001.1 (c)

[redacted]

[redacted]

May 2, 1991

Richard B. Smith, Esq.
Federal Trade Commission
Premerger Notification Office
6th Street and Pennsylvania Ave., N.W.
Washington, D.C. 10580

Dear Mr. Smith:

Enclosed are the first and second pages relating to the H-S-R value of assets issue that we have been discussing.

I very much appreciate your assistance in this matter.

Sincerely,

[redacted]

Enclosure

[redacted]

1.0 <u>Purchase Price</u>

1.1 The parties intend that the purchase price ("Purchase Price") to be paid by [redacted] for the Assets would be an amount calculated as follows: Purchase Price equals (a) $14.5 million, less (b) the amount of gross receivables at Closing without offset for bad debt reserves, less (c) $2.75 per ton multiplied by the number of tons of "Marketable Product Inventory" (as defined below.

1.2 The Purchase Price would be payable as follows:

(a) At Closing, [redacted] will pay to [redacted] the following amount ("Downpayment"): (i) $6 million, less (ii) the value at Closing of Marketable Product Inventory, as defined below.

(b) The amount remaining after subtracting the Downpayment from the Purchase Price would be paid in equal principal payments at the end of the fifth, tenth and fifteenth year after Closing.

(c) Interest would accrue on the amount of the outstanding principal balance at a rate of 8.75% annually. Interest payments would be paid quarterly. [redacted] would have the right without penalty to prepay at any time any or all of the outstanding principal balance. The parties intend to include in the Asset Purchase Agreement a mechanism to adjust the interest rate every five (5) years for changes of two percent (2%) or more in market interest rates.

1.3 Product Inventory - Immediately prior to Closing the parties would agree upon the number of tons of Marketable Product Inventory (which is defined as inventory which would be expected to move within a one (1) year period based upon 1990 sales by product). After Closing [redacted] would act as sales agent on behalf of [redacted] for the sale of such inventory. [redacted] would use its best efforts to sell such inventory. All product sold by [redacted] after Closing would be deemed to be sales of [redacted] Marketable Product Inventory, until the number of tons sold by [redacted] equals the number of tons of Marketable Product Inventory at Closing. At the end of each month, [redacted] would remit to [redacted] $2.75 per ton for tons sold in the previous month. [redacted] would be entitled to sell such product at such prices as it deems advisable, [redacted] commission to be the difference between the sale price and the $2.75 per ton. The $2.75 per ton price is based upon the assumption that the weighted average selling price of Marketable Product Inventory, using 1990 prices is equal to at least $4.50.

1.4 Accounts Receivable - [redacted] would retain all accounts receivable for all material sold and delivered on or before Closing. The parties will include in the contract appropriate provisions to protect [redacted] ability to collect receivables.

2.0 Non-Compete - In addition to the purchase price, at Closing, [redacted] would pay to [redacted] and [redacted] the total amount of $1.5 million as additional consideration for their agreement not to compete for a period of ten (10) years in the [redacted] or [redacted] business in [redacted] and [redacted] and in any county which is contiguous to [redacted] or [redacted] At Closing, [redacted] would cause [redacted] to sign an agreement not to compete for a period of no more than five (5) years in the [redacted] or [redacted] business in [redacted] and [redacted] and in any county which is contiguous to [redacted] or [redacted]. Nothing in this Paragraph or in the contract will prohibit [redacted], [redacted] or [redacted] from continued [redacted] operations in the above referenced geographic areas.

3.0 Closing - Closing of the transaction ("Closing") would be set for May 30, 1991 provided however that Closing may be held earlier, pending completion of due diligence and necessary contract documents.

5/3/91 advised [redacted] that the PNN office, including A.D. Sipple, was of the view that A will acquire the "inventory" from B at the time of closing. This view is based upon A's setting the price at which the inventory will be sold, B's receiving $2.75/ton no matter what price was received for the inventory. A appears to have obtained the "risk of loss" of the inventory (if it can get only $2/ton, it must still pay B $2.75/ton) and the "benefits of increased value" (it gets everything above $2.75 for which it sells the inventory). Our view is that A is buying the inventory for future payments of $2.75/ton. I referred [redacted] to ABA Letter # [illegible] which discusses "bona fide" consignments and, should this proposal be amenable to such a process.

RBSmith