Dated: July 15, 2003.

Sharon DiPinto,

Acting Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. 03–20462 Filed 8–11–03; 8:45 am]

BILLING CODE 4510–HC–P

UNITED STATES INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–479]

In the Matter of: Certain Coamoxiclav Products, Potassium Clavulanate Products, and Other Products Derived From Clavulanic Acid; Notice of Commission Decision Not to Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') terminating the above-referenced investigation in its entirety based on a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3104. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TTD terminal on (202) 205–1810. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server *(http://www.usitc.gov).*

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 5, 2002, based on a complaint filed by GlaxoSmithKline, PLC of the United Kingdom and SmithKlineBeecham d/b/a GlaxoSmithKline of Philadelphia, Pennsylvania (collectively, GSK) alleging a violation of section 337 of the Tariff Act of 1930 in the importation, sale for importation, and sale after importation of certain coamoxiclav products, potassium clavulanate products, and other products derived from clavulanic acid products and potassium clavulanate by reason of misappropriation of trade secrets and unfair competition. 67 FR 57850. The complainant named Biochemie GmbH, of Austria, Biochemie SpA, of Italy, Novartis AG of Switzerland, and Geneva Pharmaceuticals of New Jersey as respondents.

On July 11, 2003, the ALJ issued an ID granting a joint motion by GSK and all respondents to the investigation to terminate the investigation on the basis of a settlement agreement. The motion was supported by the Commission investigative attorney. No petitions for review of the ID were filed.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 190, as amended, 19 U.S.C. 1337, and in section 210.42(h) of the Commission's Rules of Practice and Procedure, 19 CFR 210.42(h).

Issued: August 5, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–20492 Filed 8–11–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States and New Jersey, Plaintiffs; v. Waste Management, Inc., and Allied Waste Industries, Inc., Defendants; 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 in *United States of America et al.* v. *Waste Management, Inc., et al.,* Civil No. 1:03CV01409(GK).

On June 27, 2003, the United States and the State of New Jersey filed a Complaint alleging that Waste Management's acquisition of certain voting securities and waste-hauling and disposal assets of Allied would lessen competition substantially in the provision of small container commercial waste collection services in the areas of Pitkin County, Colorado; Garfield County, Colorado; Augusta, Georgia; Myrtle Beach, South Carolina; Morris County, New Jersey; and Bergen and Passaic Counties, New Jersey, and in the provision of municipal solid waste disposal services in the Bergen and Passaic Counties, New Jersey and Tulsa and Muskogee, Oklahoma disposal areas, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires, among other things, that defendant Waste Management (1) divest small commercial waste collection assets in the areas of Pitkin County, Colorado; Garfield County, Colorado; Augusta Georgia; Myrtle Beach, South Carolina; Morris County, New Jersey; and Bergen and Passaic Counties, New Jersey; (2) alter the contracts it uses with its existing and new small container commercial waste customers in the areas of Augusta, Georgia and Myrtle Beach, South Carolina; (3) divest transfer station facilities serving Bergen and Passaic Counties, New Jersey; and (4) sell throughput disposal rights at a facility serving Bergen and Passaic Counties, New Jersey. Copies of the Complaint, the proposed Final Judgment, and the Competitive Impact Statement are available for inspection at the U.S. Department of Justice, Antitrust Division, Suite 215 North, 325 7th Street, NW., Washington, DC 20004 (telephone: (202) 514–2692), and at the Clerk's Office of the U.S. Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001.

Public comment is invited within 60 days of the date of this notice. 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).

Dorothy B. Fountain,

Deputy Director of Operations.

United States District Court for the District of Columbia

[Case No: 03 1409]

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:

I. Definitions

As used in this Hold Separate Stipulation and Order:

A. *''Acquirer''* means the entity or entities to whom Waste Management divests the Relevant Disposal Assets, Relevant Hauling Assets, or the Alternative Disposal Asset.

B. *''Allied''* means Defendant Allied Waste Industries, Inc., a Delaware corporation with its headquarters in Scottsdale, Arizona, and its successors and assigns, its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

C. *''Alternative Disposal Asset''* means, unless otherwise noted, with respect to each transfer station listed and described herein, all of Defendants' rights, titles, and interests in any tangible asset, related to the operation of each transfer station listed, including all fee simple or ownership rights to offices, garages, related facilities, capital equipment, trucks and other vehicles, scales, power supply equipment, and supplies; and all Defendants' rights, titles, and interests ion any related intangible assets, including all leasehold interests and renewal rights thereto, permits, customer lists, contracts, and accounts, or options to purchase any adjoining property.

Alternative Disposal Asset, as used herein, means one of the following three properties, as selected by Defendant Waste Management in accordance with the terms provided in Sections IV.I., V.B., and V.C. of the final Judgment:

1. Park Ridge, New Jersey

Waste Management's Park Ridge Transfer Station, located at 94 Perry Street, Park Ridge, New Jersey 07656; or

2. Fairview, New Jersey

Allied's Fairview Transfer Station (formerly permitted to BFI Transfer Systems of New Jersey, Inc.), located at 61 Broad Avenue, Fairview, New Jersey 07022; or

3. Hillsdale, New Jersey

Waste Management's Hillsdale Transfer Station, located at 131 Patterson Street, Hillsdale, New Jersey 07642.

D. ''Disposal'' means the business of disposing of waste into approved disposal sites (*i.e.,* landfills, incinerators, and transfer stations).

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. ''Fully Permitted'' means a renewal of the operating permit, currently held by Waste Management's Chestnut Ridge Solid Waste Transfer Station of Chestnut Ridge, New York and scheduled to expire on November 30, 2003, by the New York State Department of Environmental Conservation (''NYDEC'') for an additional five (5) years under terms and conditions comparable to those in the currently held permit; and further means that all additional zoning, environmental, and other permits required to operate the facility are valid and lawful. The renewed permit must be granted by NYDEC prior to expiration of the time period set forth in Section IV.A. of the Final Judgment, which time period shall include the sixty (60) day extension.

G. ''Landfill'' means a facility where waste is placed into the land.

H. ''MSW'' means municipal solid waste, a term of art used to describe solid putrescible waste generated by households and commercial establishments such as retail stores, offices, restaurants, warehouses, and non-manufacturing activities in industrial facilities. MSW does not include special handling waste (*e.g.,* waste from manufacturing processes, regulated medical waste, sewage, and sludge), hazardous waste, or waste generated by construction or demolition sites.

I. ''New Jersey Assets'' means the Relevant Disposal Assets and the Relevant Hauling Assets located in New Jersey.

J. ''Relevant Disposal Assets'' means, unless otherwise noted, with respect to each transfer station listed and described herein, all of Defendants' rights, titles, and interests in any tangible asset related to each transfer station listed, including all fee simple or ownership rights to offices, garages, related facilities, capital equipment, trucks and other vehicles, scales, power supply equipment, and supplies, and all Defendants' rights, titles, and interests in any related intangible assets, including all leasehold interests and renewal rights thereto, permits, customer lists, contracts, and accounts, or options to purchase any adjoining property.

Relevant Disposal Assets, as used herein, includes the following transfer stations, or throughput or tolling disposal rights:

1. Garfield, New Jersey

Allied's Garofalo Recycling and Transfer Station (formerly permitted to Garofalo Brothers, Inc., and Garofalo Recyling and Transfer Station Co., Inc.), located at 19–35 Atlantic Street, Garfield, New Jersey 07026.

2. Chestnut Ridge, New York

Waste Management's Fully Permitted Chestnut Ridge Solid Waste Transfer Station (owned by and permitted to Waste Management's subsidiary Marangi Bros., Inc.), located at 560 Chestnut Ridge Road, Chestnut Ridge, New York 10977.

