2001.90.39(pt) (Chile)
2005.90.5510 (Chile)
2820.10.00 (South Africa)
7006.00.40 (Indonesia)

D. Petitions for waiver of competitive need limit for products on the list of eligible products for the specified country.

0802.90.9090 (Cote d'Ivoire)
1604.16.10 (Morocco)
1604.16.30 (Morocco)
2905.11.20 (Venezuela)
2909.19.1010 (Venezuela)
2917.37.00 (Romania)
2933.39.25 (Brazil)
2933.40.30 (Brazil)
4104.39.20 (Thailand)
4107.90.60 (South Africa)
4203.21.20 (Indonesia)
6905.10.00 (Venezuela)
7614.90.20 (Venezuela)
8414.30.40 (Brazil)
8469.12.00 (Indonesia)
8471.49.26 (Thailand)
8471.60.35 (Thailand)
8517.19.40 (Thailand)
8517.19.80 (Thailand)
8517.21.00 (Thailand)
8521.10.60 (Thailand)
8527.21.10 (Brazil)
8527.31.40 (Indonesia)
8527.90.90 (Philippines)
8544.30.00 (Thailand)
9009.12.00 (Thailand)
9032.89.60 (Philippines)

[FR Doc. 96–23679 Filed 9–16–96; 8:45 am]

BILLING CODE 7020–02–P

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: September 25, 1996 at 11:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–556 (Remand) (DRAMs of One Megabit and Above from the Republic of Korea)—briefing and vote.
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: September 13, 1996.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–23908 Filed 9–13–96; 12:02 pm]

BILLING CODE 7020–02–U

the TSPC reserves the right to address removal of GSP status for countries other than those specified as well as GSP status for the entire article.

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. USA Waste Services, Inc. and Sanifill, Inc.; 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) through (h), that proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court in the District of Columbia in *United States* v. *USA Waste Services, Inc. and Sanifill, Inc.*, Civil Action No. 1:96CV02031.

On August 30, 1996, the United States filed a Complaint alleging that the proposed acquisition by USA Waste Services, Inc. of the stock of Sanifill, Inc. would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed the same time as the Complaint, requires the companies, among other things, to divest a dry waste landfill and certain commercial and residential hauling assets in Houston, Texas; make available certain municipal solid waste landfill capacity rights in the Houston area and the Johnstown, Pennsylvania area; and amend specified waste hauler contract terms in the Johnstown area in a way which fosters competition.

Public comment is invited within the statutory 60-day comment period. Such comments and response thereto will be published in the Federal Register and filed with the Court. Comments should be directed to J. Robert Kramer, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530 (telephone: 202/307–0924).

Copies of the Complaint, Stipulation and Order, Proposed Final Judgment, and Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, N.W., Washington, D.C. 20530, (202) 514–2841. Copies of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations.

In the United States District Court for the District of Columbia

United States of America, State of Texas, by and through its Attorney General, Dan Morales and Commonwealth of Pennsylvania, by and through its Attorney General, Thomas W. Corbett, Jr. Plaintiffs, v. *USA Waste Services, Inc., and Sanifill, Inc.* Defendants.

[Civil Action No.: 1:96–CZ02031]

Filed: August 30, 1996.

Judge Gladys Kessler

Stipulation on Jurisdiction and Agreed Final Judgment

It is stipulated by and between the undersigned parties, through their respective attorneys, that:

1. 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 District of Columbia.

2. The parties consent that a Final Judgment in the form hereto attached may be filed 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(b)–(h)), and without further notice to any party or other proceedings, provided that plaintiffs have not withdrawn their consent, which they 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.

3. The parties shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment, and shall, from the date of the filing of this Stipulation, comply with all the terms and provisions thereof as though the same were in full force and effect as an order of the Court.

4. In the event plaintiffs withdraw their consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall have no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: August 30, 1996.

Respectfully submitted,

For Plaintiff United States of America:

Anne K. Bingaman,

Assistant Attorney General.

Lawrence R. Fullerton,

Deputy Assistant Attorney General.

Constance K. Robinson,
Director of Operations.
J. Robert Kramer II,
PA Bar # 23963.
Willie L. Hudgins,
DC Bar # 37127.
David R. Bickel,
DC Bar # 393409.
Joel A. Christie,
WI Bar # 1019438.
Michael K. Hammaker,
DC Bar # 233684.
Attorneys, U.S. Department of Justice, Antitrust Division, 1401 H St., NW., Suite 3000, Washington, DC 20530, (202) 307–1168.

