the petition should be granted on the basis of mutual mistake of fact (constructive change of fact), citing Saint-Gobain/Norton Industrial Ceramics Corp., Order Reopening and Modifying Order, Docket No. C-3573 (November 19, 1996). On that ground, I concur in the result.

STATEMENT OF COMMISSIONER ROSCOE B. STAREK, III
CONCURRING IN THE RESULT

The order in this case requires respondent to divest assets in several areas of the country, as a remedy for the likely anticompetitive effects of respondent's acquisition of Healthtrust, Inc. - The Hospital Company. One of the assets required to be divested is the "Infusamed Lease," an office space in Salt Lake City from which respondent's Infusamed subsidiary provides infusion and pharmacy services.

Respondent has petitioned to reopen and modify the order to eliminate the Infusamed Lease from the schedule of assets to be divested. Respondent claims that both parties to the consent settlement of this matter (*i.e.*, both respondent and the Commission) labored under the erroneous assumption that the Infusamed Lease was a vital part of Pioneer Valley Hospital -- one of the primary assets that respondent was required to divest -- when in fact the Infusamed Lease has no critical relationship to the Hospital. Arguing that this mutual error regarding the Infusamed Lease constitutes a "constructive change of fact," respondent bases its request on our ruling last fall in Saint- Gobain/Norton Industrial Ceramics Corp.[1] -- the case in which we articulated the concept of a "constructive change of fact." Alternatively, respondent contends that the public interest requires the deletion of the Infusamed Lease from the divestiture assets.

I reach the same conclusion as my colleagues: respondent has made the case for modifying the order. The Infusamed Lease is not critically related to Pioneer Valley Hospital and should not have been included in the assets to be divested. I am comfortable reaching this

[1] Docket No. C-3673 (Order Reopening and Modifying Order, Nov. 19, 1996).

result either on a "constructive change of fact" basis or on the ground that it is in the public interest to grant the requested modification.

In the present order, however, the majority concludes that respondent has not shown a "constructive change of fact" within the parameters outlined in Saint-Gobain. First, my colleagues "disagree[] with Columbia's assertion that the mistaken inclusion of the Infusamed Lease Asset was a mutual mistake by both parties to the consent negotiations."[2] The majority tries to bolster this conclusion by observing that "the Commission relied on the representations of Columbia that each one of the three separate lease assets identified by Columbia for inclusion [in the relevant schedule to the consent order] was related to the business of Pioneer Valley Hospital. . . . The mistake in this case was made unilaterally by Columbia and was not a mutual mistake of fact."[3]

But as I understand the facts, both respondent and the Commission were under the misimpression that the Infusamed Lease was sufficiently related to Pioneer Valley to require inclusion in the set of divestiture assets. That the Commission may have "relied" on respondent's representations to this effect changes nothing: with or without such reliance, the fact remains that both parties to the consent agreement -- Columbia/HCA and the Commission -- entertained an incorrect view of the Infusamed Lease. This mistake was no less "mutual" than was the error (concerning the status of certain Carborundum managers) at the heart of the "constructive change of fact" doctrine that we announced in Saint-Gobain.[4]

The majority's second reason for rejecting respondent's "constructive change of fact" claim is even more perplexing. The majority states: "[T]his case does not present the kind of situation that the Commission recognized as establishing a 'constructive' change of fact in Saint-Gobain. Application of the 'constructive' changed facts ground for reopening a final order is limited to situations where, as in Saint-Gobain, the order misnames, mislabels or misidentifies a person, place or thing, and this error incorporated in the order prevents the respondent from complying with the order as written, so that the purposes of the order cannot be achieved. In these situations,

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[2] Order Reopening and Modifying Order at 4 (July 14, 1997).

[3] *Id.*

[4] Nor, I suspect, did the Commission "rely" any less on respondent's representations in Saint-Gobain than in the present case. Indeed, if the Commission had done an independent fact-finding concerning the Carborundum personnel -- rather than relying on respondent's representations -- it is highly likely that there never would have been an error concerning the Carborundum managers.

the error will typically involve a single fact, the truth or accuracy of which is easily and objectively verifiable . . ."[5]

I search in vain for language in our Saint-Gobain order to support the gloss my colleagues have put on it here. Nothing in that order speaks to the singularity of the fact at issue or to its easy or objective verifiability. With regard to prevention of compliance with the order and frustration of its purposes, the only sentence pertinent to this issue in our Saint-Gobain order[6] is hardly authority for the almost categorical limitation that my colleagues announce today. All of the majority's *post hoc* qualifications on the meaning of Saint-Gobain seem designed to mitigate the impact of a decision with which they may have become uncomfortable. If that is the majority's purpose, however, it finds no source in the text of Saint-Gobain itself.

In any event, even if my colleagues are correct that the kind of mistake cognizable under the "constructive change of fact" doctrine "will typically involve a single fact, the truth or accuracy of which is easily and objectively verifiable," why is the Infusamed Lease situation not a suitable candidate? Although my colleagues are silent on this question, the critical facts surrounding the Infusamed Lease do not differ materially (in terms of objective verifiability, etc.) from the facts concerning the Carborundum managers in Saint-Gobain, and I find the present case a worthy candidate for application of the constructive change of fact doctrine.

Having rejected changed conditions of fact as a basis for modifying the order, the majority turns to respondent's assertion that public interest considerations also warrant the requested relief. Although I agree that it is in the public interest to excuse respondent from an obligation to divest the Infusamed Lease, I cannot agree that respondent has satisfied the "affirmative need" standard, which has become enshrined in the Commission's public interest order modifications despite having no rightful place in our jurisprudence.[7]

Indeed, were my colleagues to apply their affirmative need criterion with any sort of rigor, respondent's public interest argument would fail. For example, I would be interested to learn what evidence supports the majority's observation that "continuing to require

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[5] Order Reopening and Modifying Order, *supra* n.2, at 4.

[6] "Saint-Gobain cannot, therefore, comply with the terms of paragraph 5.d. of the Hold Separate." In the Matter of Saint-Gobain/Norton Industrial Ceramics Corp., Order Reopening and Modifying Order, *supra* n.1, at 4.

[7] For one directly pertinent illustration of my oft-stated views on affirmative need, *see* In the Matter of Columbia/HCA Healthcare Corp., Docket No. C-3619, Order Reopening and Modifying Order (May 15, 1996) (Statement of Commissioner Roscoe B. Starek, III, Concurring in the Result).

Columbia to divest the [Infusamed] lease is burdening it with unnecessary expense in terms of achieving the order's remedial purposes, and is having a negative impact on its ability to compete."[8] Moreover, how has Columbia shown that "requiring it to divest the Infusamed Lease Asset will cause harm to competition in the market for the provision of home health services"?[9] And what is in the record to support the majority's conclusion that "[r]equiring Columbia to divest the lease in light of a lack of interest by the acquirer of the other divested assets, and the lack of any allegation in the complaint that a competitive problem exists in the home health services market, would impede competition in that market"?[10] Absent more information and analysis regarding home health services in the Salt Lake City area, how could the Commission possibly know that requiring respondent to divest the Infusamed Lease would "impede competition" in that "market"? Respondent's petition furnishes little in the way of substantiation, nor does the order issued today go beyond the conclusory.

Nevertheless, it is clearly in the public interest to grant the requested relief. The Infusamed Lease was included among the divestiture assets through an error, and -- entirely apart from the role that this error plays under the constructive change of fact doctrine -- the public interest requires that it be rectified. This conclusion is derived from a simple, straightforward balancing of the reasons to delete this divestiture requirement against the reasons to retain it. Consideration of the "affirmative need" question simply muddles the analysis.[11]

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[8] Order Reopening and Modifying Order, *supra* n.2, at 5.

[9] *Id.*

[10] *Id.*

[11] As I have noted elsewhere, "[a] case such as this one -- in which the affirmative need 'evidence' is paltry, but the requested relief fairly cries out to be granted -- demonstrates why the Commission should summon the will to jettison the 'affirmative need' concept and embrace explicitly a simple cost/benefit balancing approach to order modifications pursuant to the 'public interest' standard of [Commission] Rule 2.51." Statement of Commissioner Roscoe B. Starek, III, Concurring in the Result, *supra* n.7, at 2.

IN THE MATTER OF

CLASS RINGS, INC., ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3701. Consent Order, Dec. 20, 1996--Modifying Order, July 21, 1997

This order reopens a 1996 consent order -- that prohibited the respondents from having any interest in or assets of Gold Lance, Inc. -- and this order modifies the consent order by setting aside a provision prohibiting the respondents, for one year, from employing or seeking to employ any person who is or was employed during 1996 by Gold Lance, Inc. or Town & Country Corporation.

ORDER REOPENING AND MODIFYING ORDER

On May 29, 1997, respondents Commemorative Brands, Inc., formerly known as Class Rings, Inc. ("Class Rings"), and Castle Harlan Partners II, L.P. (collectively "CBI") filed a Petition of Commemorative Brands, Inc. and Castle Harlan Partners II, L.P. to Reopen and Modify Order ("Petition"), pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice and Procedure, 16 CFR 2.51. In its Petition, CBI requests that the Commission reopen the order in Docket No. C-3701 ("order") to set aside paragraph V, which prohibits CBI, for a period of one year, from employing or seeking to employ any person who is or was employed at any time during 1996 by Gold Lance, Inc. ("Gold Lance") or by Town & Country Corporation ("Town & Country") in any position relating to the design, manufacture, or sale of class rings (the "Employment Restriction").

For the reasons discussed below, the Commission has determined that CBI has demonstrated changed conditions of fact sufficient to require the reopening and modification of the order.[1]

In its Petition,[2] CBI requests that the Commission modify the order to set aside the Employment Restriction contained in paragraph V of the order.[3] The restrictions in paragraph V expire by their own

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[1] Because the Commission has determined to grant CBI's Petition based on change of fact, we do not reach a determination with respect to CBI's assertion that the provision should be set aside under the separate public interest standard.

[2] In support of its Petition, CBI provided the affidavit of Jeffrey H. Brennan, President and Chief Executive Officer of Commemorative Brands, Inc. ("Brennan Affidavit").

[3] Paragraph V provides that Castle Harlan and Class Rings:

shall not, for a period of one (1) year from the date this order becomes final, employ or seek to employ any person who is or was employed at any time during calendar year 1996 by Gold Lance or by Town & Country in any position relating to the design, manufacture, or sale of Class Rings.

terms on January 9, 1998, one year from the date on which the order became final.[4]

CBI bases its Petition on changed conditions of fact and public interest considerations.[5] The changes of fact alleged by CBI include the fact that Gold Lance is no longer a stand-alone competitor, but is now a part of the industry's market leader, Jostens, Inc. ("Jostens"). Since the order became final, Jostens, the largest producer of class rings in the country, purchased Gold Lance from Town & Country. CBI contends that, as a result of the acquisition, the Employment Restriction no longer operates to achieve the purpose for which it was designed but has the unintended effect of precluding CBI from competing against Jostens for Gold Lance employees.[6]

In addition to change of fact, CBI argues that it is in the public interest to grant its Petition because the Employment Restriction now has the unintended effect of preventing Gold Lance employees, many of whom will soon be out of work due to the Jostens' acquisition, from obtaining employment with CBI, which desires to offer jobs to qualified individuals. The Petition asserts that such a result is inconsistent with the purpose of the order and is unduly harmful to these employees.[7]

STANDARD FOR REOPENING AND MODIFYING FINAL ORDERS

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), provides that the Commission shall reopen an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditions of law or fact" so require. A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of it inequitable or harmful to competition.[8]

Section 5(b) also provides that the Commission may modify an order when, although changed circumstances would not require reopening, the Commission determines that the public interest so

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[4] Order ¶ V.

[5] CBI does not assert that any change of law requires reopening the order.

[6] Petition ¶¶ 5-12. Brennan Affidavit ¶¶ 4-6.

[7] Petition ¶¶ 13-15.

[8] S. Rep. No. 96-500, 96th Cong., 1st Sess. 9 (1979) (significant changes or changes causing unfair disadvantage); Louisiana-Pacific Corp., Docket No. C-2956, Letter to John C. Hart (June 5, 1986), at 4 (unpublished) ("Hart Letter"). *See also United States v. Louisiana-Pacific Corp.*, 967 F.2d 1372, 1376-77 (9th Cir. 1992) ("A decision to reopen does not necessarily entail a decision to modify the order. Reopening may occur even where the petition itself does not plead facts requiring modification.").

requires. Respondents are therefore invited in petitions to reopen to show how the public interest warrants the requested modification.[9] In such a case, the respondent must demonstrate as a threshold matter some affirmative need to modify the order.[10] For example, it may be in the public interest to modify an order "to relieve any impediment to effective competition that may result from the order."[11] Once such a showing of need is made, the Commission will balance the reasons favoring the requested modification against any reasons not to make the modification.[12] The Commission also will consider whether the particular modification sought is appropriate to remedy the identified harm.[13]

The language of Section 5(b) plainly anticipates that the burden is on the petitioner to make a "satisfactory showing" of changed conditions to obtain reopening of the order. The legislative history also makes clear that the petitioner has the burden of showing, other than by conclusory statements, why an order should be modified. The Commission "may properly decline to reopen an order if a request is merely conclusory or otherwise fails to set forth specific facts demonstrating in detail the nature of the changed conditions and the reasons why these changed conditions require the requested modification of the order."[14] If the Commission determines that the petitioner has made the necessary showing, the Commission must reopen the order to consider whether modification is required and, if so, the nature and extent of the modification. The Commission is not required to reopen the order, however, if the petitioner fails to meet its burden of making the satisfactory showing required by the statute. The petitioner's burden is not a light one in view of the public interest in repose and the finality of Commission orders.[15]

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[9] Hart Letter at 5; 16 CFR 2.51.

[10] Damon Corp., Docket No. C-2916, Letter to Joel E. Hoffman, Esq. (March 29, 1983), 1979-83 Transfer Binder, FTC Complaints and Orders, (CCH) ¶ 22,007, p. 22,585 ("Damon Letter"), at 2.

[11] *Damon Corp.*, Docket No. C-2916, 101 FTC 689, 692 (1983).

[12] Damon Letter at 2.

[13] Damon Letter at 4.

[14] S. Rep. No. 96-500, 96th Cong., 1st Sess. 9-10 (1979); *see also* Rule 2.51(b) (requiring affidavits in support of petitions to reopen and modify).

[15] *See Federated Department Stores, Inc. v. Moitie*, 425 U.S. 394 (1981) (strong public interest considerations support repose and finality).

CBI HAS DEMONSTRATED CHANGED CONDITIONS OF FACT THAT REQUIRE THE REOPENING AND MODIFICATION OF THE ORDER

CBI's Petition demonstrates that Jostens's acquisition of Gold Lance eliminates the need for the Employment Restriction contained in paragraph V of the order. The complaint in this matter charged that on May 20, 1996, Class Rings, an entity controlled by Castle Harlan, agreed to purchase all of the class ring assets from two companies, Town & Country and CJC Holdings, Inc. and CJC North America, Inc. ("CJC").[16] At the time of the proposed merger, CJC was manufacturing class rings. Town & Country, another leading producer of commemorative jewelry, manufactured class rings through its class ring divisions Gold Lance and L.G. Balfour Company, Inc. ("Balfour").[17] Under the consent order, Castle Harlan, in effect, was prohibited from acquiring the Gold Lance business but permitted to acquire the Balfour business as well as the CJC business from Town & Country.[18] Paragraph V of the order, the subject of the Petition, was included in the order to ensure that Town & Country, through its subsidiary Gold Lance, remained a viable independent competitor in the manufacture and sale of class rings.[19]

On April 21, 1997, Jostens, the largest producer of class rings in the United States, announced that it had purchased Gold Lance from Town & Country. Such a change, which was not foreseen at the time the Commission issued the order, results in the Employment Restriction having the unintended effect of precluding CBI from competing against the market leader Jostens for a significant number of skilled and experienced workers in this industry.

Gold Lance is no longer in need of the protection afforded by the Employment Restriction. Therefore, the acquisition of Gold Lance by Jostens constitutes a change of fact that eliminates the need for the Employment Restriction and requires the reopening and modification of the order to set aside paragraph V.

Accordingly, *It is ordered*, That this matter be, and it hereby is, reopened and that the Commission's order be, and it hereby is, modified to set aside paragraph V as of the effective date of this order.

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[16] The complaint alleged that the proposed merger would violate Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. Complaint ¶¶ 24-25.

[17] Complaint ¶¶ 1-8.

[18] Order ¶ II.

[19] Order ¶ II.

IN THE MATTER OF

SOFTSEARCH HOLDINGS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3759. Complaint, July 28, 1997--Decision, July 28, 1997

This consent order requires, among other things, Dwight's Energydata, a subsidiary of Softsearch, to license a set of complete well history and production data to a Commission-approved buyer, which then will be an independent competitor. In addition, the Commission has appointed a trustee to find a licensee and to complete the required divestiture.

Appearances

For the Commission: *George Cary, Frank Lipson, Phillip Broyles* and *William Baer.*

For the respondents: *Sandy Pfunder, Gibson, Dunn & Crutcher*, Washington, D.C. and *Neil Inus, Vincent & Elkins*, Washington, D.C.

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that Dwight's Energydata, Inc. ("Dwight's"), a wholly-owned subsidiary of respondent SoftSearch Holdings, Inc., a corporation subject to the jurisdiction of the Federal Trade Commission, has entered into an agreement to merge with Petroleum Information Corporation ("PI"), a wholly-owned subsidiary of respondent GeoQuest International Holdings, Inc., a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act ("FTC Act"), as amended, 15 U.S.C. 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

THE RESPONDENTS

PARAGRAPH 1. Respondent SoftSearch Holdings, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and

principal place of business located at 1202 Estates Drive, Suite A, Abilene, Texas. Its wholly-owned subsidiary, Dwight's Energydata, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1633 Firman Drive, Suite 100, Richardson, Texas. Dwight's Energydata, Inc., holds a 37 percent interest in Graphic Information Technologies, Inc., ("GITI") a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware.

PAR. 2. Respondent GeoQuest International Holdings, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 5333 Westheimer Drive, Houston, Texas. Its principal subsidiary is Petroleum Information Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 5333 Westheimer Drive, Houston, Texas.

PAR. 3. At all times relevant herein, each of the respondents or their predecessors, has been and is now engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

THE MERGER

PAR. 4. In July 1995 respondents agreed to merge the businesses of Dwight's and PI.

THE RELEVANT MARKETS

PAR. 5. One relevant line of commerce in which to evaluate the effects of the merger is the sale or licensing of well data. "Well data" means information in any media concerning the location, permitting, drilling or completion of any oil and gas well located in the United States, and related information.

PAR. 6. One relevant line of commerce in which to evaluate the effects of the merger is the sale or licensing of production data. "Production data" means information in any media concerning the locations of, and volume of oil, gas, or water produced from any oil or gas well located in the United States, and related information.

PAR. 7. One relevant section of the country in which to evaluate the effects of the merger is the United States as a whole.

PAR. 8. The relevant markets set forth in paragraphs five, six, and seven are highly concentrated, whether measured by Herfindahl-Hirschmann Indices or two-firm and four-firm concentration ratios. Dwight's and PI are actual competitors in the relevant markets. Dwight's and PI are the only competitive providers of well and production data for many areas of the country. The merged Dwight's/PI will have the largest market share in the relevant markets.

PAR. 9. Respondents are the only firms that have extensive, multi-state collections of historical information on oil and gas properties. Firms lacking similar databases cannot effectively compete in the relevant markets. Assembling a database that matches the database possessed by either respondent would be very difficult, expensive, and time consuming. This factor makes timely and effective entry into the relevant markets difficult and unlikely.

EFFECTS OF THE MERGER

PAR. 10. The merger may substantially lessen competition in the relevant markets in the following ways, among others:

(a) By eliminating direct competition between Dwight's and PI;
(b) By increasing the likelihood that respondents will unilaterally exercise market power; and
(c) By increasing the likelihood of, or facilitating, collusion or coordinated interaction;

each of which increases the likelihood that the prices of well data and production data will increase. The merger is also likely to lead to reduced service for customers. The merger may lead to a decline in technological innovation due to loss of rivalry in making product enhancements. The merger may further lead to a deterioration in the accuracy of the data compiled due to loss of competition in securing and verifying data.

VIOLATIONS CHARGED

PAR. 11. The merger described in paragraph four constitutes a violation of Section 5 of the FTC Act, 15 U.S.C. 45.

