

available from the Office of the Secretary of the Commission or by accessing the electronic version of this notice at the Commission's World Wide Web site (<http://www.usitc.gov>). A complete copy of Annexes 401 and 403.1 incorporating the modifications is also available from the Office of the Secretary or the Web site.

Written Submissions

No public hearing is being scheduled in connection with these proposed modifications. However, interested parties are invited to submit written statements (original and 14 copies) concerning any economic effects of the modifications. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and must be received no later than the close of business on August 31, 1999. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

Issued: August 2, 1999.

By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 99-20321 Filed 8-5-99; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921-129 (Review)]

Polychloroprene Rubber From Japan

Determination

On the basis of the record¹ developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping finding on polychloroprene rubber from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.²

Background

The Commission instituted this review on August 3, 1998 (63 FR 41282) and determined on November 5, 1998 that it would conduct a full review (63 FR 63748, November 16, 1998). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on December 16, 1998 (63 FR 69306). The hearing was held in Washington, DC, on June 3, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 26, 1999. The views of the Commission are contained in USITC Publication 3212 (July 1999), entitled Polychloroprene Rubber from Japan (Inv. No. AA1921-129 (Review)).

Issued: July 30, 1999.

By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 99-20322 Filed 8-5-99; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Antitrust Division

[Case No. 1: 99CVO1962]

United States v. Allied Waste Industries, Inc. and Browning Ferris Industries, Inc., Civ. No. 99 CV 01962; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia, Washington, DC, in *United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc.*, Civ. No. 99 CV 01962.

On July 20, 1999, the United States filed a Complaint, which alleged that Allied's proposed acquisition of Browning-Ferris Industries, Inc. ("BFI") would violate section 7 of the Clayton Act, 15 U.S.C. 18, by substantially lessening competition in waste collection and/or disposal in 18 markets around the country, including Akron/Canton, OH; Atlanta, GA; Boston, MA; Charlotte, NC; Chicago, IL; Dallas, TX; Davenport, IA; Denver, CO; Detroit, MI; Evansville, IN; Joplin/Lamar, MO; Kalamazoo/Battle Creek, MI; Moline, IL; Oakland, CA; Oklahoma City, OK; Rock Falls/Dixon, IL; Rockford, IL; and Springfield, MO. The proposed Final Judgment, filed on July 20, 1999, requires Allied and BFI to divest commercial waste collection and/or municipal solid waste disposal operations in each of the geographic areas alleged in the Complaint.

Public comment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530 [telephone: (202) 307-0924].

Constance K. Robinson,

Director of Operations & Merger Enforcement.

JUDGE: Ricardo M. Urbina; DECK TYPE:

Antitrust; DATE STAMP: 7/20/1999

Hold Separate Stipulation and Order

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

¹The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

²Commissioners Crawford and Askey dissenting.

I*Definitions*

As used in this Hold Separate Stipulation and Order:

A. *Allied* means defendant Allied Waste Industries, Inc., a Delaware corporation with its headquarters in Scottsdale, Arizona, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

B. *BFI* means defendant Browning-Ferris Industries, Inc., a Delaware corporation with its headquarters in Houston, Texas, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

C. *Relevant Disposal Assets* means, unless otherwise noted, with respect to each landfill, incinerator, or transfer station listed and described herein, all of defendants' rights, titles and interests in any tangible assets, including all fee and leasehold and renewal rights in the listed landfill, incinerator or transfer station; the garage and related facilities; offices; any related assets including capital equipment, trucks and other vehicles, scales, power supply equipment, interests, permits, and supplies; and all of defendants' rights, titles and interests in any intangible assets, including any customer lists, contracts, and accounts, or options to purchase any adjoining property.

Relevant Disposal Assets, as used herein, includes each of the following properties:

1. Incinerator and Landfills

a. Boston, MA

BFI's American Refuel SEMASS waste-to-energy incinerator facility, located at 141 Cranberry Highway (Route 28), Rochester, MA 02576.

b. Chicago, IL

BFI's Zion Landfill, located at 701 Green Bay Road, Zion, IL 60099, BFI's Orchard Hills Landfill, located at 8290 Highway 251, Davis Junction, IL 60120; and BFI's Spoon Ridge Landfill, located at Route 1 and Highway 97, Fairview, IL 61432.

c. Denver, CO

Allied's Denver Regional Landfill, located at 1141 Weld County Road #6, Erie, CO.

d. Detroit, MI

BFI's Arbor Hills Landfill, located at 10690 West Six Mile Road, Northville, MI 48167.

e. Evansville, IN

Allied's Blackfoot Landfill, located at 2726 East State Road, Winslow, IN 47598.

f. Joplin/Lamar/Springfield, MO

Allied's option to purchase the proposed Southwest Regional Landfill, located at Missouri State Highway M, Township 30N, Range 32 West, Section 34, in Jasper County, MO, which option Allied must exercise or extend such that it will not expire any sooner than 12 months following the entry of the proposed Final Judgment:

g. Moline, IL

BFI's Quad Cities Landfill, located at 13606 Knoxville Road, Milan, IL 61264;

h. Oakland, CA

BFI's, Vasco Road Landfill, located at 4001 North Vasco Road, Livermore, CA; and

i. Oklahoma City, OK

BFI's Oklahoma Landfill, located at 7600 SW 15th Street, Oklahoma City, OK 73128.

s. Transfer Stations

a. Akron/Canton, OH

Allied's RC Miller Refuse Transfer Station, located at 1800 19th Street, Canton, OH;

b. Atlanta, GA

(i) Allied's Southern States Environmental Transfer Station, located at 129 Werz Industrial Boulevard, Newnan, GA 30263;

(ii) Allied's Fayette County Transfer Station, located at 211 First Manassas Mile Road, Fayetteville, GA 30214; and

(iii) BFI's Marble Mill Road Transfer Station, located at 317 Marble Mill Road, Marietta, GA 30060;

c. Boston, MA

BFI's Holliston Transfer Station, located at 115 Washington Street, Holliston, MA 01746; BFI's Auburn Transfer Station, located at 15 Hardscrabble Road, Auburn, MA 01501; and BFI's Braintree Transfer Station, located at 257 Ivory Street, Braintree, MA 02184;

d. Charlotte, NC

Allied's Charlotte Transfer Station, located at 3130 I-85 Service Road North, Charlotte, NC 28206;

e. Chicago, IL

BFI's Melrose Park 73300 Transfer Station, located at 4700 W. Lake Street, Melrose Park, IL 60160; BFI's Rolling Meadows Transfer Station, located at 3851 Berdnick Street, Rolling Meadows,

IL 60008; BFI's DuKane Transfer Station, located at 3 N 261 West Powis Road, West Chicago, IL 60185; BFI's Northbrook-Brooks Transfer Station, located at 2750 Shermer Road, Northbrook, IL 60062; and BFI's Active/Evanston Transfer Station, located at 1712 Church Street, Evanston, IL 60201;

f. Denver, CO

Allied's Summit Waste Jordan Road Transfer Station, located at 7120 S. Jordan Road, Denver, CO;

g. Detroit, MI

BFI's SDMA Transfer Station, located at 28315 Grosbeck Highway, Roseville, MI 48066; and BFI's Schaefer Road Transfer Station, located at 3051 Schaefer Road, Dearborn, MI 48126;

h. Evansville, IN

Allied's Koester Transfer Station, located at 12800 Warrick-County Line Road, Evansville, IL 47711;

i. Kalamazoo/Battle Creek, MI

BFI's Kalamazoo Transfer Station, located at 28002 Cork Street, Kalamazoo, MI 49001; and

j. Springfield, MO

Allied's Tates Transfer Station, located at Route 2, Box 69, Verona, MO 65769.

D. Relevant Hauling Assets, unless otherwise noted, means with respect to each commercial waste collection route or other hauling asset described herein, all tangible assets, including capital equipment, trucks and other vehicles, containers, interests, permits, supplies, real property and improvements to real property (*i.e.*, buildings and garages); and it includes all intangible assets, including hauling-related customer lists, contracts, leasehold interests, and accounts.

Relevant Hauling Assets, as used herein, includes the assets in the following locations:

i. Akron, OH

Allied's front-end and rear-end loader truck small container commercial routes (hereinafter, "commercial routes") that serve the cities of Akron and Canton and Summit, Stark and Portage counties, Ohio;

2. Boston, MA

Allied's commercial routes and any commercial routes acquired by BFI from Allied or any other person since January 1, 1999 that serve the City of Boston and Bristol, Essex, Middlesex, Norfolk, Suffolk, and Worcester counties, MA;

3. Charlotte, NC

BFI's commercial routes that serve the City of Charlotte and Mecklenburg County, NC;

4. Chicago, IL

BFI's commercial routes that serve the City of Chicago and Cook, DuPage, Will, Kane, McHenry, and Lake counties, IL;

5. Dallas, TX

BFI's commercial routes that serve any nonfranchised or "open competition" areas of the City of Dallas and Dallas County, TX;

6. Davenport, IA/Moline, IL

BFI's commercial routes that serve the cities of Davenport and Bettendorf, IA; Moline, East Moline, and Rock Island, IL; and Rock Island County, IL and Scott County, IA;

7. Denver, CO

Allied's commercial routes that serve the City of Denver, and Denver, Arapahoe, Adams, Douglas and Jefferson counties, CO;

8. Detroit, MI

BFI's commercial routes that serve the City of Detroit, Wayne, Oakland and Macomb counties, MI;

9. Evansville, IN

Allied's commercial routes that serve the City of Evansville, IN and Vanderburgh County, IN, including all of its commercial routes that operate out of Allied's Evansville and Huntingburg garage facilities:

10. Kalamazoo/Battle Creek, MI

BFI's commercial routes that serve the cities of Kalamazoo and Battle Creek and Kalamazoo and Calhoun counties, MI;

11. Oklahoma City, OK

BFI's commercial routes that serve Oklahoma City and Oklahoma County, OK;

12. Rock Falls/Dixon, IL

BFI's commercial routes that serve the cities of Rock Falls and Dixon and Lee and Whiteside counties, IL;

13. Rockford, IL

Allied's commercial routes that serve the City of Rockford and Ogle and Winnebago counties, IL; and

14. Springfield, MO

Allied's commercial routes that serve the City of Springfield and Greene and Christian counties, MO.