3. North Arlington, New Jersey

Throughout or tolling disposal rights of a maximum of 1,925 tons per week, for the remainder of Waste Management's current lease and if the lease is renewed, for the duration of the period in which Waste Management has contractual rights to operate the facility, not to exceed the termination date of the Final Judgment. These disposal rights are exercisable by the Acquirer (or its designee), at the New Jersey Meadowlands Commission's HMDC Solid Waste Baler Facility (''HMDC Facility''), located at 100 Baler Boulevard, North Arlington, New Jersey 07031, under the following terms and conditions:

a. At the Acquirer's option, Waste Management shall set aside and operate or, allow the Acquirer (or its designee) to operate one (1) disposal bay and a scale and scale house for the sole use of the Acquirer (or its designee);

b. Waste Management shall permit the Acquirer (or its designee) to deliver waste to the HMDC Facility during operating hours from Monday through Saturday up to the weekly maximum of 1,925 tons. Waste Management shall have the right to stop accepting waste from any additional truck owned or operated by the Acquirer (or its designee) and entering the premises after Waste Management has accepted 350 tons of waste from the Acquirer (or its designee) on any day the HMDC Facility is operating;

c. Under the throughput or tolling arrangement, Waste Management shall permit the Acquirer (or its designee) to deliver waste to the HMDC Facility for processing and, at the option of the Acquirer (or its designee), load the processed waste into vehicles designated by the Acquirer (or its designee) for ultimate disposal; and

d. Waste Management shall operate all HMDC Facility gates, scales, scale houses, and disposal areas described in the Acquirer's contract under terms and conditions no less favorable to the Acquirer (or its designee) than those provided to Waste Management or its customers, including any municipality.

K. ''Relevant Hauling Assets'' 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, 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, permits and accounts.

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

1. Augusta, Georgia

Allied's commercial waste collection routes 903, 904, 916, and 922 that operate out of Allied's Augusta division located at 683 Commerce Court, Evans, Georgia 30809.

2. Myrtle Beach, South Carolina

Allied's commercial waste collection routes 711, 714, and 715 that operate out of Allied's Rural Sanitation Services Hauling facility located at 3512 Highway 501, Myrtle Beach, South Carolina 29579.

3. Pitkin and Garfield Counties, Colorado

Waste Management's waste collection routes 730, 824, 825, 831, 850, and 853 that operate out of Waste Management's facilities located at 226 North 12th Street, Carbondale, Colorado 81623.

4. Bergen and Passaic Counties, New Jersey

Allied's commercial waste collection routes 700, 705, 706, 401, and 405 that operate out of Allied's VMI Waste Services Hauling facility located at 75 Broad Avenue, Fairview, New Jersey 07022, except that Waste Management is not required to divest real property or improvements to real property (i.e., buildings, garages, or leasehold rights related thereto).

5. Morris County, New Jersey

Allied's commercial waste collection route 702 that operates out of Allied's VMI Waste Services Hauling facility located at 75 Broad Avenue, Fairview, New Jersey 07022, except that Waste Management is not required to divest real property or improvements to real property (*i.e.,* buildings, garages, or leasehold rights related thereto).

L. ''Small container commercial waste collection service'' means the business of collecting MSW from commercial and industrial accounts, usually in ''dumpsters'' (*i.e.,* a small container with one (1) to ten (10) cubic yards of storage capacity), and transporting or ''hauling'' such waste to a disposal site by use of a front- or rear-end loader truck. Typical commercial waste collection customers include office and apartment buildings and retail establishments (*i.e.,* stores and restaurants).

M. ''Waste Management'' means Defendant Waste Management, Inc., a Delaware corporation with its headquarters in Houston, Texas, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

II. Objectives

The Final Judgment filed in this case is meant to ensure Defendants' prompt divestiture of the Relevant Disposal Assets and Relevant Hauling Assets for the purpose of establishing viable competitors in the municipal solid waste (''MSW'') disposal business and the small container commercial waste collection business, to remedy the effects that the United States alleges would otherwise result from the acquisition of Allied's assets by Waste Management. This Hold Separate Stipulation and Order ensures, prior to such divestitures, that the Relevant Disposal Assets and Relevant Hauling Assets remain independent, economically viable, and ongoing business concerns that will remain independent and uninfluenced by Waste Management or Allied, 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 now 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 transactions 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 that (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. Waste Management shall preserve, maintain, and continue to operate the Relevant Hauling Assets and Relevant Disposal Assets as independent, ongoing, economically viable competitive businesses with management, sales and operations held entirely separate, distinct and apart from those of Waste Management's other operations. Waste Management shall not coordinate the marketing of, or sales by, any Relevant Disposal Asset or Relevant Hauling Asset with its other operations. Within twenty (20) days after the filing of the Hold Separate Stipulation and Order, Defendants will inform the United States of the steps Waste Management has taken to comply with this Hold Separate Stipulation and Order.

B. Waste Management shall take all steps necessary to ensure that (1) the Relevant Disposal Assets and Relevant Hauling Assets will be maintained and operated as independent, ongoing, economically viable and advice

competitors in the MSW disposal business and the small container commercial waste collection business; (2) the management of the Relevant Disposal Assets and Relevant Hauling Assets will not be influenced by Waste Management; 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 Waste Management's other operations. Waste Management's influence over the Relevant Disposal Assets and Relevant Hauling Assets shall be limited to that necessary to carry out its 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 and Relevant Hauling Assets, and shall maintain at 2002 levels, or at previously approved levels for 2003, 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 and lines and sources of credit to continue to maintain the Relevant Hauling Assets and Relevant Disposal Assets as economically viable and competitive ongoing businesses consistent with the requirements of Sections V. A. and B.

E. Defendants shall take all steps necessary to ensure that the Relevant Hauling Assets and Relevant Disposal Assets are fully maintained in operable condition at no less than their current capacity and sales, and shall maintain and adhere to normal repair and maintenance schedules for the Relevant Hauling Assets and Relevant Disposal 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 Hauling Assets or Relevant Disposal 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 Hauling Assets and Relevant Disposal 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 Waste Management or Allied employee who, on the date of Defendants' signing of this Hold Separate Stipulation and Order, either: (1) Works with a Relevant Hauling Asset or a Relevant Disposal Asset, or (2) is a member of management referenced in Section V.J. of this Hold Separate Stipulation and Order.

I. Defendants shall take no action that would jeopardize, delay, or impede the sale of the Relevant Disposal Assets or Relevant Hauling Assets.

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

K. 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 an Acquirer acceptable to the United States.

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

For Plaintiff, United States of America.

Michael K. Hammaker,
DC Bar No. 233684, U.S. Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 3000, Washington, DC 20530, (202) 307–0938.

For Plaintiff, State of New Jersey.

Peter C. Harvey,
Attorney General of New Jersey.

By:

Andrew L. Rossner,
Assistant Attorney General—Deputy Director, New Jersey Division of Criminal Justice, P.O. Box 085, Trenton, New Jersey 08625–0085, (609) 984–0028.

Basil L. Merenda,
Deputy Attorney General, New Jersey Division of Criminal Justice, Antitrust and Procurement Fraud Bureau, P.O. Box 085, Trenton, New Jersey 08625–0085, (609) 292–7497.

For Defendant, Waste Management, Inc.

James R. Weiss,
Preston Gates Ellis & Rouvelas Meeds LLP, 1735 New York Avenue, NW., Suite 500, Washington, DC 20006, (202) 628–1700.

For Defendant, Allied Waste Industries, Inc.

Tom D. Smith, Jones Day,
51 Louisiana Avenue, NW., Washington, DC 20001–2113, (202) 879–3971.

Dated: June 26, 2003.

Order

It is so ordered on this _____ day of _____, 2003.