For Plaintiff State of Texas:
Dan Morales,
Attorney General of Texas.
Jorge Vega,
First Assistant Attorney General.
Laquita A. Hamilton,
Deputy Attorney General for Litigation.
Thomas P. Perkins, Jr.,
Chief, Consumer Protection Division.
Mark Tobey,
Assistant Attorney General, Deputy Chief for Antitrust.
Amy R. Krasner,
Assistant Attorney General, TX Bar No. 00791050.
Office of the Attorney General of Texas, P.O. Box 12548, Austin, TX 78711–2548, (512) 463–2185.

For Plaintiff Commonwealth of Pennsylvania:
Thomas W. Corbett, Jr.,
Attorney General of Pennsylvania.
Carl S. Hisiro,
Chief Deputy Attorney General.
James A. Donahue, III,
Senior Deputy Attorney General.
Carron M. Trainer,
Deputy Attorney General.
Garrett S. Gallia,
Deputy Attorney General.
Office of the Attorney General of Pennsylvania, Antitrust Section, 14th Floor, Strawberry Square, Harrisburg, PA 17120, (717) 787–4530.

For Defendant USA Waste Services, Inc.:
Gregory T. Sangalis,
Vice-President, General Counsel, and Secretary.

For Defendant Sanifill, Inc.:
Kirk K. Van Tine,
DC Bar # 257139, Baker & Botts, LLP, 1299 Pennsylvania Ave., NW, Washington, DC 20004.
Attorneys for Sanifill, Inc.

So ordered on this ____, day of 1996.

_____
United States District Court Judge

Certification of Service

I hereby certify that a copy of the foregoing has been served upon USA Waste Services, Inc., Sanifill, Inc., the Office of the Attorney General of the State of Texas, and the Office of the Attorney General of the Commonwealth of Pennsylvania, by placing a copy of the United States' Explanation of Consent Decree Procedures in the U.S. mail, directed to each of the above-named parties at the addresses given below, this 30th day of August, 1996.

USA Waste Services, Inc.: c/o James R. Weiss, Preston, Gates, Suite 500, 1735 New York Ave., NW., Washington, DC 20006.
Sanifill, Inc.: c/o Kirk K. Van Tine, Baker & Botts, LLP, 1299 Pennsylvania Ave., NW., Washington, DC 20004.
State of Pennsylvania: James A. Donahue, III, Senior Deputy Attorney General, Antitrust Section, 14th Floor, Strawberry Square, Harrisburg, PA 17120.
State of Texas: Mark Tobey, Assistant Attorney General, Deputy Chief for Antitrust, Office of the Attorney General of Texas, P.O. Box 12548, Austin, TX 78711–2548.

David R. Bickel,
Attorney, U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20503, (202) 307–1168.

Final Judgment

Whereas, plaintiffs, United States of America (''United States''), the State of Texas (''Texas''), and the Commonwealth of Pennsylvania (''Pennsylvania''), having filed their Complaint herein on August 30, 1996, and plaintiffs and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

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

And whereas, prompt and certain divestiture of certain assets, the provision of certain disposal airspace rights, and the prompt modification of contract terms to assure that competition is not substantially lessened is the essence of this agreement;

And whereas, the parties intend to require defendants to divest, as viable business operations, the Divestiture Assets specified herein;

And whereas, defendants have represented to plaintiffs that the divestiture and contract changes 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 divestiture or contract provisions contained below;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *ordered, adjudged, and decreed* as follows:

I

Jurisdiction

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

II

Definitions

As used in this Final Judgment:

A. ''Solid waste hauling'' means the collection and transportation to a disposal site of municipal solid waste (but not construction and demolition waste; medical waste; organic waste; special waste, such as contaminated soil; sludge; or recycled materials) from residential, commercial and industrial customers. Solid waste hauling includes hand pick-up, containerized pick-up and roll-off service.

B. ''USA Waste'' means defendant USA Waste Services, Inc., a Delaware corporation with its headquarters in Dallas, Texas, and its successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents and employees.

C. ''Sanifill'' means Sanifill, Inc., a Delaware corporation with its headquarters in Houston, Texas, and its successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents and employees.

D. ''Houston Area'' means Harris County, Texas; Chambers County, Texas; Brazoria County, Texas; Fort Bend County, Texas; Montgomery County, Texas; Walker County, Texas; and Galveston County, Texas.

E. ''Johnstown Area'' means Cambria County, Pennsylvania; Blair County, Pennsylvania; Indiana County, Pennsylvania; Somerset County, Pennsylvania; and northeast Westmoreland County, Pennsylvania.