E. *Hauling* means the collection of waste from customers and the shipment

of the collected waste to disposal sites. Hauling, as used herein, does not include collection of roll-off containers
F. *Waste* means municipal solid waste.

G. *Disposal* means the business of disposing of waste into approved disposal sites.

II*Objectives*

The Final Judgment filed in this case is meant to ensure defendants' prompt divestitures of the Relevant Disposal Assets and the Relevant Hauling Assets for the purpose of establishing viable competitors in the waste disposal business or the commercial waste hauling business, or both, to remedy the effects that the United States alleges would otherwise result from Allied's acquisition of BFI. This Hold Separate Stipulation and Order ensures, prior to such divestitures, that the Relevant Disposal Assets and the Relevant Hauling Assets are independent, economically viable, and with the exception of assets listed in Sections I (C)(1)(f) and (2)(b)(iii), ongoing business concerns that will remain independent and uninfluenced by Allied (or BFI); and that competition is maintained during the pendency of the ordered divestitures.

III*Jurisdiction and Venue*

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

IV*Compliance With and Entry of Final Judgment*

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

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until

expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Hold Separate Stipulation and Order.

D. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event (1) the United States has withdrawn its consent, as provided in Section IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

F. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

V*Hold Separate Provisions*

Until the divestitures required by the Final Judgment have been accomplished:

A. Defendants shall preserve, maintain, and with the exception of assets listed in Sections I(C)(1)(f) and (2)(b)(iii), operate the Relevant Disposal Assets and the Relevant Hauling Assets as independent competitive businesses, with management, sales and operations of such assets held entirely separate, distinct and apart from those of defendants' other operations. Defendants shall not coordinate the marketing of, or negotiation or sales by, any Relevant Disposal Asset and Relevant Hauling Asset with defendants' other operations. Within twenty (20) days after the filing of the Hold Separate Stipulation and Order, or thirty (30) days after the entry of this

Order, whichever is later, defendants will inform the United States of the steps defendants have taken to comply with this Hold Separate Stipulation and Order.

B. Defendants shall take all steps necessary to ensure that (1) the Relevant Disposal Assets and the Relevant Hauling Assets will be maintained and, with the exception of the assets listed in Sections I(C)(1)(f) and (2)(b)(iii), operated as independent, ongoing, economically viable and active competitors in the waste disposal business or commercial waste hauling business, or both; (2) management of the Relevant Disposal Assets and the Relevant Hauling Assets will not be influenced by Allied (or BFI); and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning the Relevant Disposal Assets and the Relevant Hauling Assets will be kept separate and apart from defendants' other operations. Defendants' influence over the Relevant Disposal Assets and Relevant Hauling Assets shall be limited to that necessary to carry out defendants' obligations under this Hold Separate Stipulation and Order and the proposed Final Judgment.

C. Defendants shall use all reasonable efforts to maintain and increase the sales and revenues of the Relevant Disposal Assets, with the exception of assets listed in Sections I(C)(1)(f) and (2)(b)(iii), and the Relevant Hauling Assets, and shall maintain at 1998 or at previously approved levels, whichever are higher, all promotional, advertising, sales, technical assistance, marketing and merchandising support for the Relevant Disposal Assets and Relevant Hauling Assets.

D. Defendants shall provide sufficient working capital to maintain the Relevant Disposal Assets, with the exception of the assets listed in Sections I(C)(1)(f) and (2)(b)(iii), and the Relevant Hauling Assets as economically viable, and competitive ongoing businesses.

E. Defendants shall take all steps necessary to ensure that the Relevant Disposal Assets, with the exception of assets listed in Sections I(C)(1)(f) and (2)(b)(iii), and the Relevant Hauling Assets are fully maintained in operable condition at no lower than their current capacity or sales, and shall maintain and adhere to normal repair and maintenance schedules for the Relevant Disposal Assets and the Relevant Hauling Assets.

F. Defendants shall not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove,

sell, lease, assign, transfer, pledge or otherwise dispose of any of the Relevant Disposal Assets or Relevant Hauling Assets.

G. Defendants shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of the Relevant Disposal Assets and Relevant Hauling Assets.

H. Except in the ordinary course of business or as is otherwise consistent with this Hold Separate Stipulation and Order, defendants shall not hire, transfer, terminate, or otherwise alter the salary agreements for any Allied or BFI employee who, on the date of defendants' signing of this Hold Separate Stipulation and Order, either: (1) works at a Relevant Disposal Asset or Relevant Hauling Asset, or (2) is a member of management referenced in Section V(I) of this Hold Separate Stipulation and Order.

I. Until such time as the Relevant Disposal Assets and Relevant Hauling Assets are divested pursuant to the terms of the Final Judgment, the Relevant Disposal Assets and Relevant Hauling Assets of Allied and BFI shall be managed by Richard J. Wojahn. Mr. Wojahn shall have complete managerial responsibility for the Relevant Disposal Assets and Relevant Hauling Assets of Allied and BFI, subject to the provisions of this Order and the proposed Final Judgment. In the event that Mr. Wojahn is unable to perform his duties, defendants shall appoint, subject to the approval of the United States, a replacement within ten (10) working days. Should defendants fail to appoint a replacement acceptable to the United States within ten (10) working days, the United States shall appoint a replacement.

J. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestitures pursuant to the Final Judgment to purchasers acceptable to the United States.

K. This Hold Separate Stipulation and Order shall remain in effect until consummation of the divestitures contemplated by the proposed Final Judgment or until further order of the Court.

Dated: July 19, 1999.

For Plaintiff United States of America

6Anthony E. Harris, Esquire,
U.S. Department of Justice, Antitrust Division,
Litigation II Section, 1401 H Street, NW, Suite
3000, Washington, DC 20005, (202) 307-6583.

For Defendant Allied Waste Industries, Inc.

Tom D. Smith, Esquire,
Jones, Day, Reavis & Pogue, 51 Louisiana
Avenue, NW, Washington, DC 20001-2113,
(202) 879-3971.

For Defendant Browning-Ferris Industries,
Inc.

David M. Foster, Esquire,
Fulbright & Jaworski L.L.P., 801 Pennsylvania
Avenue, NW, Washington, DC 20004-2615,
(202) 662-4517.

Order

It Is So Ordered by the Court, this
____ day of _____

United States District Judge

Final Judgment

Whereas, plaintiff, the United States of America, having filed its Complaint in this action on July 20, 1999, and plaintiff and defendants, Allied Waste Services, Inc. ("Allied") and Browning-Ferris Industries, Inc. ("BFT"), by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

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

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of the Relevant Disposal Assets and Relevant Hauling Assets to assure that competition is not substantially lessened;

And whereas, the United States requires defendants to make certain divestitures for the purpose of establishing one or more viable competitors in the waste disposal business, the commercial waste hauling business, or both, in the specified areas;

And whereas, defendants have represented to the United States that the divestitures ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the injunctive provisions contained below;

Now, Therefore, before the taking of any testimony, and without trial or adjudication or any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *Ordered, Adjudged, and Decreed* as follows:

I*Jurisdiction*

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

II*Definitions*

As used in this Final Judgment:

A. *Allied* means defendant Allied Waste Industries, Inc., a Delaware corporation with its headquarters in Scottsdale, Arizona, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

B. *BFI* means defendant Browning-Ferris Industries, Inc., a Delaware corporation with its headquarters in Houston, Texas, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

C. *Relevant Disposal Assets* means, unless otherwise noted, with respect to each landfill, incinerator, or transfer station listed and described herein, all of defendants' rights, titles and interests in any tangible assets, including all fee and leasehold and renewal rights in the listed landfill, incinerator or transfer station; the garage and related facilities; offices; all related assets including capital equipment, trucks and other vehicles, scales, power supply equipment, interests, permits, and supplies; and all of defendants' rights, titles and interests in any intangible assets, including all customer lists, contracts, and accounts, or options to purchase any adjoining property.