_____
United States District Judge

United States District Court for the District of Columbia

Final Judgment

Whereas, Plaintiffs, the United States of America (''United States'') and the State of New Jersey (''New Jersey''), filed their Complaint on June 27, 2003, and Plaintiffs and Defendants, Waste Management, Inc. (''Waste Management'') and Allied Waste Industries, Inc. (''Allied''), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any part regarding any issue of law or fact;

And Whereas, Defendants agree 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 Hauling Assets and Relevant Disposal Assets by Defendant Waste Management to assure that competition is not substantially lessened;

And Whereas, the United States requires Defendant Waste Management to amend certain provisions of waste hauling contracts and the United States and New Jersey require Defendant Waste Management to make certain divestitures in order to remedy the loss of competition alleged in the Complaint;

And Whereas, Defendants have represented to Plaintiffs that the divestitures required below 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 divestitures or other injunctive provisions contained below;

And Whereas, Defendant Waste Management shall be enjoined from acquiring the Relevant Tulsa and Muskogee Disposal Assets, except as provided in this Final Judgment;

And Whereas, with respect to the New Jersey voting securities and assets to be acquired by Waste Management from Allied pursuant to the stock and asset purchase agreements between them dated January 29, 2003, as amended, this Final Judgment resolves all claims of the State of New Jersey arising under federal and state antitrust laws, including N.J. Stat. Ann. § 56:9–1 *et seq.;*

Now, therefore, before any testimony is taken, and without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged, and decreed:*

I. Jurisdiction

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

II. Definitions

As used in this Final Judgment:

A. ''Acquirer'' means the entity or entities to whom Waste Management divests the Relevant Disposal Assets, Relevant Hauling Assets, or the Alternative Disposal Asset.

B. ''Allied'' means Defendant Allied Waste Industries, Inc., a Delaware corporation with its headquarters in Scottsdale, Arizona, and its successors and assigns, its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Alternative Disposal Asset'' means, unless otherwise noted, with respect to each transfer station listed and described herein, all of Defendants' rights, titles, and interests in any tangible asset, related to the operation of each transfer station listed, including all fee simple or ownership rights to offices, garages, related facilities, capital equipment, trucks and other vehicles, scales, power supply equipment, and supplies; and all Defendants' rights, titles, and interests in any related intangible assets, including all leasehold interests and renewal rights thereto, permits, customer lists, contracts, and accounts, or options to purchase any adjoining property.

Alternative Disposal Asset, as used herein, means one of the following three properties, as selected by Defendant Waste Management in accordance with the terms provided in Sections IV.I., V.B., and V.C. of the Final Judgment:

1. Park Ridge, New Jersey

Waste Management's Park Ridge Transfer Station, located at 94 Perry Street, Park Ridge, New Jersey 07656; or

2. Fairview, New Jersey

Allied's Fairview Transfer Station (formerly permitted to BFI Transfer Systems of New Jersey, Inc.), located at 61 Broad Avenue, Fairview, New Jersey 07022; or

3. Hillsdale, New Jersey

Waste Management's Hillsdale Transfer Station, located at 131 Patterson Street, Hillsdale, New Jersey 07642.

D. ''Disposal'' means the business of disposing of waste into approved disposal sites (*i.e.,* landfills, incinerators, and transfer stations).

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. ''Fully Permitted'' means a renewal of the operating permit, currently held by Waste Management's Chestnut Ridge Solid Waste Transfer Station of Chestnut Ridge, New York and scheduled to expire on November 30, 2003, by the New York State Department of Environmental Conservation (''NYDEC'') for an additional five (5) years under terms and conditions comparable to those in the currently held permit; and further means that all additional zoning, environmental, and other permits required to operate the facility are valid and lawful. The renewed permit must be granted by NYDEC prior to expiration of the time period set forth in Section IV.A. of the Final Judgment, which time period shall include the sixty (60) day extension.

G. ''Landfill'' means a facility where waste is placed into the land.

H. ''MSW'' means municipal solid waste, a term of art used to describe solid putrescible waste generated by households and commercial establishments such as retail stores, offices, restaurants, warehouses, and non-manufacturing activities in industrial facilities. MSW does not include special handling waste (*e.g.,* waste from manufacturing processes, regulated medical waste, sewage, and sludge), hazardous waste, or waste generated by construction or demolition sites.

I. ''New Jersey Assets'' means the Relevant Disposal Assets and the Relevant Hauling Assets located in New Jersey.

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

Relevant Disposal Assets, as used herein, includes the following transfer stations, or throughput or tolling disposal rights:

1. Garfield, New Jersey

Allied's Garofalo Recycling and Transfer Station (formerly permitted to Garofalo Brothers, Inc., and Garofalo Recycling and Transfer Station Co., Inc.), located at 19–35 Atlantic Street, Garfield, New Jersey 07026.

2. Chestnut Ridge, New York

Waste Management's Fully Permitted Chestnut Ridge Solid Waste Transfer Station (owned by and permitted to Waste Management's subsidiary Marangi Bros., Ind.), located at 560 Chestnut Ridge Road, Chestnut Ridge, New York 10977.

3. North Arlington, New Jersey

Throughout or tolling disposal rights of a maximum of 1,925 tons per week, for the remainder of Waste Management's current lease and if the lease is renewed, for the duration of the period in which Waste Management has contractural rights to operate the facility, not to exceed the termination date of this Final Judgment. These disposal rights are exercisable by the Acquirer (or its designee), at the New Jersey Meadowlands Commission's HMDC Solid Waste Baler Facility (''HMDC Facility''), located at 100 Baler Boulevard, North Arlington, New Jersey 07031, under the following terms and conditions:

a. At the Acquirer's option, Waste Management shall set aside and operate or, allow the Acquirer (or its designee) to operate one (1) disposal bay and a scale and scale house for the sole use of the Acquirer (or its designee);

b. Waste Management shall permit the Acquirer (or its designee) to deliver waste to the HMDC Facility during

operating hours from Monday through Saturday up to the weekly maximum of 1,925 tons. Waste Management shall have the right to stop accepting waste from any additional truck owned or operated by the Acquirer (or its designee) and entering the premises after Waste Management has accepted 350 tons of waste from the Acquirer (or its designee) on any day the HMDC Facility is operating;

c. Under the throughput or tolling arrangement, Waste Management shall permit the Acquirer (or its designee) to deliver waste to the HMDC Facility for processing and, at the option of the Acquirer (or its designee), load the processed waste into vehicles designated by the Acquirer (or its designee) for ultimate disposal; and

d. Waste Management shall operate all HMDC Facility gates, scales, scale houses, and disposal areas described in the Acquirer's contract under terms and conditions no less favorable to the Acquirer (or its designee) than those provided to Waste Management or its customers, including any municipality.

K. ''Relevant Hauling Assets'' 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, 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, permits and accounts.

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

1. Augusta, Georgia

Allied's commercial waste collection routes 903, 904, 916, and 922 that operate out of Allied's Augusta division located at 683 Commerce Court, Evans, Georgia 30809.

2. Myrtle Beach, South Carolina

Allied's commercial waste collection routes 711, 714, and 715 that operate out of Allied's Rural Sanitation Services Hauling facility located at 3512 Highway 501, Myrtle Beach, South Carolina 29579.

3. Pitkin and Garfield Counties, Colorado

Waste Management's waste collection routes 730, 824, 825, 831, 850, 851, and 853 that operate out of Waste Management's facility located at 226 North 12th Street, Carbondale, Colorado 81623.

4. Bergen and Passaic Counties, New Jersey

Allied's commercial waste collection routes 700, 705, 706, 401, and 405 tht operate out of Allied's VMI Waste Services Hauling facility located at 75 Broad Avenue, Fairview, New Jersey 07022, except that Waste Management is not required to divest real property or improvements to real property (*i.e.,* buildings, garages, or leasehold rights related thereto).

5. Morris County, New Jersey

Allied's commercial waste collection route 702 that operates out of Allied's VMI Waste Services Hauling facility located at 75 Broad Avenue, Fairview, New Jersey 07022, except that Waste Management is not required to divest real property or improvements to real property (*i.e.,* buildings, garages, or leasehold rights related thereto).

L. ''Relevant Tulsa and Muskogee Disposal Assets'' means Allied's Porter Landfill (also referred to as 51B Landfill), located at Route 2, Box 120, Porter, Oklahoma 74454, or any other landfill owned by Allied or any third party located within twenty-five (25) miles from the center of either the city of Tulsa or the city of Muskogee, Oklahoma.

M. ''Small container commercial waste collection service'' means the business of collecting MSW from commercial and industrial accounts, usually in ''dumpsters'' (*i.e.,* a small container with one (1) to ten (10) cubic yards of storage capacity), and transporting or ''hauling'' such waste to a disposal site by use of a front- or rear-end loader truck. Typical commerical waste collection customers include office and apartment buildings and retail establishments (*e.g.,* stores and restaurants).