F. ''Houston Hauling Assets'' means the frontload commercial business of Sanifill that provides solid waste hauling services in the Houston Area, and, at the option of the purchaser, the rearload residential business of Sanifill presently served by Sanifill's Channelview garage located at 999 Ashland in Channelview, Texas. These assets include all customer lists, contracts and accounts, including all contracts for disposal of solid waste at disposal facilities, and, with respect to the rearload residential business, assignable contracts, all trucks, containers, equipment, material, and supplies associated with these assets.

G. ''Sunray Assets'' means the operating, permitted Type 4 landfill (also known as the North County Landfill) and other related assets of USA Waste with an office at 2015 Wyoming in League City, Texas. These include the current permit Number 1849 and permit application Number 1849A filed with the Texas Natural Resource Conservation Commission, all customer lists, contracts and accounts, including all equipment, material, and supplies associated with these assets. These assets are not required to include the assets of any hauling business in operation at the Sunray site.

H. ''Airspace Rights'' means the right of independent private haulers to dispose municipal solid waste at the Pellegrene Landfill in the Johnstown Area over a ten-year period beginning on the date of the divestiture as described more fully in Section IX.

I. ''Airspace Assets'' means the right to dispose, over a ten-year period beginning on the date of the divestiture, of up to a total of 2,000,000 tons of municipal solid waste in amounts of up to a total of 270,000 tons per year at the Hazelwood Landfill located at 4971 Tri-City Beach Road in Baytown, Texas and the Brazoria County Landfill located at 10310 FM in Angleton, Texas.

J. ''Divestiture Assets'' refers to the Houston Hauling Assets, Sunray Assets, and Airspace Assets.

K. ''Small Container'' means a 1 to 10 cubic yard container.

L. ''Small Containerized Solid Waste Hauling Service'' means providing solid waste hauling service to commercial customers by providing the customer with a Small Container that is picked up mechanically using a frontload, rearload, or sideload truck, and expressly excludes hand pick-up service, and service using a compactor attached to or part of a small container.

M. ''Customer'' means a Small Containerized Solid Waste Hauling Service customer.

III

Applicability

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

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of the Divestiture Assets, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

IV

Divestiture of Assets

A. Defendants are hereby ordered and directed, within 90 days from the filing of this Final Judgment, to divest the Divestiture Assets, unless the United States, after consultation with Texas, consents that only some portion of the Divestiture Assets need be divested. Defendants are further ordered and directed to notify plaintiffs in writing immediately when they have completed the divestitures.

B. Unless the United States, after consultation with Texas, otherwise consents, divestiture under Section IV.A, or by the trustee appointed pursuant to Section V, shall be accomplished in such a way as to satisfy the United States, in its sole determination after consultation with Texas, that the Houston Hauling Assets can and will be operated by the purchaser as a viable, ongoing business engaged in solid waste hauling, and that the Sunray Assets can and will be operated by the purchaser as a viable, ongoing business engaged in solid waste disposal in the Houston Area. Divestiture under Section IV.A or by the trustee, shall be made to a purchaser or purchasers for whom it is demonstrated to the satisfaction of the United States, after consultation with Texas, that (1) the purchase or purchases is or are for the purpose of competing effectively in solid waste hauling, dry waste disposal, or both, and (2) the purchaser or purchasers has or have the managerial, operational, and financial capability to compete effectively in solid waste hauling and/or disposal.

C. In accomplishing the divestitures ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets and Airspace Rights described in this Final Judgment. Defendants shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Defendants shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all information regarding the Divestiture Assets customarily provided in a due diligence process except such information subject to attorney-client or work-product privileges. Defendants shall make available such information to plaintiffs at the same time such information is made available to any other person. In giving notice of the availability of the Houston Hauling Assets, defendants shall not exclude any persons bound by any non-compete obligations to Sanifill.

D. Defendants shall not require of the purchaser or purchasers, as a condition of sale, that any current employee of the Divestiture Assets be offered or guaranteed continued employment after the divestiture.

E. Defendants shall take all reasonable steps to accomplish quickly the divestiture contemplated by this Final Judgment.

F. As part of the sale of the Airspace Assets, defendants will include an agreement to accept waste from the purchaser or anyone designated by the purchaser to dispose of waste at the landfills. As agents of the purchaser, defendants will operate the gate, scale house, and disposal area under terms and conditions no less favorable than those provided by defendants' vehicles or the vehicles of any municipality in the Houston Area, except as to price and credit terms.