Relevant Disposal Assets, as used herein, includes each of the following properties:

1. Landfills, Incinerators, and Airspace Disposal Rights

a. Boston, MA

(1) BFI's American Refuel SEMASS waste-to-energy incinerator facility, located at 141 Cranberry Highway (Route 28), Rochester, MA 02576;

(2) Airspace disposal rights at BFI's Fall River Landfill, located at 1080 Airport Road, Fall River, MA 02720, pursuant to which SEMASS may dispose of up to the maximum amount of ash and "bypass" waste, as now defined in the operating permit (or any modifications, amendments or

extensions thereto) of Fall River Landfill, for a period of time up to the closure or attainment of permitted capacity of the landfill, provided however, that defendants must commit to operate BFI's Fall River Landfill, and its gate, scale house, and disposal area under terms and conditions no less favorable than those provided to defendants' own vehicles or to the vehicles of any municipality in Massachusetts, except as to price and credit terms; and

(3) Airspace disposal rights at Ogden Martin Systems Massburn incinerator, located at 100 Recovery Way, Haverhill, MA 01830, pursuant to which a purchaser or purchasers may dispose as much as 1,150 tons/day of waste, for a ten-year period of time.

b. Charlotte, NC

Allied's Lee County Landfill, located at 1301 Sumter Highway, Bishopville, SC 29010, the sale of which will be required only if the United States, in its sole discretion, concludes, pursuant to Sections IV or V of the Judgment, that the purchaser of Allied's Charlotte Transfer Station [see Section II(C)(2)(d) below] is unacceptable.

c. Chicago, IL

BFI's Zion Landfill, located at 701 Green Bay Road, Zion, IL 60099; BFI's Orchard Hills Landfill, located at 8290 Highway 251, Davis Junction, IL 60120; and BFI's Spoon Ridge Landfill, located at Route 1 and Highway 97, Fairview, IL, 61432.

d. Denver, CO

Allied's Denver Regional Landfill, located at 1141 Weld County Road #6, Erie, CO;

e. Detroit, MI

BFI's Arbor Hills Landfill, located at 10690 West Six Mile Road, Northville, MI 48167;

f. Evansville, IN

Allied's Blackfoot Landfill, located at 2726 East State Road, Winslow, IN 47598;

g. Joplin/Lamar/Springfield, MO

(1) Allied's option to purchase the proposed Southwest Regional Landfill, located at Missouri State Highway M, Townsend 30N, Range 32 West, Section 34, in Jasper County, MO, which option Allied must exercise or extend so that it will not expire any sooner than 12 months following the entry of this Final Judgment; and

(2) Airspace disposal rights at Allied's Wheatland Regional Landfill, located at Columbus, KS, pursuant to which a

purchaser or purchasers can dispose up to 700 tons/day of waste, for a period of time up to three months after the opening of Southwest Regional Landfill, *provided, however*, that for each purchaser of airspace rights (or its designee), defendants must commit to operate Allied's Wheatland Regional Landfill, and its gate, scale house, and disposal area under terms and conditions no less favorable than those provided to defendants' own vehicles or to the vehicles of any municipality in Missouri, except as to price and credit terms;

h. Kalamazoo/Battle Creek, MI

Airspace disposal rights at Allied's Ottawa Farms Landfill, located at 15550 68th Street, Coopersville, MI 49404, or BFI's C&C Landfill, located at 14800 P Drive North, Marshall, MI 49068, pursuant to which a purchaser may dispose up to 450 tons/day of waste for up to a ten-year period of time, the sale of which will be required only if the United States, in its sole discretion, concludes, pursuant to Sections IV or V of the Judgment, that the purchaser of Allied's Kalamazoo Transfer Station [see Section II(C)(2)(i) below] is unacceptable; *and provided, however*, that for each purchaser of airspace rights (or its designee), defendants must commit to operate Allied's Ottawa Farms landfill or BFI's C&C Landfill, and its gate, scale house, and disposal area under terms and conditions no less favorable than those provided to defendants' own vehicles or to the vehicles of any municipality in Michigan, except as to price and credit terms;

i. Moline, IL

BFI's Quad Cities Landfill, located at 13606 Knoxville Road, Milan, IL 61264;

j. Oakland, CA

BFI's Vasco Road Landfill, located at 4001 North Vasco Road, Livermore, CA; and

k. Oklahoma City, OK

BFI's Oklahoma Landfill, Located at 7600 SW 15th Street, Oklahoma City, OK 73128.

2. Transfer Stations

a. Akron/Canton, OH

Allied's RC Miller Refuse Transfer Station, located at 180 19th Street, Canton, OH;

Relevant Hauling Assets, as used herein, includes the assets in the following locations:

1. Akron, OH

Allied's front-end and rear-end loader truck small container routes (hereinafter, "commercial routes") that serve the cities of Akron and Canton and Summit, Stark and Portage counties, Ohio;

2. Boston, MA

Allied's commercial routes and any commercial routes acquired by BFI from Allied or any other person since January 1, 1999 that serve the City of Boston and Bristol, Essex, Middlesex, Norfolk, Suffolk, and Worcester counties, MA;

3. Charlotte, NC

BFI's commercial routes that serve the City of Charlotte and Mecklenburg County, NC;

4. Chicago, IL

BFI's commercial routes that serve the City of Chicago and Cook, DuPage, Will, Kane, McHenry, and Lake counties, IL;

5. Dallas, TX

BFI's commercial routes that serve any nonfranchised or open competition areas of the City of Dallas and Dallas County, TX;

6. Davenport, IA and Moline, IL

BFI's commercial routes that serve the cities of Davenport and Bettendorf, IA; Moline, East Moline, and Rock Island, IL; and Rock Island County, IL and Scott County, IA;

b. Atlanta, GA

Allied's Southern States Environmental Transfer Station, located at 129 Werz Industrial Boulevard, Newnan, GA 30263; Allied's Fayette County Transfer Station, located at 211 First Manassas Mile Road, Fayetteville, FA 30214; and BFI's Marble Mill Road Transfer Station, located at 317 Marble Mill Road, Marietta, GA 30060;

c. Boston, MA

BFI's Holliston Transfer Station, located at 115 Washington Street, Holliston, MA 01746; BFI's Auburn Transfer Station, located at 15 Hardscrabble Road, Auburn, MA 01501; and BFI's Braintree Transfer Station, located at 257 Ivory Street, Braintree, MA 02184;

d. Charlotte, NC

Allied's Charlotte Transfer Station, located at 3130 I-85 Service Road North, Charlotte, NC 28206;

e. Chicago, IL

BFI's Melrose Park 73300 Transfer Station, located at 4700 W. Lake Street, Melrose Park, IL 60160; BFI's Rolling

Meadows Transfer Station, located at 3851 Berdnick Street, Rolling Meadows, IL 60008; BFI's DuKane Transfer Station, located at 3 N 261 West Powis Road, West Chicago, IL 60185; BFI's Northbrook-Brooks Transfer Station, located at 2750 Shermer Road, Northbrook, IL 60062; and BFI's Active/Evanston Transfer Station, located at 1712 Church Street, Evanston, IL 60201;

f. Denver, CO

Allied's Summit Waste Jordan Road Transfer Station, located at 7120 S. Jordan Road, Denver, CO;

g. Detroit, MI

BFI's SDMA Transfer Station, located at 28315 Grosbeck Highway, Roseville, MI 48066; and BFI's Schaefer Road Transfer Station, located at 3051 Schaefer Road, Dearborn, MI 48126;

h. Evansville, IN

Allied's Koester Transfer Station, located at 12800 Warrick-County Line Road, Evansville, IN 47711;

i. Kalamazoo/Battle Creek, MI

BFI's Kalamazoo Transfer Station, located at 28002 Cork Street, Kalamazoo, MI 49001; and

j. Springfield, MO

Allied's Tates Transfer Station, located at Route 2, Box 69, Verona, MO 65769.

D. Relevant Hauling Assets, unless otherwise noted, means with respect to each commercial waste collection route or other hauling asset described herein, all tangible assets, including capital equipment, trucks and other vehicles, containers, interests, permits, supplies; and if requested by the purchaser, real property and improvements to real property (*i.e.*, buildings and garages). It also includes all intangible assets, including hauling/related customer lists, contracts, leasehold interests, and accounts.

7. Denver, CO

Allied's commercial routes that serve the City of Denver and Denver, Arapahoe, Adams, Douglas and Jefferson counties, CO;

8. Detroit, MI

BFI's commercial routes that serve the City of Detroit, Wayne, Oakland and Macomb counties, MI;

9. Evansville, IN

Allied's commercial routes that serve the City of Evansville, IN and Vanderburgh County, IN, including all of its commercial routes that operate out of Allied's Evansville and Huntingburg garage facilities;

10. Kalamazoo/Battle Creek, MI

BFI's commercial routes that serve the cities of Kalamazoo and Battle Creek and Kalamazoo and Calhoun counties, MI;

11. Oklahoma City, OK

BFI's commercial routes that serve Oklahoma City and Oklahoma County, OK;

12. Rock Falls/Dixon, IL

Allied's commercial routes that serve the cities of Rock Falls and Dixon and Lee and Whiteside counties, IL;

13. Rockford, IL

Allied's commercial routes that serve the City of Rockford, IL, and Ogle and Winnebago counties, IL; and

14. Springfield, MO

Allied's commercial routes that serve the City of Springfield and Greene and Christian counties, MO.

E. *Hauling* means the collection of waste from customers and the shipment of the collected waste to disposal sites. Hauling, as used herein, does not include collection of roll-off containers.

F. *Waste* means municipal solid waste.

G. *Disposal* means the business of disposing of waste into approved disposal sites.

H. *Collection of small container solid waste* means collection of waste from customers by *inter alia*, providing a customer with a one to ten cubic yard container, which is picked up mechanically using a front- or rear-end loader truck. The term excludes hand pick-up collection service, and service using a compactor attached to, or part of, a container.

III

Applicability

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

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets, or of a lesser business unit that includes defendants' Relevant Hauling and Relevant Disposal Assets, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

IV*Divestitures*

A. In the event that Allied acquires BFI, defendants are hereby ordered and directed, in accordance with the terms of this Final Judgment, within one hundred and twenty (120) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to sell all Relevant Disposal Assets and Relevant Hauling Assets as viable, ongoing businesses to a purchaser or purchasers acceptable to the United States, in its sole discretion.