N. ''Waste Management'' means Defendant Waste Management, Inc., a Delaware corporation with its headquarters in Houston, Texas, and includes its successors and assigns, and its subsidaries, divisions, groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

III. Applicability

A. This Final Judgment applies to Waste Management and Allied, as defined above, and all other persons in active concert or participation with any of them who receive 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 lesser business units that include Defendants' Relevant Disposal Assets, Relevant Hauling Assets, or the Alternative Disposal Asset, that the Acquirer agree to be bound by the provisions of the Final Judgment.

IV. Divestitures

A. Defendant Waste Management is ordered and directed, within ninety (90) 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 divest the Relevant Disposal Assets and Relevant Hauling Assets, except for the New Jersey Assets, in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States in its sole discretion.

The United States, in its sole discretion, may agree to an extension of this time period of up to sixty (60) calendar days, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Relevant Disposal Assets and Relevant Hauling Assets as expeditiously as possible.

B. Defendants are ordered and directed, within ninety (90) calendar days after the approval by the New Jersey Department of Environmental Protection of Waste Management's request to acquire Allied's assets in New Jersey, to divest the New Jersey Assets in a manner consistent with this Final Judgment and state law to an Acquirer acceptable to the United States, in its sole discretion, after consultation with New Jersey. The United States, in its sole discretion, after consultation with New Jersey, may agree to an extension of this time period of up to sixty (60) calendar days, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the New Jersey Assets as expeditiously as possible. If the Defendants have not received approval by the New Jersey Department of Environmental Protection of Waste Management's request to acquire Allied's assets in New Jersey within ninety (90) calendar days after the filing of the Complaint in this matter, plus any extension of time granted by the United States of up to sixty (60) calendar days, Waste Management shall not purchase from Allied any of the voting securities or assets located in New Jersey and identified in the January 29, 2003 purchase agreements, as amended.

C. In accomplishing the divestitures ordered by this Final Judgment, Defendant Waste Management promptly shall make known, by usual and customary means, the availability of the

Relevant Disposal Assets and Relevant Hauling Assets. Defendants shall inform any person making inquiry regarding a possible purchase of the Relevant Disposal Assets or Relevant Hauling Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Relevant Disposal Assets or Relevant Hauling Assets, whichever is then available for sale, customarily provided in a due diligence process except such information or documents subject to the attorney-client or work-product privileges. Defendants shall make available such information to the United States, or both the United States and New Jersey as to the New Jersey Assets and the Alternative Disposal Asset, at the same time that such information is made available to any other person.

D. Defendants shall provide the United States, or both the United States and New Jersey as to the New Jersey Assets and the Alternative Disposal Asset, and each prospective Acquirer of the Relevant Disposal Assets or Relevant Hauling Assets information relating to the personnel involved in the operation and management of the Relevant Disposal Assets or Relevant Hauling Assets to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer to employ any Defendant employee whose primary responsibility is the operation or management of the Relevant Disposal Assets or Relevant Hauling Assets.

E. Defendants shall permit each prospective Acquirer of the Relevant Disposal Assets or Relevant Hauling Assets to have reasonable access to personnel and to make inspections of the physical facilities; access to any and all environmental, zoning, and other permit documents and information; and access to 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 facility described in Section II.J.2, Defendant Waste Management shall warrant to the Acquirer of the 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 that will impede in any way, the permitting, operation, or divestiture of the Relevant Disposal Assets or Relevant Hauling Assets.

H. With the exception of the facility described in Section II.J.2, Defendants Waste Management shall warrant to the Acquirer of the 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 following the sale of the Relevant Disposal Assets or Relevant Hauling Assets, Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Relevant Disposal Assets or Relevant Hauling Assets.

I. Defendant Waste Management warrants that there is an existing NYDEC operating permit for the Chestnut Ridge Solid Waste Transfer Station, which expires November 30, 2003. Waste Management's failure to divest the Chestnut Ridge Solid Waste Transfer Station in accordance with the conditions set forth in this Final Judgment shall result in the appointment of a trustee and the divestiture of the alternative Disposal Asset as provided in Sections V.A., V.B., and V.C. Should Waste Management be required to divest the Alternative Disposal Asset pursuant to Section V.B., it shall be bound by the same terms and provide warranties for the Alternative Disposal Asset comparable to those specified in Sections IV.C. through IV.H.

J. Unless the United States, in its sole discretion, and after consultation with New Jersey as to the New Jersey Assets and the Alternative Disposal Asset, otherwise consents in writing, the divestitures pursuant to Section IV, or by trustee appointed pursuant to Section V, of the Final Judgment, shall include either the entire Relevant Hauling Assets and Relevant Disposal Assets, or the entire Relevant Hauling Assets, the Relevant disposal Assets (excluding the Chestnut Ridge Solid Waste Transfer Station), and the Alternative Disposal Asset, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, and after consultation with New Jersey as to the New Jersey Assets and the Alternative Disposal Asset, that the divested assets will be used by the Acquirer, as part of a viable, ongoing disposal or hauling business. Divestiture of the Relevant Disposal Asset, Relevant Hauling Assets and the Alternative Disposal Asset may be made to an Acquirer, provided that in each instance it is demonstrated to the sole satisfaction of the United States, after consultation with New Jersey as to the New Jersey Assets and the Alternative Disposal Asset, that the Relevant Disposal Assets, Relevant Hauling Assets and the Alternative Disposal Asset will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment,

1. Shall be made to an Acquirer that, in the United States' sole judgment, after consultation with New Jersey as to the New Jersey Assets and the Alternative Disposal Asset, has the intent and capability, including managerial, operational, and financial capability, to compete effectively in the disposal or hauling business; and

2. Shall be accomplished so as to satisfy the United States, in its sole discretion, after consultation with New Jersey as the New Jersey Assets and the Alternative Disposal Asset, that none of the terms of any agreement between an Acquirer and Defendant Waste Management gives Defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Appointment of Trustee

A. If Defendant Waste Management has not divested either the Relevant disposal Assets, or the Relevant Hauling Assets, or both, within the time period specified in Section IV.A., Defendant Waste Management shall notify United States, or both the United States and New Jersey as to the New Jersey Assets and the Alternative Disposal Asset, of that fact in writing. Upon application of the United States, in its sole discretion, after consultation with New Jersey as to the New Jersey Assets and the Alternative Disposal Assets, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of either the Relevant Disposal Assets, or the Relevant Hauling Assets, or both.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell either the Relevant Disposal Assets, or the Relevant Hauling Assets, or both. In the event the Chestnut Ridge Solid Waste Transfer Station (as defined in Sections II.F. and II.J.2) cannot be sold prior to the expiration of the time period provided in Section IV.A., the trustee shall divest the Alternative Disposal Asset selected by Waste Management from the three facilities identified in Section II.C. of the Final Judgment. Waste Management's selection of one of the three alternative facilities must be communicated to the trustee in writing within three (3) days following a request from the trustee to make the election.

C. Notwithstanding the provisions contained in Sections IV.I. and V.B. of this Final Judgment, if the sole reason for requiring the divestiture of the Alternative Disposal Asset is that the Chestnut Ridge Solid Waste Transfer Station is not fully permitted within the time allowed herein, Waste Management, following the direction of the United States to divest the Relevant Disposal Assets, shall have sixty (60) days to do so.

D. Notwithstanding the provisions contained in Section V.B., The United States may, in its sole discretion, extend the expiration of the time period provided in Section IV.A. relating to the sale of the Chestnut Ridge Solid Waste Transfer Station for an additional ninety (90) days. This extension may occur only if the following conditions are satisfied as of the expiration of the time period provided in Section IV.A.:

1. Waste Management has sold the Chestnut Ridge Solid Waste Transfer Station to an Acquirer acceptable to the United States in its sole discretion, even though the facility is not yet Fully Permitted;

2. The Chestnut Ridge Solid Waste Transfer Station is being operated by the Acquirer or by another party, approved by the United States in its sole discretion, on behalf and for the benefit of the Acquirer, and

3. The United States, in its sole discretion, is satisfied that the Chestnut Ridge Solid Waste Transfer Station is likely to be Fully permitted by the New York Department of Environmental Conservation within the ninety (90) day extension of time granted under this Section.

E. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States, in its sole discretion, after consultation with New Jersey as to the New Jersey Assets and the Alternative Disposal Asset, at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V.G. of this Final Judgment, the trustee may hire at the cost and expense of Defendant Waste Management any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

F. Defendant Waste Management shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by Defendant Waste Management must be conveyed in writing to the United States, or both the United States and New Jersey as to the New Jersey Assets and the Alternative Disposal Asset, and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

G. The trustee shall serve at the cost and expense of Defendant Waste Management, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the Relevant Disposal Assets, Relevant Hauling Assets, and the Alternative Disposal 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 Defendant Waste Management and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Relevant Disposal Assets, Relevant Hauling Assets, and any Alternative Disposal Asset selected by Waste Management, and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

H. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. 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 of the business to be divested, and Defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to customary confidentiality protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

I. After its appointment, the trustee shall file monthly reports with the United States, or both the United States and New Jersey as to the New Jersey Assets and the Alternative Disposal Asset, and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent that 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 month, 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 Relevant Disposal Assets, Relevant Hauling Assets, or the Alternative Disposal Asset, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Relevant Disposal Assets, Relevant Hauling Assets, and any Alternative Disposal Asset.

J. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent that such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall, at the same time, furnish such report to the United states, or both the United States and New Jersey as to the New Jersey Assets and the Alternative Disposal Asset, who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, 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 Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, Defendant Waste Management or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States, or both the United States and New Jersey as to the New Jersey Assets and the Alternative Disposal Assets, of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify Defendant Waste Management. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Relevant Disposal Assets, Relevant Hauling Assets, or the

Alternative Disposal Asset together with full details of the same.

B. Within fifteen (15) calendar days of receipts by United States, or both the United States and New Jersey as to the New Jersey Assets and the Alternative Disposal Assets, of such notice, the United States, in it sole discretion, after consultation with New Jersey as to the New Jersey Assets and the Alternative Disposal Assets, may request from Defendants, the proposed Acquirer or Acquirers, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquire, and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. 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 Acquirer, any third party, and the trustee, whichever is later, the United States, in its sole discretion, after consultation with New Jersey as to the New Jersey Assets and the Alternative Disposal Asset, 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 that it does not object, the divestiture may be consummated, subject only to Defendant Waste Management's limited right to object to the sale under Section V.F. of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Defendant Waste Management under Section V.F., a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. Hold Separate

Until the divestitures required by this Final Judgment has 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 divestitures ordered by this Court.

IX. Affidavits

A. Within twenty (2) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, Defendants shall deliver to the United States, or both the United States and New Jersey as to the New Jersey Assets and the Alternative Disposal Asset, an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) days, 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 Relevant Disposal Assets, Relevant Hauling Assets, or the Alternative Disposal Asset, 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 Defendants have taken to solicit buyers for the Relevant Disposal Assets, Relevant Hauling Assets, or the Alternative Disposal Asset, and to provide required information to each prospective Acquirer, 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, after consultation with New Jersey, 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 Complaint in this matter, Defendants shall deliver to the United States, or both the United States and New Jersey as to the New Jersey Assets and the Alternative Disposal Asset, an affidavit that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States, or both the United States and New Jersey as to the New Jersey Assets and the Alternative Disposal Asset, an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve the Relevant Disposal Assets, Relevant Hauling Assets, and the Alternative Disposal Asset, and to divest the Relevant Disposal Assets, Relevant Hauling Assets, and Alternative Disposal Asset until one year after such divestiture has been completed.

X. Compliance Inspection

A. For purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, or upon written request of a duly authorized representative of the New Jersey Attorney General's Office, and on reasonable notice to Defendants, be permitted:

1. Access during Defendants' office hours to inspect and copy, or at the United States' option, to require Defendants to provide copies of, all books, ledgers, accounts, records and documents in the possession, custody or control of Defendants, relating to any matters contained in this Final Judgment; and

2. To interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of a duly authorized representative of the assistant Attorney General in charge of the Antitrust Division, or upon the written request of the New Jersey Attorney General's Office, Defendants shall submit such written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the Plaintiffs to any person other than an authorized representative of the executive branch of the United States, or the New Jersey Attorney General's Office, except in the course of legal proceedings to which the United States or New Jersey 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 Plaintiffs, 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 Plaintiffs shall give Defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. Relevant Tulsa and Muskogee Disposal Assets

Waste Management shall not directly or indirectly acquire or propose to acquire any assets of or any interest, including any financial, security, loan equity or management interest, in the Relevant Tulsa and Muskogee Disposal Assets without thirty (30) days advance notification to the Antitrust Division of the United States Department of Justice of any such acquisition. The obligation to provide notice under this Section is met by either a written notification, or if applicable, a premerger notification pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18(a) (the ''HSR Act''). In the event that a proposed acquisition of Allied's Porter Landfill (also referred to as 51B Landfill), located at Route 2, Box 120, Porter, Oklahoma 74454 is not subject to the reporting and waiting period requirements of the HSR Act, notification under this Section shall be provided to the Antitrust Division in the same format as, and in accordance with, the instructions relating to the Notification and Report Form set for in the appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in items 5 through 9 of the instructions must be provided only about the Tulsa and Muskogee, Oklahoma area. The notification required by this Section shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If, within the thirty (30) day period after notification of a proposed acquisition of a proposed acquisition of Allied's Porter Landfill, representatives of the Antitrust Division make a written request for additional information, Waste Management shall not consummate the proposed transaction or agreement until thirty (30) days after submitting all such additional information. Early termination of the waiting periods in this Section may be requested and, where appropriate, granted. This Section shall be broadly construed, and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

XII. No Reacquisition

Defendant Waste Management may not reacquire any part of the Relevant Disposal Assets, Relevant Hauling Assets, or the Alternative Disposal Asset during the term of this Final Judgment, provided that if Waste Management is required to divest the Alternative Disposal Asset, Waste Management may reacquire the Chestnut Ridge Solid Waste Transfer Station.

XIII. Revisions to Contracts

A. Waste Management shall alter the contracts it uses with its small container commercial waste collection customers in each of the markets specified below to the form contained in Section XIII.B. below.

B. In each of the markets specified below, Waste Management shall offer contracts to all new small container commercial waste collection customers as well as to existing customers that sign new contracts for small container commercial waste collection service effective on or after the date that it acquires Allied's assets in accordance with the following conditions. No contract shall:

1. Have an initial term longer than two (2) years;

2. Have any renewal term longer than one (1) year;

3. Require that the customer give Waste Management notice of termination more than thirty (30) days prior to the end of any initial term of renewal term;

4. Require that the customer pay liquidated damages in excess of three times its average monthly charge during the first year the customer has had service with Waste Management; and

5. Require that the customer pay liquidated damages in excess of two (2) times its average monthly charge after the first year the customer has had service with Waste Management.

Waste Management shall offer such contracts to all other current small container commercial waste collection service customers in the respective markets detailed below on or before January 1, 2005:

Defendant	Cities	Counties or Areas
Waste Management	Myrtle Beach, SC	Georgetown and Horry Counties, SC.
Waste Management	Augusta, GA	Columbia, Lincoln, McDuffie, Richmond, and Warren Counties, GA.

Waste Management agrees that it will not attempt to enforce any contract term affecting commercial waste collection customers in the specified areas that conflicts with or is inconsistent with the above terms, even if those customers choose not to sign a contract with the new terms.

XIV. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XV. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XVI. Public Interest Determination

Entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

_____

United States District Judge

United States District Court for the District of Columbia

Case No.: 1:03CV01409]

Judge: Gladys Kessler.

Deck Type: Antitrust.

Competitive Impact Statement

Plaintiff United States of America (''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.