PAR. 12. The merger described in paragraph four, if consummated, would constitute a violation of Section 7 of the Clayton Act, 15 U.S.C. 45, and Section 5 of the FTC Act, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed merger of Dwight's Energydata, Inc., a wholly-owned subsidiary of SoftSearch Holdings, Inc. ("respondent"), and Petroleum Information Corporation, a wholly-owned subsidiary of GeoQuest International Holdings, Inc. ("respondent"), having been furnished with a copy of a draft complaint that the Bureau of Competition proposed to present to the Commission for its consideration, and which, if issued by the Commission, would charge respondents with violations of the Clayton Act and Federal Trade Commission Act; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents 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 respondents that the 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 respondents have violated the said Acts, 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 comments received, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent SoftSearch Holdings, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at Suite A, 1202 Estates Drive, Abilene, Texas. Its wholly-owned subsidiary, Dwight's Energydata, Inc. is a corporation

organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1633 Firman Drive, Richardson, Texas. Dwight's Energydata, Inc. holds a 37 percent interest in Graphics Information Technologies, Inc. ("GITI"), a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware. GITI has no operating assets, but since the formation of Tobin Data Graphics LLC in June 1994, GITI has held a 50% percent interest in Tobin Data Graphics LLC.

2. Respondent GeoQuest International Holdings, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 5333 Westheimer Drive, Houston, Texas. GeoQuest is a holding company and has no operating assets. Its principal subsidiary is Petroleum Information Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 5333 Westheimer Drive, Houston, Texas.

3. Tobin Data Graphics LLC is a Texas limited liability company, with its office and principal place of business located at 114 Camp Street, San Antonio, Texas.

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

ORDER

I.

It is ordered, That, as used in this order, the following definitions shall apply:

A. *"Dwight's"* means SoftSearch Holdings, Inc., its directors, officers, employees, agents and representatives, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by SoftSearch Holdings, Inc., and the respective directors, officers, employees, agents and representatives, successors and assigns of each.

B. *"PIC"* means GeoQuest International Holdings, Inc., its directors, officers, employees, agents and representatives, successors,

and assigns; its subsidiaries, divisions, groups and affiliates controlled by GeoQuest International Holdings, Inc., and the respective directors, officers, employees, agents, and representatives, successors and assigns of each.

C. *"TDG"* means Tobin Data Graphics LLC, its directors, officers, employees, agents and representatives, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Tobin Data Graphics LLC, and the respective directors, officers, employees, agents, and representatives, successors and assigns of each.

D. *"Graphics Information Technologies, Inc.,"* is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 1560 Broadway, Suite 903, Denver, Colorado.

E. *"HPDI, L.L.C.,"* is a Texas limited liability company with its office and principal place of business located at 9300 Research Boulevard, Suite 306, Austin, Texas.

F. *"Respondents"* means Dwight's and PIC.

G. The *"Merger"* means the proposed combination of the businesses of Dwight's Energydata, Inc., and Petroleum Information Corporation.

H. *"Commission"* means the Federal Trade Commission.

I. *"Relevant product"* means well data and production data.

J. *"Well data"* means information in any media concerning the location, permitting, drilling activity or completion of any oil or gas well located in the United States, including U.S. territorial waters, and related information.

K. *"Well header data"* means the following information regarding an oil, gas, or other well: API Number, Surface and Bottom Hole Locations (Township, Range, Section, Area, Block, Section, Survey, Abstract, and Footage Calls), Lease Name and ID, Well Number, Permit Number, Operator Name, Total Depth, Completion or Plugging Date, Final Status, Class, Field Name, Elevation, and Dwights ID.

L. *"Production data"* means information in any media concerning the identity, location and volume of fluids, including, but not limited to, oil, water, and natural gas, produced from or injected into any oil or natural gas well or leases located in the United States, including U.S. territorial waters, and related information.

M. *"Acquirer"* means the person or persons approved by the Commission to acquire the specified data.

N. *"Divest"* means to grant a perpetual, world-wide license to the Acquirer, with the right, subject to the terms of this order, to use, combine with other information, reproduce, market, assign or otherwise transfer, and sublicense the specified data.

O. *"Specified data"* means digital well data and production data that are included in one or more of the Schedule A products and the well header data received by Dwight's from TDG under the Data Exchange and Sales Representative Agreement entered into on June 1, 1995.

P. *"Schedule A products"* means those products listed in Schedule A of this order.

Q. *"Shared employee"* means any person whose salary or other compensation for services rendered is paid, directly or indirectly, by both TDG and Petroleum Information/Dwight's.

R. *"Petroleum Information/Dwight's"* means the entity that is created as a result of the Merger.

S. *"Royalty-based compensation"* means a payment to a vendor or licensor based, directly or indirectly, upon the revenue generated by the sale of the vendor's or licensor's well data or production data.

II.

It is further ordered, That:

A. Following completion of the Merger, respondents shall divest the specified data, absolutely and in good faith, at no minimum price, consistent with the provisions of this order, either to (1) HPDI, L.L.C., pursuant to, and in accordance with the time frame set out in paragraph 2(a) of, the License Agreement for specified data entered into between Dwight's and HPDI, L.L.C., dated September 18, 1996 (Exhibit A hereto); or (2) another person that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. Provided, however, if, at the time the Commission determines to make this order final, the Commission notifies respondents that HPDI, L.L.C., is not an acceptable acquirer, then respondents shall not divest the specified data to HPDI, L.L.C. Upon expiration of the divestiture period described in paragraph III.B.4 of the order, respondents shall have no further obligation to divest.

B. The purpose of the divestiture of the specified data is to ensure the continued use of the specified data in the same type of business

in which the specified data is used at the time of the Merger, and to remedy any lessening of competition resulting from the Merger as alleged in the Commission's complaint.

C. After the specified data has been divested, respondents shall not exercise any right they may have, whether at common law, in equity, or in bankruptcy or reorganization (including through obtaining any equity interest in a reorganized debtor) or otherwise, to terminate the license granted under this order or to seek to have such license terminated, or to require, or seek to require, the Acquirer or its successor or assignee to return the specified data.

III.

It is further ordered, That:

A. If respondents have not divested, absolutely and in good faith and with the Commission's prior approval, the specified data, the Commission may, on the date this order becomes final, or at any time thereafter, appoint either Ben C. Burkett, II, of Burkett Consulting, Dallas, Texas, ("Burkett") or someone else to act as trustee to divest the specified data. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, respondents shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee pursuant to Section 5(1) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondents to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to paragraph III.A of this order, respondents shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission either (1) shall select Burkett to be the trustee under the terms of a trustee agreement as set out in Exhibit B hereto; or (2) shall select another trustee subject to the consent of respondents, which consent shall not be unreasonably withheld. The trustee, if not Burkett, shall be a person with experience and expertise

in acquisitions and divestitures. If respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee, other than Burkett, within ten (10) days after notice by the staff of the Commission to respondents of the identity of any proposed trustee, respondents shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the specified data.

3. Within ten (10) days after appointment of the trustee, respondents shall execute a trust agreement that, subject to the prior approval of the Commission, and in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order. Such agreement may contain provisions requiring the trustee to protect against unauthorized disclosure or use of the specified data before the specified data is divested.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in paragraph III.B.3 to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the Court; provided, however, the Commission may extend this period only two (2) times for up to twelve (12) months each time.

5. The trustee shall have full and complete access to the specified data and to the personnel, books, records and facilities related to the specified data or to any other relevant information, as the trustee may reasonably request. The trustee may require that a repository be established to allow for examination of the specified data by prospective Acquirers. Respondents shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by respondents shall extend the time for divestiture under this paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall make reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondents' absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to the Acquirer as set out in paragraphs II and III of this order, provided, however, if the trustee receives *bona fide* offers from more than one acquiring entity, the trustee shall submit all such bids to the Commission, and if the Commission determines to approve more than one such acquiring entity either for the whole data set or for any of the same parts of the data set comprising the specified data, the trustee shall divest to the acquiring entity or entities selected by respondents from among those approved by the Commission. The Commission may approve divestiture of parts of the specified data to different acquiring entities, but in no event will there be more than one Acquirer for either the whole data set comprising the specified data, or any of the same parts of the data set comprising the specified data.

7. The trustee shall serve, without bond or other security, at the cost and expense of respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondents, and at reasonable fees, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the respondents, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the specified data.

8. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from

misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph III.A of this order.

10. Consistent with the terms of this order, the Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be reasonably necessary or appropriate to accomplish the divestiture required by this order. Notwithstanding paragraph IV.G herein, such additional orders or directions may provide for, among other things, giving the Acquirer the right to use the record layouts specified in paragraph IV.A when sublicensing the specified data, with provisions that insure against confusion of the origin of the data.

11. The trustee shall have no obligation or authority to operate or maintain the specified data.

12. The trustee shall report in writing to respondents and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV.

It is further ordered, That:

A. The specified data shall be delivered to the Acquirer in machine-readable, usable form in the record layouts in Annex 1 of this order for well data, Annex 2A of this order for production data, Annex 2B of this order for the Texas oil test (W10) file; Annex 2C of this order for the Louisiana oil test (DM1R) file; and Annex 3 of this order for Petroleum Data System (PDS) data, which support the Dwight's Petroleum Reservoirs CD-ROM. Respondents shall provide the Acquirer the specified data in the computer code set in which the records are maintained or in industry standard (8-bit) ASCII, at the Acquirer's option.

B. Respondents shall provide the Acquirer with all existing technical system documentation and user documentation relating to the specified data. Such documentation includes, but is not limited to, a description of all data elements in Dwight's Well Data System, a description of the data file in Dwight's A-File (unpacked) file; a description of the test file in the Texas oil test (W10) file; a

description of the test file in the Louisiana oil test (DM1R) file; Dwight's "Data Item Manual;" and the keys to all codes used by Dwight's, whether maintained in machine-readable format, hard copy, or microfilm.

C. Respondents shall provide Acquirer with data that is current as of the date of the divestiture for all data elements that were included in any Schedule A product on the date on which the Commission accepts this order for comment, to the extent that data exist on any Dwight's computer records.

D. Respondents shall make no claim to ownership, title, or interest in any product derived from the specified data by the Acquirer.

E. Respondents are not required to provide the Acquirer the right to sublicense well identifier codes, field and reservoir codes, and operator codes, to the extent that such codes are unique to Dwight's. However, respondents shall provide Acquirer with the right to provide its licensees with a cross-reference to enable a licensee to convert from Dwight's codes to the Acquirer's codes.

F. Respondents are not required to provide Acquirer (a) any latitude or longitude data that respondents possess solely by reason of the Data Exchange and Sales Representative Agreement entered into between Dwight's and TDG on June 1, 1995; (b) any software, or any rights to use or sublicense any software; or (c) any calculation of estimated future recoverable oil or gas reserves.

G. Respondents are not required to provide Acquirer the right to use the record layouts specified in paragraph IV.A when sublicensing the specified data.

H. The Acquirer shall not transfer or sublicense any rights to any specified data in any manner that would have the effect of creating additional independent vendors for the whole or any part of the specified data. Notwithstanding the above, Acquirer shall have the right to, among other things: assign or otherwise transfer all of its rights to and interest in all or part of the specified data to another person; create distributorships or appoint sales agents for licensing of the specified data; or license the specified data to geological libraries for use by their members on a read-and-print-only basis. In addition, Acquirer shall have the right to enter into data exchange agreements wherein the recipient of the Acquirer's data has the right to market and sublicense the specified data, provided that the recipient under such data exchange agreement shall not grant a license or other right

to specified data, or otherwise knowingly make the specified data available, to any person unless such person has agreed not to transfer or sublicense the specified data and not to make the specified data publicly available. Respondents shall not enforce any restriction on the Acquirer's right to transfer or sublicense the specified data in the event that a court or an administrative agency, in a proceeding involving the respondents, issues a final order from which no appeal has been or can be taken, determining that all or a portion of the specified data is not protected intellectual property. Within 30 days of the issuance of such an order, respondents shall notify the Commission and the Acquirer that restrictions on the transfer or sublicense contained in the License Agreement will not be enforced with respect to the portion of the specified data that was determined to be unprotected intellectual property.

I. Upon reasonable notice to respondents from the Acquirer, respondents shall provide such assistance to the Acquirer as is reasonably necessary to ensure that the purpose of the divestiture of the specified data is accomplished. Such assistance shall include reasonable consultation with knowledgeable employees of respondents for a period of time sufficient to ensure that the Acquirer's personnel are appropriately trained in the sources and processing of the data contained in the specified data. Respondents, however, shall not be required to continue providing such assistance for more than twelve (12) months from the date of the divestiture. Respondents may charge the Acquirer at a rate no greater than their direct costs for providing such technical assistance. Direct costs consist of expenses and the salary and benefits attributable to respondents' employees actually providing assistance, for the time required for the provision of such technical assistance, and variable overhead, including out-of-pocket expenses.

J. Respondents may take reasonable steps with respect to their employees to assure that the confidentiality of their proprietary data is not compromised, but respondents shall not impose non-competition agreements that have the purpose or effect of interfering with the ability of the Acquirer to recruit or employ respondents' employees.

K. Respondents, upon 24 hours advance notice by the Acquirer, shall provide Acquirer, at Acquirer's expense, reasonable access to, and the right to copy, any data-source document or data in respondents' possession that was used to compile the specified data to the extent respondents have such data-source document or data at

the time of the request. Respondents may charge the Acquirer only for respondents' direct costs in providing such access or copying. Direct costs consist of the salary and benefits attributable to respondents' employees for the time required for the provision of such access and copying, and variable overhead, including out-of-pocket expenses.

L. Within ten (10) days after divestiture of the specified data, Dwight's shall assign to the Acquirer all of its rights under and interest in the Data Exchange Agreement of July 1, 1993, with The Independent Oil & Gas Service, Inc. ("Independent"), which relates to well data in Kansas. If Independent consents to such assignment, Petroleum Information/Dwight's shall promptly remove from its products all data acquired from Independent under the Data Exchange Agreement of July 1, 1993, and all predecessor agreements and provide the data to the Acquirer in the record layout specified in paragraph IV.A above; provided, however, that Petroleum Information/Dwight's shall be free to negotiate a new agreement with Independent. Such new agreement may neither be exclusive nor contain a royalty-based compensation provision. If Independent does not consent to such assignment, Dwight's shall promptly terminate the Data Exchange Agreement in accordance with its terms and provide any data to which Dwight's has an ownership right under said Agreement to the Acquirer in the record layout specified in paragraph IV.A.

M. Within ten (10) days after divestiture of the specified data, Dwight's shall assign to the Acquirer all of its rights under and interest in the Joint Marketing Agreement of July 1, 1994, with Munger Oil Information Services, Inc. ("Munger"), which relates to well data for California, Oregon, Pacific Federal Offshore, Alaska, and Washington. If Munger consents to such assignment, Petroleum Information/Dwight's shall promptly remove from its products all data acquired from Munger under the Joint Marketing Agreement of July 1, 1994, and all predecessor agreements and provide the data to the Acquirer in the format specified in paragraph IV.A above; provided, however, that Petroleum Information/Dwight's shall be free to negotiate a new agreement with Munger. Such new agreement may neither be exclusive nor contain a Royalty-based compensation provision. If Munger does not consent to such assignment, Dwight's shall promptly terminate the Joint Marketing Agreement in accordance with its terms and provide any data to which Dwight's has

an ownership right under said Agreement to the Acquirer in the record layout specified in paragraph IV.A.

V.

It is further ordered, That respondents shall provide to the Commission staff or a Repository designated by the Commission staff a copy of the specified data that was provided to the Acquirer, a copy of all Schedule A products as of the date on which the Commission accepts this order for comment, and a copy of all Dwight's CD-ROM products published and offered for sale to customers immediately prior to the divestiture of the specified data.

VI.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, respondents shall not, without prior notification to the Commission, directly or indirectly:

A. Acquire any stock, share capital, equity, or other interest in Graphics Information Technologies, Inc., or in any person engaged in the distribution of a relevant product at any time within the two years preceding such acquisition;

B. Enter into any agreements or other arrangements with any person whose principal business is distributing a relevant product, to obtain direct or indirect ownership, management, or control of any preexisting data bases that are or were used in such business; or

C. Acquire from any one entity cumulatively during any period of three consecutive calendar years (a) the exclusive ownership of records containing well data covering more than 75,000 wells in any one state except Texas, or 250,000 wells in the State of Texas or (b) either the exclusive right, or a non-exclusive right with a royalty-based compensation, to market well data covering more than 75,000 wells in any one state except Texas, or 250,000 wells in the State of Texas. Respondents shall have the right to rely upon the supplying entity's best estimates, at the time of the acquisition, concerning the number and locations of the covered wells. In determining whether notification may be required by this provision, well records that have been included in a previous notification under this provision or under 15 U.S.C. 18a shall not be considered.

VII.

It is further ordered, That the prior notifications required by paragraph VI of this order shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of respondents and not of any other party to the transaction. Respondents shall provide the Notification to the Commission at least thirty days prior to consummating any such transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information, respondents shall not consummate the transaction until twenty days after substantially complying with such request for additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition.

Provided, however, that prior notification shall not be required by paragraph VI of this order for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a.

VIII.

It is further ordered, That within thirty (30) days after the date this order becomes final and every thirty (30) days thereafter until respondents have fully complied with the provisions of paragraphs II, III, IV, and V of this order, respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, or have complied with this order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with the order.

IX.

It is further ordered, That:

A. Within ten days of receiving notification from the Commission staff that the specified data has been divested to the Acquirer, TDG shall offer to the Acquirer, its successor, assignee, agent or distributor (collectively, "Acquirer" for purposes of this paragraph), a Sales Representative Agreement in the form of Exhibit C hereto. The terms of any sales representative agreement between TDG and the Acquirer shall cover the same products and be at least as favorable to the Acquirer as the terms agreed to from time to time between TDG and Petroleum Information/Dwight's. The Sales Representative Agreement for the Acquirer shall be non-terminable by TDG, except under the following circumstances:

1. The breach of material terms by the Acquirer or the Acquirer's inability to pay. In the case of such a breach, the obligations of TDG shall resume upon cure of the breach. In the case of receivership or voluntary or involuntary bankruptcy, or the institution of proceedings therefor, the obligation of TDG under this paragraph may be suspended until the appointment of a trustee or a successor to operate the Acquirer's business or a debtor in possession; or

2. TDG no longer maintains a Sales Representative Agreement with Petroleum Information/Dwight's and there are no other joint selling arrangements between TDG and Petroleum Information/Dwight's for a particular product.

B. TDG shall not disclose to any officer, director, or employee of Petroleum Information/Dwight's or any shared employee any information that TDG receives from the Acquirer regarding (1) the Acquirer's actual or prospective customers, (2) the content of any customer proposals or offers made by the Acquirer, or (3) the terms of any individual customer dealings with TDG or the Acquirer.

C. Within 30 days of receiving notification from the Commission staff that the specified data has been divested to the Acquirer, TDG shall submit to the Commission a copy of the Sales Representative Agreement entered into with Petroleum Information/Dwight's and with the Acquirer. For three years after the date this order becomes final, TDG shall submit to the Commission any revisions or amendments to such agreements within thirty (30) days of their execution.

X.

It is further ordered, That, for the purpose of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and reasonable notice, each respondent and TDG shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order; and

B. Upon five (5) days' notice to the appropriate respondent, and without restraint or interference, to interview officers, directors, or employees of the respondent, who may have counsel present.

XI.

It is further ordered, That respondents and TDG shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents or TDG such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporations that may affect compliance obligations arising out of the order.

SCHEDULE A

I. Dwight's Production Data CD-Rom Products
West Coast Area, consisting of California, Oregon, Pacific Federal Offshore, Alaska
Gulf Coast Area, consisting of Arkansas, Louisiana, Mississippi, Alabama, Florida, Federal Offshore, Coastal Counties of Texas
MidContinent Area, consisting of Arkansas, Kansas, Michigan, Oklahoma and Texas Railroad Commission District 10.
Texas Area, consisting of all of Texas
Rocky Mountain Area, consisting of Arizona, Colorado, Montana, New Mexico, North Dakota, South Dakota, Wyoming, Nebraska, Nevada, Utah

II. Dwight's Discover SCOUT CD-ROM Products
Gulf Coast Area, consisting of Arkansas, Louisiana, Mississippi, Alabama, Florida, Federal Offshore
MidContinent Area, consisting of Northern Arkansas, Michigan, Oklahoma and Texas Railroad Commission District 10
Texas Area, consisting of all of Texas

Rocky Mountain Area, consisting of Arizona, Colorado, Montana, New Mexico, North Dakota, South Dakota, Wyoming, Nebraska, Nevada, Utah, Idaho

III. Dwight's Discover CD-ROM Products

Oklahoma Area, consisting of Oklahoma

Rocky Mountain Area, consisting of Arizona, Colorado, Montana, New Mexico, North Dakota, South Dakota, Wyoming, Nebraska, Nevada, Utah, Idaho

IV. Dwight's Petroleum Reservoirs (DPR) With Operated Production CD-ROM Products

State of Alaska

State of California

Permian Basin

Texas & Southeast New Mexico

State of Oregon

Gulf Coast Area, consisting of Alabama, Arkansas, Florida, Gulf of Mexico Offshore, Louisiana, Mississippi, Texas Railroad Commission Districts 2, 3, and 4

MidContinent Area, consisting of Arkansas, Kansas, Oklahoma, Texas Railroad Commission District 10

Rocky Mountain Area, consisting of Arizona, Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming, New Mexico

ANNEX 1

Well Data
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Record Layout for Comma Delimited File

The option to export WDS information in a comma delimited format provides additional flexibility for importing data into spreadsheet and database management programs.