V

Appointment of Trustee

A. In the event that Defendants have not divested all of their assets required by Section IV.A by the time set forth in Section IV.A, the Court shall, on application of the United States, after consultation with Texas, appoint a trustee selected by the United States to effect the divestiture required by Section IV.A. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the assets required to be divested pursuant to Section IV.A. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Section VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate.

Defendants shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance, or on the grounds that the sale is contrary to the express terms of this Final Judgment. Any such objections by defendants must be conveyed in writing to plaintiffs and the trustee within ten (10) days after the trustee has provided the notice required under Section VI.

B. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets 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, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of such trustee shall be reasonable 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.

C. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorney, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the Divestiture Assets, and defendants shall develop financial or other information relevant to such assets as the trustee may reasonably request, subject to reasonable 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.

D. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture order under this Final Judgment. If the trustee has not accomplished such divestiture within six months after its appointment, the trustee shall thereupon 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. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purposes of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States, after consultation with Texas.

E. Defendants shall give 30 days' notice to the United States, Texas, and Pennsylvania prior to acquiring any interest that is not otherwise reportable under the Hart-Scott Rodino Act in any assets, capital stock, or voting securities, other than in the ordinary course of business, of any person that, at any time during the twelve months immediately preceding the acquisition, was engaged in the solid waste hauling industry in the Houston Area or the Johnstown Area where that person had small container revenues in excess of $500,000 per year or total revenues in excess of $1 million per year. However, nothing herein shall preclude defendants from acquiring less than five (5) percent of the stock of a publicly traded company.

F. Defendants shall give 30 days' notice to the United States, Texas, and Pennsylvania prior to acquiring any interest that is not otherwise reportable under the Hart-Scott Rodino Act in any assets, capital stock, or voting securities, other than in the ordinary course of business of any person that, at any time during the twelve months immediately preceding the acquisition, was engaged in the municipal solid waste or dry waste disposal industry in the Houston Area or the Johnstown Area, where the revenues of that person, when aggregated with the revenues of any person or persons acquired in the previous six months, exceed the revenue limits of paragraph E above. However, nothing herein shall preclude defendants from acquiring less than five (5) percent of the stock of a publicly traded company.

G. The purchaser or purchasers of the Divestiture Assets, or any of them, shall not, without the prior written consent of the United States, after consultation with Texas, sell any of those assets to, or combine any of those assets with, those of defendants during the life of this decree. Furthermore, the purchaser or purchasers of the Divestiture Assets, or any of them, shall notify plaintiffs 45 days in advance of any proposed sale of all or substantially all of the assets, or change in control over those assets, acquired pursuant to this Final Judgment.

VI

Notification

A. Defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify plaintiffs of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest or desire to acquire any ownership interest in the Divestiture Assets or any of them, together with full details of the same. Within fifteen (15) days after receipt of the notice, plaintiffs may request additional information concerning the proposed divestiture, the proposed purchaser, and any other potential purchaser. Defendants or the trustee shall furnish the additional information within fifteen (15) days of the receipt of the request. Within thirty (30) days after receipt of the notice or within fifteen (15) days after receipt of the additional information, whichever is later, the United States, after consultation with Texas, shall notify in writing defendants and the trustee, if there is one, if it objects to the proposed divestiture. If the United States fails to object within the period specified, or if the United States notifies in writing defendants and the trustee, if there is one, that it does not object, then the divestiture may be consummated, subject only to defendant's limited right to object to the sale under Section V.A. Upon objection by the United States, after consultation with Texas, or by defendants under Section V.A, the proposed divestiture shall not be accomplished unless approved by the Court.

B. Thirty (30) days from the date when defendants consummate the acquisition, but in no event later than October 30, 1996, and every thirty (30) days thereafter until the divestiture has been completed, defendants shall deliver to plaintiffs a written report as to the fact and manner of compliance with Section IV of this Final Judgment. Each such report shall include, for each person who during the preceding thirty (30) days made an offer, expressed an interest or desire to acquire, entered into negotiations to acquire, or made an inquiry about acquiring any ownership interest in the Divestiture Assets or any of them, the name, address, and telephone number of that person and a detailed description of each contact with that person during that period. Defendants shall maintain full records of all efforts made to divest the Divestiture Assets or any of them.

VII

Financing

Defendants shall not finance all or any part of any purchase made pursuant to Sections IV or V of this Final Judgment without the prior written consent of the United States, after consultation with Texas and Pennsylvania.