Nature and Purpose of the Proceeding

Defendant Waste Management, Inc. (''Waste Management'') and Defendant Allied Waste Industries, Inc. (''Allied'') entered into stock and asset purchase agreements on January 29, 2003, pursuant to which Waste Management would acquire certain voting securities and waste-hauling and disposal assets of Allied in a number of areas throughout the United States. The United States and the State of New Jersey (''New Jersey'') filed a civil antitrust Complaint on June 27, 2003, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be to lessen competition substantially for waste collection and disposal services in several markets in violation of Section 7 of the Clayton Act. This loss of competition would result in consumers paying higher prices and receiving fewer services for the collection and disposal of waste.

At the same time the Complaint was filed, the United States also filed a Hold Separate Stipulation and Order and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, Waste Management is required within 90 days after the filing of the Complaint, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest, as viable business operations, specified waste-hauling and disposal assets. The proposed Final Judgment also requires Defendants, within 90 days after approval by the New Jersey Department of Environmental Protection of Waste Management's request to acquire assets in New Jersey, to divest, as viable business operations, certain waste-hauling and disposal assets located in New Jersey and New York. Under the terms of the Hold Separate Stipulation and Order, Waste Management is required to take certain steps to ensure that the assets to be divested will be preserved and held separate from its other assets and businesses. In addition to the divestitures, the proposed Final Judgment also requires Waste Management to comply with certain conditions in its customer contracts in two identified areas.

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

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Waste Management, with revenues in 2002 of approximately $11.1 billion, is the nation's largest waste collection and disposal company, operating throughout the United States. Allied, with 2002 revenues of approximately $5.5 billion, is the nation's second largest waste collection and disposal company. The proposed transaction, as initially agreed to by Defendants on January 29, 2003, would lessen competition substantially as a result of Waste Management's acquisition of the following: (1) Hauling assets in Pitkin County, Colorado; (2) hauling assets in Garfield County, Colorado; (3) hauling assets in Augusta, Georgia; (4) hauling assets in Myrtle Beach, South Carolina; (5) hauling assets in Morris County, New Jersey; (6) hauling assets in Bergen and Passaic Counties, New Jersey; (7) voting securities and disposal assets serving Bergen and Passaic Counties, New Jersey; and (8) disposal assets in Tulsa, Oklahoma. This acquisition is the subject of the Complaint and proposed Final Judgment filed by the United States and New Jersey on June 27, 2003.

B. The Competitive Effects of the Transaction

Municipal solid waste (''MSW'') is solid, putrescible waste generated by households and commercial establishments. Waste collection firms, or haulers, contract to collect MSW from residential and commercial customers and 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 the waste. Small container commercial waste collection is one component of MSW collection, which also includes residential and other waste collection. Allied and Waste Management compete in the collection of small container commercial waste and the disposal of MSW.

1. The Effects of the Transaction on Competition in Small Container Commercial Waste Collection Service

a. Small Container Commercial Waste Collection.

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 generally use specialized equipment to store, collect, and transport waste from these accounts to approved disposal sites. This equipment (*e.g.,* one- to ten-cubic-yard containers for waste storage, and front-end load vehicles commonly used for collection and transportation) is uniquely well suited for providing 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, these firms use different waste storage equipment (*e.g.,* garbage cans or semi-stationary roll-off containers) and different vehicles (*e.g.,* rear-load, side-load, and roll-off trucks), which, for a variety of reasons, cannot be conventionally 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. In the event of a small but significant and nontransitory increase in price for small container commercial waste collection services, customers would not switch to any other alternative. Thus, the Complaint alleges that the provision of small container commercial waste collection services constitutes a line of commerce, or relevant service, for purpose of analyzing the effects of the transaction.

The Complaint alleges that the provision of small container commercial waste collection service 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. Distance may significantly limit a remote 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 this analysis, the Complaint alleges that the areas of Pitkin County, Colorado; Garfield County, Colorado; Augusta, Georgia; Myrtle Beach, South Carolina; Morris County, New Jersey; and Bergen and Passaic Counties, New Jersey constitute sections of the country, or relevant geographic markets, for the purpose of assessing the competitive effects of a combination of Allied and Waste Management in the provision of small container commercial waste collection services.

There are significant entry barriers into small container commercial waste collection. A new entrant into small container commercial waste collection services must achieve a minimum efficient scale and operating efficiencies comparable to those of existing firms in order to provide a significant competitive constraint on the prices charged by market incumbents. In order to obtain comparable operating efficiencies, a new firm must achieve route density similar to existing firms.

An efficient route usually handles 80 or more customers or containers each day. Because most customers have their waste collected once or twice a week, a new entrant must have several hundred customers in close proximity to construct an efficient route. However, the common use of price discrimination and long-term contracts by existing commercial waste collection firms can leave too few customers available to the entrant in a sufficiently confined geographic area to create an efficient route. The incumbent firm can selectively and temporarily charge an unbeatably low price to specified customers targeted by new entrants. Long-term contracts often run for three to five years and may automatically renew or contain large liquidated damage provisions for contract termination. Such terms make it more costly or difficult for a customer to switch to a new hauler and obtain lower prices for its collection service. Because of these factors a new entrant may find it difficult to compete by offering its services at pre-entry price levels comparable to the incumbent and may find an increase in the cost and time required to form an efficient route, thereby limiting a new entrant's ability to build an efficient route and reducing the likelihood that the entrant will ultimately be successful.

The need for route density, the use of long-term contracts with restrictive terms, and the ability of existing firms to price discriminate raise significant barriers to entry by new firms, which will likely be forced to compete at lower than pre-entry price levels. Such barriers in the market for small container commercial waste collection have allowed incumbent firms to raise prices successfully.

b. Anticompetitive Effects in Small Container Commercial Waste Collection Service Markets.

(1) Pitkin County, Colorado. In Pitkin County, Colorado, Waste Management's acquisition of Allied's hauling assets would reduce from two to one the number of significant firms that compete in the collection of small container commercial waste. After the acquisition, Waste Management would control over 89 percent of total market revenues, which exceed $1.8 million annually. There are no other significant small container commercial waste competitors in this market.

(2) Garfield County, Colorado. In Garfield County, Colorado, Waste Management's acquisition of Allied's hauling assets would reduce from two to one the number of significant firms that compete in the collection of small container commercial waste. After the acquisition, Waste Management would control over 93 percent of total market revenues, which approximate $3.2 million annually. There are no other significant small container commercial waste competitors in this market.

(3) Augusta, Georgia Area. Waste Management is acquiring the hauling assets of Allied in Augusta, Georgia. These assets serve small container commercial waste collection customers in Columbia, Richmond, McDuffie, Lincoln, and Warren Counties, Georgia. In the Augusta, Georgia area, the proposed acquisition would reduce from three to two the number of significant firms that compete in the collection of small container commercial waste. After the acquisition, Waste Management would control over 63 percent of total market revenues, which approximate $7.5 million annually.

(4) Myrtle Beach, South Carolina Area. Waste Management is acquiring the hauling assets of Allied in Myrtle Beach, South Carolina. These assets serve small container commercial waste collection customers in Georgetown and Horry Counties, South Carolina. In this area, the proposed acquisition would reduce from three to two the number of significant firms that compete in the collection of small container commercial waste. After the acquisition, Waste Management would control over 58 percent of total market revenues, which exceed $7.4 million annually.

(5) Morris County, New Jersey. In Morris County, New Jersey, Waste Management's acquisition of Allied's hauling assets would reduce from four to three the number of significant firms that compete in the collection of small container commercial waste. After the acquisition, Waste Management would control over 41 percent of total market revenues, which exceed $14 million annually.

(6) Bergen and Passaic Counties, New Jersey. Waste Management is acquiring the hauling assets of Allied that serve Bergen and Passaic Counties, New Jersey. In Bergen and Passaic Counties, New Jersey, the proposed acquisition would reduce from four to three the number of significant firms that compete in the collection of small container commercial waste. After the acquisition, Waste Management would control over 47 percent of total market revenues, which exceed $38 million annually.