Each field within a record is separated by commas. Fields are not alpha or Zero filled. Alpha fields are surrounded by double quotes; any field without quotes is read as numeric.

HEADER & LOCATION INFORMATION
FILE NAME: *.EDR

Item Name	Format	Maximum Length	Length With Delimiters
WDS ID	A	8	11
RECORD TYPE (constant value: 10)	N	2	3
FULL API NUMBER	A	10	13
API STATE CODE	A	2	5
API COUNTY CODE	A	3	6
API WELL CODE	A	5	8
MERIDIAN CODE	A	2	5
SECTION	N	2	4
TOWNSHIP	N (3,1)	3	6
TOWNSHIP DIRECTION	A	1	4
RANGE	N (3,1)	3	6
RANGE DIRECTION	A	1	4
QUARTER QUARTER	A	12	15
FOOTAGE NORTH/SOUTH	N	5	8
FOOTAGE DIRECTION NORTH/SOUTH	A	1	4
FOOTAGE EAST/WEST	N	5	8
FOOTAGE DIRECTION EAST/WEST	A	1	4
FOOTAGE CORNER	A	1	5
FOOTAGE QUADRANT	A	2	5
OPERATOR CODE	N	4	7
OPERATOR	A	40	43
LEASE NAME	A	32	35
WELL NUMBER	A	6	9
ELEVATION	N	5	8
ELEVATION TYPE	A	2	5
FIELD NAME	A	30	33
FIELD CODE	N	7	10
RESERVOIR	A	24	27
OBJECTIVE DEPTH - MEASURED	N	5	8
* OBJECTIVE DEPTH - TVD	N	5	8
OBJECTIVE FORMATION	A	24	27
OBJECTIVE FORMATION AGE CODE	N	1	4
WELL TYPE	A	2	5
COMPLETION TYPE	A	2	5
CLOSEST FORMATION REPORTED	A	24	27
CLOSEST FORMATION AGE CODE	N	1	4
FILE STATUS FLAG	A	1	4
CURRENT STATUS	A	5	8
ENTRY DATE (yyyymmdd)	N	8	9
CHANGE DATE (yyyymmdd)	N	8	9
PERMIT DATE (yyyymmdd)	N	8	9
PERMIT NUMBER	A	8	11
OFFSHORE FLAG	A	1	4

* Record layout reserved for future implementation of data item; currently not populated.

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LATITUDE & LONGITUDE
FILE NAME: *.LL

Item Name	Format	Maximum Length	Length With Delimiters
WDS ID	A	8	11
RECORD TYPE (const. and value: LL)	N	2	3
LAT-LONG SOURCE	A	6	9
LATITUDE	N (3,5)	10	11
LONGITUDE	N (3,5)	10	10

PERMIT & COMPLETION DATA
FILE NAME: *.CMP

Item Name	Form Length	Maximum Delimiters	Length with
WDS ID	A	8	11
RECORD TYPE (constant value: 20)	A	2	3
SPUD DATE (yyyymmdd)	N	8	9
CONTRACTOR	A	24	27
RIG NUMBER	A	16	19
CIRCULATION MEDIUM	A	1	4
TOTAL DEPTH - MEASURED	N	8	6
* TOTAL DEPTH - TVD	N	8	6
TOTAL DEPTH DATE (yyyymmdd)	N	8	9
FORMATION AT TOTAL DEPTH	A	24	27
FORMATION AT TD AGE CODE	N	3	4
PLUGBACK DEPTH	N	8	6
COMPLETION DATE (yyyymmdd)	N	8	9
COMPLETION CODE	A	2	5
FINAL STATUS	A	8	5
PRODUCING LEASE NUMBER	N	7	6
PRODUCING WELL NUMBER	N	7	5
LOCATION REPORT DATE (yyyymmdd)	N	8	9
COMPLETION REPORT DATE (yyyymmdd)	N	8	9
* DATA SOURCE	A	6	9
* DATA SOURCE WELL ID	A	26	26

* Record layout designed for future implementation of data item; currently not populated.

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TOPS RECORDS
FILE NAME: *.TOP

Item Name	Form	Maximum Length	Length with Delimiters
WDS ID	A	8	11
RECORD TYPE (constant value: 30)	N	2	3
TOP SOURCE	A	1	4
FORMATION TOP TYPE	A	1	4
FORMATION DEPTH	N	8	6
FORMATION NAME	A	24	27
FORMATION AGE CODE	N	2	3

ALL NARRATIVE (VAX TEXT)
FILE NAME: *.TXT

Item Name	Form	Maximum Length	Length with Delimiters
WDS ID	A	8	11
RECORD TYPE (constant value: 40)	N	2	3
RECORD FORMAT	N	2	3
RECORD SEQUENCE NUMBER	N	5	6
RECORD SUB-SEQUENCE NUMBER	N	3	4
INFORMATION SOURCE	A	1	4
INFORMATION TYPE CODE	N	2	3
INFORMATION TYPE	A	8	11
** NARRATIVE INFORMATION	A		

PARSED CORE DATA
FILE NAME: *.COR

Item Name	Form	Maximum Length	Length with Delimiters
WDS ID	A	8	11
RECORD TYPE (constant value: 40)	N	2	3
RECORD SEQUENCE NUMBER	N	5	6
INFORMATION SOURCE	A	1	4
INFORMATION TYPE CODE (constant value: 8)	N	1	2
INFORMATION TYPE (constant value: core)	A	4	7
TEST NUMBER	N	3	4
INTERVAL TOP	N	5	6
INTERVAL BOTTOM	N	5	6
FORMATION NAME	A	24	27
FORMATION AGE CODE	N	2	3
REMARKS	A	27	30
** CORE NARRATIVE	A		

** Length of narrative is variable

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PARSED DST DATA
FILE NAME: *.DST

Item Name	Type	Maximum Length	Length with Delimiters
WDS ID	A	8	11
RECORD TYPE (constant value: 40)	N	2	3
RECORD SEQUENCE NUMBER	N	8	8
RECORD SUB-SEQUENCE NUMBER	N	3	4
INFORMATION SOURCE	A	1	4
INFORMATION TYPE CODE (constant value: 10)	N	2	3
INFORMATION TYPE (constant value: DST)	A	3	6
TEST NUMBER	N	3	4
INTERVAL TOP	N	5	6
INTERVAL BOTTOM	N	5	6
FORMATION NAME	A	24	27
FORMATION AGE CODE	N	3	4
STATUS REMARKS	A	8	11
FIRST TIME OPEN	N	3	4
FIRST TIME SHUT IN	N	3	4
SECOND TIME OPEN	N	3	4
SECOND TIME SHUT IN	N	3	4
INITIAL HYDROSTATIC PRESSURE	N	5	6
FINAL HYDROSTATIC PRESSURE	N	5	6
FIRST INITIAL FLOW PRESSURE	N	5	6
FINAL INITIAL FLOW PRESSURE	N	5	6
SECOND FLOW PRESSURE	N	5	6
SECOND FINAL FLOW PRESSURE	N	5	6
FIRST SHUT-IN PRESSURE	N	5	6
SECOND SHUT-IN PRESSURE	N	5	6
BOTTOM HOLE TEMPERATURE	N	5	6
RESISTIVITY	N	6	7
RECOVERY 1 VALUE	N	6	7
RECOVERY 1 DESCRIPTION	A	32	35
RECOVERY 2 VALUE	N	6	7
RECOVERY 2 DESCRIPTION	A	32	35
RECOVERY 3 VALUE	N	6	7
RECOVERY 3 DESCRIPTION	A	32	35
RECOVERY 4 VALUE	N	6	7
RECOVERY 4 DESCRIPTION	A	32	35
* SAMPLE NARRATIVE	N		

** Length of battery 4 position

ANNEX 1

Well Data
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PARSED SHOWS
FILE NAME: *.SHO

Item Name	Form	Maximum Length	Length with Delimiters
WDS ID	A	8	11
RECORD TYPE (constant value: 40)	N	2	3
RECORD SEQUENCE NUMBER	N	5	6
INFORMATION SOURCE	A	1	4
INFORMATION TYPE CODE (constant value 12)	N	2	3
INFORMATION TYPE (constant value: Shows)	A	5	8
INTERVAL TOP	N	5	6
INTERVAL BOTTOM	N	5	6
FORMATION NAME	A	24	27
FORMATION AGE CODE	A	4	4
REMARKS	A	27	30
** SHOW NARRATIVE	A		

PARSED PERFS
FILE NAME: *.PER

Item Name	Form	Maximum Length	Length with Delimiters
WDS ID	A	8	11
RECORD TYPE (constant value: 40)	N	2	3
RECORD SEQUENCE NUMBER	N	5	6
INFORMATION SOURCE	A	1	4
INFORMATION TYPE CODE (constant value: 21)	N	2	3
INFORMATION TYPE (constant value: Perfs)	A	5	8
INTERVAL TOP	N	5	6
INTERVAL BOTTOM	N	5	6
FORMATION NAME	A	24	27
FORMATION AGE CODE	A	4	4
REMARKS	A	27	30
** PERF NARRATIVE	A		

PARSED PZONE
FILE NAME: *.PZO

Item Name	Form	Maximum Length	Length with Delimiters
WDS ID	A	8	11
RECORD TYPE (constant value: 40)	N	2	3
RECORD SEQUENCE NUMBER	N	5	6
INFORMATION SOURCE	A	1	4
INFORMATION TYPE CODE (constant value: 23)	N	2	3
INFORMATION TYPE (constant value: PZone)	A	5	8
INTERVAL TOP	N	5	6
INTERVAL BOTTOM	N	5	6
FORMATION NAME	A	24	27
FORMATION AGE CODE	A	4	4
REMARKS	A	27	30
** PAY ZONE NARRATIVE	A		

** Length of narrative is maximum.

ANNEX 1

Well Data
Annex 1
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INITIAL POTENTIAL
FILE NAME: *.IP

Item Name	Type	Maximum Length	Length with Decimal
WDS ID	A	8	11
RECORD TYPE (constant value: 40)	N	2	3
RECORD SEQUENCE NUMBER	N	5	6
INFORMATION SOURCE	A	1	4
INFORMATION TYPE CODE (constant value: 28)	N	2	3
INFORMATION TYPE (constant value: IP)	A	2	5
VOLUME, OIL	N	5	6
UNITS OIL VOLUME	A	7	10
VOLUME, GAS	N	5	6
UNITS GAS VOLUME	A	7	10
VOLUME, WATER	N	5	6
UNITS WATER VOLUME	A	7	9
** IP NARRATIVE	A		

COMBINED PERF, PTCNZ, AND IP RECORD
FILE NAME: *.PPI
(Available in June 1991 Release)

Item Name	Type	Maximum Length	Length with Decimal
WDS ID	A	8	11
RECORD TYPE	N	2	3
RECORD SEQUENCE NUMBER	N	5	6
INFORMATION SOURCE	A	1	4
INFORMATION TYPE CODE (constant value: 21)	N	2	3
INFORMATION TYPE (constant value: Perfs/Ptcnz)	A	5	5
INTERVAL TOP	M	5	6
INTERVAL BOTTOM	N	5	6
FORMATION NAME	A	24	27
FORMATION AGE CODE	N	3	3
CHOKE SIZE	A	5	5
FLOW TUBING PRESSURE	N	5	6
FLOW CASING PRESSURE	N	5	6
SHUT IN TUBING PRESSURE	N	5	6
SHUT IN CASING PRESSURE	N	5	6
GRAVITY	N (3,1)	5	6
OIL VOLUME	N	5	6
OIL UNITS	A	7	10
GAS VOLUME	N	5	6
GAS UNITS	A	7	10
WATER VOLUME	N	5	6
WATER UNITS	A	7	10
METHOD OF TEST	A	3	5
CALCULATED FLAG	A	1	4
CODE	N	10	11
REMARKS	A	27	30
** PERF NARRATIVE	A		

** Length of narrative is variable

ANNEX 1

Well Data
Annex 1
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OPERATOR & NAMES LOOKUP TABLES
FILE NAME: *.LUT

Item Name	Data Type	Maximum Length	Length with Decimal
WDS ID	A	8	11
RECORD TYPE (constant value: 90)	N	2	3
DWIGHTS OPERATOR CODE	N	6	7
OPERATOR ADDRESS	A	64	67
API STATE CODE	N	2	5
POSTAL ABBREV	A	2	5
STATE NAME	A	20	23
API COUNT CODE	N	3	6
COUNTY NAME	A	20	23
* DWIGHTS DISTRICT CODE	N	3	6
DISTRICT NAME	A	20	23
AAPG BASIN CODE	N	3	6
AAPG BASIN NAME	A	20	23
COUNTRY CODE	A	4	7
COUNTRY NAME	A	20	23

* Record layout designed for future implementation of data item currently not populated.

ANNEX 2

Production Data
Annex 2 A
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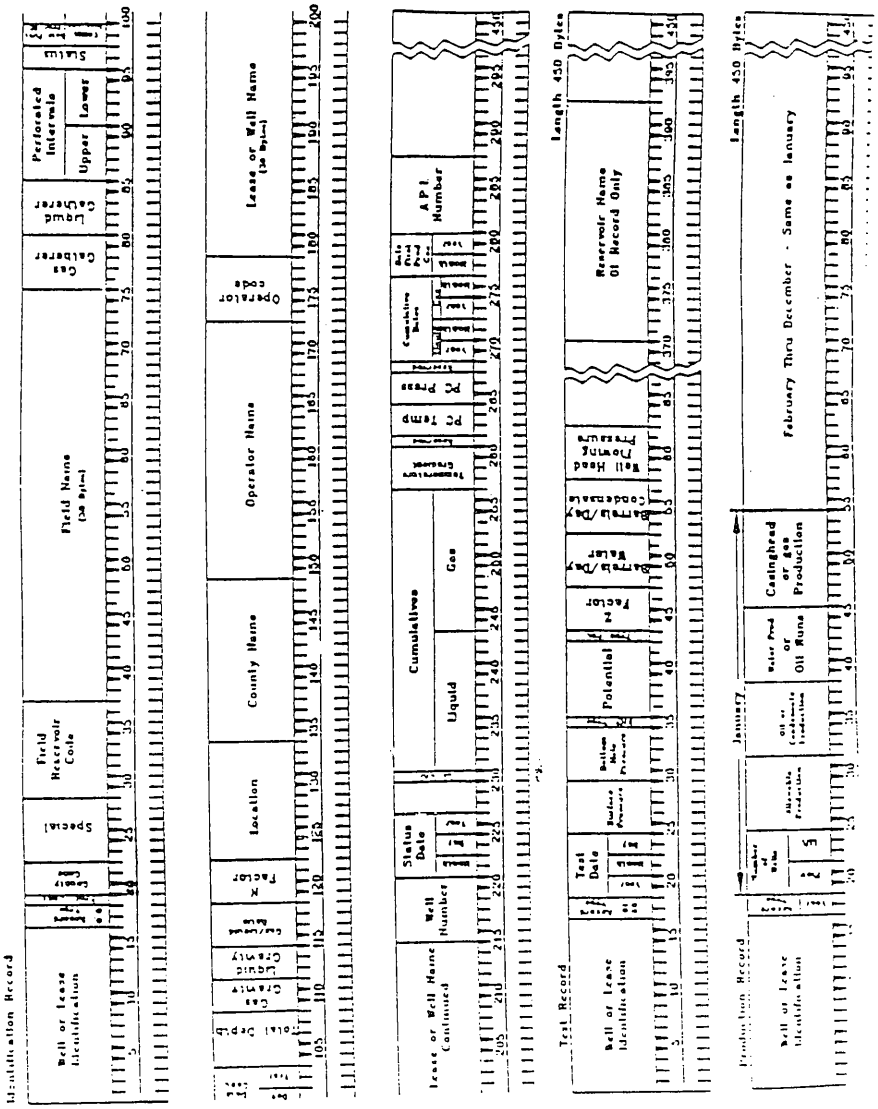

ANNEX 2

Production Data
Annex 2 B
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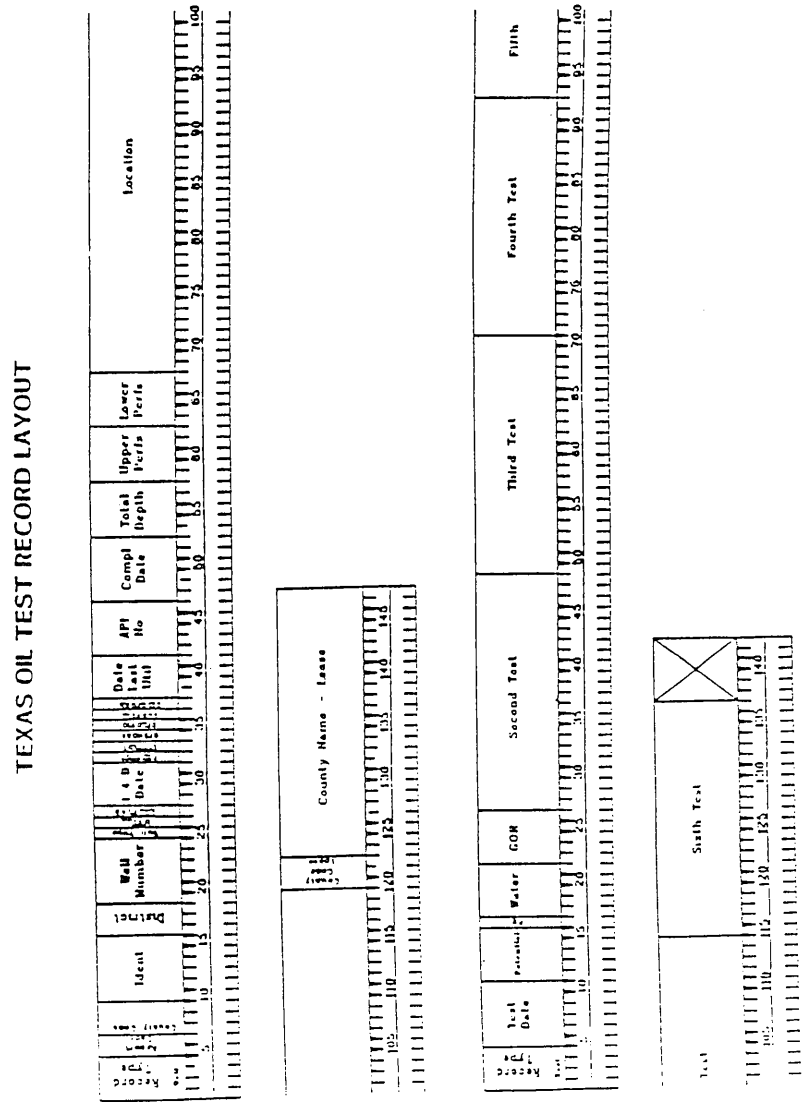

ANNEX 2

Production Data
Annex 2 C
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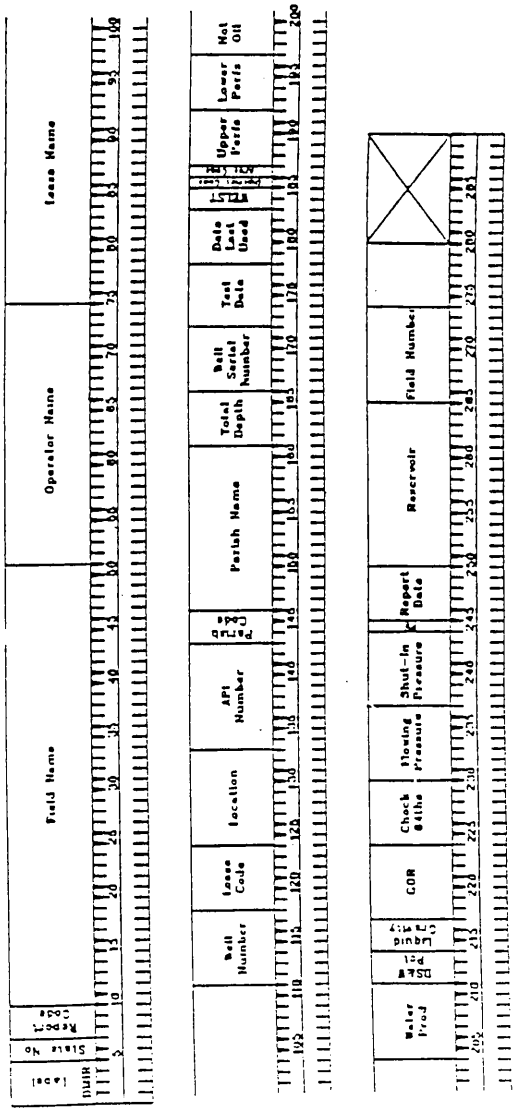
LOUISIANA OIL TEST RECORD LAYOUT



ANNEX 3

DWIGHT'S

PETROLEUM DATA SYSTEM

TOTL FORMAT

DPDS/TOTL Fixed-Format Specification

Tape Structure
A DPDS/TOTL Fixed-Format data tape contains data from the Dwight's Petroleum Data System Oil and Gas file (TOTL) database. There are three versions of the DPDS/TOTL Fixed-Format file:

The Initial Load format will contain all information about each Field or Reservoir.