B. Defendants shall use their best efforts to accomplish the divestitures ordered by this Final Judgment as expeditiously and timely as possible. The United States, in its sole discretion, may extend the time period for any divestiture and additional period of time, not to exceed sixty (60) calendar days.

C. In accomplishing the divestitures ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Relevant Disposal Assets and the Relevant Hauling Assets. Defendants shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Defendants shall also offer to furnish to all prospective purchasers, subject to customary confidentiality assurances, all information regarding the Relevant Disposal Assets and Relevant Hauling Assets customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

D. Defendants shall not interfere with any negotiations by any purchaser to employ any Allied (or former BFI) employee who works at, or whose primary responsibility concerns, any disposal or hauling business that is part of the Relevant Disposal Assets or Relevant Hauling Assets.

E. Defendants shall permit prospective purchasers of the Relevant Disposal Assets or Relevant Hauling Assets to have access to personnel and to any and all environmental, zoning, and other permit documents and information, and to make inspection of the Relevant Disposal Assets and Relevant Hauling Assets and of any and

all financial, operational, or other documents and information customarily provided as part of a due diligence process.

F. With the exception of the facilities described in Section II(C)(1)(g), defendants shall warrant to each purchaser of Relevant Disposal Assets or Relevant Hauling Assets that each asset will be operational on the date of sale.

G. Defendants shall not take any action, direct or indirect, that will impede in any way the operation of the Relevant Disposal Assets or Relevant Hauling Assets.

H. Defendants shall warrant to each purchaser of Relevant Disposal Assets or Relevant Hauling Assets that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that defendants will not undertake, directly or indirectly, following the divestiture of each asset, any challenges to the environmental, zoning, or other permits or applications for permits or licenses pertaining to the operation of the asset.

I. Unless the United States otherwise consents in writing, the divestitures pursuant to Section IV, or by trustee appointed pursuant to Section V of this Judgment, shall include all Relevant Disposal Assets and Relevant Hauling Assets and be accomplished by selling or otherwise conveying each asset to a purchaser in such a way as to satisfy the United States, in its sole discretion, that the Relevant Disposal Assets or Relevant Hauling Assets can and will be used by the purchaser as part of a viable, ongoing business or businesses engaged in waste disposal or hauling. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser (or purchasers) for whom it is demonstrated to the United States's sole satisfaction that: (1) The purchaser(s) has the capability and intent of competing effectively in the waste disposal or hauling business in each relevant area; (2) the purchaser(s) has the managerial, operational, and financial capability to compete effectively in the waste disposal or hauling business in each relevant area; and (3) none of the terms of agreement between the purchaser and defendants gives any defendant the ability unreasonably to raise the purchaser's costs, lower the purchaser's efficiency, or otherwise interfere in the ability of the purchaser to compete effectively in each relevant area.

V*Appointment of Trustee*

A. In the event that defendants have not sold the Relevant Disposal Assets or Relevant Hauling Assets within the time specified in Section IV of this Final Judgment, the divestiture of each Relevant Disposal Asset or Relevant Hauling Asset not sold shall be accomplished by a trustee to be selected by the United States, as its sole discretion. Defendants shall not object to the selection of the trustees on any grounds other than irremediable conflict of interest. Defendants must make any such objection within five (5) business days after the United States notifies defendants of the trustee selection.

B. After the United States's selection of the trustee, only the trustee shall have the right to divest the unsold Relevant Disposal Assets or Relevant Hauling Assets. The trustee shall have the power and authority to accomplish any and all divestitures at the best price then obtainable upon all reasonable efforts of the trustee, subject to the provisions of Sections IV and VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. The trustee shall divest the unsold Relevant Disposal Assets or Relevant Hauling Assets in the manner that is most conducive to creating, preserving and maintaining competition between Allied and BFI in the markets for the collection and disposal of municipal solid waste described in the Complaint. Subject to Section V(C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of defendants any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestitures, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestitures at the earliest possible time to a purchaser or purchasers acceptable to the United States, and shall have such other powers as this Court shall deem appropriate.

C. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of each asset sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of such

trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divested business and based on a fee arrangement providing the trustee with an incentive based on the price obtained and the speed with which divestiture is accomplished.

D. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestiture of the Relevant Disposal Assets or Relevant Hauling Assets, and shall assist the trustee in accomplishing the required divestitures. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities for the Relevant Disposal Assets or Relevant Hauling Assets, and to defendants' overall businesses as is reasonably necessary to effectuate the divestiture. Defendants shall provide financial or other information relevant to the Relevant Disposal Assets or Relevant Hauling Assets customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. Subject to customary confidentiality assurances, defendants shall permit prospective acquirers of any Relevant Disposal Assets or Relevant Hauling Assets to have reasonable access to the information provided to the trustee and to management personnel for the Relevant Disposal Assets or Relevant Hauling Assets, and to make inspection of any physical facilities for the Relevant Disposal Assets or Relevant Hauling Assets.

E. After the trustee's appointment, the trustee shall confer regularly with designated representatives of the parties and shall file biweekly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestitures ordered under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding period, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the business to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to sell the businesses to be divested.

F. The United States may object to a proposed divestiture by the trustee in the manner prescribed in Section VI of this Final Judgment. Defendants shall not object to a divestiture by the trustee on any grounds other than the trustee's malfeasance. Any such objections by defendants shall be made in the manner prescribed in Section VI of this Final Judgment.

G. If the trustee has not accomplished such divestitures within one hundred and twenty (120) days after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished, and (3) the trustee's recommendations for completing the required divestiture; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. No less than three (3) days prior to filing such report with the Court, the trustee shall furnish a copy of such report to the parties. Upon the filing of such report with the Court, each party shall have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI

Notice of Proposed Divestitures

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Sections IV or V of this Final Judgment, defendants or the trustee, whichever is then responsible for effecting the divestiture, shall notify the United States of the proposed divestiture. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the business to be divested that is the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by the

United States of such notice, the United States, in its sole discretion, may request from defendants, the proposed purchaser, or any other third party additional information concerning the proposed divestiture and the proposed purchaser. Defendants and the trustee shall furnish any additional information requested from them within (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice [or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed purchaser, and any third party, whichever is later], the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice to defendants (and the trustee, if applicable) that it does not object, then the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V(F) of this Final Judgment. Upon objection by the United States, a divestiture proposed under Section IV or Section V of this Final Judgment shall not be consummated. Upon objection by defendants under the provision in Section V(F), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII

Ban on Future Acquisitions

A. Without prior written approval of the United States, defendants shall not acquire, directly or indirectly, any interest in any business, assets, capital stock, or voting securities of any person that, at any time during the twelve (12) months immediately preceding such acquisition, as engaged in waste disposal or collection of small container waste in any area listed in Section VII(B), where the person's annual revenues from waste disposal or collection of small container waste in the area were in excess of \$1,000,000 in the 12 month period immediately preceding the proposed acquisition, or the sale price of the assets would be in excess of \$1,000,000.

B. Unless otherwise noted, the injunctive provisions in Section VII (A) above apply whenever defendants seek to acquire any interest in any business, assets, capital stock, or voting securities of any person that was engaged in the disposal of waste from, or the collection

of small container solid waste in, any of the following areas:

AREAS FOR WHICH INJUNCTIVE PROVISION APPLIES

City	Counties
Atlanta, GA	Clayton, Cobb, DeKalb, Douglas, Fayette, Fulton, Gwinett, Henry, Newton, Paulding, Rockdale, Spalding, and Walton counties, GA (disposal only).
Boston, MA	Bristol, Essex, Middlesex, Norfolk, Suffolk, and Worcester counties, MA
Charlotte, NC	Mecklenburg County, NC
Chicago, IL	Will, Kane, Cook, DuPage, Lake and McHenry counties, IL
Davenport, IA and Moline, IL	Rock Island County, IL and Scott County, IA
Evansville, IN	Vanderburgh County, IN
Kalamazoo/Battle Creek, MI	Kalamazoo and Calhoun counties, MI
Joplin/Lamar, MO	Jasper and Newton counties, MO
Springfield, MO	Greene and Christian counties, MO

VIII

Defendants' Additional Obligations

Defendants are hereby ordered and directed to, in accordance with the terms of this Final Judgment:

A. Refrain from reacquiring any interest in any Relevant Disposal Assets or Relevant Hauling Assets divested pursuant to the terms of this Final Judgment, without prior written notice to, and written consent of, the United States;

B. Refrain from conditioning the sale of any landfill pursuant to this Final Judgment on any understanding, agreement or commitment, written or understood, that the purchase (or purchasers) will agree to sell airspace or otherwise permit defendants to dispose of waste in that landfill; and

C. Within sixty (60) days after entry of the Final Judgment, jointly move with the United States to modify each of the Final Judgments in *United States v. Allied Waste Industries, Inc.*, 7 Trade Reg. Rep. (CCH) ¶50,860 (D.D.C., filed and pending April 8, 1999); *United States v. Browning-Ferris Industries, Inc.*, 1996-2 Trade Cas. (CCH) ¶71,456 (D.D.C. 1996); and *United States v. Browning-Ferris Industries, Inc.*, 1995-2 Trade Cas. (CCH) ¶71,079 (D.D.C. 1995) (the "consent decrees"), to provide that, for the period of time and in the geographic areas specified in the consent decrees, defendants and any person acquired by defendants will neither offer nor enforce any provision of any current or future contract for the collection of small container solid waste, the terms of which do not conform to the injunctive provisions of the consent decrees.

