

Complaint

88 F.T.C.

IN THE MATTER OF  
RSR CORPORATION

ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC.  
7 OF THE CLAYTON ACT

*Docket 8959. Complaint, Apr. 1, 1974 — Final Order,\* Dec. 2, 1976*

Order requiring a Dallas, Texas, producer of secondary lead products, among other things, to divest itself, within one (1) year, of the assets of Quemetco, Inc., excluding the acquired facility located in Seattle, Washington, and the capital derived from the sale of its acquired interest in the facility located in the Republic of Mexico. Further, the order prohibits respondent from acquiring any domestic lead producing company for a period of ten (10) years without prior F.T.C. approval.

*Appearances*

For the Commission: *K. Keith Thurman, Anuthalia Lingos, and James C. Egan, Jr.*

For the respondent: *Robert L. Wald, Wald, Harkrader & Ross, Washington, D.C.; and Merrill L. Hartman, Hewett, Johnson, Swanson & Barbee, Dallas, Tex.*

COMPLAINT

The Federal Trade Commission having reason to believe that RSR Corporation, a corporation subject to the jurisdiction of the Commission, has acquired the stock of Quemetco, Inc., a corporation, in violation of Section 7 of the Clayton Act, as amended, (15 U.S.C. 18), hereby issues this complaint, pursuant to Section 11 of that Act (15 U.S.C. 21), stating its charges in that respect as follows:

I. DEFINITIONS

1. For the purpose of this complaint, the following definitions shall apply:

(a) "The U.S. lead market" consists of all primary lead and secondary lead produced in the United States and all imports of lead pigs and bars.

(b) "Secondary lead" is lead recovered from scrap sources, such as scrap lead-acid type batteries.

(c) "Primary lead" is refined lead and antimonial lead produced by the smelting and refining of ores and base bullion.

(d) "Refineries" include smelters in addition to refining facilities.

\* Reported as corrected by Order of the Commission dated Jan. 7, 1977.

## II. RSR CORPORATION

2. Respondent, RSR Corporation (hereinafter "RSR"), is now, and was at the time of the acquisition a Delaware corporation with its principal office and place of business located at 2727 North Westmoreland, Dallas, Texas.

3. Effective October 1, 1971, RSR acquired substantially all of the common stock of Revere Smelting and Refining Corp. (hereinafter "Revere") and acquired all of the capital stock of Murph Metals Incorporated (hereinafter "Murph"). Prior to October 1, 1971, Revere was controlled by the same principals as RSR and operated a secondary lead smelter and refinery located in Newark, New Jersey. Murph, prior to October 1, 1971, operated a secondary lead smelter and refinery located in Dallas, Texas.

4. Murph and Revere had combined sales in 1970 of \$26,198,141. In 1971, RSR had total sales of \$27,727,027 and assets of \$11,620,583. For the first nine months of 1972, RSR had sales of \$24,000,000 and assets for the first six months of 1972 of \$12,665,507.

5. Murph and Revere had combined shipments of 56,000 short tons of secondary lead in 1970. Total shipments by RSR totalled 61,000 short tons in 1971 and 75,000 short tons in 1972.

6. In both 1971 and 1972, RSR was the second largest domestic producer of secondary lead with refineries located in Dallas, Texas and Newark, New Jersey.

7. At all times relevant herein, RSR sold and shipped its products throughout the United States and was and is now engaged in commerce as "commerce" is defined in the Clayton Act.

## III. THE ACQUISITION

8. On or about October 26, 1972, RSR acquired all of the then issued and outstanding capital stock of Quemetco, Inc. (hereinafter "Quemetco"), a subsidiary of St. Joe Minerals Corporation (hereinafter "St. Joe"), for \$22 million.

## IV. QUEMETCO

9. Quemetco was at all times relevant herein and is now a California corporation with its principal office and place of business located at 720 South Seventh Ave., City of Industry, California.

10. Quemetco was founded in 1947 as Western Lead Products Co. In 1969, Western Lead Products Co. acquired the Pacific Division of Bunker Hill Company, which operated a secondary lead smelter located in Seattle, Washington. In July of 1970, Western Lead Products Co. changed its corporate name to Quemetco, Inc. On December 29, 1970,

Quemetco was acquired by St. Joe for \$7.8 million and continued its operation as a St. Joe subsidiary until October 26, 1972, when RSR acquired Quemetco from St. Joe.