VIII

Prohibited Conduct

With respect to the Johnstown Area, defendants are enjoined and restrained as follows:

A. Except as set forth in paragraph VIII.B. and G., defendants shall not enter into any contract with a Customer for a service location that:

(1) Has an initial term longer than one (1) year;

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

(3) Requires that the Customer give defendants notice of termination more than thirty (30) days prior to the end of any initial term or renewal term;

(4) Requires that the Customer pay liquidated damages in excess of three times the greater of its prior monthly charge or its average monthly charge over the most recent six months during the first year of the initial term of the Customer's contract;

(5) Requires that the Customer pay liquidated damages in excess of two times the greater of its prior monthly charge or its average monthly charge over the most recent six months after the Customer has been a Customer of a defendant for a continuous period in excess of one (1) year;

(6) Requires the Customer to give defendants notice of any offer by or to another solid waste hauling firm or requires the Customer to give defendants a reasonable opportunity to respond to such an offer for any period not covered by the contract (sometimes referred to as a ''right to compete'' clause);

(7) Is not easily readable (*e.g.*, formatting and typeface) or is not labeled, in large letters, SERVICE CONTRACT; or

(8) Requires a Customer to give defendants the right or opportunity to provide hauling service for recyclables or more than one solid waste hauling service for a Customer unless the Customer affirmatively chooses to have defendant do so by so stating on the front of the contract.

B. Notwithstanding the provisions of paragraph VIII.A. of this Final Judgment, defendants may enter into a contract with a Customer for a service location with an initial term in excess of one year provided that:

(1) The Customer has acknowledged in writing that the defendants have offered to the Customer the form contracts defendants are required under VIII.A. and D. to offer generally to Customers by notice in the form attached hereto as Exhibit B;

(2) The Customer has the right to terminate the contract after one year by giving notice to defendants thirty (30) days or more prior to the end of that one year period;

(3) The contract otherwise complies with the provisions of paragraph VIII.A. (2)–(8); and

(4) The number of service locations subject to contracts permitted under subparagraph B. does not exceed 25% of the total number of service locations for small containerized solid waste hauling service in any year.

C. From the date of the filing of an executed Stipulation, defendants shall offer to new Customers with service locations only contracts that conform to the requirements of paragraphs VIII.A. or B. of this Final Judgment, except as provided in VIII.G.

D. Except as provided in VIII.G., within thirty (30) days following the entry of this Final Judgment, defendants shall send to all existing Customers with service locations with contracts having an initial term longer than one year and which otherwise do not conform with paragraph VIII.B. a notice in the form attached hereto as Exhibit A. If the customer elects to accept the offered contract language, defendants shall execute such an agreement.

E. Except as provided in VIII.G., for each Customer with a contract having an initial term longer than one year and that otherwise does not conform to paragraphs VIII.B. that enters a renewal term 120 days after entry of this Final Judgment, defendants shall send a reminder to that Customer, in the form attached hereto as Exhibit B, ninety (90) days or more prior to the effective date of the renewal term. This remainder may be sent to the Customer as part of a monthly bill, but if it is, it must be displayed on a separate page and in large print.

F. Upon entry of this Final Judgment, defendants may not enforce those contract provisions that are inconsistent with this Final Judgment.

G. Notwithstanding the provisions of this Final Judgment, defendants may enter into contracts with municipal or governmental entities that are not in compliance with paragraphs VIII.A.–F. provided that those contracts are awarded to defendants on the basis of a formal request for bids or a formal request for proposals issued by the Customer.

H. Notwithstanding the provisions of this Final Judgment, defendants shall not be required to do business with any Customer.

I. Defendants may not oppose any efforts by any persons to amend any county plans to add any landfill, to permit a new landfill, or to permit expansion of an existing landfill.

IX

Airspace Rights

A. Defendants shall provide the Airspace Rights at the Pellegrene Landfill, located at SR 2019 Lucisboro Road in Homer City, Pennsylvania as follows:

(1) Defendants are obligated to accept up to 200 tons per day and up to 62,400 tons per year during the ten-year period;

(2) Subject to applicable county plans, these Airspace Rights will be available to any independent private hauler for waste collected in the Pennsylvania counties of Cambria, Blair, Westmoreland, and Somerset until the tonnage limits in IX.A(1) are met; and

(3) Defendants will provide these Airspace rights under terms and conditions no less favorable than those provided to defendants' vehicles or the vehicles of any municipality in the Johnstown area, except as to price and credit terms.

B. For purposes of measuring the tonnage of airspace rights provided under Section IX,

(1) Construction and demolition or other Type 4 materials and waste delivered in transfer trailers are not included in the tonnage limits set forth in IX.A.(1);

(2) ''Independent private hauler'' refers to any private firm, not including municipalities, providing solid waste collection services, but no disposal services, in the Johnstown Area.