IX

Affidavits

A. Within twenty (20) calendar days of the filing of the Hold Separate Stipulation and Order in this matter and

every twenty (20) calendar days thereafter until the divestiture has been completed, whether pursuant to Section IV or Section V of this Final Judgment, defendants shall deliver to the United States an affidavit as to the fact and manner of compliance with Sections IV or V of this Final Judgment. Each such affidavit shall include, *inter alia*, the name, address, and telephone number of each person who, at any time after the period covered by the last report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the businesses to be divested, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that defendants have taken to solicit a buyer for any and all Relevant Disposal Assets and Relevant Hauling Assets and to provide requiring information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitations on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Hold Separate Stipulation and Order in this matter, defendants shall deliver to the United States an affidavit which describes in detail all actions defendants have taken and all steps defendants have implemented on an on-going basis to preserve the Relevant Disposal Assets and Relevant Hauling Assets pursuant to Section X of this Final Judgment and the Hold Separate Stipulation and Order entered by the Court. The affidavit also shall describe, but not be limited to, defendants' efforts to maintain and operate each Relevant Disposal Asset

and Relevant Hauling Asset as a viable active competitor; to maintain separate management, staffing, sales, marketing and pricing of each asset; and to maintain each asset in operable condition at current capacity configurations. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after any such change has been implemented.

C. For a one-year period following the completion of each divestiture, defendants shall preserve all records of any and all efforts made to preserve the Relevant Disposal Assets and Relevant Hauling Assets that were divested and to effect the ordered divestitures.

X

Hold Separate Order

Until the divestitures required by the Final Judgment have been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the sale of any Relevant Disposal Asset or Relevant Hauling Asset.

XI

Financing

Defendants are ordered and directed not to finance all or any part of any acquisition by any person made pursuant to Sections IV or V of this Final Judgment.

XII

Compliance Inspection

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

A. Duly authorized representatives of the United States Department of Justice,

upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their principal offices, shall be permitted:

1. Access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to the matters contained in this Final Judgment and the Hold Separate Stipulation and Order; and

2. Subject to the reasonable convenience of defendants and without restraint or interference from them, to interview, either informally or on the record, their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit such written reports, under oath if requested, with respect to any matter contained in the Final Judgment and the Hold Separate Stipulation and Order.

C. No information or documents obtained by the means provided in Sections IV, VI or XII of this Final Judgment shall be divulged by a representative of the United States to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days notice shall be given by the United States to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendants are not a party.

XIII

Retention of Jurisdiction

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

XIV

Termination

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

XV

Public Interest

Entry of this Final Judgment is in the public interest.

Dated _____, 1999.

United States District Judge

Certificate of Service

I, Anthony E. Harris, hereby certify that on July 20, 1999, I caused a copies of the foregoing Complaint, Hold Separate Stipulation and Order, proposed Final Judgment, and United State's Explanation of Consent Decree Procedures to be served on each defendants by hand-delivery and by mailing copies of the pleadings first-class, postage prepaid, to a duly authorized legal representative, as follows:

Counsel for Defendant Allied Waste Industries, Inc.

Tom D. Smith, Esquire,
Jones, Day Reavis, & Pogue, 51, Louisiana Avenue, NW, Washington, DC 20001-2113.

Counsel for Defendant Browning-Ferris Industries, Inc.

David M. Foster, Esquire,
Fulbright & Jaworski, L.L.P., 801 Pennsylvania Avenue, NW, Washington, DC 20004-2615.

Anthony E. Harris, Esquire,
Illinois Bar #1133713, Department of Justice, Antitrust Division, 1401 H Street, NW, Suite 3000, Washington, DC 20530.

Competitive Impact Statement

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

I. Nature and Purpose of the Proceeding

On July 20, 1999, the United States filed a civil antitrust suit that alleges that the proposed acquisition by Allied Waste Industries, Inc. ("Allied") of Browning-Ferris Industries, Inc. ("BFI") would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that in many markets throughout the United States, Allied and BFI are two of the most significant competitors in small container commercial waste collection, disposal of municipal solid waste ("MSW") (i.e., the operation of landfills, transfer stations or incinerators), or both services.

The Complaint alleges that a combination of Allied and BFI would substantially lessen competition in the disposal of municipal solid waste in thirteen highly concentrated markets: Akron/Canton, Ohio; Atlanta, Georgia; Boston, Massachusetts; Charlotte, North Carolina; Chicago, Illinois; Denver, Colorado; Detroit, Michigan; Evansville, Indiana; Joplin/Lamar and Springfield, Illinois; Kalamazoo/Battle Creek, Michigan; Moline, Illinois; Oakland, California; and Oklahoma City, Oklahoma.

The Complaint alleges that the merger also would substantially lessen competition in the provision of small container commercial waste collection services in fourteen highly concentrated, relevant geographic markets: Akron/Canton, Ohio; Boston, Massachusetts; Charlotte, North Carolina; Chicago, Illinois; Dallas, Texas; Davenport, Iowa/Moline, Illinois; Denver, Colorado; Detroit, Michigan; Evansville, Indiana; Kalamazoo/Battle Creek, Michigan; Oklahoma City, Oklahoma; Rock Falls/Dixon, Illinois; Rockford, Illinois; and Springfield, Missouri.

According to the Complaint, the loss of competition would likely result in consumers paying higher prices and receiving fewer or lesser quality services for the collection and disposal of waste. The prayer for relief in the Complaint seeks: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act and (2) a permanent injunction that would prevent Allied from acquiring control of or otherwise combining its assets with those owned by BFI.

At the time the Complaint was filed, the United States also filed a proposed settlement that would permit Allied to complete its acquisition of BFI, provided divestitures of certain waste collection and disposal assets are accomplished in such a way as to preserve competition in the affected markets. This settlement consists of a

proposal Final Judgment, a Hold Separate Stipulation and Order, and a letter that outlines a standard on which the United States and the defendants have agreed to decide whether waste collection routes that partially serve a given geographic area, or which contain a mix of residential and small container waste collection customers or franchise or nonfranchised business, should be divested pursuant to the terms of the proposed Final Judgment.¹

The proposed Final Judgment orders Allied and BFI to divest commercial waste collection routes in each of the relevant areas in which the Complaint alleges the merger would substantially reduce competition in the provision of small container commercial waste collection services. In addition, the proposed Final Judgment orders Allied and BFI to divest an incinerator, landfills, transfer stations, or disposal rights in such facilities in each of the relevant markets in which the merger would substantially reduce competition in the disposal of municipal solid waste. (A summary of the commercial waste collection and waste disposal assets that defendants must divest pursuant to the Judgment appears below in Appendix A.) Allied and BFI must complete their divestitures of the waste collection and disposal assets within 120 days after July 20, 1999, or five days after entry of the proposed Final Judgment, whichever is later.

The Hold Separate Stipulation and Order ("Hold Separate Order") and the proposal Final Judgment ensure that

¹ A copy of this correspondence appears in Appendix B. According to the proposed Final Judgment [§§ II(D)(1)–(14), IV and V], defendants must divest small container commercial waste collection routes that serve customers in certain geographic areas. Since some small container commercial waste collection routes may serve only part of an area defined in the proposed Final Judgment, or may contain a mix of small container commercial and other types of customers (e.g., in Dallas, Texas franchised customers), the United States and the defendants agreed to apply a *de minimis* standard in determining whether a route may be subject to divestiture under the Judgment. The parties agreed that defendants must divest the entire waste collection route if, in its most recent year of operation, the route obtained 10 percent or more of its revenues from the provision of small container commercial waste collection services (and in the case of Dallas, Texas, such services from nonfranchised commercial customers), or 10 percent or more of such revenues are generated by customers located in a geographic area specified in the Judgment.

Applying this standard to the Boston area, for example, the proposed Final Judgment would require defendants to divest any Allied route (or any route that BFI acquired from Allied or any other person after January 1, 1999), if the route obtained 10 percent or more of its revenues from commercial waste collection customers who have business locations in the City of Boston, or Bristol, Essex, Middlesex, Norfolk, Suffolk, or Worcester counties, MA.

until the divestitures mandated by the Judgment are accomplished, the currently operating collection and disposal assets that are to be divested will be maintained and operated as saleable, economically viable, ongoing concerns, with competitively sensitive business information and decision-making divorced from that of the combined company. Allied and BFI, subject to the United States' approval, will appoint a person to manage the operations to be divested and ensure defendants' compliance with the requirements of the proposed Final Judgment and Hold Separate Order.

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

II. Description of the Events Giving Rise to the Violations Alleged in the Complaint

A. The Defendants and the Proposed Transaction

Allied is the third largest waste collection and disposal firm in the United States. Based in Scottsdale, Arizona, it provides waste collection and disposal services in over 20 states. In 1998, Allied's total operating revenues were in excess of \$1.6 billion.

BFI, based in Houston, Texas, is the nation's second largest waste collection and disposal firm. It provides waste collection and disposal services throughout the country, often in direct competition with Allied. During its 1998 fiscal year, BFI had total domestic operating revenues of over \$4.7 billion.

In March 1999, Allied announced its agreement to acquire BFI in a stock transaction worth nearly \$9.4 billion. This transaction, which would combine two major waste industry competitors and substantially increase concentration in a number of already highly concentrated, difficult-to-enter waste markets, precipitated the United States' antitrust suit.

B. The Competitive Effects of the Transaction

Waste collection firms, or "haulers," contract to collect municipal solid waste ("MSW") from residential and commercial customers; they transport the waste to private and public disposal facilities (e.g., transfer stations, incinerators and landfills), which, for a fee, process and legally dispose of waste. Allied and BFI compete in

operating waste collection routes and waste disposal facilities.