11. In 1971 and prior to its acquisition by RSR in 1972, Quemetco was the Nation's fourth largest producer of secondary lead and a producer of lead and zinc oxides and alloys, with operating facilities located in the States of Washington, Indiana, Texas, California, and the Republic of Mexico. During 1971, Quemetco operated secondary lead refineries in City of Industry, California; Indianapolis, Indiana; and Seattle, Washington. In 1972, in addition to the above facilities Quemetco commenced secondary lead smelting and refining at its newly constructed Wallkill, New York plant.

12. In 1965, Quemetco had sales of \$10,892,696 and assets of \$4,358,276; in 1968, sales had risen to \$12,936,575 and assets to \$5,288,035; and in 1971, sales were \$32,127,415 and assets were \$20,132,422. For the first nine months of 1972, Quemetco had sales of \$30.4 million and assets of \$26,243,890.

13. In 1968, Quemetco had shipments of 17,464 short tons of secondary lead. In 1971, Quemetco's shipments of secondary lead had risen to 39,558 short tons and were 43,281 short tons in 1972.

14. At all times relevant herein, Quemetco sold and shipped its products throughout the United States and engaged in commerce as "commerce" is defined in the Clayton Act.

#### V. TRADE AND COMMERCE

15. The relevant geographic market involved in this complaint is the United States as a whole.

##### A. *The U.S. Lead Market*

16. In 1971, the U.S. lead market consisted of 1,409,200 short tons of lead produced by domestic primary and secondary lead refiners, or imported as lead pigs and bars; its value was approximately \$389 million. In 1972, the U.S. lead market consisted of 1,551,604 short tons with a value of approximately \$467 million.

17. Prices in the U.S. lead market are posted in New York City by the leading primary lead producers. Such prices reflect the supply of lead from primary and secondary refineries and imports of lead pigs and bars. The New York price of lead has increased over the last two years, going from an average price of 13.815 cents per pound in 1971 to 16.0 cents per pound in April 1973.

18. The U.S. lead market is highly concentrated, with the top four firms accounting for over 62 percent of total shipments in 1971 and

1972 by weight and the top eight firms accounting for over 70 percent of total shipments by weight in those years.

19. The number of firms smelting and refining lead in the U. S. declined from 1962 to 1972.

20. The barriers to entry into lead smelting and refining have increased significantly between 1962 and 1972.

21. In 1971, RSR accounted for 4.3 percent of total shipments by weight in the U.S. lead market, and for 4.9 percent of such shipments by weight in 1972.

22. In 1971, Quemetco accounted for 2.8 percent of total shipments by weight in the U.S. lead market, and for 2.7 percent of such shipments by weight in 1972.

#### B. *The U. S. Secondary Lead Market*

23. In order to meet U.S. lead consumption requirements, it is necessary and economical to produce secondary as well as primary lead. Most secondary lead is produced from recycled scrap, such as scrap lead-acid type batteries.

24. The refineries used for the production of secondary lead differ substantially from those involved in refining primary lead. Secondary refineries cannot be used to refine primary lead. The only U. S. firm producing both secondary and primary lead uses separate facilities for the production of each.

25. Subsequent to the acquisition of Quemetco by RSR, only ASARCO produced and sold both primary and secondary lead. N L Industries, Inc. sells both primary and secondary lead although it only produces secondary lead.

26. There are certain distinct customers for secondary lead. The antimonial lead used to produce the grids of lead-acid type storage batteries is produced almost entirely by secondary refineries.

27. In 1971, the U.S. secondary lead market consisted of 572,800 short tons with a total value of approximately \$152 million. In 1972, the U.S. secondary lead market consisted of 577,870 short tons with a total value of approximately \$174 million.

28. Concentration is extremely high in the smelting and refining of secondary lead. Three firms accounted for approximately 54 percent of 1971 secondary lead production and accounted for over 56 percent of such production in 1972.