X

Preservation of Assets

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

A. Defendants shall take all steps necessary to ensure that the Houston Hauling Assets will be maintained and operated in the ordinary course of business and consistent with past practices, and shall (1) maintain all insurance policies and all permits that are required for the operation of the assets, and (2) maintain books of account and records in the usual, regular, and ordinary manner and consistent with past practices.

B. Defendants shall take all steps necessary to ensure that the Sunray Assets will be maintained and operated as an independent, ongoing, economically viable and active competitor in the provision of dry waste disposal services in the Houston Area, with management operations, books, records and competitively-sensitive sales, marketing and pricing information and decision-making kept separate and apart from, and not influenced by, that of Sanifill's solid waste hauling and disposal businesses.

C. Defendants shall use all reasonable efforts to maintain and increase sales of solid waste hauling and disposal services provided by the Divestiture Assets, and they shall maintain at 1995 or previously approved levels, whichever is higher, promotional, advertising, sales, marketing and merchandising support for such services.

D. Defendants shall take all steps necessary to ensure that the Divestiture Assets are fully maintained in operable condition, and shall maintain and adhere to normal or previously approved repair, improvement and maintenance schedules for the Divestiture Assets.

E. Defendants shall not, except as part of a divestiture approved by plaintiffs, remove, sell or transfer any Divestiture Assets, other than solid waste hauling and disposal services provided in the ordinary course of business.

F. Defendants shall take no action that would jeopardize the sale of Divestiture Assets.

G. Defendants shall appoint a person with oversight responsibility for the Divestiture Assets to insure compliance with this section of the Final Judgment.

XI

Compliance Inspection

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

A. Duly authorized representatives of the United States, Texas, or Pennsylvania, including consultants and other persons retained by the plaintiffs, shall, upon the written request of the Assistant Attorney General in charge of the Antitrust Division or the Attorney General of the State of Texas or the Attorney General of the Commonwealth of Pennsylvania, respectively, and on reasonable notice to defendants made to its principal offices, be permitted:

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

2. subject to the reasonable convenience of defendants and without restraint or interference from them, to interview defendants' directors, officers, employees, and agents who may have counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division or the Attorney General of the State of Texas or the Attorney General of the Commonwealth of Pennsylvania, respectively, made to defendants at their principal offices, defendants shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information nor any documents obtained by the means provided in this Section XI shall be divulged by any representative of the United States or the Office of the Attorney General of Texas or of the Office of the Attorney General of Pennsylvania to any person other than a duly authorized representative of the Executive Branch of the United States or of the Office of the Attorney General of Texas or of the Office of the Attorney General of Pennsylvania, except in the course of legal proceedings to which the United States, Texas or Pennsylvania 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 for 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 ten (10) days notice to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which any defendant is not a party.

XII

Retention of Jurisdiction

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

XIII

Termination

This Final Judgment will expire on the tenth anniversary of the date of its entry.

XIV

Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____

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

_____

United States District Judge

Notice to Customers

Dear Valued Customer:

[Insert name of local operating company] is offering a new one year contract to all small containerized solid waste hauling customers with service locations in [insert market here]. We would like to take this opportunity to offer this contract to you. Of course, if you prefer, you can continue with your existing contract.

In most cases, this new contract will have terms that are more advantageous to customers than their current contracts. This new contract has the following features:

- An initial term of one year (unless you request a longer term);
- A renewal term of one year;
- At the end of your initial term, you may take no action and your contract will renew *or* you can choose not to renew the contract by simply giving us notice at any time up to 30 days prior to the end of your term;
- If you can request a contract with a term longer than one year, you can cancel that contract after one year by giving us notice at any time up to 30 days prior to the end of the first year;
- If you terminate the contract at any other time, you will be required to pay, as liquidated damages, no more than three times the greater of your prior monthly or average monthly charge. If you've been a customer continuously for more than one year, the liquidated damages would be reduced to two times the greater of your prior monthly or average monthly charge;
- You will not be required to give us notice of any offer from another waste hauling firm or to give us an opportunity to make a counteroffer although you may do so if you wish;
- You will be able to choose on the contract which specific types of waste hauling services you would like us to perform.

You may obtain a new contract containing these terms by calling [insert telephone number or sales rep name and number].

Exhibit A

If you prefer, you may continue with your existing contract. If you retain your existing contract, we will not enforce any terms that are inconsistent with the new form contract terms.

We thank you for your business and look forward to a continued relationship with you. If you have any questions, please call [insert contact person and phone number].