The Update format will contain only information that has been updated since the previous release.

The Special format will contain all information about each Field or Reservoir in a custom-defined area.

There are multiple physical files per tape. Each tape begins with a Tape Header File. This file contains one record, a Tape Header Record (Record type 0000), which identifies the information present on the tape. The remaining files are divided into TOTL Area Groups. Each TOTL Area Group has:

File Header File. This file contains one record, a File Header Record (Record Type 0001), which identifies the DPDS Area to which the data file applies.

Data File. This file contains the actual DPDS/TOTL data. Refer to the attached tape specifications for the format of the data file. The last record in the Data File will always be a File Total Record (Record Type 9900). The File Total Record contains control totals which can be used to verify that the update completed successfully.

The last file on the tape is a Tape Total File. This file contains one record, a Tape Total Record (Record Type 9999), which contains control totals which can be used to verify that the update completed successfully.
Each file on the DPDS/TOTL Fixed-Format tape has a record length of 140. The records are blocked at 114 records per block for a blocksize of 15,960.
Tapes can be produced using either the EBCDIC or ASCII character set.
Tapes can be produced at a density of 1600 or 6250 bpi.
Dwight's uses industry-standard 2400 feet, 9-track tapes.

Record Type Relationships
Each record contains a Unique Record identifier and a Transaction Code. The Unique Record Identifier (UNIQID) will specifically identify one, and only one, field or reservoir record in DPDS/TOTL. The Transaction Code indicates the action to be taken to update the data associated with the TOTL field or reservoir record. There are three Transaction Types:

The Add Transaction Type (A) indicates that the data on the transaction record did not previously exist and should be added to the file. An Initial Load tape will consist of only Add transactions. If an Add transaction is encountered on Record Type 0100, this indicates a new field or reservoir to be added to the file. An Add transaction on other record types indicates that the data on that transaction record should be added to the field or reservoir record identified by the Unique Record Identifier.

The Change Transaction Type (C) indicates that one or more data items on the transaction record has been updated. All data items on the TOTL field or reservoir record should be updated with the values provided on the Change transaction.

The Delete Transaction Type (D) indicates that all data items on the transaction record have been deleted from the DPDS/TOTL file. If a Delete transaction is encountered on Record Type 0100, this indicates that the entire field or reservoir record has been deleted from the DPDS/TOTL file. A Delete transaction on other record types indicates that only those data items on that transaction have been deleted from the field or reservoir record.

Data Types

There are three data types used by the DPDS/TOTL Fixed-Format Specification. The Data Type is indicated by an A, N, or L in the "Type" column of the Fixed-Format Specification that follows. The three data types are:

The Alpha-Numeric data type (A) indicates text data and can contain letters, numbers, and special characters. Alpha-numerica data is left-justified.

The Numeric data type (N) contains a numerica value only. The numbers are FORTRAN-compatible. The numbers do not contain leading zeros, and have an explicit decimal point if not a whole number. A numerica specification is provided in the "Format" column. The numeric specification is given in the format "W.D", where "W" is the total field width, and "D" is the number of decimal digits.

The Logical data type (L) contains either a "1" or a blank. The "1" indicates a "TRUE" condition, and the blank indicates a "FALSE" condition.

EXHIBIT A

LICENSE AGREEMENT FOR SPECIFIED DATA

This Agreement is made by and between Dwight's Energydata, Inc., a Delaware corporation, located at 1633 Firman Drive, Richardson, Texas 75081 (hereinafter referred to as "Dwight's"), and HPDI, L.L.C., located at 9300 Research Boulevard, Suite 306, Austin, Texas (hereinafter referred to as "Licensee"). This Agreement replaces and supersedes an Agreement between the parties signed as of May 2, 1996, which earlier Agreement shall be null and void.

1. LICENSE AND DATA

(a) Dwight's hereby grants to Licensee, subject to the terms and provisions of this Agreement, a perpetual, worldwide, nonexclusive license (the "License") to use, combine with other information, reproduce and market, with the rights provided herein to sublicense, assign or otherwise transfer, the digital well data and the digital production data described on Schedule A hereto (collectively the

"Specified Data"). The License shall become effective on the Effective Date (as hereinafter defined) upon the payment by License of the initial installment of the License Fee (as hereinafter defined) in accordance with paragraph 3 hereof.

(b) Dwight's shall deliver the Specified Data to Licensee in machine-readable form in the record layout in Annex 1 to Schedule A hereto (for well data), in the record layouts in Annexes 2A, 2B and 2C to Schedule A hereto for production data, the Texas oil test (W10) file and the Louisiana oil test (DM1R) file) and in the record layout in Annex 3 to Schedule A hereto (for Petroleum Data System (PDS) data). The Specified Data so delivered shall be in the computer language in which Dwight's records therefor are maintained or, if requested in writing by the Licensee at least ten days prior to the Effective Date, in industry standard (8-bit) ASCII, or in any other mutually agreeable format. Delivery of the Specified Data shall be in accordance with the following schedule:

(i) A copy of the well data portion of the Specified Data, current as of each date of delivery, shall be delivered (A) in a single delivery within ten days after the Effective Date [ ].

(ii) A copy of the production data portion of the Specified Data for the states of Texas, Louisiana, Oklahoma, New Mexico, Kansas and Colorado and for Guld Offshore (the "HPDI Areas"), current as of each date of delivery, shall be delivered (A) in a single delivery within ten days after the Effective Date [ ].

(iii) A copy of the production data portion of the Specified Data for all areas other than the HPDI Areas (the "Non-HPDI Areas"), current as of each date of delivery, shall be delivered (A) in a single delivery within ten days after the Effective Date [ ].

(iv) A copy of the PDS data portion of the Specified Data, current as of each date of delivery, shall be delivered (A) in a single delivery within ten days after the Effective Date [ ].

The Specified Data so delivered shall be accompanied by well identifier codes, field and reservoir codes and operator codes created by Dwight's for use by Licensee to the same extent as Dwight's has created such codes for its own use.

(c) Each portion of the Specified Data shall be current as of the date of its delivery for all data elements included in the products listed on Schedule A hereto that are part of the delivery. Dwight's shall have no obligation to provide updates with respect to Specified Data after the date of delivery thereof [ ].

(d) Notwithstanding the foregoing, and subject to paragraph 1(f) hereof, Licensee shall have no right to market, sublicense, assign or otherwise transfer the record layouts and formats set forth in Annexes 1, 2A, 2B, 2C or 3 to Schedule A hereto, any proprietary well identifier codes, field and reservoir codes or operator codes of Dwight's or any other proprietary formats of Dwight's. In no event shall Licensee acquire any right under this Agreement to (i) any latitude or longitude data that Dwight's possesses solely by reason of the Data Exchange and Sales Representative Agreement, dated June 1, 1995, with Tobin Data Graphics LLC ("TDG"), (ii) any software (or any intellectual property or other rights in respect thereof) or (iii) any calculation of estimated future recoverable oil and gas reserves. Without limiting the foregoing, it is acknowledged that the Agreement Containing Consent Order (In the Matter of SoftSearch Holdings, Inc., and GeoQuest International Holdings, Inc., File No. 951-0130) in the form executed by Dwight's for acceptance by the Federal Trade Commission (the "Order"), contemplates that

Licensee shall be offered a Sales Representative Agreement by TDG covering the same products and on as favorable terms as those agreed to from time to time between TDG and Petroleum Information/Dwight's (as hereinafter defined).

(e) At the time of delivery of each portion of the Specified Data. Dwight's shall provide Licensee for its own use a copy of all technical system documentation and user documentation relating to such Specified Data then in existence. With respect to the Specified Data as a whole, such documentation shall include, but is not limited to, a description of all data elements in Dwight's Well Data System, a description of the data file in Dwight's A-File (unpacked) file; a description of the test file in the Texas oil test (W10) file; a description of the test file in the Louisiana oil test (DM1R) file; Dwight's "Data Item Manual" and the keys to all codes created by Dwight's for use by Licensee pursuant to paragraph 1(b) above.

(f) On the Effective Date, Dwight's shall provide Licensee, in machine-readable form as described in paragraph 1(b) above, with a cross-reference to enable License and its Sublicensees to convert from Dwight's proprietary codes to non-proprietary codes.

2. LICENSE TERM

(a) This Agreement shall become effective on the latest of (i) the date the assets of Dwight's are transferred to Petroleum Information/Dwight's, L.L.C. ("Petroleum Information/Dwight's") pursuant to the Formation Agreement to be entered into by Dwight's and GeoQuest International Holdings, Inc., or (ii) the date the order becomes final; or (iii) the date the Federal Trade Commission approves divestiture to HPDI. L.L.C. pursuant to the order," (the latest such date being herein referred to as the "Effective Date"), and shall remain in effect unless and until it is terminated in accordance with the terms hereof or applicable law. Dwight's shall have no obligation to Licensee to effect such transfer or obtain such issuance or approval, any of which may be abandoned at any time for any reason or no reason. Nothing contained in the immediately preceding sentence is intended to, or shall, permit Dwight's to license the Specified Data to a higher bidder pursuant to the order while Licensee is ready, willing and able to perform its obligations under this Agreement, if such transfer occurs and the Federal Trade Commission continues to require the License as contemplated by the order.

(b) Dwight's shall have no right, whether at common law, in equity, or in bankruptcy or reorganization (including through obtaining any equity interest in a reorganized Debtor) or otherwise, to terminate the License or to seek to have the License terminated, or to require, or seek to require, the Licensee to return the Specified Data.

(c) Licensee may terminate the License only by assignment as provided in paragraph 6, herein.

3. LICENSE FEE

(a) Licensee shall pay to Dwight's the sum of $[ ] for the license granted hereunder (the "License Fee") in accordance with the following schedule: [ ]. The amount of the License Fee remaining unpaid from time to time shall bear interest at the rate of [ ]% per annum, compounded monthly, payable annually on each anniversary of the Effective Date and on the date on which such amount matures, whether by acceleration or otherwise. Such amount shall be evidenced by a

negotiable promissory note of Licensee, payable to the order of Dwight's, in form and substance reasonably satisfactory to Dwight's, which shall be delivered by Licensee to Dwight's on the Effective Date.

(b) Licensee shall be responsible for and shall pay all sales, use, transfer or other taxes, however designated, levied or based on the License Fee, the License or any other rights granted under this Agreement, exclusive of taxes based on the overall income or capital of Dwight's.

4. PROPERTY RIGHTS: CONFIDENTIALITY

(a) No title to or ownership interest in any of the Specified Data or any other information provided pursuant to this Agreement is transferred to Licensee hereby. The Specified Data and all such other information, regardless of the form, format, and media in which they are contained, are and remain the exclusive property and trade secrets of Dwight's notwithstanding the license granted hereby. Dwight's retains all copyright interests in the Specified Data, whether published or unpublished, all trade secrets and all other intellectual or proprietary rights in the Specified Data and other information provided pursuant to this Agreement.

(b) Licensee hereby acknowledges that the Specified Data and other information provided pursuant to this Agreement contain trade secrets and other proprietary information of Dwight's.

(c) Licensee shall keep the Specified Data and such other information received from Dwight's under this License confidential in accordance with this Agreement. Licensee shall take all steps necessary or reasonably requested by Dwight's to assure that it, its sublicensees and others to whom Licensee may from time to time make the Specified Data available in accordance with this Agreement shall avoid unauthorized publication, use or disclosure of the Specified Data, and otherwise shall not permit the Specified Data to become publicly available.

(d) Licensee shall have no right to use the name "Dwight's" or "PI" or "Petroleum Information" (or any variations thereof) or any trademarks or service marks of Dwight's or Petroleum Information's in any manner, and Licensee shall not use the name "Dwight's" or "PI" or "Petroleum Information" (or any variations thereof) or any trademarks or service marks of Dwight's or Petroleum Information's in describing, marketing, using or sublicensing the Specified Data, or in any other manner. The foregoing is not intended to prohibit Licensee from (i) inserting announcements in the trade press, for a period not to exceed six months from the Effective Date, that on [date] Licensee acquired the Specified Data from Dwight's Energydata as a result of a consent order issued by the Federal Trade Commission relating to the merger of Dwight's and Petroleum Information Corporation or (ii) responding orally and in good faith, but not as part of any marketing effort, to inquiries concerning the source of the Specified Data.

5. UPDATES AND SUPPORT

Dwight's shall not be obligated to update or support any of the Specified Data after the Effective Date, except for [ ] the technical assistance provided pursuant to paragraph 9 hereof.

6. SUBLICENSES, ASSIGNMENTS AND OTHER TRANSFERS

Licensee shall not sublicense, assign or otherwise transfer any rights to any Specified Data in any manner that would have the effect of creating one or more vendors for the while or any part of Specified Data in addition to Licensee. Notwithstanding the foregoing. Licensee shall have the right to do the following:

(a) Sublicense all or part of the Specified Data without (i) the right to further sublicense, or (ii) the right to disclose to the public;

(b) Assign or otherwise transfer all of its rights to and interest in all or part of the Specified Data to another person; provided that (i) Licensee provides Dwight's with prior written notice of such assignment or other transfer, including without limitation the name and address of the assignee or transferee, (ii) the assignee or transferee agrees in writing to be bound by all of the provisions hereof applicable to the Specified Data, and (iii) Licensee shall not retain any rights to or interest in any Specified Data assigned or otherwise transferred;

(c) Create distributorships or appoint sales agents for Licensee's data products that include the Specified Data, under agreements appropriate for the distribution of sublicenses of such products; provided that the distributors and sales agents agree in writing to be bound by all of the provisions hereof applicable to the Specified Data, including without limitation the sublicensing thereof;

(d) Grant sublicenses for Licensee's data products that include the Specified Data to geological libraries for access through such libraries only on a read-and-print-only basis; and

(e) Enter into *bona fide* data exchange agreements, wherein the recipient of rights in respect of the Specified Data has the right to market and sublicense the Specified Data; provided that such recipient shall not grant any sublicense of any of the Specified Data, or otherwise knowingly make any of the Specified Data available, to any person unless such person has agreed in writing not to sublicense the Specified Data and not to make the Specified Data publicly available; and provide also that such recipient agrees in writing to be bound by all of the provisions hereof applicable to the Specified Data.

All sublicense, assignments and other transfers permitted by this paragraph 6 shall be in writing and shall expressly provide that the restrictions contemplated by paragraph 4(c) and this paragraph 6 shall be enforced by Licensee, its licensor and the respective successors and assigns thereof. Upon Dwight's reasonable request from time to time. Licensee shall provide Dwight's with the forms of agreement used by Licensee so as to verify compliance by Licensee with the requirements of this paragraph 6.

7. LIMITATION OF LIABILITY: INDEMNIFICATION

(a) Dwight's represents and warrants that it holds such right, title and interest in the Specified Data as may be required to permit Dwight's to enter into and perform its obligations under this Agreement. THE SPECIFIED DATA AND THE MEDIA UPON WHICH THEY ARE SUPPLIED ARE PROVIDED "AS IS." DWIGHT'S MAKES NO OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANT LIABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ERROR-FREE USE ALL OF WHICH ARE EXPRESSLY

DISCLAIMED. DWIGHT'S MAKES NO REPRESENTATIONS AND WARRANTIES THAT THE SPECIFIED DATA CONTAIN NO ERRORS OR OMISSIONS AND EXPRESSLY DISCLAIMS ANY LIABILITY FOR ALL ERRORS AND OMISSIONS IN THE SPECIFIED DATA. Dwight's is under no obligation to continue the development of the specified data or to correct any error therein.

(b) IN NO EVENT SHALL DWIGHT'S BE LIABLE TO LICENSEE, OR ANY END-USER OR ANY OTHER THIRD PARTY FOR ANY LOSS OR DAMAGE, INCLUDING WITHOUT LIMITATION ANY LOSS OF USE, ANY DECISIONS MADE USING ANY OF THE SPECIFIED DATA, OR ANY LOST PROFIT, INCIDENTAL, SPECIAL AND/OR CONSEQUENTIAL DAMAGES, EVEN IF DWIGHT'S HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. In the event Licensee corrects any erroneous information licensed by Dwight's hereunder after the delivery thereof pursuant hereto, Dwight's shall have no interest in the correction. Dwight's shall have no obligation to provide Licensee with any corrections it makes in the Specified Data after the delivery thereof pursuant hereto.

(c) LICENSEE'S SOLE REMEDY IN RESPECT OF THE SPECIFIED DATA SHALL BE REPLACEMENT OF THE DATA IN QUESTION.

(d) THE LIMITATIONS CONTAINED IN THIS PARAGRAPH 7 SHALL APPLY EVEN IF ANY LIMITED REMEDY FAILS IN ITS ESSENTIAL PURPOSE.

(e) Licensee shall indemnify, defend, and hold harmless Dwight's and its affiliates, employees, officers and directors from and against any and all sums, costs, damages, judgments, losses and expenses (including without limitation reasonable attorneys' fees and disbursements) which Dwight's or any of its affiliates, employees, officers or directors may incur or be obligated to pay as a result of (i) any claims for infringement of any copyright or other proprietary rights as to the data products marketed by Licensee (other than the Specified Data licensed hereunder that may be incorporated therein) or resulting from or relating to any modification, reformatting or coding of the Specified Data or the combination thereof with other data, or (ii) any claim or action resulting from or arising out of the sublicensing, assignment or other transfer of the Specified Data or the use of the Specified Data by Licensee or by any sublicensee, assignee or other transferee of Licensee (other than a breach by the sublicensee, assignee or transferee of the terms of its sublicense, assignment or transfer that satisfy, to the extent applicable, the requirements of paragraph 4 and 6 hereof). SUCH INDEMNIFICATION SHALL APPLY NOTWITHSTANDING ANY NEGLIGENCE (WHETHER SOLE OR CONTRIBUTORY) ON THE PART OF ANY INDEMNIFIED PERSON. Licensee may assume the defense of any matter for which indemnification under this paragraph (e) is sought with counsel reasonably acceptable to Dwight's, which may be Licensee's own counsel. If Licensee so assumes such defense, it shall take all steps reasonably necessary in the defense or settlement of the matter at its own expense; provided that an indemnified person may participate in such defense with its own counsel but only at such indemnified person's own expense. Licensee may not consent to any settlement of any such matter insofar as it affects such indemnified person without such person's written consent.

8. INJUNCTIVE RELIEF

Licensee acknowledges and agrees that (a) the Specified Data and other information provided pursuant to this Agreement are unique and consist of valuable intellectual property that Dwight's will continue to use in its business, (b)

the publication, disclosure or misuse of the Specified Data and other information provided pursuant to this Agreement by Licensee or by its sublicensees, assignees and other transferees in violation of the restrictions provided in this Agreement will cause grave harm to Dwight's and (c) Dwight's remedy at law for a breach by Licensee of this Agreement will be inadequate. In the event of a breach or threatened breach of this Agreement by Licensee, Dwight's shall be entitled to obtain injunctive relief, specific performance and such other equitable relief in respect of Licensee and its sublicensees, assignees and other transferees. The foregoing shall in no way limit any other remedies to which Dwight's may be entitled under this Agreement, at law or in equity.

9. TECHNICAL ASSISTANCE

For up to 12 months after the Effective Date, upon reasonable notice to Dwight's from Licensees, Dwights's shall provide such technical assistance to Licensee as is reasonably necessary to enable Licensee to sublicense the Specified Data to end-users. Such technical assistance shall include reasonable consultation with knowledgeable employees of Dwight's sufficient so that Licensee's personnel may be appropriately trained in the sources and processing of the data contained in the Specified Data. Licensee shall pay Dwight's, within 30 days after each invoice therefor. Dwight's direct costs for providing such technical assistance, together with all sales, service, use or similar taxes payable in respect thereof. Direct costs consist of all out-of-pocket expenses, the salary and benefits attributable to Dwight's employees actually providing assistance for the time required for the provision of such assistance, and all other variable overhead. Any past due invoiced amounts shall bear interest at the lesser of 12% per annum or the highest rate allowed by applicable law from the date when due. Dwight's may cease the provision of such technical assistance if any such amounts remain unpaid for 60 days.