29. In 1971, RSR accounted for 10.6 percent of shipments by weight in the secondary lead market. The value of this 1971 production was approximately \$17 million. In 1972, RSR accounted for 13.0 percent of shipments by weight of secondary lead. The value of this 1972 production was approximately \$23 million.

30. In 1971, Quemetco accounted for 6.9 percent of shipments by weight in the secondary lead market. The value of this 1971 production was approximately \$11 million. In 1972, Quemetco accounted for 7.5 percent of shipments by weight of secondary lead. The value of this 1972 production was approximately \$13 million.

31. Prior to its acquisition of Quemetco, RSR planned to construct a new smelting and refining facility to replace its Newark, New Jersey plant which was to be closed permanently in 1973. Concurrent to its acquisition of Quemetco, RSR abandoned its plans for the new construction because of the existence of Quemetco's new plant in Wallkill, New York.

32. Prior to its acquisition of Quemetco, RSR planned to construct or acquire a secondary lead smelter and refinery in the Midwest. Concurrent to its acquisition of Quemetco, RSR abandoned its plans for this facility because of the existence of Quemetco's plant in Indianapolis, Indiana.

33. The number of secondary lead smelters and refineries in the U.S. has declined from 1962 to 1972.

34. The barriers to entry into secondary lead smelting and refining have increased significantly between 1962 and 1972.

#### VI. EFFECTS OF THE ACQUISITION

35. The effects of the acquisition of Quemetco by RSR may be substantially to lessen competition or to tend to create a monopoly in the production and sale of lead in the U.S. lead market and of secondary lead in the U.S. secondary lead market, in violation of Section 7 of the Clayton Act, as amended, in the following ways among others:

(a) Substantial actual competition in the U.S. lead market between Quemetco and RSR and between Quemetco and other firms in that market has been eliminated.

(b) Substantial actual competition between two of the leading firms, *i.e.*, RSR and Quemetco, in the production of secondary lead in the United States has been eliminated and, also, substantial actual competition in the secondary lead market between Quemetco and other firms in that market has been eliminated.

(c) The position of RSR in the U.S. lead market and the U.S. secondary lead market has been strengthened.

(d) The already high barriers to entry into the U.S. lead market and into the U.S. secondary lead market have been raised.

(e) The high levels of concentration in the U.S. lead market and in the U.S. secondary lead market have been significantly increased.

## VII. THE VIOLATION CHARGED

36. The acquisition of Quemetco, Inc., by RSR Corporation constitutes a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. §18).

INITIAL DECISION BY MONTGOMERY K. HYUN, ADMINISTRATIVE  
LAW JUDGE

APRIL 20, 1976

## [1] PRELIMINARY STATEMENT

On April 1, 1974, the Federal Trade Commission ("Commission") issued the complaint herein, charging RSR Corporation ("RSR") with violation of Section 7 of the Clayton Act, as amended (15 U.S.C. §18), by its October 1972 acquisition of substantially all of the stock of Quemetco, Inc. ("Quemetco"), a wholly-owned subsidiary of St. Joe Minerals Corporation ("St. Joe"), [2] for about \$22 million. The complaint alleges that the effect of RSR's acquisition of Quemetco may be to lessen competition substantially or tend to create a monopoly in the "U.S. lead market" and the "U.S. secondary lead market" by (1) eliminating substantial actual competition between Quemetco and RSR and between Quemetco and other firms in the relevant markets, (2) strengthening the position of RSR in the relevant markets, (3) raising entry barriers into the relevant markets, and (4) significantly increasing concentration levels in the relevant markets.

On May 13, 1974, RSR duly filed its answer to the complaint, admitting certain allegations and denying others. By order of July 3, 1974, RSR's answer was amended. RSR denied that the "U.S. lead market" and "U.S. secondary lead market" are relevant markets in which to assess the effects of the challenged acquisition. It also denied that the acquisition had any of the effects alleged in the complaint.

On July 2, 1974, RSR filed a Motion for Severance of Geographic Market Issue and Separate Trial Thereon Before Disposition of Other Issues. The motion was denied by order of July 3, 1974. On March 10, 1975, RSR filed a Motion for Summary Decision on the Geographic Market Issue and for Order Dismissing Complaint, with supporting affidavits. The motion was denied by order of March 24, 1975. On June 23, 1975, RSR filed a Motion for Adjudication of the Issue of Liability Prior to Hearings on Relief. The motion was denied by order of July 8, 1975.