1. The Effects of the Transaction on Competition in the Markets for Small Container Commercial Waste Collection Services

Small container commercial waste collection service is the collection of MSW from commercial businesses such as office and apartment buildings and retail establishments (e.g., stores and restaurants) for shipment to, and disposal at, an approved disposal facility. Because of the type and volume of waste generated by commercial accounts and the frequency of service required, haulers organize commercial accounts into special routes, and use specialized equipment to store, collect and transport waste from these accounts to approved disposal sites. This equipment—one to ten cubic yard containers for waste storage, plus front-end (and sometimes, rear-end) loader vehicles for collection and transportation—is uniquely well suited to the provision of small container commercial waste collection service. Providers of other types of waste collection services (e.g., residential and roll-off services) are not good substitutes for small container commercial waste collection firms. In their waste collection efforts, other firms use different waste storage equipment (e.g., garbage cans or semi-stationary roll-off containers) and different vehicles (e.g., side-load trucks), which, for a variety of reasons, cannot be conveniently or efficiently used to store, collect or transport waste generated by commercial accounts, and hence, are rarely used on small container commercial waste collection routes. For purposes of antitrust analysis, the provision of small container commercial waste collection services constitutes a line of commerce, or relevant service, for analyzing the effects of the merger.

The Complaint alleges that the provision of small container commercial waste collection services takes place in compact, highly localized geographic markets. It is expensive to ship waste long distances in either collection or disposal operations. To minimize transportation costs and maximize the scale, density, and efficiency of their waste collection operations, small container commercial waste collection firms concentrate their customers and collection routes in small areas. Firms with operations concentrated in a distant area cannot easily compete against firms whose routes and customers are locally based. Sheer distance may significantly limit a distant firm's ability to provide

commercial waste collection service as frequently or conveniently as that offered by local firms with nearby routes. Also, local commercial waste collection firms have significant cost advantages over other firms, and can profitably increase their charges to local commercial customers without losing significant sales to firms outside the area.

Applying that analysis, the Complaint alleges that fourteen areas—Akron/Canton, Ohio; Boston, Massachusetts; Charlotte, North Carolina; Chicago, Illinois; Dallas, Texas; Davenport, Iowa/Moline, Illinois; Denver, Colorado; Detroit, Michigan; Evansville, Indiana; Kalamazoo/Battle Creek, Michigan; Oklahoma city, Oklahoma; Rock Falls/Dixon, Illinois; Rockford, Illinois; and Springfield, Missouri—constitute sections of the country, or relevant geographic markets, for the purpose of assessing the competitive effects of a combination of Allied and BFI in the provision of small container commercial waste collection services. In each of these markets, Allied and BFI are two of the largest competitors, and the combined firm would command from 25 percent to 85 percent or more of total market revenues. These fourteen small container commercial waste collection markets generate from \$2.5 million to over \$200 million in annual revenues.

New entry into these markets would be difficult, time consuming, and is unlikely to be sufficient to constrain any post-merger price increase. Many customers of commercial waste collection firms have entered into “evergreen” contracts, tying them to a market incumbent for indefinitely long periods of time. In competing for uncommitted customers, market incumbents can price discriminate, *i.e.*, selectively (and temporarily) charge unbeatably low prices to customers targeted by entrants, a tactic that would strongly discourage a would-be competitor from competing for such accounts, which, if won, may be very unprofitable to serve. Taken together, the prevalence of long term contracts and the ability of market incumbents to price discriminate substantially increases any would-be new entrant’s costs and time necessary for it to build its customer base and obtain efficient scale and route density to become an effective competitor in the market.

The Complaint alleges that a combination of Allied and BFI would likely lead to an increase in prices charged to consumers of commercial waste, collection services. The acquisition would diminish competition by enabling the few remaining competitors to engage more easily,

frequently, and effectively in coordinated pricing interaction that harms consumers. This is especially troublesome in markets where entry has not proved an effective deterrent to the exercise of market power.

2. The Effects of the Transaction on Competition in Other Markets for Disposal of Municipal Solid Waste

A number of federal, state and local safety, environmental, zoning and permit laws and regulations dictate critical aspects of storage, handling, transportation, processing and disposal of MSW. MSW can only be sent for disposal to a transfer station, sanitary landfill, or incinerator permitted to accept MSW. Anyone who attempts to dispose of MSW in a facility that has not been approved for disposal of such waste, risks severe civil and criminal penalties. Firms that compete in the disposal of MSW can profitably increase their charges to haulers for disposal of MSW without losing significant sales to other firms. For these reasons, there are no good substitutes for disposing of MSW.

Disposal of MSW tends to occur in highly localized markets.² Disposal costs are a significant component of waste collection services, often comprising 40 percent or more of overall operating costs. It is expensive to transport waste significant distances for disposal. Consequently, waste collection firms strongly prefer to send waste to local disposal sites. Sending a vehicle to dump waste at a remote landfill increases both the actual and opportunity costs of a hauler’s collection service. Natural and man-made obstacles (*e.g.*, mountains and traffic congestion), sheer distance and relative isolation from population

² Though disposal of municipal solid waste is primarily a local activity, in some densely populated urban areas there are few, if any, local landfills or incinerators available for final disposal of waste. In these areas, transfer stations are the principal disposal option. A transfer station collects, processes and temporarily stores waste for later bulk shipment by truck, rail or barge to a more distant disposal site, typically a sanitary landfill, for final disposal. In such markets, local transfer stations compete for municipal solid waste for processing and temporary storage, and sanitary landfills may compete in a broader regional market for permanent disposal of area waste.

In this case, in several relevant areas (*e.g.*, Akron/Canton, Atlanta, Charlotte, Chicago, Kalamazoo/Battle Creek, and Springfield), distant landfills may compete with local disposal facilities (incinerators or landfills) through the use of transfer stations. Regional landfills also compete for permanent disposal of waste from these areas. In some areas, however, the proposed Final Judgment requires defendants to divest transfer stations because such divestitures may aid in the competitive viability of a companion landfill, the divestiture of which, the United States believes, is essential for effective relief.

centers (and collection operations) all substantially limit the ability of a remote disposal site to compete for MSW from closer, more accessible sites. Thus, waste collection firms will pay a premium to dispose of waste at more convenient and accessible sites. Operators of such disposal facilities can—and do—price discrimination, *i.e.*, charge higher prices to customers who have fewer local options for waste disposal.

For these reasons, the Complaint alleges that, for purposes of antitrust analysis, thirteen areas—Akron/Canton, Ohio; Atlanta, Georgia; Boston, Massachusetts; Charlotte, North Carolina; Chicago, Illinois; Denver, Colorado; Detroit, Michigan; Evansville, Indiana; Joplin/Lamar/Springfield, Missouri; Kalamazoo/Battle Creek, Michigan; Moline, Illinois; Oakland, California; and Oklahoma City, Oklahoma—are relevant geographic markets for disposal of municipal solid waste. In each of these markets, Allied and BFI are two of only a few significant competitors. Their combination would command from 30 percent to well over 90 percent of disposal capacity for municipal solid waste in highly concentrated markets that each generate revenues of from \$5 million to over \$250 million annually.

Entry into disposal of municipal solid waste is difficult. Government permitting laws and regulations make obtaining a permit to construct or expand a disposal site an expensive and time-consuming risk. Significant new entry into these markets is unlikely to occur in any reasonable period of time, and hence, is not likely to prevent exercise of market power after the acquisition.

In each listed market, Allied’s acquisition of BFI would remove a significant competitor in disposal of municipal solid waste. With the elimination of BFI, market incumbents will no longer compete as aggressively since they will not have to worry about losing business to BFI. The resulting substantial increase in concentration, loss of competition, and absence of reasonable prospect of significant new entry or expansion by market incumbents likely to ensure that consumers will pay substantially higher prices for disposal of MSW, collection of small container commercial waste, or both, following the acquisition.

III. Explanation of the Proposed Final Judgment

A. Divestiture Provisions of the Judgment

The divestiture relief described in the proposed Final Judgment will eliminate the anticompetitive effects of the defendants' acquisition in the provision of small container commercial waste collection services in, and the disposal of MSW from, the relevant markets by establishing new, independent and economically viable competitors in each affected market. The proposed Final Judgment requires Allied and BFI, within 120 days after July 20, 1999, or five days after notice of the entry of this Final Judgment by the Court, whichever is later, to sell certain commercial waste collection assets ("Relevant Hauling Assets") and disposal assets ("Relevant Disposal Assets") as viable, ongoing businesses to a purchaser or purchasers acceptable to the United States, in its sole discretion. The collection assets to be divested include small container commercial waste collection routes, trucks, customer lists, and if requested by the purchaser, garage facilities. The disposal assets to be divested include an incinerator, landfills, transfer stations, airspace disposal rights and an incinerator, and certain other assets critical to successful operation of such facilities (e.g., leasehold and renewal rights in the particular landfill or transfer station, garages and offices, trucks and vehicles, scales, permits, and intangible assets such as landfill or transfer station-related customer lists and contracts).

If Allied and BFI cannot accomplish the divestitures within the prescribed period of time, the proposed Final Judgment provides that the United States may appoint a trustee to complete the divestiture of each relevant disposal asset or relevant hauling asset not sold. The proposed Final Judgment generally provides that the assets must be divested in such a way as to satisfy the United States, in its sole discretion, that the assets can and will be used by the purchaser as part of a viable, ongoing business or businesses engaged in waste collection or disposal that can compete effectively in the relevant area.³

³The proposed Final Judgment in this case, like the decree pending in *United States v. USA Waste Services, Inc.*, No. 98 CV 1616 (N.D. Ohio, filed July 17, 1998), also prohibits defendants from reacquiring any of the assets divested under the terms of the decree. See Judgment, § VIII(C). While the injunctive provisions of antitrust divestiture decrees logically and implicitly proscribe reacquisition of divested assets, the unique circumstances of this industry, which is rapidly consolidating and where there have been instances of the same assets changing hands several times as

Defendants must take all reasonable steps necessary to accomplish the divestitures, and shall cooperate with bona fide prospective purchasers and, if one is appointed, with the trustee.