10. VERIFICATION OF DATA

Upon 24 hours' advance notice to Dwight's from Licensee, Dwight's shall provide Licensee, at Licensee's expense, reasonable access to, and the right to copy, any data-source documents or data in Dwight's possession that was used to compile the Specified Data, to the extent that Dwight's has such data-source document or data at the time of the request. Such documents and data may be used to verify or to correct the information contained in the Specified Data. Licensee shall not use the information contained therein for any other purpose and shall otherwise keep such information confidential at all times. Licensee shall pay Dwight's, within 30 days after each invoice therefor, Dwight's direct costs in providing such access or copying, together with all sales, service, use or similar taxes payable in respect thereof. Direct costs consist of all out-of-pocket expenses, the salary and benefits attributable to Dwight's employees for the time required for the provision of such access and copying, and all other variable overhead. Any past due invoiced amounts shall bear interest at the lesser of 12% per annum or the highest rate allowed by applicable law from the date when due. Dwight's may cease the provision of such access and copying if any such amounts remain unpaid for 60 days.

11. RIGHTS UNDER ADDITIONAL CONTRACTS

Within ten days after the Effective Date, Dwight's shall assign to Licensee, without any representation or warranty of any kind and without recourse, all of its rights under and interest in (a) the Data Exchange Agreement of July 1, 1993, with The Independent Oil & Gas Service, Inc., and (b) the Joint Marketing Agreement of July 1, 1994, with Munger Oil Information Services, Inc. (each an "Agreement to be Assigned"). No such assignment shall become effective until the other parties thereto consent to such assignment. If either such other party does not consent to such assignment, any well data to which Dwight's has an ownership right upon termination by Dwight's of the applicable Agreement to be Assigned (i) shall be deemed included in the Specified Data and licensed to Licensee hereunder on all of the terms and conditions provided herein and (ii) shall be delivered to Licensee as soon as practicable after such termination.

12. ATTORNEYS' FEES

Should either party institute any action or proceeding to enforce this Agreement or any provision hereof, or for damages by reason of any alleged breach of this Agreement, or for a declaration of rights hereunder, the prevailing party in any such action or proceeding shall be entitled to receive from the other party all costs and expenses, including reasonable attorneys' fees and disbursements, incurred by the prevailing party in connection with such action or proceeding.

13. EXCUSABLE DELAYS

Neither party shall be liable or responsible for delay or failure to perform any of such party's obligations under this Agreement (other than the payment of money) occasioned by any cause beyond its reasonable control, including but not limited to war; civil disturbance; fire; flood; earthquake; windstorm; unusually severe weather; acts or defaults of common carriers; accidents; strike or other labor trouble; lack of or inability to obtain materials, transportation, labor, fuel or supplies; governmental laws, acts, regulations, embargoes, or orders (whether or not such later prove to be invalid); or any other cause, contingency or circumstance not subject to such party's reasonable control.

14. RELATIONSHIP OF PARTIES

Nothing contained in this Agreement shall be construed to imply a joint venture, partnership, or agency relationship between Dwight's and Licensee. Neither party shall be liable for the debts, obligations, or responsibilities of the other party, and neither party shall have the right or authority to assume or create any obligation or responsibility, whether express or implied, on behalf of or in the name of the other party or to bind the other party in any manner.

15. ENTIRE AGREEMENT

This Agreement embodies the entire contractual agreement of the parties in relation to the subject matter hereunder, and there is no other oral or written agreement or understanding between the parties at the time of execution hereof. This Agreement cannot be modified except by the written agreement of both parties hereto. This Agreement is performable in and shall be governed by and construed

and enforced in accordance with the laws of the State of Texas. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors, assigns and transferees; provided that Licensee may not sublicense, assign or otherwise transfer the License and any other rights under this Agreement except to the extent permitted by, and in compliance with, paragraph 4 and 6 hereof. It is hereby acknowledged and agreed that from an after the Effective Date, the obligations of Dwight's hereunder shall be performed solely by its successor, Petroleum Information/Dwight's, and Petroleum Information/Dwight's shall receive all the rights and benefits contemplated under this Agreement, and Dwight's shall have not liability therefor.

SCHEDULE A

I. Dwight's Production Data CD-Rom Products

West Coast Area, consisting of California, Oregon, Pacific Federal Offshore, Alaska

Gulf Coast Area, consisting of Arkansas, Louisiana, Mississippi, Alabama, Florida, Federal Offshore, Coastal Counties of Texas

MidContinent Area, consisting of Arkansas, Kansas, Michigan, Oklahoma and Texas Railroad Commission District 10. Texas Area, consisting of all of Texas

Rocky Mountain Area, consisting of Arizona, Colorado, Montana, New Mexico, North Dakota, South Dakota, Wyoming, Nebraska, Nevada, Utah

II. Dwight's Discover SCOUT CD-ROM Products

Gulf Coast Area, consisting of Arkansas, Louisiana, Mississippi, Alabama, Florida, Federal Offshore

MidContinent Area, consisting of Northern Arkansas, Michigan, Oklahoma and Texas Railroad Commission District 10 Texas Area, consisting of all of Texas

Rocky Mountain Area, consisting of Arizona, Colorado, Montana, New Mexico, North Dakota, South Dakota, Wyoming, Nebraska, Nevada, Utah, Idaho

III. Dwight's Discover CD-ROM Products

Oklahoma Area, consisting of Oklahoma

Rocky Mountain Area, consisting of Arizona, Colorado, Montana, New Mexico, North Dakota, South Dakota, Wyoming, Nebraska, Nevada, Utah, Idaho

IV. Dwight's Petroleum Reservoirs (DPR) With Operated Production CD-ROM Products

State of Alaska

State of California

Permian Basin

Texas & Southeast New Mexico

State of Oregon

Gulf Coast Area, consisting of Alabama, Arkansas, Florida, Gulf of Mexico Offshore, Louisiana, Mississippi, Texas Railroad Commission Districts 2, 3, and 4

MidContinent Area, consisting of Arkansas, Kansas, Oklahoma, Texas Railroad Commission District 10

Rocky Mountain Area, consisting of Arizona, Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming, New Mexico

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Record Layout for Comma Delimited File

The option to export WDS information in a comma delimited format provides additional flexibility for importing data into spreadsheet and database management programs.

Each field within a record is separated by commas. Fields are not alpha or Zero filled. Alpha fields are surrounded by double quotes; any field without quotes is read as numeric.

HEADER & LOCATION INFORMATION
FILE NAME: *.HDR

Item Name	Format	Maximum Length	Length With Delimiters
WDS ID	A	8	11
RECORD TYPE (constant value: 10)	N	2	3
FULL API NUMBER	A	10	13
API STATE CODE	A	2	4
API COUNTY CODE	A	3	5
API WELL CODE	A	5	8
MERIDIAN CODE	A	2	4
SECTION	N	2	4
TOWNSHIP	N (2,1)	3	6
TOWNSHIP DIRECTION	A	1	4
RANGE	N (2,1)	3	6
RANGE DIRECTION	A	1	4
QUARTER QUARTER	A	12	15
FOOTAGE NORTH/SOUTH	N	5	6
FOOTAGE DIRECTION NORTH/SOUTH	A	1	4
FOOTAGE EAST/WEST	N	5	6
FOOTAGE DIRECTION EAST/WEST	A	1	4
FOOTAGE CORNER	A	2	5
FOOTAGE QUADRANT	A	2	5
OPERATOR CODE	N	6	7
OPERATOR	A	40	43
LEASE NAME	A	32	35
WELL NUMBER	A	6	9
ELEVATION	N	5	6
ELEVATION TYPE	A	2	5
FIELD NAME	A	30	33
FIELD CODE	N	9	10
RESERVOIR	A	24	27
OBJECTIVE DEPTH - MEASURED	N	5	6
* OBJECTIVE DEPTH - TVD	N	5	6
OBJECTIVE FORMATION	A	24	27
OBJECTIVE FORMATION AGE CODE	N	3	4
WELL TYPE	A	2	5
COMPLETION TYPE	A	2	5
CLOSEST FORMATION REPORTED	A	24	27
CLOSEST FORMATION AGE CODE	N	3	4
FILE STATUS FLAG	A	1	4
CURRENT STATUS	A	5	8
ENTRY DATE (yyyymmdd)	N	8	9
CHANGE DATE (yyyymmdd)	N	8	9
PERMIT DATE (yyyymmdd)	N	8	9
PERMIT NUMBER	A	8	11
OFFSHORE FLAG	A	1	4

* Records layout [illegible] for future implementation of data [illegible] 2001 [illegible]

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LATITUDE & LONGITUDE
FILE NAME: *.LL

Item Name	Format	Maximum Length	Length With Delimiters
WDS ID	A	8	11
RECORD TYPE (const. asn value: 10)	N	2	3
LAT-LONG SOURCE	A	6	9
LATITUDE	N (3,5)	10	11
LONGITUDE	N (3,5)	10	10

PERMIT & COMPLETION DATA
FILE NAME: *.CMP

Item Name	Format Length	Maximum Delimiters	Length with
WDS ID	A	8	11
RECORD TYPE (constant value: 20)	A	2	3
SPUD DATE (YYYYmmdd)	N	8	9
CONTRACTOR	A	24	27
RIG NUMBER	A	16	19
CIRCULATION MEDIUM	A	1	4
TOTAL DEPTH - MEASURED	N	8	6
* TOTAL DEPTH - TVD	N	8	6
TOTAL DEPTH DATE (YYYYmmdd)	N	8	9
FORMATION AT TOTAL DEPTH	A	24	27
FORMATION AT TD AGE CODE	N	3	4
PLUGBACK DEPTH	N	8	6
COMPLETION DATE (YYYYmmdd)	N	8	9
COMPLETION CODE	A	2	5
FINAL STATUS	A	8	8
PRODUCING LEASE NUMBER	N	7	8
PRODUCING WELL NUMBER	N	7	8
LOCATION REPORT DATE (YYYYmmdd)	N	8	9
COMPLETION REPORT DATE (YYYYmmdd)	N	8	9
* DATA SOURCE	A	6	9
* DATA SOURCE WELL ID	A	26	26

* Record layout designed for future implementation of data item currently not populated.

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TOPS RECORDS
FILE NAME: *.TOP

Item Name	Form	Maximum Length	Length with Delimiters
WDS ID	A	8	11
RECORD TYPE (constant value: 30)	N	2	3
TOP SOURCE	A	1	4
FORMATION TOP TYPE	A	1	4
FORMATION DEPTH	N	8	8
FORMATION NAME	A	24	27
FORMATION AGE CODE	N	3	3

ALL NARRATIVE DATA
FILE NAME: *.TXT

Item Name	Form	Maximum Length	Length with Delimiters
WDS ID	A	8	11
RECORD TYPE (constant value: 40)	N	2	3
RECORD FORMAT	N	2	3
RECORD SEQUENCE NUMBER	N	3	6
RECORD SUB-SEQUENCE NUMBER	N	3	4
INFORMATION SOURCE	A	1	4
INFORMATION TYPE CODE	N	2	3
INFORMATION TYPE	A	8	11
** NARRATIVE INFORMATION	A		

PARSED CORE DATA
FILE NAME: *.COR

Item Name	Form	Maximum Length	Length with Delimiters
WDS ID	A	8	11
RECORD TYPE (constant value: 40)	N	2	3
RECORD SEQUENCE NUMBER	N	3	6
INFORMATION SOURCE	A	1	4
INFORMATION TYPE CODE (constant value: 8)	N	1	2
INFORMATION TYPE (constant value: core)	A	4	7
TEST NUMBER	N	3	4
INTERVAL TOP	N	8	6
INTERVAL BOTTOM	N	8	6
FORMATION NAME	A	24	27
FORMATION AGE CODE	N	3	3
REMARKS	A	27	30
** CORE NARRATIVE	A		

** Length of narrative is variable

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PARSED DST DATA
FILE NAME: *.DST

Data Name	Data Type	Maximum Length	Length with Decimal
WIDS ID	A	8	11
RECORD TYPE (constant value: 40)	N	2	3
RECORD SEQUENCE NUMBER	N	5	6
RECORD SUB-SEQUENCE NUMBER	N	3	4
INFORMATION SOURCE	A	1	4
INFORMATION TYPE CODE (constant value: 10)	N	2	3
INFORMATION TYPE (constant value: DST)	A	3	6
TEST NUMBER	N	3	4
INTERVAL TOP	N	5	6
INTERVAL BOTTOM	N	5	6
FORMATION NAME	A	24	27
FORMATION AGE CODE	N	3	4
STATUS REMARKS	A	8	11
FIRST TIME OPEN	N	3	4
FIRST TIME SHUT IN	N	3	4
SECOND TIME OPEN	N	3	4
SECOND TIME SHUT IN	N	3	4
INITIAL HYDROSTATIC PRESSURE	N	5	6
FINAL HYDROSTATIC PRESSURE	N	5	6
FIRST INITIAL FLOW PRESSURE	N	5	6
FINAL INITIAL FLOW PRESSURE	N	5	6
SECOND FLOW PRESSURE	N	5	6
SECOND FINAL FLOW PRESSURE	N	5	6
FIRST SHUT-IN PRESSURE	N	5	6
SECOND SHUT-IN PRESSURE	N	5	6
BOTTOM HOLE TEMPERATURE	N	5	6
RESISTIVITY	N	6	7
RECOVERY 1 VALUE	N	5	6
RECOVERY 1 DESCRIPTION	A	25	28
RECOVERY 2 VALUE	N	5	6
RECOVERY 2 DESCRIPTION	A	25	28
RECOVERY 3 VALUE	N	5	6
RECOVERY 3 DESCRIPTION	A	25	28
RECOVERY 4 VALUE	N	5	6
RECOVERY 4 DESCRIPTION	A	25	28
** SAMPLE NARRATIVE	N		

** Length of narrative is location

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PARSED SHOWS
FILE NAME: *.SHO

Item Name	Type	Maximum Length	Length with Delimiters
WDS ID	A	8	11
RECORD TYPE (constant value: 40)	N	2	3
RECORD SEQUENCE NUMBER	N	5	6
INFORMATION SOURCE	A	1	4
INFORMATION TYPE CODE (constant value 12)	N	2	3
INFORMATION TYPE (constant value: Shows)	A	5	8
INTERVAL TOP	N	5	6
INTERVAL BOTTOM	N	5	6
FORMATION NAME	A	24	27
FORMATION AGE CODE	A	4	4
REMARKS	A	27	30
** SHOW NARRATIVE	A		

PARSED PEFS
FILE NAME: *.PEF

Item Name	Type	Maximum Length	Length with Delimiters
WDS ID	A	8	11
RECORD TYPE (constant value: 40)	N	2	3
RECORD SEQUENCE NUMBER	N	5	6
INFORMATION SOURCE	A	1	4
INFORMATION TYPE CODE (constant value: 21)	N	2	3
INFORMATION TYPE (constant value: Perfs)	A	5	8
INTERVAL TOP	N	5	6
INTERVAL BOTTOM	N	5	6
FORMATION NAME	A	24	27
FORMATION AGE CODE	A	4	4
REMARKS	A	27	30
** PERF NARRATIVE	A		

PARSED FRACS
FILE NAME: *.FRC

Item Name	Type	Maximum Length	Length with Delimiters
WDS ID	A	8	11
RECORD TYPE (constant value: 40)	N	2	3
RECORD SEQUENCE NUMBER	N	5	6
INFORMATION SOURCE	A	1	4
INFORMATION TYPE CODE (constant value: 22)	N	2	3
INFORMATION TYPE (constant value: FZone)	A	5	8
INTERVAL TOP	N	5	6
INTERVAL BOTTOM	N	5	6
FORMATION NAME	A	24	27
FORMATION AGE CODE	A	4	4
REMARKS	A	27	30
** FRAC ZONE NARRATIVE	A		

** Length of narrative is [illegible]

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INITIAL POTENTIAL
FILE NAME: *.IP

Item Name	Type	Maximum Length	Length with Decimals
WIDS ID	A	8	11
RECORD TYPE (constant value: 40)	N	2	3
RECORD SEQUENCE NUMBER	N	5	6
INFORMATION SOURCE	A	1	4
INFORMATION TYPE CODE (constant value: 28)	N	2	3
INFORMATION TYPE (constant value: IP)	A	2	5
VOLUME, OIL	N	5	6
UNITS OIL VOLUME	A	7	10
VOLUME, GAS	N	5	6
UNITS GAS VOLUME	A	7	10
VOLUME, WATER	N	5	6
UNITS WATER VOLUME	A	7	9
** IP NARRATIVE	A		

COMBINED PERF, PERFNL, AND IP RECORD
FILE NAME: *.PPI
(Available in June 1991 Release)

Item Name	Type	Maximum Length	Length with Decimals
WIDS ID	A	8	11
RECORD TYPE	N	2	3
RECORD SEQUENCE NUMBER	N	5	6
INFORMATION SOURCE	A	1	4
INFORMATION TYPE CODE (constant value: 31)	N	2	3
INFORMATION TYPE (constant value: Perfs/Perfnl)	A	5	8
INTERVAL TOP	N	5	6
INTERVAL BOTTOM	N	5	6
FORMATION NAME	A	24	27
FORMATION AGE CODE	N	3	3
CHOKE SIZE	A	5	8
FLOW TUBING PRESSURE	N	5	6
FLOW CASING PRESSURE	N	5	6
SHUT IN TUBING PRESSURE	N	5	6
SHUT IN CASING PRESSURE	N	5	6
GRAVITY	N (2,1)	5	6
OIL VOLUME	N	5	6
OIL UNITS	A	7	10
GAS VOLUME	N	5	6
GAS UNITS	A	7	10
WATER VOLUME	N	5	6
WATER UNITS	A	7	10
METHOD OF TEST	A	3	6
CALCULATED FLAG	A	1	4
CODE	N	10	11
REMARKS	A	27	30
** PERF NARRATIVE	A		

** Length of narrative is variable

ANNEX 1

Well Data
Annex 1
Page 7 of 7

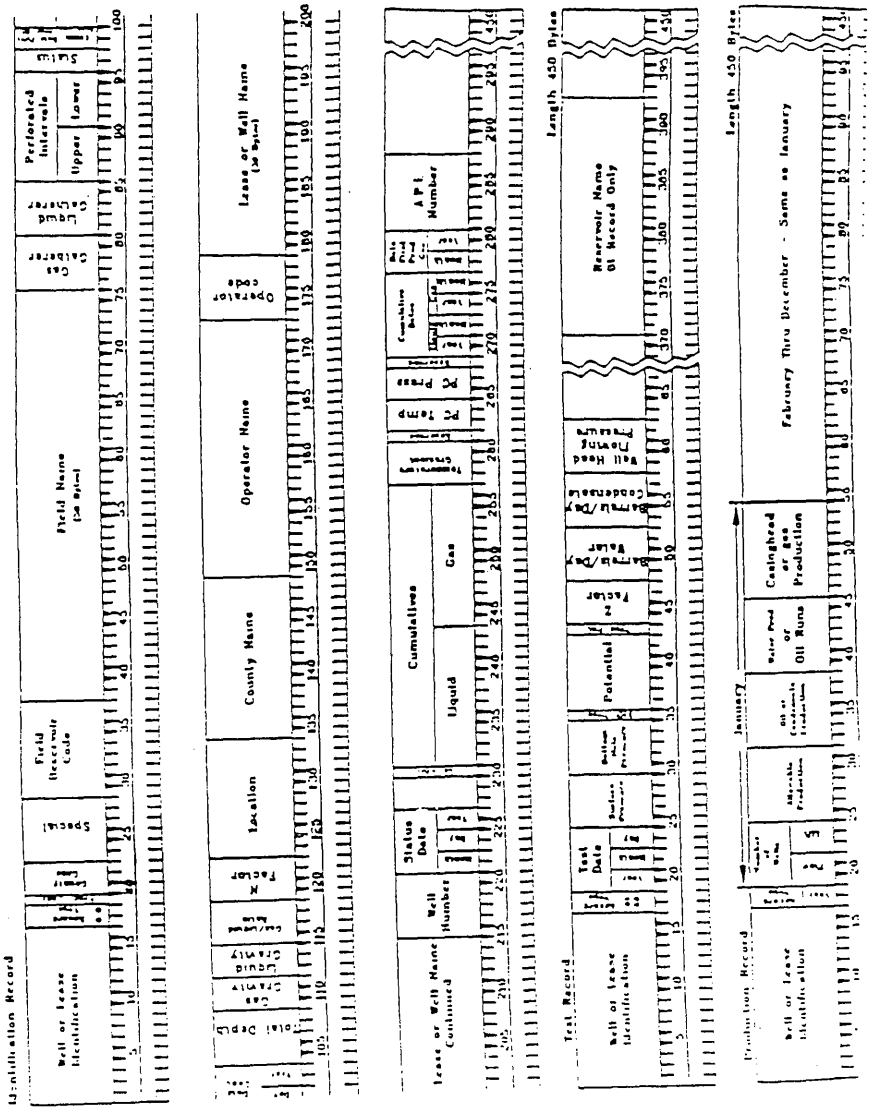
OPERATOR & NAMES LOOKUP TABLES
FILE NAME: *.LST

Data Name	Data Type	Maximum Length	Length with Delimiters
WELL ID	A	8	11
RECORD TYPE (constant value: 90)	N	2	5
DWIGHTS OPERATOR CODE	N	4	7
OPERATOR ADDRESS	A	64	67
API STATE CODE	N	2	5
POSTAL ABBREV	A	2	5
STATE NAME	A	20	23
API COUNT CODE	N	3	6
COUNTY NAME	A	20	23
DWIGHTS DISTRICT CODE	N	3	6
DISTRICT NAME	A	20	23
AAPG BASIN CODE	N	3	6
AAPG BASIN NAME	A	20	23
COUNTRY CODE	A	4	7
COUNTRY NAME	A	20	23