Prehearing conferences were held in Washington, D.C. on July 2, 1974 and April 28, 1975 and several informal conferences were held with counsel for the purpose of resolving outstanding procedural

Initial Decision

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problems. Both parties were permitted substantial prehearing discovery and prehearing documents, including document lists, witness lists, copies of proposed exhibits and trial briefs, were exchanged. Presentation of complaint counsel's case-in-chief began in Washington, D.C. on July 21, 1975 and ended on July 31, 1975. Defense hearings began on September 3, 1975 and ended on September 19, 1975. Rebuttal hearings were held on October 6, 7 and 17, 1975. The evidentiary record was closed on January 20, 1976 after reception of "certain stipulations of anticipated testimony in lieu of hearing and reception of further documentary evidence on December 18, [3] 1975 and January 19, 1976.<sup>1</sup> Counsel for the parties filed proposed findings of fact, conclusions of law and order, together with supporting briefs, on March 1, 1976 and answers on March 12, 1976. The record contains some 2400 pages of transcript, numerous documentary exhibits and several physical exhibits.

This case is before me upon the complaint, answer, testimony and other evidence, proposed findings of fact and conclusions of law and order and briefs filed by the parties. These submissions have been given careful consideration and, to the extent not adopted herein in the form proposed or in substance, are rejected as not supported by the record or as immaterial. Any motions not heretofore or herein specifically ruled upon, either directly or by the necessary effect of the conclusions in this initial decision, are denied.

Having heard and observed the witnesses and having carefully reviewed the entire record in this proceeding, together with the proposed findings and conclusions submitted by the parties, the administrative law judge makes the findings set forth below.<sup>2</sup>

#### [4] FINDINGS OF FACT

##### I. DEFINITIONS

1. For the purpose of these findings, the following definitions shall apply:

<sup>1</sup> The intervals were necessary in order to accord the parties reasonable opportunity to prepare and negotiate the terms of stipulations, coincident with complaint counsel's engagement in the trial of another Section 7 proceeding before the Commission (Dkt. 8972) and the year-end holidays.

<sup>2</sup> References to the record are made in parentheses, and the following abbreviations are used:

F—Findings in this initial decision.

CFP—Proposed findings of fact, conclusions of law and order of complaint counsel.

CRB—Complaint counsel's reply brief.

RFP—Respondent's proposed findings of fact, conclusions of law and proposed order.

RB—Respondent's brief in support of its proposed findings of fact, conclusions of law and order.

RRB—Respondent's reply brief.

CX—Complaint counsel exhibits.

RX—Respondent's exhibits.

Transcript is referred to with the last name of the witness and page number.

- a. "Secondary lead" is lead recovered from scrap sources, such as scrap lead-acid type batteries. (Complaint and Answer, Par. 1(b).)
- b. "Primary lead" is lead produced by smelting and refining of ores and base bullion. (Complaint and Answer, Par. 1(c); Blair 33.)
- c. "Alloyed lead" is lead containing one or more alloying minerals. (Lospinoso 750.)
- d. "Soft lead" or "pure lead" is lead other than alloyed lead, containing at least 99.97 percent lead by weight. (Blair 31, 35; Ray 168; Mardick 278-79.)
- e. "Hard lead" is alloyed lead containing antimony or calcium as at least one of the alloying minerals. Such lead has the characteristic of hardness or strength, and is non-malleable. (Blair 31; Ray 167-68, 171; Kenny 241; Lospinoso 750-51.) [5]
- f. "Antimonial lead" is alloyed lead containing antimony as the primary alloying mineral, but often containing lesser percentages of tin, arsenic and various other minerals in the form of impurities. (Kenny 241; Mardick 277; Lospinoso 738, 752.)
- g. "Battery groups" are the inside components of a battery that has been decased and drained of acid. (Blair 46.)
- h. "TEL" (tetraethyl lead) is a gasoline antiknock additive. (Pren-gaman 1014.)