The Complaint alleges that a combination of Allied and Waste Management in these areas would remove a significant competitor in small container commercial waste collection services. In each of these markets, the resulting increase in concentration, loss of competition, and absence of any reasonable prospect of significant new entry or expansion by market incumbents likely will result in higher prices for the collection of small container commercial waste.

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

a. 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 be disposed of lawfully in a transfer station, landfill, or incinerator permitted to accept MSW. Anyone who attempts to dispose of MSW in an unlawful manner risks severe civil and criminal penalties. In some areas, landfills are scarce because of significant population density and the limited availability of suitable land. Accordingly, most MSW generated in these areas is burned in an incinerator or brought to transfer stations where it is compacted and transported to a more distant permanent disposal site.

Because of the strict laws and regulations that govern the disposal of MSW, there are no good substitutes for MSW disposal. Firms that compete in the disposal of MSW can profitably

increase their charges to haulers of MSW without losing significant sales to any other firms. Thus, for purposes of antitrust analysis, the disposal of MSW constitutes a line of commerce, or relevant service, for purposes of analyzing the transaction.

The disposal of MSW generally occurs in localized markets. The Complaint alleges that the Bergen and Passaic Counties, New Jersey disposal area (which includes Bergen and Passaic Counties and areas within 10 miles of these counties) constitutes a section of the country, or a relevant geographic market, for purposes of assessing the competitive efforts of the transaction. Due to the high costs of transporting MSW and the substantial travel time to other disposal facilities based on distance, natural barriers, and congested roadways, virtually all of the MSW generated in Bergen and Passaic Counties, New Jersey is disposed of in transfer stations in the Bergen and Passaic Counties, New Jersey disposal area. Firms that compete in the disposal of MSW in the Bergen and Passaic Counties, New Jersey disposal area can profitably increase their charges for MSW disposal without losing significant sales to more distant disposal sites.

The Complaint also alleges that the Tulsa and Muskogee, Oklahoma area (which includes Muskogee, Rogers, Tulsa, and Wagoner Counties, Oklahoma) constitutes a section of the country, or a relevant geographic market, for purposes of assessing the competitive effects of the transaction. Because of transportation costs and travel time to more distant facilities, virtually all of the MSW generated in the Tulsa and Muskogee, Oklahoma area is disposed of in landfills within roughly 25 miles of Tulsa or Muskogee, Oklahoma. Firms that compete in the disposal of MSW in the Tulsa and Muskogee, Oklahoma area can profitably increase their charges for MSW disposal without losing significant sales to more distant disposal sites.

There are significant barriers to entry in MSW disposal. Obtaining a permit to construct a new disposal facility or expand an existing one is a costly and time-consuming process that typically takes many years to conclude. Local public opposition often increases the time and uncertainty of successfully permitting a facility. In the Bergen and Passaic Counties, New Jersey disposal area and the Tulsa and Muskogee, Oklahoma area, entry by a new MSW disposal facility would be costly and time-consuming, and unlikely to prevent market incumbents from significantly raising prices for the disposal of MSW following the acquisition.

b. Anticompetitive Effects in the Disposal of Municipal Solid Waste.

(1) Bergen and Passaic Counties, New Jersey Disposal Area. The proposed acquisition would reduce from four to three the number of significant competitors for the disposal of MSW in the Bergen and Passaic Counties, New Jersey disposal area. Defendants Waste Management and Allied operate five of the nine transfer stations in this market and collectively control over 55 percent of the available disposal capacity for Bergen and Passaic Counties. Annual revenue from disposal of waste in Bergen and Passaic Counties, New Jersey is over $50 million.

(2) Tulsa and Muskogee, Oklahoma Area. In the Tulsa and Muskogee, Oklahoma area, the acquisition would reduce from three to two the number of significant firms competing to dispose of MSW. There are currently four owners of the six landfills that service the Tulsa and Muskogee, Oklahoma area. Two of the six landfills are expected to close in the near future, leaving four landfills owned by three companies to service haulers in the area. After the acquisition, Waste Management would own three of the four remaining landfills in this area.

The Complaint alleges that a combination of Waste Management and Allied in the Bergen and Passaic Counties, New Jersey disposal area and the Tulsa and Muskogee, Oklahoma area would remove a significant competitor in the market for the disposal of MSW. In each of these markets, the resulting increase in concentration, loss of competition, and absence of any reasonable prospect of significant new entry or expansion by market incumbents likely will result in higher prices for the disposal of MSW.

III. Explanation of the Proposed Final Judgment

A. Small Container Commercial Waste Collection Service

The divestiture and contract-revision requirements of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in small container commercial waste collection services in the markets identified in the Complaint by establishing a new, independent, and economically viable competitor in each of those markets and, in some areas, by also reducing the barriers to entry created by the contracts currently used by Waste Management. the proposed Final Judgment requires Waste Management, within 90 days after the filing of the Complaint, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest, as a viable ongoing business or businesses, small container commercial waste collection assets (*e.g.,* routes, trucks, containers, and customer lists) in the areas of Pitkin County, Colorado; Garfield County, Colorado; Augusta, Georgia; and Myrtle Beach, South Carolina. On or before January 1, 2005, the proposed Final Judgment also requires Waste Management to alter the contracts it uses with it existing and new small container commercial waste customers in the areas of Myrtle Beach, South Carolina and Augusta, Georgia. The proposed Final Judgment further requires Defendants, within 90 days after approval by the New Jersey Department of Environmental Protection of Waste Management's request to acquire assets in New Jersey, to divest certain waste-hauling and disposal assets located in New Jersey and New York. The assets must be divested in such a way as to satisfy the United States that the operations can and will be operated by the purchaser or purchasers as a viable, ongoing business or businesses that can compete effectively in each relevant market. Defendants must take all reasonable steps necessary to accomplish the divestitures quickly and shall cooperate with prospective purchasers.

In the event that Defendants do not accomplish the divestitures within the periods prescribed in the proposed Final Judgment, the Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestitures. If a trustee is appointed, the proposed Final Judgment provides that Waste Management 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 Court, United States, and New Jersey as appropriate, setting forth his or her efforts to accomplish the divestitures. At the end of six months, if the divestitures have not been accomplished, the trustee, United States, and New Jersey as appropriate, 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.

1. Pitkin County, Colorado and Garfield County, Colorado

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in small container commercial waste collection services in Pitkin County, Colorado and Garfield County, Colorado. Under the proposed Final Judgment, Waste Management is required to divest seven routes that serve small container commercial waste collection customers, among others, in Pitkin County, Colorado and Garfield County, Colorado to a new, independent, and economically viable competitor in these areas. These divestitures include all of Waste Management's existing small container commercial waste collection routes in the two counties. Many of Waste Management's small container commercial accounts in Pitkin County, Colorado and Garfield County, Colorado are not allocated, however, to a specific route, and their collective sale would not likely produce an efficient divestiture package. Accordingly, a majority of the routes that Waste Management must divest serve a mixture of small container commercial customers and residential customers. The package of routes to be divested produces annual revenues roughly equivalent to the $2 million in annual revenues generated by all of Waste Management's small container commercial accounts in Pitkin County, Colorado and Garfield County, Colorado.

2. Myrtle Beach, South Carolina Area and Augusta, Georgia Area

In the Myrtle Beach, South Carolina and Augusta, Georgia areas, the United States determined that competition would be best maintained by requiring a combination of divestiture and contract relief. The divestiture relief in the Myrtle Beach, South Carolina and Augusta, Georgia areas requires Waste Management to divest all but one of Allied's small container commercial waste collection routes in each area. The divestitures of these routes to a new, independent, and economically viable competitor will help to eliminate the anticompetitive effects of the acquisition in small container commercial waste collection in the Myrtle Beach, South Carolina and Augusta, Georgia areas by creating a competitor capable of restoring competition that otherwise would have been lost.