* Records are not available for certain miscellaneous or data items, currently not populated

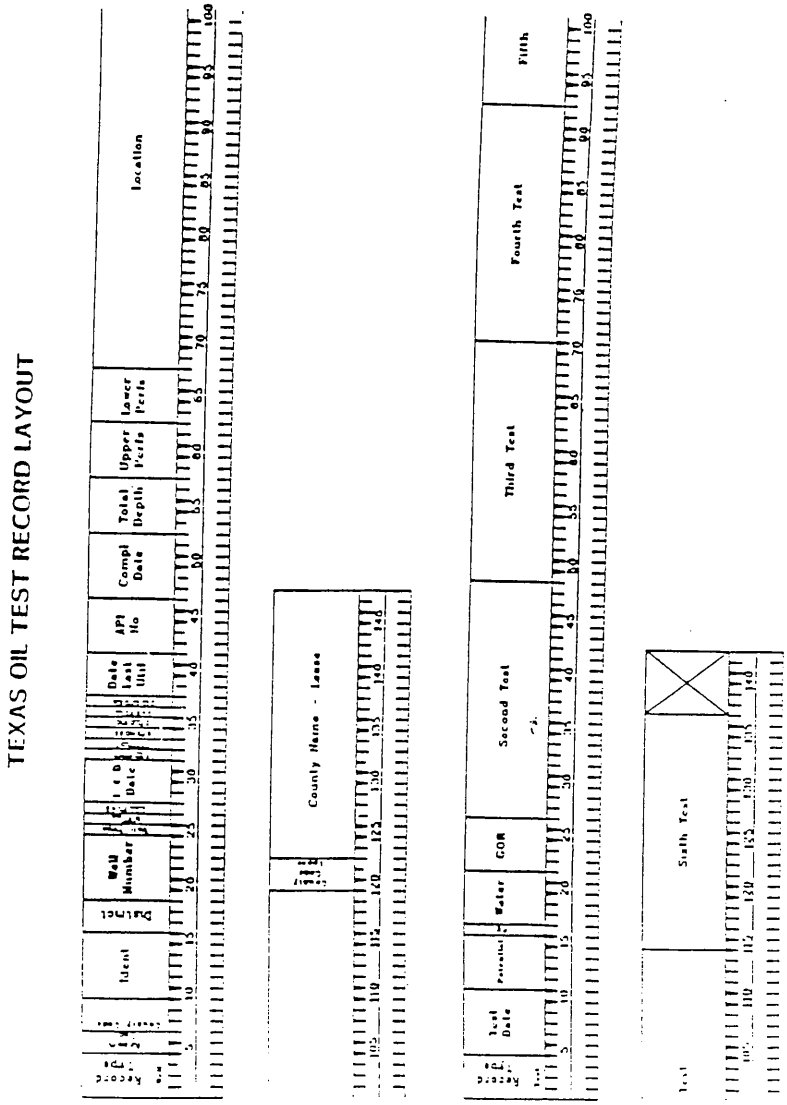
ANNEX 2

Production Data
Annex 2 A
Page 1 of 3



ANNEX 2

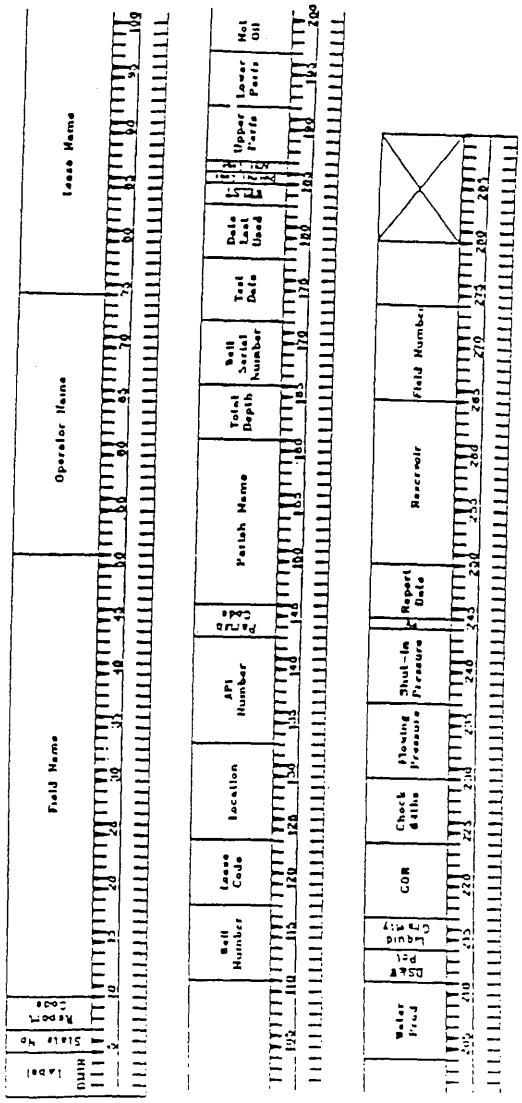
Production Data
Annex 2 B
Page 2 of 3



ANNEX 2

Production Data
Annex 2 C
Page 3 of 3

LOUISIANA OIL TEST RECORD LAYOUT



ANNEX 3

DWIGHT'S

PETROLEUM DATA SYSTEM

TOTL FORMAT

DPDS/TOTL Fixed-Format Specification

Tape Structure
A DPDS/TOTL Fixed-Format data tape contains data from the Dwight's Petroleum Data System Oil and Gas file (TOTL) database. There are three versions of the DPDS/TOTL Fixed-Format file:

The Initial Load format will contain all information about each Field or Reservoir.

The Update format will contain only information that has been updated since the previous release.

The Special format will contain all information about each Field or Reservoir in a custom-defined area.

There are multiple physical files per tape. Each tape begins with a Tape Header File. This file contains one record, a Tape Header Record (Record type 0000), which identifies the information present on the tape. The remaining files are divided into TOTL Area Groups. Each TOTL Area Group has:

File Header File. This file contains one record, a File Header Record (Record Type 0001), which identifies the DPDS Area to which the data file applies.

Data File. This file contains the actual DPDS/TOTL data. Refer to the attached tape specifications for the format of the data file. The last record in the Data File will always be a File Total Record (Record Type 9900). The File Total Record contains control totals which can be used to verify that the update completed successfully.

The last file on the tape is a Tape Total File. This file contains one record, a Tape Total Record (Record Type 9999), which contains control totals which can be used to verify that the update completed successfully.
Each file on the DPDS/TOTL Fixed-Format tape has a record length of 140. The records are blocked at 114 records per block for a blocksize of 15,960.
Tapes can be produced using either the EBCDIC or ASCII character set.
Tapes can be produced at a density of 1600 or 6250 bpi.
Dwight's uses industry-standard 2400 feet, 9-track tapes.

Record Type Relationships
Each record contains a Unique Record identifier and a Transaction Code. The Unique Record Identifier (UNIQID) will specifically identify one, and only one, field or reservoir record in DPDS/TOTL. The Transaction Code indicates the action to be taken to update the data associated with the TOTL field or reservoir record. There are three Transaction Types:

The Add Transaction Type (A) indicates that the data on the transaction record did not previously exist and should be added to the file. An initial Load tape will consist of only Add transactions. If an Add transaction is encountered on Record Type 0100, this indicates a new field or reservoir to be added to the file. An Add transaction on other record types indicates that the data on that transaction record should be added to the field or reservoir record identified by the Unique Record Identifier.

The Change Transaction Type (C) indicates that one or more data items on the transaction record has been updated. All data items on the TOTL field or reservoir record should be updated with the values provided on the Change transaction.

The Delete Transaction Type (D) indicates that all data items on the transaction record have been deleted from the DPDS/TOTL file. If a Delete transaction is encountered on Record Type 0100, this indicates that the entire field or reservoir record has been deleted from the DPDS/TOTL file. A Delete transaction on other record types indicates that only those data items on that transaction have been deleted from the field or reservoir record.

Data Types

There are three data types used by the DPDS/TOTL Fixed-Format Specification. The Data Type is indicated by an A, N, or L in the "Type" column of the Fixed-Format Specification that follows. The three data types are:

The Alpha-Numeric data type (A) indicates text data and can contain letters, numbers, and special characters. Alpha-numerica data is left-justified.

The Numeric data type (N) contains a numerica value only. The numbers are FORTRAN-compatible. The numbers do not contain leading zeros, and have an explicit decimal point if not a whole number. A numerica specification is provided in the "Format" column. The numeric specification is given in the format "W.D", where "W" is the total field width, and "D" is the number of decimal digits.

The Logical data type (L) contains either a "1" or a blank. The "1" indicates a "TRUE" condition, and the blank indicates a "FALSE" condition.

EXHIBIT B

TRUSTEE AND MARKETING AGREEMENT

TRUSTEE AND MARKETING AGREEMENT (this "Agreement"), dated as of _____ between respondents (as further defined below) and Ben C. Burkett, II ("Trustee").

PRELIMINARY STATEMENT

On _____, respondents entered into an Agreement Containing Consent Order, attached hereto as Exhibit A, that contemplates the issuance by the Federal Trade Commission (the "FTC") of an order set forth therein (the "order"), which has not yet been issued by the FTC or become final. The terms and provisions of the order shall be considered as if included and fully stated herein. Also, definitions included in the order shall apply throughout this Agreement.

If issued by the FTC, the order (at Article II) requires respondents to divest the Specified Data following completion of the merger. Article III of the order provides that, if respondents have not so divested, the FTC may appoint a Trustee,

and requires that, within 10 days of the FTC appointment of the Trustee, and subject to the prior approval of the FTC. Respondents must execute a trust agreement that transfers to the Trustee all rights and powers necessary to permit the Trustee to effect the divestiture required by the order. For this reason, the parties have prepared this Agreement, which shall be executed if an only if the conditions precedent, as set forth in Article III of the order, have occurred.

The Commission may approve divestiture of parts of the Specified Data to different acquiring entities, but in no event will there be more than one Acquirer for either the whole data set comprising the Specified Data, or any of the same parts of the data set comprising the Specified Data.

Trustee will actively pursue an Acquirer(s) for the Specified Data.

ADDITIONAL DEFINITIONS

In addition to any terms parenthetically defined in the text of this Agreement, and terms defined in the order, the following definitions shall apply throughout:

1. *"Approved Acquirer"* means a Prospective Acquirer that has been approved by the FTC pursuant to Article II of the order.

2. *"Divest"* means to grant a perpetual, worldwide, nonexclusive license to the Acquirer, with the right, subject to the terms of the order, to use, combine with other information, reproduce, market, assign or otherwise transfer, and sublicense the Specified Data.

3. *"Person"* means any individual, corporation, partnership, or other business or legal entity.

4. *"Prospective Acquirer"* means a person with a *bona fide* interest in acquiring the assets to be divested.

5. *"Respondents"* means "Dwight's" and "PIC" as those two terms are defined in the order.

ARTICLE I

1.01. Transfer of Powers. Respondents hereby transfer to Trustee, in trust, and for the duration of the trust as provided in Section 2.03 of this Agreement, and subject to the terms of the order, respondents' right and power to Divest the Specified Data.

1.02. Creation of Trust. Trustee hereby acknowledges receipt of the authority and power to divest the Specified Data in accordance with the terms of the order and to effect its purposes and agrees to hold such authority and power in trust (the "Trust") for the duration of the Trust as provided in Section 2.03 of this Agreement. The purpose of the Trust shall be to effect the prompt divestiture to an Approved Acquirer.

ARTICLE II

2.01. Powers of Trustee. Trustee shall have the rights, duties or powers with respect to the divestiture as set forth in Article III of the order. Any descriptions thereof contained in this Agreement in no way modify respondents' obligations under the order. Any modification of such rights, duties, and powers shall be made in accord with Section 7.04 of this Agreement.

2.02. Trustee's Duties. Trustee's duty shall be to Divest the Specified Data to an approved Acquirer in accord with the order and this Agreement. Trustee shall use Trustee's reasonable efforts to negotiate the most favorable price and terms for respondents in any proposed contract that Trustee submits to the FTC for approval, subject to respondents' absolute and unconditional obligation to Divest at no minimum price as stated in Article III.B.6 of the order.

2.03. Duration of Trustee's Authority. Trustee shall have the power and authority to divest the Specified Data to an Approved Acquirer for a period of twelve (12) months commencing on the latest to occur of (a) the date the assets of Dwight's are transferred to Petroleum Information/Dwight's pursuant to the merger agreement, dated as of ____1996, between Dwight's and PIC (the "Transfer Date"), (b) the date the order become final and (c) the date of Trustee's appointment by the FTC. Such period may be extended pursuant to Article III.B.4 of the order. Such period may be terminated as provided in Section 6.01 of this Agreement.

2.04. Multiple Offers. If Trustee receives *bona fide* offers from more than one Prospective Acquirer, Trustee shall submit all such bids to the FTC, and if the FTC determines to approve more than one such acquiring entity for either the whole data set or for any of the same parts of the data set comprising the Specified Data, Trustee shall divest to the acquiring entity of entities selected by respondents from among those approved by the FTC.

2.05. Confidential and Proprietary Information. Trustee shall maintain the confidentiality of confidential or proprietary information relating to the assets to be divested. Such information may be disclosed only to:

(a) Prospective Acquirers;
(b) Prospective financiers and suppliers of Prospective Acquirers, or
(c) Persons employed by Trustee under Section 3.01 of this Agreement

Who have first executed appropriate confidentiality agreements. Respondents shall permit Prospective Acquirers and their prospective financiers or suppliers to inspect the assets to be divested with or without Trustee being present. Trustee may disclose to the FTC such confidential or proprietary information relating to the assets to be divested as the FTC may request, without the need for execution of a confidentiality agreement.

2.06. Unauthorized Disclosure. Trustee shall not license, divest, or otherwise disclose to any person or use any of the Specified Data or other information obtained from the respondents except as provided in this Agreement or order.

2.07. Reports. Trustee shall submit, sixty (60) days from the date of commencement of the Trustee's power and authority as provided in Section 2.03 of this Agreement and every sixty (60) days thereafter until Trustee's appointment has been completed or this Agreement terminates as provided in Section 6.01 of this Agreement, a confidential report in writing to respondents and the FTC, setting froth Trustee's efforts to accomplish the divestiture including (a) a summary of all discussions and negotiations held with, and the identities of, all interested persons, and (b) copies of offers, counteroffers and correspondence concerning the Prospective Acquirer(s). Trustee shall also provide to respondents and the FTC such other reports of efforts to divest the assets to be divested as respondents or the FTC may require.

2.08. Access to Relevant Information and Facilities. Trustee shall have full and complete access to the personnel, facilities, books and records, related assets

offered for divestiture or to other relevant information as Trustee may reasonably request. Respondents shall develop such financial or other information as Trustee may reasonably request and shall cooperate with any reasonable request of the Trustee. Trustee shall give respondents reasonable notice of any request for such access or such information; however, Trustee may have access to the assets themselves at any time during normal business hours without notice. Trustee shall attempt to schedule any other access or request for information in such a manner as will not unreasonably interfere with respondent's operations.

2.09. Submission of Contracts for Approval. At any time during the duration of the Trust as provided in Section 2.03 of this Agreement, Trustee may submit to the FTC for approval, in accordance with the FTC's Rules governing approval, with a copy to respondents, any contract with a Prospective Acquirer to acquire the assets to be divested. In order to assist the FTC in assessing whether any Prospective Acquirer may be deemed an Approved Acquirer. Trustee may require the Prospective Acquirer to summit to the FTC a verified statement setting forth facts in support of its financial, technical, and marketing capabilities, and intent to use the assets to be divested, and to submit any business plan regarding the same.

2.10. Personal Liability of Trustee. Trustee shall serve without bond or other security and shall use Trustee's best judgment in performing Trustee's duties hereunder. With the exception of Sections 2.05 and 2.06 of this Agreement, Trustee shall be exempt from personal liability, to the extent permitted by law, for any action or decision not to act taken or made in good faith. Trustee shall be liable for misfeasance in performing under this Agreement or to the extent that any loss, claim, damage or liability results from Trustee's gross negligence, willful or wanton acts, or bad faith by the Trustee or Trustee's representatives.

ARTICLE III

3.01. Retention and Payments of Assistants. From the date of commencement of the Trustee's power and authority as provided in Section 2.03 of this Agreement, Trustee shall have authority to retain such consultants, accountants, attorneys, business broker, appraisers, and other representatives and assistants (collectively "Assistants") as Trustee determines are reasonably necessary to assist Trustee to perform Trustee's duties hereunder. Retention of such Assistants shall be at the cost and expense of respondents. Respondents shall be responsible for reasonable fees and expenses for Assistants retained by Trustee hereunder, and such fees and expenses shall be billed separately from Trustee's personal expense and costs. Trustee shall note Trustee's approval of invoices for fees and expenses incurred pursuant to this Section 3.01 and submit the same to respondents no more than five (5) days after receipt of such invoices. Respondents shall pay such invoices in their usual course of payment, unless objected to in accordance with Section 3.03 of this Agreement.

3.02. Monthly Payments: Success Fees. Trustee shall be compensated by respondents for Trustee's services under this Agreement as provided in this Section 3.02.

(a) Respondents shall pay Trustee a retainer of [ ] on the date of execution of this Agreement by respondents and Trustee.

(b) Respondents shall pay Trustee a fee (the "Monthly Payment") of (i) [ ] per month during the first 12 months of the duration of the Trust as provided in Section 2.03 of this Agreement and (ii) [ ] per month thereafter if the duration of the Trust is extended as provided in Section 2.03 of this Agreement. The first Monthly Payment shall be made on the first day of the first month that commences after the commencement of the Trustee's power and authority as provided in Section 2.03 of this Agreement. Successive Monthly Payments shall be paid at the first day of each month thereafter until the earlier of: (A) the date the consummation of the divestiture contemplated hereby or (B) the date of termination of the Trust pursuant to Section 6.01 of this Agreement.

(c) Respondents shall pay Trustee a success fee (the "Success fee") if the divestiture of the Specified Data is consummated during the duration of the Trust as provided in Section 2.03 of the Agreement. The Success Fee shall equal the product of (i) the amount of cash consideration (exclusive of interest on any deferred payment obligation) provided in the definitive divestiture agreement (the "Cash Consideration"), time (ii) the percentage (the "Applicable Percentage") set forth below opposite the period in which the divestiture is consummated and Cash Consideration is first received by respondents, as follows:

Date of Consummation and First Receipt	Applicable Percentage
On or before the expiration of six months after the commencement of the Trustee's powers and authority as provided in Section 2.03 of this Agreement ("First Six Months")	[ ]%
After the First Six Months but on or before the expiration of 12 months after the commencement of the Trustee's power and authority as provided in Section 2.03 of this Agreement ("Second Six Months")	[ ]%
After Second Six Months	[ ]%

The Success Fee shall only be payable when, and as a percentage of, the Cash Consideration is received by respondents, and it shall not be payable if the divestiture is not consummated or in respect of any Cash Consideration that is not received by respondents. Notwithstanding the foregoing, if the maximum Success Fee otherwise payable under this Section 3.02(c) would be less than the minimum amounts (each the "Minimum Fee") set forth below opposite the period in which the divestiture is consummated and Cash Consideration is first received by respondents, the Success Fee shall equal the lesser of: (i) such Minimum Fee and (ii) the amount of Cash Consideration provided in the definitive divestiture agreement that is actually received by respondents.