## II. IDENTITY AND BUSINESS OF RESPONDENT RSR CORPORATION

2. Respondent RSR Corporation (RSR) is now, and was at the time of its acquisition of Quemetco, Inc. (Quemetco), a Delaware corporation. Its principal office and place of business at the time of the acquisition was at 2727 North Westmoreland, Dallas, Texas. (Complaint and Answer, Par. 2.) Its principal office and place of business today is at 1111 West Mockingbird Lane, Dallas, Texas. (Lospinoso 713-14.)

3. RSR was founded in 1970 for the purpose of acquiring and operating a lead smelting and refining plant in Newark, New Jersey, originally under the name "Revere Smelting & Refining Corporation" (Revere). (CX 25E.) On October 1, 1971, RSR reorganized and simultaneously acquired Murph Metals Incorporated (Murph), which operated a lead smelting and refining plant in Dallas, Texas. (Complaint and Answer, Par. 3; CX 25E.) The Newark and Dallas plants were recycling operations, that is, they produced secondary pure lead and lead alloys by smelting and refining lead-bearing scrap. (CX 25E.)

4. Murph and Revere had combined sales in 1970 of about \$26,198,000. In 1971, RSR had total sales of about \$27,727,000 and assets of \$11,620,583 as of December 31, 1971. RSR had sales of \$24,000,000 for the first nine months of 1972, and assets of \$12,665,507 as of June 30, 1972. (Complaint and Answer, Par. 4.)



[6] 5. Murph and Revere had combined shipments of 56,000 short tons of secondary lead in 1970. Total shipments by RSR totalled 61,000 short tons in 1971 and 75,000 short tons in 1972. (Complaint and Answer, Par. 5.)

6. In both 1971 and 1972, RSR was the second largest domestic producer of secondary lead in the United States. (Complaint and Answer, Par. 5; CX 64A-C *in camera*.)

7. Prior to October 26, 1972, RSR produced antimonial lead and other lead alloys, lead products and pure lead. (Initial Request for Admissions and Answer, Par. 30.)

8. In 1970 and 1971, approximately 65 percent of RSR's dollar net sales were derived from sales of bulk lead. (Third Request for Admissions and Answer, Pars. 38, 39.) For the first six months of 1972, approximately 73 percent of RSR's dollar net sales were derived from sales of bulk lead. (Third Request for Admissions and Answer, Par. 40.)

9. In 1972, a preponderance of RSR's sales of bulk lead were of antimonial lead alloys. (Answer to Third Request for Admissions, Par. 36.)

10. In 1971, three battery manufacturers accounted for approximately 10 percent each of RSR's total sales and a fourth battery manufacturer accounted for about 7 percent. (Third Request For Admissions and Answer, Par. 41.) During the first six months of 1972 (ended June 30), three major battery manufacturers accounted for approximately 20 percent, 14 percent and 12 percent, respectively, of RSR's total sales. (Third Request for Admissions and Answer, Par. 42.)

11. Since 1972, RSR has been shifting its secondary lead production to a greater proportion of soft lead. By 1975, RSR plants were producing approximately 65 percent soft lead and 35 percent antimonial lead. This change in production was made in response to increased customer demand for soft lead. (Lospinoso 834-35.)

12. In 1974, RSR's soft lead met the standards of the London Metal Exchange for lead and has been traded on that market since 1975. (Kenny 258-59; Kenkel 386; Threlkeld 1453.)

[7] 13. In 1971 and 1972, RSR considered antimonial lead to be a product with a limited future, and desired to become more active in other product areas. (Lospinoso 854-55, 979-80; Hatten 1218-20.) It hoped to become a "low-cost, high volume producer of lead" by acquiring a network of lead recycling plants extending across the country. (Lospinoso 852-53.)

14. During that period, RSR was also faced with the need to replace its existing lead recycling plant in Newark, New Jersey. This plant was located on premises leased on a month-to-month basis from the Newark Housing Authority, and RSR was on notice that the lease would be

terminated and the plant thus closed in 1973. (Complaint and Answer, Par. 31; CX 25B.)

15. On August 24, 1972, RSR made a public offering of 320,000 shares of common stock. It planned to apply the net proceeds of the offering, expected to amount to \$3,003,400, to construction of a new smelting and refining facility to replace the Newark plant. (CX 25C-D.)