Reminder to Customers

Your contract will automatically renew on [MM/DD/YY] unless we receive your cancellation by [MM/DD/YY].

You may also obtain a new form contract with some terms more advantageous to you than your current contract.

You may obtain a new contract containing these terms by calling [insert telephone number or sales rep name and number].

Exhibit B

Competitive Impact Statement

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

I

Nature and Purpose of the Proceeding

On August 30, 1996, the United States filed a civil antitrust Complaint which alleges that the proposed acquisition of the voting stock of Sanifill, Inc. (''Sanifill'') by USA Waste Services, Inc. (''USA Waste'') would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that the combination of these two significant competitors would lessen competition substantially in the provisions of small containerized waste hauling services and landfill disposal services in the Houston, Texas and Johnstown Pennsylvania areas. As defined in the Complaint, the Houston area encompasses Harris County, Texas; Chambers County, Texas; Brazoria County, Texas, Fort Bend County, Texas; Montgomery County, Texas; Walker County, Texas and Galveston County, Texas; including the municipalities located, in whole or in part, in those counties (''Houston market''). The Johnstown area encompasses Indiana County, Pennsylvania; Somerset County, Pennsylvania; Cambria County, Pennsylvania; northeastern Westmorland County, Pennsylvania; and Blair County, Pennsylvania, including the municipalities located, in whole or in part, in those counties (''Johnstown market''). The prayer for relief in the Complaint seeks: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act; and (2) a permanent injunction preventing USA Waste from acquiring control of Sanifill.

When the Complaint was filed, the United States also filed a proposed settlement that would permit USA Waste to complete its acquisition of Sanifill, but require certain divestitures and contract modifications that will preserve competition in the Houston and Johnstown markets. This settlement consists of a Stipulation and Order and a proposed Final Judgment.

The proposed Final Judgment orders USA Waste to divest the Sanifill garage located at 999 Ashland, Channelview, Texas 77530; Sanifill's frontload commercial hauling business that provides solid waste hauling services in the Houston market, most of the rearload residential business of Sanifill presently served by Sanifill's Channelview facility (''Houston Hauling Assets''), and USA Waste's North County Landfill located at 2015 Wyoming, League City, Texas (''Houston Landifill Site'').

In addition, USA Waste is ordered to sell the right to use landfill capacity for up to 2,000,000 tons of municipal solid waste (''MSW'') over a ten year period beginning on the date of divestiture (and capped at an annual total of 270,000 tons) at one or both of the following sites in the Houston market: the Hazelwood Landfill located at 4719 Tri-City Beach Road, Baytown, Texas 77520 and the Brazoria County Landfill located at 10310 FM 523, Angleton, Texas. (''Houston Airspace Assets''). USA Waste must complete the divestiture of the Houston Assets, the Houston Landfill Site, and the Houston Airspace Assets within ninety (90) days after the date on which the proposed Final Judgment was filed (i.e., August 30, 1996), in accordance with the procedures specified therein.

The Stipulation and Order and proposed Final Judgment requires USA Waste to ensure that, until the divestitures mandated by the proposed Final Judgment have been accomplished, the Houston Hauling Assets and the Houston Landfill Site will be maintained and operated as an independent, ongoing, economically viable and active competitor. USA Waste must preserve and maintain the assets to be divested as salable, ongoing concerns, with competitively sensitive business information and decision-making divorced from that of USA Waste. USA Waste will appoint a person or persons to monitor and ensure its compliance with these requirements of the proposed Final Judgment.

Further, the proposed Final Judgment orders USA Waste to take certain actions to eliminate any anticompetitive impact from the proposed acquisition on the Johnstown market. USA Waste is ordered to offer less restrictive service contracts to their small container solid waste hauling customers in the Johnstown market. It must provide at least 30 days written notice to the U.S. Department of Justice and the Commonwealth of Pennsylvania Attorney General's Office in advance of its purchase of any significant waste hauling or waste disposal company in the Johnstown market. It shall not oppose the addition of any landfill, existing or new, to any county landfill plan in the Johnstown market. And further, USA Waste shall make available a total of 200 tons per day of MSW landfill capacity over a ten year period beginning on the date of divestiture at the following site in the Johnstown market: the Pellegrene Landfill located at SR 2019 Lucisboro Road, Homer City, Pennsylvania 15748. The Pelligrene Landfill capacity shall be made available by the defendants for use by any and all independent private MSW haulers.

The United States 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 the 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

USA Waste is the third largest solid waste hauling and disposal company in the nation, and several municipal, commercial, industrial and residential customers in 24 states. In 1995, USA Waste had total revenues of over $730 million.