Date of Consideration and First Receipt	Minimum Fee
During First Six Months	$[ ]
During Second Six Months	[ ]
After Second Six Months	[ ]

If a Minimum Fee applies such fee shall be payable out of the first amounts of Cash Consideration received by respondents.

3.03. Expenses. Respondents shall reimburse Trustee's reasonable out-of-pocket expenses and costs incurred by Trustee or Trustee's Assistants in connection with the discharge of Trustee's duties and efforts to divest the Specified Assets to be divested. Such expenses and costs shall include reasonable expenses of travel, lodging, meals, incidental items, and personal car mileage at the maximum allowable rate per mile permitted by the Internal Revenue Service.

Respondents may object to payment of any bill submitted by Trustee for the payment of out-of-pocket expenses and costs for Trustee or Trustee's Assistants. Respondent shall make any such objection in writing within seven (7) days of receipt from Trustee of the bill. Payment shall be made for any portion of an amount requested which is not objected to. Any dispute under this Section 3.03 which the parties have not resolved within seven (7) days of any objection shall be submitted to the FTC for determination, which shall be binding on the parties.

3.04. Cost of Collection. Trustee may recover Trustee's costs of collection including reasonable attorneys' fees, if respondents fail to pay compensation or expenses and costs not objected to or not disapproved by the FTC pursuant to Section 3.03 of this Agreement.

ARTICLE IV

4.01. Binders and downpayments. Trustee shall deposit any funds paid by a prospective acquirer as a refundable binder or downpayment in a separate interest bearing bank account with any accrued interest thereon being paid to the party entitled to such funds.

4.02. License of Assets. If the FTC has approved a Prospective Acquirer in accordance with Article III of the order, respondents shall execute a license agreement, and all related documents necessary to license the assets to be licensed; provided that the terms of such agreement and other documents shall be consistent with the order, shall disclaim all representations, warranties and liabilities in respect of the Specified Data by respondents and provide appropriate protection for the confidential and proprietary information of respondents, and shall contain such other provisions as shall be appropriate to licenses of similar property effected in similar circumstances.

4.03. Closing. Trustee shall make reasonable efforts to schedule signings, and closings for the consummation of divestitures, at a place and time determined by Trustee on dates that would provide respondents with at least thirty (30) days' prior notice. If such dates are unreasonably burdensome on the Acquirer, Trustee shall make reasonable efforts to schedule such signings, and closings for the consummation of divestitures, at mutually convenient times for all parties concerned. Trustee shall provide the FTC and respondents with an opportunity to review any closing documents prior to the closings for the consummation of divestitures.

4.04. Final Accounting. Upon the termination of Trustee's duties hereunder, there shall be an accounting ("Final Accounting") of any balance due and owing (i) for Trustee's expenses and costs (pursuant to Section 3.03 of this Agreement), (ii) for Monthly Fees (pursuant to Section 3.02(b) of this Agreement), and (iii) as Incentive Compensation (pursuant to Section 3.02(c) of this Agreement). The Final Accounting shall be approved by the FTC.

ARTICLE V

5.01. Respondents' Duties. Respondents shall use all reasonable efforts to assist and cooperate with Trustee in accomplishing the divestiture as contemplated by the order and this Agreement. Respondents shall take no action to interfere with or impede Trustee's accomplishment of the terms of the order.

5.02. Respondents' Contact with Prospective Acquirers. Respondents shall promptly notify Trustee in writing of any contact it may have with any persona that makes an offer or expresses an interest in acquiring the assets to be divested after the date of commencement of the Trustee's power and authority as provided in Section 2.03 of this Agreement.

5.03. Indemnity of Trustee. With the exception of Section 2.05 and 2.06 of this Agreement, respondents shall indemnify Trustee and hold Trustee harmless against any losses, claims, damages or liabilities to which Trustee may become subject arising in any manner out of or in connection with Trustee's duties under this Agreement and the order, unless such losses, claims, damages, or liabilities arise out of any misfeasance, gross negligence, willful or wanton acts, or bad faith by the Trustee or its representatives.

5.04. Authority to Execute. Respondents represent that the persons executing this Agreement on behalf of respondents have the authority to bind respondents to this Agreement.

ARTICLE VI

6.01. Termination of Agreement and Trust. This Agreement and the Trust established hereby shall terminate upon the earliest to occur of the following: (a) the completion of the divestiture; (b) Trustee's resignation or removal by the FTC for failure to perform Trustee's duties hereunder, (c) the termination of this Agreement by the FTC or (d) the expiration of Trustee's authority under Section 2.03 of this Agreement. Upon termination of the Trust. Respondents shall have no further obligation to pay compensation or expenses to Trustee hereunder, except to pay the compensation and reimburse Trustee for the expenses provided in Article III of this Agreement that have accrued to the date of termination. In furtherance of the foregoing, but not by way of limitation thereof, no Success Fee shall be payable to Trustee in respect of a divestiture that is consummated after the date of any termination. Trustee's obligations under Sections 2.05 and 2.06 of this Agreement and respondents' obligations under Sections 3.04, 4.04 and 5.03 of this Agreement shall survive any termination.

ARTICLE VII

7.01. Notices. The FTC shall be copied on all correspondence between Trustee and respondents. All notices and other communications required or permitted under this Agreement or the order shall be in writing and shall be deemed to have been duly given if personally delivered, mailed by registered or certified U.S. Mail return receipt requested, or delivered by overnight courier or Express Mail, or transmitted by facsimile to the following addresses, or any other address that has been designated in writing to the sending party:

(a) To Trustee:
Ben C. Burkett, II
Burkett Consulting
7126 Alpha Road
Dallas, Texas 75240
Telecopier: 214-239-9037

(b) To respondents:
Dwight's Energydata, Inc.
1633 Firman Dr.
Richardson, Texas 75081
Telecopier: 214-783-0058
Attention: President

GeoQuest International Holdings, Inc.
5333 Westheimer, Suite 100
Houston, Texas 77056
Telecopier: 713-599-9131

(c) To FTC:
Compliance Division
Federal Trade Commission
Bureau of Competition
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
Telecopier: (202) 326-2655

7.02. No Assignment. This Agreement shall become effective upon the date of execution, subject to the approval of the FTC. This Agreement may not be assigned or otherwise transferred by respondents or Trustee without the consent of respondents and Trustee and the approval of the FTC. Any such assignment or transfer shall be consistent with the terms of the order. It is hereby acknowledged and agreed that from and after the Transfer Date, respondents' obligations hereunder shall be performed solely by their successor, Petroleum Information/Dwight's.

7.03. Entire Agreement. This Agreement, and those portions of the order incorporated herein by reference, constitute the entire agreement of the parties and supersede any and all prior agreements and understandings between the parties, written or oral, with respect to the subject matter hereof.

7.04. Modification. No amendment, modification, termination or waiver of any provision of this Agreement, nor consent to any departure therefrom by any parties hereto, shall be effective unless made in a writing signed by all parties and approved by the FTC. Any such amendment, modification, termination or waiver shall be consistent with the terms of the order.

7.05. Duplicate Originals. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

7.06. Section Headings. Any heading of the sections of this Agreement are for convenience only and are to be assigned no significance whatsoever as to its interpretation and intent.

7.07. Order Governs. The order shall govern this Agreement and any provisions herein which conflict or are inconsistent with it may be declared null and void by the FTC and any provision not in conflict shall survive and remain a part of this Agreement.

7.08. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Texas (excluding any principles of such law that would apply any other law other than applicable Federal law) and such Federal laws as may apply.

EXHIBIT C

SALES REPRESENTATIVE AGREEMENT

This is an agreement ("Agreement") entered into and effective as of _____("Effective Date") between TOBIN DATA GRAPHICS LLC, a Texas limited liability company, with its principal place of business at 114 Camp Street, San Antonio, Texas 78204, herein referred to as "TDG," and _____ herein referred to as "SR." TDG and SR shall be referred to individually as a "party," and collectively as the "parties." In consideration of the mutual promises and benefits set forth, the parties agree as follows:

Recitals:

TDG and SR desire that SR assist TDG in the marketing and delivery of certain well location information owned by TDG to customers.

1.0 Definitions. The following terms shall have the definitions provided.

1.1 *"Coordinate"* shall mean all latitudinal and longitudinal location references calculated or determined by TDG.

1.2 *"Coordinate Fees"* shall mean the use fees to be paid by customers for the Coordinates as descried in Exhibit A hereto. The Coordinate Fees may be revised unilaterally by TDG from time to time; however, such Coordinate Fees will remain equal to or less than the Coordinate fees that TDG establishes with the entity created by the merger of Dwight's Energydata, Inc. and Petroleum Information Corporation. SR will be given thirty days advance written notice of any such revisions.

1.3 *"License Agreement"* shall mean the TDG agreement in the form attached hereto as Exhibit B to be entered into with customers pursuant to Section 2.1 below with such amendments as TDG may require from time to time in its discretion. SR will be given thirty days advance written notice of any such amendments. *"TDG Customer Agreement"* shall mean any agreement entered into between TDG and its customers for Coordinates delivered directly to such customers by TDG.

1.4 *"Person"* shall mean and include natural individuals and an entity of any type.

2.0 Appointment. During the term of this Agreement and subject to the other terms hereof, TDG hereby appoints SR on a nonexclusive basis, as a sales representative to assist TDG in the marketing and delivery of Coordinates which have been correlated to SR Well Data, and to bill and collect Coordinate Fees. SR may use its authorized sales agents to assist it provided that such agents comply with all terms and conditions imposed on SR by this Agreement, and that SR is responsible for their actions, in their capacity as sales agents.

2.1.1 License Agreement. Prior to delivering Coordinates to a customer who is not otherwise authorized in writing by TDG to receive Coordinates. SR shall obtain from such customer a signed copy of the License Agreement as in effect hereunder at the time. Each such signed copy shall be delivered to TDG withing thirty days of receipt by SR.

2.1.2 On-line License Agreement. Unless and until instructed otherwise by TDG in writing, SR is deemed to have obtained a valid, but limited, License Agreement from on-line customers only if the following provisions have been

satisfied: (i) SR shall provide a document on screen that describes the License Agreement provisions for viewing or downloading TDG data, (ii) this document must be acceptable to TDG both as to form and content, (iii) any on-line customers must have previously signed a SR license agreement in which the proprietary nature of the on-line data is agreed, (iv) the License Agreement is limited only to on-line delivery of TDG data and only for as long as this paragraph (2.1.2) is in effect, (v) customers are charged, and royalties are due, in accordance with TDG's then current Coordinate Fees schedule, and (vi) TDG is furnished a list of such current customers that have downloaded Coordinates each month.

2.2 Permitted Distribution. Prior to permitting a Person access to a Coordinate, from time to time after the Effective Data, SR must be deemed to have the permission of TDG as provided below ("TDG's Permission"). SR shall be deemed to have TDG's Permission if (i) SR has obtained from such Person a signed License Agreement regarding such Coordinate which is currently effective, (ii) SR has obtained from TDG notice that such Person otherwise has an effective TDG Customer Agreement regarding such Coordinate, or (iii) SR has complied with Section 2.1.2 above for delivery of on-line data. SR shall not be deemed to have TDG's Permission when (i) TDG provides notice to SR that any such License Agreement or TDG Customer Agreement is not effective, (ii) this Agreement is terminated, or (iii) the On-line License Agreement provisions in Section 2.1.2 are no longer valid or acceptable to TDG. The parties hereby agree that all information regarding their respective customers shall be deemed Confidential Information, as defined below, and shall not be used or disclosed for any reason other than to fulfill the purposes of this Section 2.2.

2.3 Activities of SR. With respect to the marketing and delivery of such Coordinates by SR the following shall apply:

a. SR shall represent itself to third parties only as a sales representative of TDG.

b. SR shall not represent to customers with respect to the Coordinates delivered by SR that such customer is being charged less than TDG charges for Coordinates if delivered by TDG. However, SR may at its sole discretion charge more than TDG charges.

c. SR shall not be required to devote any particular time or resources to marketing and delivering the Coordinates.

d. SR shall not represent or warrant (i) that TDG expects to deliver any particular number of Coordinates during any future period, or (ii) that TDG otherwise will or expects to undertake any activity not described in the License Agreement or in TDG's current marketing materials in effect and delivered to SR by TDG from time to time.

e. SR shall not allow any representations to be made that it is an agent or representative of TDG capable of binding TDG in any manner.

f. SR shall make no warranties or representations to third parties as to the accuracy, completeness or other condition of the Coordinates.

3.0 Coordinate Fees. SR shall bill customers on behalf of TDG not less than the Coordinate Fees currently in effect from time to time. The current Coordinate Fees are set forth in Exhibit A.

3.1 Collection and Payment. SR shall bill all Coordinate Fees in accordance with its normal procedures for billing its own or similar products. SR shall collect the Coordinate Fees from customers and forward such funds to TDG within thirty days of the end of the calendar month during which such Fees were collected.

3.2 Estimated Payments. SR may bill and collect Coordinate Fees in advance of delivery based on SR's estimate of the number of Coordinates to be delivered for a fixed period. Such Coordinate Fees shall be forwarded to TDG in accordance with Section 3.1 above provided that if the Coordinates actually delivered for the subject period are fewer than the estimate. TDG shall refund the excess payments to SR upon request. However, in accordance with SR's normal procedures. SR may bill its CD-Rom customers at the beginning of each customer's annual license period for all Coordinates available in the area subscribed to at that time. Any new Coordinates added to the are of coverage during the customer's annual license term will not be billed and Coordinate Fees will not be due TDG until the date of such customer's annual renewal term.

4.0 Coordinates.

4.1. Delivery and Use of Coordinates. Subject to the items of this Agreement, SR may duplicate and store the Coordinates internally for the sole purpose of delivering them to its customers and may deliver the Coordinates as a stand alone product or incorporate them as part of SR products in Sr's normal course of business. SR shall not deliver, copy, use or disclose to third parties the Coordinates for any other purpose. Notwithstanding the above, SR shall not incorporate Coordinates into any product unless SR can limit individual customer access to the Coordinates ("Security Procedures") in compliance with this Agreement All Security Procedures shall be disclosed to TDG and be reasonably acceptable to TDG.

4.2 Prohibited Transfers. SR may not offer a License Agreement or other right to, or otherwise knowingly make available, any Coordinate, or any component thereof to any of the following: (i) a competitor of TDG, (ii) a government agency, (iii) an entity which might cause such information to be available in the public domain, or (iv) any third party to use the data for the purpose of compiling, adding to, or building a data base or file that such third person could then use, sell, license, or lease to anyone else or for any purpose other than such third party's internal use.

5.0 Obligations of SR.

5.1 Reports. On the 30th day after each calendar month, SR will provide TDG the following reports:

A Delivery Report, on a mutually agreeable form, that identifies by area and by recipient the number of Coordinates delivered by SR during the prior calendar month.

A Statement, on a mutually agreeable form, of all sums billed by SR for Coordinates during the prior calendar month.

A Trouble Report identifying any errors in the Coordinates of which SR has actual knowledge.

If the parties cannot agree on a form, TDG shall provide the forms to be used.

6.0 Marketing and Distribution. SR shall obtain in writing, prior to use, written approval from TDG of any promotional or other material which uses the

name, trademarks or product names of TDG. Each party shall pay its own advertising, marketing, and distribution expenses.

7.0 Warranties. Except as otherwise provided herein, TDG warrants and represents that it has full and unrestricted right to use and to authorize others to use the Coordinates provided to SR. TDG EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES ARISING FROM COURSE OF CONDUCT AND USAGE OF TRADE ALL COORDINATES AND THE MEDIA UPON WHICH THEY ARE SUPPLIED ARE PROVIDED "AS IS." TDG MAKES NO WARRANTY EITHER EXPRESS OR IMPLIED AS TO THE VALIDITY, ACCURACY, OR COMPLETENESS OF ANY OF SUCH COORDINATES. SR ACCEPTS TDG'S COORDINATES "AS IS" AND WITH ALL FAULTS. TDG DISCLAIMS ANY LIABILITY FOR ALL, IF ANY, ERRORS AND OMISSIONS IN THE COORDINATES SUPPLIED HEREUNDER.

8.0 General Obligations.

8.1 Delivery. All data subject hereto shall be delivered in the delivering party's normal course of business and in its standard, electronic, machine readable form except as otherwise mutually agreed to by the parties. Each party shall be responsible for the media and transportation costs of delivering its data to the other party.

8.2 Business Practices. Each party agrees that the services to be provided by it shall be performed in a good and workmanlike manner, and that such services will be performed in accordance with all applicable federal, state and local laws. Each party shall keep full, clear and accurate financial and other records with respect to all data subject hereto including license and other agreements with customers.

8.3 License Enforcement. Each party agrees that it will use its best efforts in normal business practice to ensure that its customers do not use the data subject hereto in violation of this Agreement or the agreement entered into with the customer.

8.4 Inspection. TDG shall have the right at its own expense to inspect and audit those portions of SR's books, records and all associated documents necessary to ensure compliance with the terms and conditions of this Agreement. SR agrees to maintain such books, records and associated documents for a period of two (2) years from the end of the calendar year in which such items were recorded and to make such books, records and associated documents available to TDG at all reasonable times within such period and for so long thereafter as any dispute remains unresolved. So long as a dispute does not exits such inspections and audits shall not be conducted more than twice per year on 30 days prior notice.

9.0 Confidentiality.

9.1 Confidential Information. In the course of their mutual dealings, the parties each have become, and will continue to become, aware of the other party's business affairs, property, methods of operation, processing systems, trade secrets, data, software, programs, download formats and related information and technology in various forms and formats which the other party treats for itself or others as proprietary and confidential ("Confidential Information"). Except as otherwise provided herein, each party agrees that (i) the Confidential Information of the other party is the exclusive property of the other party and such other party retains all copyright, trade secret and trademark interests therein, whether published or unpublished, and (ii) it shall observe complete confidentiality with regard to all

aspects of the Confidential Information, and to insure such confidentiality, shall take appropriate action, by instruction, agreement or otherwise, with such party's employees, consultants, contractors, and customers permitted access to such Confidential Information so as to enable such party to satisfy its confidentiality obligations under this Agreement. Each party agrees to limit access to the other party's Confidential Information to those employees and consultants who in the course of their employment need access to such data. If either party provides access to data or Confidential Information to individuals or entities in breach of this Agreement, then such party agrees to indemnify and hold the other party harmless from (i) any and all resulting claims of liability to third parties, and (ii) was acquired by a party from a third party; or (iii) was know to a party prior to its receipt from the other party; shall not be deemed Confidential Information for the purposes of this Agreement or any other agreement between the parties.

9.2 Violations. Without limitation of the foregoing, a party which learns or has reason to believe that any person has had access to the data subject hereto or the Confidential Information, or any portion thereof, and, as a result, the terms of this Agreement are being violated (i) shall advise the other party immediately of such even, and (ii) shall cooperate with the other party in seeking injunctive or other equitable relief against any such third person. All of the undertakings and obligations relating to confidentiality and non-disclosure, whether contained in this paragraph or elsewhere in this Agreement, and whether of either party, shall survive the termination of this Agreement for whatever reason.

10.0 Proprietary Rights.

10.1 Infringement. Each party agrees to give prompt notice to the other party of any actual, threatened, or suspected infringement of proprietary, trademark or copyright rights of the other party by any entity or third party and agrees to provide reasonable assistance to the other party in the protection of those rights. Each party also shall give the other prompt notice of any claim that the data subject hereto may violate any rights of a third party.

11.0 Remedies, Limitation of Liability. The Coordinates subject hereto and the Confidential Information are unique and each party's remedy at law for a breach of this Agreement by the other party may be inadequate. Each party acknowledges that the disclosure of any aspect of the other party's Confidential Information or any information which, at law or equity, ought to remain confidential, or the breach of any other provision hereof, will give rise to irreparable injury to the other party inadequately compensable in damages. Accordingly, either party may seek or obtain injunctive relief against the breach or threatened breach to the terms of this Agreement, in addition to any other legal remedies which may be available, and each party hereby consents to the obtaining of such injunctive relief.

IN NO EVENT SHALL TDG BE LIABLE FOR ANY LOST PROFIT, INCIDENTAL, SPECIAL, AND/OR CONSEQUENTIAL DAMAGES RESULTING FROM ERRORS OR OMISSIONS IN THE COORDINATES PROVIDED HEREUNDER, EVEN IF TDG HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SR'S SOLE REMEDY REGARDING DEFECTIVE COORDINATES SHALL BE REPLACEMENT OF THE MEDIA AND COORDINATES IN QUESTION PROVIDED, HOWEVER, THAT SR SHALL BE ENTITLED TO THIS REMEDY ONLY IF TDG IS CAPABLE OF CORRECTING THE COORDINATE IN THE NORMAL COURSE OF ITS BUSINESS. IN NO EVENT SHALL TDG BE LIABLE AS A RESULT OF DEFECTIVE, UNDELIVERED OR MISSING COORDINATES FOR ANY MONETARY AMOUNTS.