16. In 1971, RSR sold either lead alloys or soft lead in at least twenty States. (Initial Request For Admissions and Answer, Par. 31.)

17. Since it was founded in 1970, RSR has been engaged in commerce as "commerce" is defined in the Clayton Act. (Answer, Par. 7.)

### III. IDENTITY AND BUSINESS OF QUEMETCO, INC., THE ACQUIRED FIRM

18. Prior to its acquisition by RSR on October 26, 1972, Quemetco, Inc. (Quemetco) was a Delaware corporation organized under the laws of Delaware with its principal office and place of business located at 720 South Seventh Ave., City of Industry, California. (Initial Request for Admissions and Answer, Pars. 1 and 2; Second Request for Admissions and Answer, Par. 1.)

19. Quemetco was founded in 1946 and incorporated the following year under the name "Western Lead Products Co." (Quenell 496) In 1969, it acquired from Bunker Hill Company a secondary lead smelter located in Seattle, [8] Washington. (Initial Request for Admissions and Answer, Par. 4.) Western Lead Products changed its name to "Quemetco, Inc." in 1970. (RSR's Answer to Initial Requests for Admissions 5.) At that time it operated lead recycling plants at three locations: City of Industry, California; Seattle, Washington; and Indianapolis, Indiana. (CX 18B-C; Quenell 497-98.)

20. In the fiscal year ending March 31, 1968, Quemetco had sales of about \$12,936,000 and assets of \$5,288,035 as of March 31, 1968. (Initial Request for Admissions and Answer, Pars. 19 and 20.) In 1971 Quemetco had sales of about \$32,127,000 and assets of \$20,132,422 as of December 31, 1971. (Initial Request for Admissions and Answer, Pars. 21 and 22.) For the first nine months of 1972, Quemetco had sales of about \$30.4 million and assets of \$26,243,890 as of September 30, 1972. (Initial Request for Admissions and Answer, Pars. 23 and 24.)

21. Quemetco produced 39,558 short tons of secondary lead in 1971 and 43,281 short tons in 1972. (Initial Request for Admissions and Answer, Pars. 26 and 27.) In 1971, the value of Quemetco's secondary lead shipments was approximately \$11 million; in 1972, it was

approximately \$13 million. (Initial Request for Admissions and Answer, Pars. 28 and 29.)<sup>3</sup>

22. At the time of its acquisition by RSR, Quemetco produced lead oxides, antimonial lead alloys, zinc alloys, miscellaneous lead products, special lubricants, and soft lead. (Initial Request for Admissions and Answer, Par. 8.)

23. In 1969, the management of Quemetco attempted to raise money for the purpose of expanding the company's recycling operations. They considered a public offering of stock but found the market not receptive; they sought a private placement but found the cost too high. They were, therefore, receptive when officials of St. Joe Minerals Corporation (St. Joe), a leading producer of [9] primary lead, approached them in 1970 with an interest in the purchase of the company. The purchase was consummated on December 29, 1970, and Quemetco became a wholly-owned subsidiary of St. Joe. (Quenell 499.)

24. In the year following its purchase of Quemetco, St. Joe authorized a Quemetco expansion program involving the construction of a replacement plant for the Indianapolis plant and a new recycling plant in Wallkill, New York.<sup>4</sup> (RSR's Answers to Initial Request for Admissions 10, 12-14; RSR's Answer to Second Request for Admissions 2.)

25. In July 1971, Quemetco began construction of a new secondary lead smelter and refinery at Indianapolis, Indiana to replace its existing plant there. (Initial Request for Admissions and Answer, Pars. 12 and 13; Blair 60-61, 70.) That plant had just commenced production of oxide and smelting of secondary lead at the time of the acquisition by RSR (CX 14; Blair 61-62, 64) but the battery breaking system was not complete at that time. (Blair 61-64; Quenell 507-08.) This plant had a designed capacity of approximately 30,000-36,000 short tons of secondary lead per year, operating on a three shift, 5-day per week basis. (Blair 70; Quenell 508-09.)