If a trustee is appointed, the proposed Final Judgment provides that defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestitures are accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish the divestitures. At the end of six months, if the divestitures have not been accomplished, the trustee and the parties will make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

B. Additional Injunctive Relief

1. United State's Prior Approval of Any Subsequent Acquisitions by Defendants of Commercial Waste Collection and Waste Disposal Competitors in Certain Highly Concentrated Markets

The Final Judgment, § VII, also requires that for a five-year period after its entry, defendants must seek and obtain written approval from the United States before acquiring any person engaged in the provision of small container waste collection service or the disposal of municipal solid waste in the Atlanta, Boston, Charlotte, Chicago, Davenport, IA/Moline, IL, Evansville, Kalamazoo/Battle Creek, Joplin/Lamar, or Springfield areas, where the acquired person had reported annual revenues of at least \$1 million or the purchase price of the person's assets is at least \$1 million. This notice and prior approval provision will assist the United States in preventing potentially significant acquisitions by Allied of smaller waste industry rivals in already highly-concentrated markets in transitions that otherwise would fall outside the reporting thresholds of the Hart-Scott-Rodino Act. Allied, BFI and other leading waste industry firms have already made a number of such acquisitions, which, taken together, have significantly increased concentration, and substantially reduced competition, in many local waste markets.

a result of such consolidation, dictated that the United States make this proscription explicit in this case.

2. Modification of Consent Decrees in Prior Waste Cases Involving the Defendants

Finally, the Final Judgment, § VIII, requires Allied and BFI to join the United States in moving to modify the consent decrees in three earlier cases—*United States v. Allied Waste Industries, Inc.*, 7 Trade Reg. Rep. (CCH) ¶ 50,860 (D.D.C., filed and pending April 8, 1999); *United States v. Browing-Ferris Industries, Inc.*, 1996-2 Trade Cas. (CCH) ¶ 71,456 (D.D.C. 1996); and *United States v. Browing-Ferris Industries, Inc.*, 1995-2 Trade Cas. (CCH) ¶ 71,079 (D.D.C. 1995). In essence, the modification would prohibit Allied and BFI, and any person acquired by them, in the St. Louis, Missouri; Dubuque, Iowa, Memphis, Tennessee; Baltimore, Maryland and southern Florida areas from offering or enforcing evergreen clauses in small container commercial waste collection contracts. The modifications would clarify—and in some instances, extend—the scope of these consent decrees, and help eliminate contractual provisions that significantly deter entry, thus hindering competition in the provision of commercial waste collection services in these five major markets.

IV. Remedies Available to Potential Private Litigants

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

V. Procedures Available for Modification of the Proposed Final Judgment

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

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment

within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**. Written comments should be submitted to: J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530.

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

IV. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants Allied and BFI. The United States could have continued the litigation to seek preliminary and permanent injunctions against Allied's acquisition of BFI. The United States is satisfied, however, that defendants' divestiture of the assets described in the Judgment will establish, preserve and ensure viable competitors in each of the relevant markets identified by the United States. To this end, the United States is convinced that the proposed relief, once implemented by the Court, will prevent Allied's acquisition of BFI from having adverse competitive effects.

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

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

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other

considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added).

As the Court of Appeals for the District of Columbia Circuit recently held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See *United States v. Microsoft Corp.*, 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."⁴ Rather,

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

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

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), quoting *United States v. Bechtel Corp.*, 648 F.2d 660, (9th Cir.), cert. denied, 454 U.S. 1083 (1981); see also *Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995). Precedent requires that

The balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the

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

first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.⁵

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest' (citations omitted)."⁶

Moreover, the court's role under the Tunney Act is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the Court to "construct [its] own hypothetical case and then evaluate the decree against that case," *Microsoft*, 56 F.3d at 1459. Since "[t]he court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bring a case in the first place," it follows that the court "is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States might have but did not pursue. *Id.*

VIII. Determinative Documents

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

Dated: July 26, 1999.

⁵ *United States v. Bechtel Corp.*, 648 F.2d at 666 (citations omitted) (emphasis added); see *United States v. BNS, Inc.*, 858 F.2d at 463; *United States v. National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States v. Gillette Co.*, 406 F. Supp. at 716. See also *United States v. American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983), cert. denied, 465 U.S. 1101 (1984).

⁶ *United States v. American Tel. and Tel. Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States* 460 U.S. 1001 (1983) quoting *United States v. Gillette Co.*, *supra*, 406 F. Supp. at 716; *United States v. Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

Respectfully submitted,
 Anthony E. Harris,
*Illinois Bar #1133713, U.S. Department of
 Justice, 1401 H Street, NW, Suite 3000,
 Washington, DC 20530, (202) 307-6583.*

Appendix A—Summary of Waste Disposal and Collection Assets That Must Be Divested Under the Proposed Final Judgment

I. Waste Disposal Assets

The proposed Final Judgment, §§ II(C)(1) and (2), IV and V, requires Allied and BFI to divest certain "relevant disposal assets." In general, this means, with respect to each incinerator, landfill or transfer station, defendants must sell, to a purchaser acceptable to the United States, all of their rights, titles and interests in any tangible assets, including all fee and leasehold and renewal rights in the listed incinerator, landfill or transfer station; the garage and related facilities; offices, and any related assets including capital equipment, trucks and other vehicles, scales, power supply equipment, interests, permits, and supplies; and all of their rights, titles and interests in any intangible assets, including customer lists, contracts, and accounts, or options to purchase any adjoining property. The list of disposal facilities that must be divested includes properties in the following locations, under the listed terms and conditions:

A. Incinerator, Landfills and Airspace Disposal Rights

1. Boston, MA

(a) BFI's American Refuel SEMASS waste-to-energy incinerator facility, located at 141 Cranberry Highway (Route 28), Rochester, MA 02576;

(b) Airspace disposal rights at BFI's Fall River Landfill, located at 1080 Airport Road, Fall River, MA 02720, pursuant to which SEMASS may dispose of up to the maximum amount of ash and "bypass" waste, as now defined in the operating permit (or any modifications, amendments or extension thereto) of Fall River Landfill, for a period of time up to the closure or attainment of permitted capacity of the landfill, provided however, that defendants must commit to operate BFI's Fall River Landfill, and its gate, scale house, and disposal area under terms and conditions no less favorable than those provided to defendants' own vehicles or to the vehicles of any municipality in Massachusetts, except as to price and credit terms; and

(c) Airspace disposal rights at Ogden Martin Systems Massburn incinerator, located at 100 Recovery Way, Haverhill, MA 01830, pursuant to which a purchaser or purchasers may dispose as much as 1,150 tons/day of waste, for a ten-year period of time.

2. Charlotte, NC

Allied's Lee County Landfill, located at 1301 Sumter Highway, Bishopville, SC 29010, the sale of which will be required only if the United States, in its sole discretion, concludes, pursuant to Section IV or V of the Final Judgment, that the

purchaser of Allied's Charlotte Transfer Station [see Section II(B)(4) below] in unacceptable.

3. Chicago, IL

BFI's Zion Landfill, located at 701 Green Bay Road, Zion, IL 60099; BFI's Orchard Hills Landfill, located at 8290 Highway 251, Davis Junction, IL 60120; and BFI's Spoon Ridge Landfill, located at Route 1 and Highway 97, Fairview, IL, 61432.

4. Denver, CO

Allied's Denver Regional Landfill, located at 1141 Weld County Road #6, Erie, CO.

5. Detroit, MI

BFI's Arbor Hills Landfill, located at 10690 West Six Mile Road, Northview, MI 481667.

6. Evansville, IN

Allied's Blackfoot Landfill, located at 2726 East State Road, Winslow, IN 47598;

7. Joplin/Lamar/Springfield, MO

(a) Allied's option to purchase the proposed Southwest Regional Landfill, located at Missouri state Highway M, township 30N, Range 32 West, Section 34, in Jasper County, MO, which option allied must exercise or extend so that it will not expire any sooner than 12 months following the entry of the final Judgment; and

(b) Airspace disposal rights at Allied's Wheatland Regional Landfill, located at Columbus, KS, pursuant to which a purchaser or purchasers can dispose up to 700 tons/day of waste, for a period of time up to three months after the opening of southwest Regional Landfill, provided, however, that for each purchaser of airspace rights (or its designee), defendants must commit to operate Allied's Wheatland Regional Landfill, and its gate, scale house, and disposal area under terms and conditions no less favorable than those provided to defendants' own vehicles or to the vehicles of any municipality in Missouri, except as to price and credit terms.