12.0 Term and Termination.

12.1. Term. This Agreement shall remain in effect for three years unless terminated earlier as provided herein. The period from the Effective Date of this Agreement until its termination is referred to herein as the term of the Agreement.

12.2 Termination Option. Each party shall have the right to terminate this agreement at any time upon giving the other party at least one year prior written notice of such termination. In addition, and upon giving 90 days written notice to SR, TDG shall have the right to terminate this Agreement in the event that it and/or its successor companies (i) in good faith ceases the conduct of calculating and providing Coordinates to customers or (ii) similarly terminates all Sales Representative Agreements that it may have with other sales representatives. On termination of this Agreement, TDG will not deliver additional Coordinates to SR. If this Agreement is terminated by Sr, SR shall immediately return all copies of the Coordinates, and all manifestations of TDG's Confidential Information, and cease using such products and information for all purposes. If this Agreement is terminated by TDG, SR will be allowed, subject to the other provisions of this Agreement, to provide to customers Coordinates previously received, but only for the term of each customer's then existing written agreement (excluding any renewal or extension made or attempted after such term) but not to exceed three years following termination of this Agreement and only for the sole purpose of fulfilling commitments for subscription products in existence on the date of termination. At the end of such time, SR shall immediately return all copies of the Coordinates, and all manifestations of TDG's Confidential Information, and cease using such products and information for all purposes.

13.0 General.

13.1 Entire Agreement. This Agreement, including the exhibits hereto, all of which are incorporated herein by this reference, contains the full understanding of the parties with respect to the subject matter hereof, and no waiver, alteration, or modification of any of the provisions hereof shall binding unless in writing and signed by duly authorized representatives of each party. Neither the course of conduct between the parties nor trade usage shall act to modify or alter the provisions of this Agreement. If this Agreement is executed in counterparts, each shall be deemed an original, but all together shall constitute but one and the same agreement.

13.2 Assignment. This entire Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties and shall be fully assignable by either party.

13.3 Force Majeure. Neither party shall be liable to the other for delay in the performance of its obligations hereunder to the extent that such delay is due to causes beyond its reasonable control.

13.4 Attorney's Fees. Should any party institute any action or proceeding to enforce this Agreement or any provision hereof, or for damages, by reason of any alleged breach, or for a declaration of rights hereunder, the prevailing party in any such action or proceeding shall be entitled to receive from the other party all costs and expenses, including attorney's fees and disbursements, incurred by the prevailing party in such action or proceeding.

13.5 Authority. Each of the undersigned individuals executing on behalf of the respective signatories hereto warrants and represents to each of the parties hereto that he is duly authorized by such entity on whose behalf he is executing this

Agreement and that he has full power and authority to bind such entity by affixing this signature hereto.

13.6 State Law. This Agreement shall be construed in accordance with, and the rights and obligations of the parties hereunder shall be determined in accordance with, the laws of the State of Texas.

13.7. Notices. Any notice required or permitted hereunder shall be conclusively deemed properly given upon delivery of the same, in writing, in person or by mailing the same by certified mail to the party to be notified at such party's address as set forth in the preamble to this Agreement, or to such other address as may be specified in a notice delivered pursuant hereto

13.8 Severability and Waiver. If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, or if any provision hereof is or becomes impracticable, the remaining provisions and the Agreement as a whole shall nevertheless continue in full force and effect without being impaired or invalidated in any way, and the parties shall replace the invalid, unenforceable or impracticable provision with a valid, enforceable or practical provision which shall meet the economic aims of the invalid, unenforceable or impracticable provision as closely as possible. No delay in exercising, no course of dealing with respect to, and no partial exercise of any right or remedy hereunder shall constitute a waiver of any other right or remedy, or future exercise thereof. With respect to any continuing or persistent default hereunder, no delay in exercising, no course of dealing with respect to, and no partial exercise of any right or remedy shall constitute a waiver thereof.

13.9 Construction. Headings used throughout this Agreement are for administrative convenience only and shall be disregarded for the purpose or construing and enforcing this Agreement. The language in all parts of this Agreement shall in all cases be construed simply, according to its fair meaning, and shall not be construed strictly for or against either of the parties.

13.10 Other Business. Except as otherwise provided herein, each party shall be allowed to solicit any type customer in any geographic area and enter into software, hardware, data delivery, development, license, and maintenance agreements therewith. The provisions of this Agreement do not grant either party any rights or obligations to act on behalf of the other party regarding any other products or services not specifically mentioned.

13.11 Relationship of Parties. Nothing contained in this Agreement shall be construed to imply a joint venture, partnership, or agency relationship between TDG and SR or any of their employees. Except as specifically set forth herein, no party shall be liable for the debts, obligations, or responsibilities of another party, and no party shall have the right or authority to assume or create any obligation or responsibility, whether express or implied, on behalf of or in the name of another party or to bind another party in any manner.

EXHIBIT A

Exhibit A

(To TDG-_____ Sales Representative Agreement dated __/__/__

Coordinate Fee Schedule

	Superbase Maintenance Subscribers		Superbase Maintenance Non-Subscribers	
	Gulf Coast (1)	All other areas (Jeffersonian and Carter)	Gulf Coast (1)	All other area (Jeffersonian and Carter)

I. Perpetual License Fees

For Permitted Well Coordinates

Number of coordinates	
all volumes	

For Completed Well Coordinates

Number of coordinates	
1- 10,000	
10,001- 50,000	
50,001-120,000	
120,001 and greater	

II. Limited Term License Fees (annual)

Number of coordinates	
all volumes	

III. Second license, multiple copies CD-Rom

Number of coordinates	
all volumes	

IV. Re-issue fees

Number of coordinates	
all volumes	

(1) Gulf Coast includes Texas, Louisiana, Mississippi, Alabama, Florida and Offshore

EXHIBIT B

Exhibit B (version 1 of 2, Perpetual License)

(To TDG-_____ Sales Representative Agreement dated __/__/__)

DATA LICENSE AGREEMENT

By signature below the undersigned Licensee agrees with and for the benefit of Town Data Graphics LLC, a Texas limited liability company doing business at 114 Camp Street, San Antonio, Texas 78204 and other locations ("TDG"), that its acceptance, possession and use of the Products, as such term is defined below, are subject to the following terms and conditions, and undertakes to perform the obligations of Licensee set forth below.

1. **Products.** The term "Products" as used in this Agreement means the data more specifically described in the Pricing Schedules, as defined below, including all data, software programs, download formats, user documentation and related information and technology in any form or format provided to Licensee by or on behalf of TDG during the term of this Agreement. However, the term "Products" shall not include any additional TDG products acquired by Licensee subsequent to the execution of this Agreement which are subject to a separate written license agreement.

2. **Pricing Schedules.** The term "Pricing Schedules" means the one or more documents, proposals, orders or invoices prepared by or on behalf of TDG from time to time, duly authorized by TDG and supplied to Licensee to describe further (to the extent TDG deems necessary) the Products, term of the license, and the costs thereof to be paid by Licensee, all of which are incorporated herein by this reference and made part of this Agreement.

3. **Grant of License.** TDG grants to Licensee, subject to the provisions of this Agreement, a nonexclusive, nontransferable limited license to possess and use those Products for which Licensee has paid the license fees set forth in the applicable Pricing Schedule(s) in furtherance of Licensee's own business and in accordance with this Agreement. TDG shall not be obligated to supply to Licensee more than one representation of each of the Products. If a Product is lost, destroyed, or impaired by Licensee, a replacement may be obtained from TDG or one of its sales representatives for the costs of handling and expenses, subject to mutual agreement at the time of the request.

4. **License Restrictions.** Licensee agrees to use the Products only for Licensee's own business. Licensee shall not: (i) permit any affiliated entities or third parties access to or use of the Products except as specifically set forth below, (ii) use the Products in the operation of a service bureau, to provide time sharing services, or in any other similar arrangement, or (iii) decompile, disassemble or otherwise reverse engineer the Products.

5. **Copies.** Licensee may not copy the Products except that one (1) copy only may be made for archival purposes. The Products shall remain in a single memory location in Licensee's data system except that portions of the Products may be transferred to other data storage devices under Licensee's exclusive control to display, manipulate and analyze such Products for Licensee's own internal use. Licensee may merge or modify the Products for its own internal use. Hard copies of the Products may be made for Licensee's internal use. Such hard copies shall not be provided to third parties, except if (i) provided in the regular course of Licensee's business and for the sole purpose of analysis or interpretation in furtherance of Licensee's own business, and (ii) Licensee obtains the prior written agreement of the recipient in the form supplied by TDG to use the Products only for such purpose, to return the hard copies to Licensee, and otherwise to be subject to and comply with this Agreement, and (iii) Licensee assumes responsibility to assure compliance by the third party with such agreement. All copies of Products, including merged or modified portions, shall remain the property of TDG, shall continue to be subject to this Agreement, and shall include all TDG copyright and other proprietary notices.

6. **License Fees.** Licensee agrees to pay TDG or its authorized sales representative for all charges incurred for Products provided to Licensee in accordance with applicable Pricing Schedules. Interest shall be payable on any past due amounts computed from the date due at the lesser of eighteen percent (18%) or the highest rate allowed by law. In addition to the charges otherwise payable hereunder, Licensee shall be responsible for and pay all taxes, however designated, levied or based on charges made under this Agreement, exclusive of taxes based on the net income of TDG. If any amounts due under this Agreement have not been paid in full within thirty (30) days after they are due, then without limitation of any other remedies and rights TDG may have, TDG may at its discretion and without prior notice to Licensee terminate this Agreement.

7. **Term and Termination.** This Agreement shall become effective on the date Licensee executes it and shall remain in effect until, if ever, Licensee shall breach any provision hereof, in which event it shall terminate automatically without the requirement of any notice or other action by TDG, provided that Licensee shall have thirty (30) days grace for payments as described above. Upon notice by TDG at any time after termination for any reason of this Agreement, Licensee shall within ten (10) days return to TDG, at Licensee's expense, the Products and all copies thereof, delete or destroy all other copies and representations of the Products, and deliver to TDG written certification by an officer of Licensee that the Products have been returned, all copies have been deleted or destroyed, and the use of the Products has been discontinued. If this Agreement is terminated for any reason relating to any breach by Licensee, all provisions hereof to the benefit of TDG shall survive and remain in effect, but Licensee shall not be entitled to possess or use the Products, shall not be entitled to any refund or have any other rights or remedies pursuant hereto.

8. **Proprietary Rights.** The Products are proprietary to TDG, and title to them remains in TDG. Some or all of the Products may be delivered to Licensee incorporated in or integrated as part of other information technology products offered and distributed by sales representatives of TDG. Notwithstanding any such integration or incorporation all right, title and interest in and to the Products are and remain the sole and exclusive property of TDG. All applicable common law and statutory rights in the Products including, without limitation, rights in confidential and trade secret material, data, source code, object code and copyrights, shall be and will remain the property of TDG. Licensee shall have no right, title or interest in such proprietary rights or in the Products, except the license to use the Products as granted hereby.

9. **Confidential Information.** Licensee agrees that the Products contain proprietary information, including trade secrets, know-how and confidential information, that is the exclusive property of TDG. During the period this Agreement is in effect and after its termination for any reason, Licensee and its employees and agents shall maintain the confidentiality of this information and shall not sell, license, publish, display, distribute, disclose or otherwise make available this information to any third party nor use such information except as authorized by this Agreement. To insure such confidentiality, Licensee and, [illegible] appropriate action by institution, agreement or otherwise, [illegible] Licensee's employees, consultants, contractors, and third-party [illegible] permitted access to the Products to [illegible]

EXHIBIT B

satisfy Licensee's confidentiality obligations under this Agreement. Licensee agrees to limit access to the Products to those employees and/or consultants who in the course of their employment need access to the Products. Licensee shall not remove such proprietary notices as TDG or its sales representatives may choose to place with or on the Products. Licensee shall immediately report to TDG, and halt, unauthorized use or disclosure of the Products.

10. **Limited Warranty; Limitation of Liability.** TDG warrants: (i) that it has the authority to license the Products to Licensee, and (ii) if supplied by TDG, that the media on which the Products are recorded is free from defects in material and workmanship under normal use for a period of ninety (90) days from delivery to Licensee.

EXCEPT AS PROVIDED IN THE PRECEDING SENTENCE, THE PRODUCTS AND THE MEDIA UPON WHICH THEY ARE SUPPLIED ARE PROVIDED "AS IS". TDG EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF CONDUCT, AND USAGE OF TRADE. IT IS UNDERSTOOD THAT TDG OBTAINS DATA INCLUDED IN THE PRODUCTS FROM THIRD PARTIES, INCLUDING GOVERNMENT AGENCIES, AND THAT TDG IS UNDER NO OBLIGATION TO CONTINUE THE DEVELOPMENT OF ANY OF THE PRODUCTS OR TO CORRECT ANY ERROR, OMISSION OR MALFUNCTION THEREIN. NEITHER TDG NOR ANY OF ITS SALES REPRESENTATIVES SHALL BE OBLIGATED TO UPDATE OR SUPPORT THE PRODUCTS.

TDG DISCLAIMS ANY LIABILITY FOR ALL, IF ANY, ERRORS AND OMISSIONS IN THE PRODUCTS. IN NO EVENT SHALL TDG BE LIABLE FOR ANY LOST PROFIT, INCIDENTAL, SPECIAL, PUNITIVE AND/OR CONSEQUENTIAL DAMAGES, WHETHER ARISING FROM CONTRACT OR NEGLIGENCE, EVEN IF TDG OR ITS SALES REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LICENSEE'S SOLE REMEDY REGARDING DEFECTIVE PRODUCTS SHALL BE REPLACEMENT OF THE MEDIA AND PRODUCTS IN QUESTION WITH TDG'S MOST SIMILAR CURRENT OFFERING. IN NO EVENT SHALL TDG BE LIABLE FOR ANY AMOUNTS IN EXCESS OF THE AMOUNTS PAID BY LICENSEE TO OR FOR TDG PURSUANT TO THIS AGREEMENT.

THE PARTIES ACKNOWLEDGE THAT EACH OF THE PROVISIONS OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION THE PAYMENT PROVISIONS HEREOF, WERE BASED, IN PART, ON THE PROVISIONS OF THIS SECTION 10, AND THAT EACH PARTY FULLY UNDERSTANDS AND ACCEPTS THE OBLIGATIONS AND LIMITATIONS DESCRIBED IN THIS SECTION 10, WHICH SHALL SURVIVE THE TERMINATION, FOR ANY REASON, OF THIS AGREEMENT.

11. **Remedies.** It is acknowledged by Licensee that the Products are unique and TDG's remedy at law for a breach of this Agreement by Licensee will be inadequate. Therefore, if Licensee fails to adhere to the terms and conditions of this Agreement, TDG will be entitled to obtain injunctive relief. This Section shall in no way limit any other remedies to which TDG may be entitled as a result of such breach by Licensee. If Licensee breaches this Agreement, then Licensee agrees to indemnify and hold TDG harmless from: (i) any and all resulting claims of liability of TDG to third parties, and (ii) any other damages TDG may incur. In any dispute regarding this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and related costs in addition to other remedies.

12. **General Provisions.** Licensee acknowledges and agrees that this Agreement, together with all related Pricing Schedules, is the complete and exclusive statement of the agreement between the parties, which supersede and merge all prior proposals, negotiations and understandings and all other agreements, oral or written, between the parties relating to the subject matter hereof. Any contrary provision in any purchase order or other communication by Licensee is expressly rejected. No sales representative of TDG or other person has any authority to make any warranty or representation to Licensee or any other person as to the accuracy, completeness or other condition of any of the Products, to modify this Agreement in any manner, to assume or create any obligation or responsibility, whether express or implied, on behalf of TDG, or to otherwise bind TDG in any manner. Licensee shall not assign or otherwise transfer the Products or this Agreement to anyone, including any parent, subsidiary, affiliated entity or third party, or as part of the sale of all or any portion of its business, or pursuant to any merger, consolidation or reorganization, without TDG's prior written consent. Except that TDG may unilaterally create or amend any Pricing Schedule, including modification of prices for the Products or maintenance, prospectively, any waiver, amendment, or modification of any provision hereof shall not be effective unless made in writing and duly signed by both Licensee and TDG. No delay in exercising, no course of dealing with respect to, and no partial exercise of any right or remedy hereunder shall constitute a waiver of such right or remedy, or any other right or remedy, or future exercise thereof. If any provision hereof is invalid, illegal or unenforceable under any applicable statute or rule of law, it is to that extent to be deemed omitted. The remainder of the Agreement shall be valid and enforceable to the maximum extent possible. The undersigned individual signing this Agreement on behalf of Licensee represents and warrants to TDG that he or she is duly authorized to execute the Agreement on behalf of Licensee, and that this Agreement is the valid, binding and enforceable obligation of Licensee in accordance with its terms. This Agreement shall be governed by the laws, other than the choice of law rules, of the State of Texas. Licensee hereby consents for all purposes and to the fullest extent possible to the jurisdiction of the courts of the State of Texas with regard to any matter relating to the interpretation or enforcement of the Agreement, and waives any objection it might otherwise have that any such forum is inappropriate or inconvenient.

The undersigned acknowledges as and on behalf of Licensee that Licensee has read and understands this Agreement, has received full and adequate consideration for it, and that Licensee agrees to be bound by its terms. In witness whereof, this Agreement is executed:

LICENSEE:

_____
(Type Licensee's name)

By _____
(Authorized signature)

_____
(Type name and title)

Date _____

APPENDIX I

ASSET MAINTENANCE AGREEMENT

This Asset Maintenance Agreement (the "Agreement") is by and between SoftSearch Holdings, Inc. ("SoftSearch"), a corporation organized under the laws of the State of Texas, with its principal offices located at Abilene, Texas, and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively, the "Parties").

PREMISES

Whereas, SoftSearch and GeoQuest International Holdings, Inc. entered into an agreement, dated _____, pursuant to which SoftSearch's wholly-owned subsidiary Dwight's Energydata, Inc. ("Dwights") and GeoQuest's wholly-owned subsidiary Petroleum Information Corporation will merge their assets (the "Acquisition"); and

Whereas, the Commission is now investigating the Acquisition to determine whether it would violate any of the statutes enforced by the Commission; and

Whereas, The Commission has reason to believe that the agreement would violate Section 5 of the Federal Trade Commission Act, and that, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act, statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order ("Consent Order"), the Commission must place it on the public record for a period of at least sixty days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an agreement is not reached preserving the Specified Data (as defined in the Agreement Containing Consent Order) during the period prior to the time that the Consent Order becomes final, divestiture of said data to an possible in any proceeding challenging the legality of the Acquisition in the event that the Consent Order does not become final; and

Whereas, the action of SoftSearch in entering into this Agreement shall in no way be construed as an admission by SoftSearch that the

Acquisition violates the statutes as alleged in the draft complaint attached hereto; and

Whereas, SoftSearch understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now therefore, in consideration of the Commission's agreement that, unless it determines to reject the Consent Order, it will not seek further relief from the Parties with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order annexed hereto, and to seek the divestiture of such assets to be preserved under this Agreement as may be required to maintain the level of competition that existed prior to the Acquisition, the Parties agree as follows:

1. SoftSearch agrees to execute, and upon its issuance to be bound by, the attached Consent Order.

2. SoftSearch agrees that from the date this Agreement is accepted by the Commission until the earliest of the dates listed in subparagraphs (a) and (b) it will comply with the provisions of this Agreement.

(a) The date the Consent Order becomes final; or

(b) Three business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's rules.

3. SoftSearch shall maintain and update the Specified Data; preserve its viability and marketability, and prevent its destruction, removal, wasting, deterioration or impairment of any kind.

4. If the Commission seeks in any proceeding with respect to the Acquisition to obtain injunctive or equitable relief, SoftSearch shall not raise an objection based upon the fact that the Commission has permitted the Acquisition to be consummated. SoftSearch also waives all rights to contest the validity of this Agreement.

5. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to SoftSearch made to its principal office, SoftSearch shall permit any duly authorized representative of the Commission:

(a) Access during the office hours of SoftSearch or Dwights, in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in possession or under the control of SoftSearch relating to compliance with the Agreement; and

(b) Upon five (5) days' written notice to SoftSearch or Dwights and without restraint or interference from it, to interview officers or employees of SoftSearch or Dwights, who may have counsel present, regarding any such matters.

6. The Agreement shall not be binding until approved by the Commission.