26. In September 1971, Quemetco began construction of a new secondary lead smelter and refinery and oxide plant in Wallkill, New York. (Initial Request for Admissions and Answer, Par. 10; Blair 59-60.) That plant had a designed capacity of approximately 30,000-36,000 short tons of secondary lead per year, operating on a three shift, 5-day per week basis. (Blair 70; Quenell 508-09.) At the time of the acquisition by RSR, the Wallkill plant had its equipment installed and had commenced the production of oxides and was in the final testing stage

<sup>3</sup> See also "Answer to Complaint Counsel's Motion to Have Certain Requests for Admissions Deemed Admitted" at 5-6, filed Nov. 27, 1974, and "Order Ruling on Complaint Counsel's Motion to Have Certain Requests for Admissions Deemed Admitted" at 2, filed Feb. 4, 1975.

<sup>4</sup> The Wallkill plant is referred to as the "Middletown" plant at several places in the record of this proceeding. Wallkill and Middletown are interchangeable names for the same plant.

prior to the commencement of smelting and refining operations within one month. (Initial Request for Admissions and Answer, Par. 11; Blair 60-61, 63-64; Quenell 507-08.)

[10] 27. On April 21, 1972, the Federal Trade Commission announced its intent to issue a complaint challenging St. Joe's acquisition of Quemetco under Section 7 of the Clayton Act and seeking total divestiture of the Quemetco facilities. ([1970-1973 Transfer Binder] Trade Reg. Rep. ¶19,966; Quenell 500.) The complaint (F.T.C. Dkt. 8892) was formally issued on June 29, 1972 [83 F.T.C. 1357]; it alleged that St. Joe's acquisition of Quemetco eliminated actual and potential competition between St. Joe and Quemetco, foreclosed St. Joe's competitors from selling lead to Quemetco, and strengthened St. Joe's dominant market position. ([1970-1973 Transfer Binder] Trade Reg. Rep. ¶¶19,966 and 20,047)

28. In view of the possibility that St. Joe would, as a result of the F.T.C. challenge, ultimately be required to divest itself of Quemetco, RSR's management sought to determine St. Joe's interest in selling Quemetco to RSR. (Quenell 501-02.) RSR's management believed that the combination of Quemetco's plants with their remaining plant in Dallas would provide a good network of lead recycling plants dispersed throughout the country. (Lospinoso 852-53; see also Craig 437.)

29. On October 26, 1972, St. Joe sold all of the outstanding stock of Quemetco to RSR. (Complaint and Answer, Par. 8.) The purchase price was \$22 million, paid in the form of \$20 million in cash and a \$2 million note. The \$20 million in cash was derived from a \$12 million bank loan, a \$5 million note placed with private investors, and the use of approximately \$3 million of the net proceeds from the August 24, 1972 public offering. (CX 14.)

30. Quemetco was at the time of the acquisition and has since been engaged in commerce as "commerce" is defined in the Clayton Act. (Answer, Par. 14.)

#### IV. THE RELEVANT PRODUCT MARKETS

##### A. *The U.S. Lead Market*

31. Lead is a heavy metallic element. (Third Request for Admissions and Answer, Par. 2) It is high in density (making it an excellent shield for protection against x-ray and nuclear radiation), heavy, with poor electricity and heat [11] conducting qualities, resistant to certain chemical substances and soft or malleable (unless alloyed with a hardening agent). Lead is adaptable to a wide range of uses. (Third Request for Admissions and Answer, Par. 3; Prengaman 1003.) Because of its unique properties, lead is peculiarly suited to the manufacture of

a wide range of products, including batteries; gasoline antiknock compounds; bearing metals; cable covering; caulking lead; lead pipe, traps and bends; casting metals; collapsible tubes; lead foil (for bottle tops); terne metal; solder; type metal; paint pigments, and for annealing and galvanizing. (Prengaman 1007-08, 1014-15, 1017, 1019-20, 1022-29, 1033-35, 1037-38, 1041-44.)

32. There are substitutes for lead in some uses. (Trozzo 1733, 1736.) For example, plastic may be substituted for lead in pipe and cable covering; iron, brass, copper or steel may be substituted for lead in ammunition; other processing techniques may be used in place of tetraethyl lead in raising the antiknock qualities of gasoline. (Trozzo 1736, 1741-42, 1832.) Respondent does not, however, contend that these products should be included in the relevant market, for they are not interchangeable with lead for most end uses.