8. Kalamazoo/Battle Creek, MI

Airspace disposal rights at Allied's Ottawa Farms Landfill, located at 15550 68th Street, Coopersville, MI or BFI's C&C Landfill, located at 14800 P drive North, Marshall, MI 49068, pursuant to which a purchaser may dispose up to 450 tons/day of waste for up to a ten-year period of time, the sale of which will be required only if the United States, in its sole discretion, concludes, pursuant to Section IV or V of the Final Judgment, that the purchaser of Allied's Kalamazoo Transfer Station see Section (B)(9) below] is unacceptable; and provided, however, that for each purchaser of airspace rights (or its designee), defendants must commit to operate Allied's Ottawa Farms Landfill or BFI's C&C Landfill, and its gate, scale house, and disposal area under terms and conditions no less favorable than those provided to defendants' own vehicles or to the vehicles of any municipality in Michigan, except as to price and credit terms;

9. Moline, IL

BFI's Quad Cities Landfill, located at 13606 Knoxville Road, Milan, IL 61264;

10. Oakland, CA

BFI's Vasco Road Landfill, located at 4001 North Vasco Road, Livermore, CA; and

11. Oklahoma City, OK

BFI's Oklahoma Landfill, located at 7600 SW 15th street, Oklahoma City, OK 73128.

B. Transfer Stations

1. Akron/Canton, OH

Allied's RC Miller Refuse Transfer Station, located at 1800 19th Street, Canton, OH;

2. Atlanta, GA

Allied's Southern States Environmental Transfer Station, located at 129 Werz Industrial Boulevard, Newnan, GA 30263; Allied's Fayette County Transfer Station, located at 211 First Manassas Mile Road, Fayetteville, GA 30214; and BFI's Marble Mill Road Transfer Station, located at 317 Marble Mill Road, Marietta, GA 30060.

3. Boston, MA

BFI's Holliston Transfer Station, located at 115 Washington Street, Holliston, MA 01746; BFI's Auburn Transfer Station, located at 15 Hardscrabble Road, Auburn, MA 02501; and BFI's Braintree Transfer Station, located at 257 Ivory Street, Braintree, MA 02184.

4. Charlotte, NC

Allied's Charlotte Transfer Station, located at 3130 I-85 Service Road North, Charlotte, NC 28206.

5. Chicago, IL

BFI's Melrose Park 7330 Transfer Station, located at 4700 W. Lake Street, Melrose Park, IL 60160; BFI's Rolling Meadows Transfer Station, located at 3851 Berdnick Street, Rolling Meadows, IL 60008; BFI's DuKane Transfer Station, located at 3 N 261 West Powis Road, West Chicago, IL 60185; BFI's Northbrook-Brooks Transfer Station, located at 2750 Shermer Road, Northbrook, IL 60062; and BFI's Active/Evanston Transfer Station, located at 1712 Church Street, Evanston, IL 60201.

6. Denver, CO

Allied's Summit Waste Jordan Road Transfer Station, located at 7120 S. Jordan Road, Denver, CO.

7. Detroit, MI

BFI's SDMA Transfer Station, located at 28315 Grosbeck Highway, Roseville, MI 48066; and BFI's Schaefer Road Transfer Station, located at 3051 Schaefer Road, Dearborn, MI 48126.

8. Evansville, IN

Allied's Koester Transfer Station, located at 12800 Warrick-County Line Road, Evansville, IN 47711.

9. Kalamazoo/Battle Creek, MI

BFI's Kalamazoo Transfer Station, located at 28002 Cork Street, Kalamazoo, MI 49001; and

10. Springfield, MO

Allied's Tates Transfer Station, located at Route 2, Box 69, Verona, MO 65769.

II. Commercial Waste Collection Assets

The Final Judgment, §§ II(D), IV and V, also orders Allied and BFI to divest certain

"relevant hauling assets" that may be used in the small commercial waste collection business. The assets primarily include routes, capital equipment trucks and other vehicles, containers, interests, permits, supplies, customer lists, contracts, accounts, and if requested by the purchaser of the assets, garages, used to service customers along the routes in the following locations:

A. Akron, OH

Allied front-end and rear-end loader truck small container routes (hereinafter, "commercial routes") that serve the cities of Akron and Canton and Summit, Stark and Portage counties, Ohio.

B. Boston, MA

Allied's commercial routes and any commercial routes acquired by BFI from Allied or any other person since January 1, 1999 that serve the City of Boston and Bristol, Essex, Middlesex, Norfolk, Suffolk, and Worcester counties, MA.

C. Charlotte, NC

BFI's commercial routes that serve the City of Charlotte and Mecklenburg County, NC.

D. Chicago, IL

BFI's commercial routes that serve the City of Chicago and Cook, DuPage, Will, Kane, McHenry, and Lake counties, IL.

E. Dallas, TX

BFI's commercial routes that serve any nonfranchised or open competition areas of the City of Dallas and Dallas County, TX.

F. Davenport, IA and Moline, IL

BFI's commercial routes that serve the cities of Davenport and Bettendorf, IA; Moline, East Moline, and Rock Island, IL; and Rock Island County, IL and Scott County, IA.

G. Denver, CO

Allied's commercial routes that serve the City of Denver and Denver, Arapahoe, Adams, Douglas and Jefferson counties, CO.

H. Detroit, MI

BFI's commercial routes that serve the City of Detroit, Wayne, Oakland and Macomb counties, MI.

I. Evansville, IN

Allied's commercial routes that serve the City of Evansville, IN and Vanderburgh County, IN, including all of its commercial routes that operate out of Allied's Evansville and Huntingburg garage facilities.

J. Kalamazoo/Battle Creek, MI

BFI's commercial routes that serve the cities of Kalamazoo and Battle Creek and Kalamazoo and Calhoun counties, MI.

K. Oklahoma City, OK

BFI's commercial routes that serve Oklahoma City and Oklahoma County, OK.

L. Rock Falls/Dixon, IL

Allied's commercial routes that serve the cities of Rock Falls and Dixon and Lee and Whiteside counties, IL.

M. Rockford, IL

Allied's commercial routes that serve the City of Rockford, IL, and Ogle and Winnebago counties, IL; and

N. Springfield, MO

Allied's commercial routes that serve the City of Springfield and Greene and Christian counties, MO.

Appendix B—Agreement Regarding Routes that Partially Serve an Area in the Judgment or Obtain Revenues From Commercial and Other Types of Customers

July 19, 1999.

By Facsimile and U.S. Mail

Tom D. Smith, Esquire,

Jones, Day, Reavis & Pogue, 1450 G Street, NW, Washington, DC 20005-2088.

David M. Foster, Esquire,

Fulbright & Jaworski L.L.P., 801 Pennsylvania Avenue, NW, Washington, DC 20004-2615.

Re: Proposed Final Judgment in *United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc.*

Dear Messrs. Smith and Foster: I write regarding several issues not explicitly resolved by language in the proposed Final Judgment.

Section II(D) of the Judgment defines "Relevant Hauling Assets" and does so by reference to whether a defendant's route: (a) is a front-end loader or rear-end loader small container route; (b) "serves" a city or county listed in the Judgment; and (c) solely with respect to Dallas, Texas [Judgment, Section II (D)(5)], serves a nonfranchised or "open competition" area.

The United States and the defendants agree that a defendant's waste collection route is a front-end loader or rear-end loader small container route, which must be divested pursuant to the terms of the Final Judgment, if the route, in its most recent year of operation, generated ten percent or more of its revenues from: (a) front-end loader and rear-end loader small container commercial customers; (b) whose businesses are located in a city or county listed in Section II of the Judgment; or (c) with respect to Section II(D)(5), whose businesses are located in a nonfranchised or open competition area of the Dallas area.

Please sign below if this letter accurately sets forth our agreements with respect to the Final Judgment and you agree that the terms set forth herein are enforceable pursuant to the terms of the Final Judgment.

Sincerely yours,

Anthony E. Harris,

Attorney, Litigation II Section.

On Behalf of Allied Waste Industries, Inc.

Tom D. Smith, Esquire,

Jones, Day, Reavis & Pogue, 51 Louisiana Avenue, NW, Washington, DC 20001-2113

For Browning-Ferris Industries, Inc.

David M. Foster, Esquire,

Fulbright & Jaworski L.L.P., 801 Pennsylvania Avenue, NW, Washington, DC 20004-2615.

Certificate of Service

I, Anthony E. Harris, hereby certify that on July 26, 1999, I caused a copy of the foregoing Competitive Impact

Statement to be served on the defendants Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. by facsimile and by mailing it first-class, postage prepaid, to duly authorized legal representatives of those parties, as follows:

Counsel for Defendant Allied Waste Industries, Inc.

Tom D. Smith, Esquire,

Jones, Day, Reavis & Pogue, 51 Louisiana Avenue, NW, Washington, DC 20001-2113

Counsel for Defendant Browning-Ferris Industries, Inc.

David M. Foster, Esquire,

Fulbright & Jaworski L.L.P., 801 Pennsylvania Avenue, NW, Washington, DC 20004-2615.

Anthony E. Harris, Esquire,

Illinois Bar # 1133713, U.S. Department of Justice, Antitrust Division, 1401 H Street, NW, Suite 3000, Washington, DC 20530.

[FR Doc. 99-20163 Filed 8-5-99; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No 98-8]

Mark Binette, M.D., Grant of Restricted Registration

On September 19, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Mark J. Binette, M.D. (Respondent) of Mesa, Arizona, notifying him of an opportunity to show cause as to why DEA should not deny his application for registration as a practitioner pursuant to 21 U.S.C. 823(f), for reason that his registration would be inconsistent with the public interest.

By letter dated January 22, 1998, Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause. Following prehearing procedures, a hearing was held in Phoenix, Arizona on August 4 and 5, 1998, before Administrative Law Judge Mary Ellen Bittner. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, both parties submitted proposed findings of fact, conclusions of law and argument. On January 20, 1999, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision, recommending that Respondent's application for registration be granted without restrictions. Neither party filed exceptions to Judge Bittner's opinion, and on February 22, 1999, Judge Bittner