Because these divestitures alone will not fully eliminate the anticompetitive effects of the acquisition in each area, they are augmented by decree provisions that obligate Waste Management to alter all of its contracts with its small container commercial waste customers. The new contracts are less restrictive in duration, renewal terms, and the liquidated damages imposed on a customer who wishes to switch its service to a new hauler. Contract relief is significant because it lowers entry barriers and effectively enables smaller competitors to grow and new competitors to enter. This contract relief will make it easier for customers to consider competitive alternatives, easier for existing small haulers to compete and expand in the future, and more difficult for incumbent haulers to price discriminate successfully. The contract provisions also make it easier for new haulers to enter a market, and raise the prospect that the markets will become less concentrated and more competitive than they were pre-acquisition by enabling smaller firms to compete for customers under contract with incumbent hauling firms.

Waste Management's implementation of the contract relief specified in the proposed Final Judgment should permit the purchaser of the divested assets, and other competitors, to maintain efficient routes and gain customers more easily if Waste Management seeks to raise prices in these markets. The combined route divestitures and contract relief sought in the Myrtle Beach, South Carolina area and Augusta, Georgia area, will ensure that consumers of small container commercial waste collection services will continue to receive the benefits of competition.

3. Morris County, New Jersey and Bergen and Passaic Counties, New Jersey

The proposed Final Judgment requires partial divestitures of the Allied small container commercial waste collection assets being acquired by Waste Management in Morris County, New Jersey and in Bergen and Passaic Counties, New Jersey. The proposed acquisition raised competitive concerns in these areas based upon the significant post-acquisition market concentration and Waste Management's post-acquisition market share. The United States, however, determined that partial divestitures of Allied's small container commercial waste collection routes would be acceptable in each area in light of the other, albeit less substantial, third-party competitors located therein. In addition, the post-acquisition market concentrations identified in Morris County, New Jersey and Bergen and Passaic Counties, New Jersey were lower than those found in other areas addressed in the proposed Final Judgment. These divestitures will ensure that consumers of small container commercial waste collection services in Morris County, New Jersey and Bergen and Passaic Counties, New Jersey will continue to receive the benefits of competition—lower prices and better service.

B. Disposal of Municipal Solid Waste in the Bergen and Passaic Counties, New Jersey Disposal Area and the Tulsa and Muskogee, Oklahoma Area

1. Bergen and Passaic Counties, New Jersey Disposal Area

Waste Management's proposed acquisition of two Allied transfer station disposal facilities in Bergen County, New Jersey raised significant concerns about the availability of sufficient disposal capacity for haulers of MSW generated in Bergen and Passaic Counties, New Jersey. To remedy the anticompetitive effects of the proposed acquisition, the proposed Final Judgment requires Waste Management to divest the Garofalo Transfer Station in Garfield, New Jersey and the Chestnut Ridge Solid Waste Transfer Station in Chestnut Ridge, New York. In addition to the divestitures, the proposed Final Judgment requires that Waste Management sell throughput disposal rights to a third party at the New Jersey Meadowlands Commission's HMDC Transfer Station for the remainder of Waste Management's current lease, and if the lease is renewed, for the duration of the period in which Waste Management has contractual rights to operate the facility, not to exceed the termination date of the proposed Final Judgment. Collectively, the throughput disposal rights and divestitures provide haulers of MSW generated in Bergen and Passaic Counties, New Jersey with a range of options providing at least 1,200 tons per day of uncommitted MSW disposal capacity. In the event that Waste Management is unable to divest the Chestnut Ridge Solid Waste Transfer Station by the date specified in the proposed Final Judgment, it will, in the alternative, divest one of three Bergen County, New Jersey transfer stations. The divestiture and throughput disposal provisions of the proposed Final Judgment will fully eliminate the anticompetitive effects of the acquisition for MSW disposal services in the Bergen and Passaic Counties, New Jersey disposal area.

The proposed Final Judgment requires that all divested assets be acquired by a new, independent, and economically viable competitor. The proposed relief

will thereby ensure that users of disposal services in these areas will continue to receive the benefits of competition.

2. Tulsa and Muskogee, Oklahoma Area

Defendants agreed to exclude from the transaction the proposed sale of all waste-hauling and disposal assets in the Tulsa and Muskogee, Oklahoma area in light of concerns expressed by the United States regarding the increased concentration in MSW disposal that would occur. The proposed Final Judgment requires Waste Management to provide written notice to the United States at least 30 days in advance of its acquisition of any landfill located within 25 miles of the city of Tulsa, Oklahoma or the city of Muskogee, Oklahoma. If Waste Management again proposes to acquire the Porter Landfill originally scheduled to be purchased in this transaction, the notice required from Waste Management shall also include the additional information specified in the proposed Final Judgment. The proposed Final Judgment thus maintains the pre-acquisition structure of MSW disposal competition in the Tulsa and Muskogee, Oklahoma area, and thereby ensures that users of disposal services in the area will continue to receive the benefits of competition.

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 lawsuit that may be brought against the Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States, New Jersey, and Defendants 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 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 the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 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 Final 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 Final Judgment.

VI. 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. The United States could have continued to litigation and sought preliminary and permanent injunctions against Waste Management's acquisition of certain Allied voting securities and assets. The United States is satisfied, however, that the divestiture of assets and the contract relief described in the proposed Final Judgment will preserve competition for small container commercial waste collection services and MSW disposal in the relevant markets identified by the United States.

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

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-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). As the United States Court of Appeals for the D.C. Circuit held, this statue 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,* 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

In conducting this inquiry, ''[t]he 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.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney).[1] Rather,

> [a]bsent 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-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. May 17, 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) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th

[1] *See also United States* v. *Gillete Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (recognizing it was not the court's duty to settle; rather, the court must only answer ''whether the settlement achieved [was] within the reaches of the public interest''). 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. Rep. No. 93–1463, 93rd Cong., 2d Sess. 8–9 (1974), *reprinted* in 1974 U.S.C.C.A.N. 6535, 6538.

Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62. Case law requires that

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the 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.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted) [2]

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.' '' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *Gillete*, 406 F. Supp. at 716), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy).

Moreover, the Court's role under the APPA 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. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing 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.* at 1459–60.

[2] *Cf. BNS,* 858 F.2d at 463 (holding that the court's ''ultimate authority under the (APPA) is limited to approving or disapproving the consent decree''); *Gillette,* 406 F. Supp. at 716 (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies (obtained in the decree are) so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'''').

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 22, 2003.

Respectfully submitted,
Michael K. Hammaker,
DC Bar No. 233684, U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW., Suite 3000, Washington, DC 20530, (202) 307–0938.

Certificate of Service

I hereby certify that a copy of the foregoing has been served upon Waste Management, Inc., Allied Waste Industries, Inc., and the State of New Jersey by placing a copy of this Competitive Impact Statement in the U.S. mail, first class and postage prepaid, directed to each of the above-named parties at the addresses given below, this 22nd day of July, 2003.

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Jim Walter Resources, Inc.

[Docket No. M–2003–054–C]

Jim Walter Resources, Inc., P.O. Box 133, Brookwood, Alabama 35444 has filed a petition to modify the application of 30 CFR 75.503 (Permissible electric face equipment; maintenance) to its No. 4 Mine (MSHA I.D. No. 01–01247) located in Tuscaloosa County, Alabama. The petitioner requests a modification of the existing standard to allow use of extended length cables on underground coal mining equipment. The petitioner proposes to use the extended length cable to power 2,400-volt continuous mining machines. The petitioner has listed in this petition for modification specific terms and conditions that would be followed when its proposed alternative method is implemented. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Jim Walter Resources, Inc.

[Docket No. M–2003–055–C]

Jim Walter Resources, Inc., P.O. Box 133, Brookwood, Alabama 35444 has filed a petition to modify the application of 30 CFR 75.1002 (Location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its No. 4 Mine (MSHA I.D. No. 01–01247) located in Tuscaloosa County, Alabama. The petitioner proposes to use 2,400-volt high-voltage trailing cable to power a continuous miner inby the last open crosscut and within 150 feet of pillar workings. The petitioner has listed in this petition for modification specific terms and conditions that would be followed when its proposed alternative method is implemented. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to comments@msha.gov, or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before September 11, 2003. Copies of these petitions are available for inspection at that address.