33. The record does not contain evidence of effective competition with lead by substitute products for the principal uses of lead. United States consumption of lead increased steadily from 1968 to 1972 despite substantial fluctuations in its price. (CX 19C, Table 1.)

34. "Primary lead" is lead produced by the smelting and refining of lead ores and concentrates. (Blair 33; Ray 168; Kenny 242; Mardick 274; Craig 406-07; Quenell 499; Prengaman 1003; Cassara 1349; Bers 1256; Threlkeld 1446; see also Complaint and Answer, Par. 1(c).) "Secondary lead" is lead produced by the smelting and refining of lead-bearing scrap; it is also referred to as "recycled lead." (Blair 20; Ray 168-69; Kenny 241-42; Mardick 271; Craig 410-11; Quenell 499-500; Prengaman 1004; Bers 1256; Cassara 1349; Threlkeld 1446; see also Complaint and Answer, Par. 1(b).)

35. Lead is used in two different forms, as pure or soft lead and as alloyed lead. Pure lead is a product that is virtually all lead, with only minor traces of impurities; it is also called "soft lead" because of its [12] malleability (Blair 31; Lospinoso 715, 751; Prengaman 1005) and accounts for about two-thirds of total lead consumption in the United States. (RX 61V, Table 14; RX 80; RX 81; see also Barber 2036-38, 2044-50, 2238-39.) Primary soft lead and recycled soft lead, when made to conform to the same specifications, are interchangeable for the principal end uses of soft lead. (Blair 83; Lospinoso 716, 815-17; Prengaman 1004, 1007-45; Bers 1256-57.) "Hard lead" is an alloy of lead and other elements such as antimony, calcium, tin or arsenic; the elements are added to increase the strength of the product. (Blair 31; Lospinoso 750-52; Prengaman 1006.) Hard lead made from primary lead and hard lead made from recycled lead, when made to conform to the same specifications, are interchangeable for the principal end uses of

hard lead. (Lospinoso 815, 817-19; Prengaman 1004, 1009-37; Bers 1257-58.)

36. The Lead Industries Association is an industrywide trade association to which processors of lead and manufacturers of lead products belong. The organization seeks to promote the use of lead. (Mardick 309; Craig 404.)

37. The parties agree that the U.S. lead market comprising primary and secondary lead is an appropriate product market for the purposes of this proceeding.

#### B. *The U.S. Secondary Lead Market*

38. Within the overall U.S. lead market, there are two distinct submarkets, the production and sale of primary lead and the production and sale of secondary lead. The two submarkets are distinguished by significant differences in production, marketing, end uses, vendors and prices.

39. Industry witnesses and lead purchasers recognized the term "secondary lead" as referring to the smelting and refining of lead from scrap (or recycled) sources. (Blair 20; Warrender 124; Ray 168-69; Kenny 241; Mardick 271; Kenkel 361, 370; Craig 410-11; Quenell 499; Prengaman 1004; Bers 1241, 1256; Cassara 1349; Threlkeld 1446.) Likewise, industry witnesses and lead purchasers recognized the term "primary lead" as referring to the smelting and refining of lead from ores and base bullion. (Blair 33; Warrender 124; Ray 168; Kenny 242; Mardick 274; Kenkel 361, 364; Craig 406; Quenell 499; Prengaman 1003; Bers 1241, 1256; Cassara 1349; Threlkeld 1446.)

[13] 40. These terms are commonly used in the lead industry. (Blair 20, 33; Ray 168-69; Kenny 241-42; Mardick 271; Craig 406, 410-11; Quenell 499; Lospinoso 875.)

41. RSR recognizes that it competes primarily with other secondary smelters and refiners. It stated in filings with the Securities and Exchange Commission on June 7 and August 24, 1972:

The Company competes not only with other independent secondary producers, but also with smelting and refining divisions of integrated manufacturers of lead products, as well as, to a limited extent, with producers of primary lead. (CX 25G; CX 26B.)

42. The industry trade association, the Lead Industries Association, publishes statistics which distinguish between primary and secondary lead. (Mardick 309; Craig 431.)

43. The U.S. Bureau of Mines also publishes several statistical reports which separately state production information for primary and