Sanifill is one of the top ten companies in the solid waste hauling and disposal business in the United States with operations in 23 states, the District of Columbia, Puerto Rico, Mexico and Canada. In 1995, Sanifill had total revenues of about $257 million.

On June 22, 1996, USA Waste agreed to acquire all of the voting stock of Sanifill for a purchase price of $1.5 billion. This transaction, which would take place in the highly concentrated Houston and Johnstown small container hauling and landfill disposal industries, precipitated the government's suit.

The Transaction's Effects in the Houston and Johnstown Markets

A. The Solid Waste Hauling Industry

The Complaint alleges that small containerized hauling services and landfill disposal services constitute lines of commerce, or relevant product markets, for antitrust purposes, and that the Houston area and the Johnstown area constitute appropriate sections of the country, or relevant geographic markets. The Complaint alleges the effect of USA Waste's acquisition may be to lessen competition substantially in the provision of small containerized hauling services in the Houston and Johnstown markets and landfill disposal services in the Houston market.

Solid waste hauling involves the collection of paper, food, construction material and other solid waste from homes, businesses and industries, and the transporting of that waste to a landfill or other disposal site. These services may be provided by private haulers directly to residential, commercial and industrial customers, or indirectly through municipal contracts and franchises.

Service to commercial customers accounts for a large percentage of total hauling revenues. Commercial customers include restaurants, large apartment complexes, retail and wholesale stores, office buildings, and industrial parks. These customers typically generate a substantially larger volume of waste than that generated by residential customers. Waste generated by commercial customers is generally placed in metal containers of one to ten cubic yards provided by their hauling company. One to ten cubic yard containers are called ''small containers.'' Small containers are collected primarily by front-end load vehicles that lift the containers over the front of the truck by means of a hydraulic hoist and empty them into the storage section of the vehicle, where the waste is compacted. Specially-rigged rear-end load vehicles can also be used to service some small container customers, but these trucks generally are not as efficient as front-end load vehicles and are limited in the size of containers they can safely handle. Front-end load vehicles can drive directly up to a container and hoist the container in a manner similar to a forklift hoisting a pallet; the containers do not need to be manually rolled into position by a truck crew as with a rear-end load vehicle. Service to commercial customers that use small containers is called ''small containerized hauling service.''

Solid waste hauling firms also provide service to residential and industrial (or ''roll-off'') customers. Residential customers, typically households and small apartment complexes that generate small amounts of waste, use noncontainerized solid waste hauling service, normally placing their waste in plastic bags or trash cans at curbside. Rear-end load vehicles are generally used to collect waste from residential customers and from those commercial customers that generate relatively small quantities of solid waste, similar in amount and kind to those generated by residential customers. Generally, rear-end loaders use a two or three person crew to manually load the waste into the rear of the vehicle.

Industrial or roll-off customers include factories and construction sites. These customers either generate noncompactible waste, such as concrete or building debris, or very large quantities of compactible waste. They deposit their waste into very large containers (usually 20 to 40 cubic yards) that are loaded onto a roll-off truck and transported individually to the disposal site where they are emptied before being returned to the customer's premises. Customers, like shopping malls, use large, roll-off containers with compactors. This type of customer generally generates compactible trash, like cardboard, in very great quantities; it is more economical for this type of customer to use roll-off service with a compactor than to use a number of small containers picked up multiple times a week.

There are no practical substitutes for small containerized hauling service. Small containerized hauling service customers will not generally switch to noncontainerized service because it is too impractical and costly for those customers to bag and carry their trash to the curb for hand pick-up. Small containerized hauling service customers also value the cleanliness and relative freedom from scavengers afforded by that service. Similarly, roll-of service is much too costly and takes up too much space for most small containerized hauling service customers. Only customers that generate the largest volumes of solid waste can economically consider roll-off service, and for customers that do generate large volumes of waste, roll-off service is usually the only viable option.

Solid waste hauling services are generally provided in very localized areas. Route density (a large number of customers that are close together) is necessary for small containerized solid waste hauling firms to be profitable. In addition, it is not economically efficient for trash hauling equipment to travel long distances without collecting significant amounts of waste. Thus, it is not efficient for a hauler to serve major metropolitan areas from a distant base. Haulers, therefore, generally establish garages and related facilities within each major local area served. Local laws or regulations may further localize markets. For example, flow control regulations in Pennsylvania can designate the facilities where trash picked up within a geographic area must be disposed. Other local regulations may prohibit the depositing of trash from outside a particular jurisdiction in disposal facilities located within that jurisdiction. By designating certain disposal facilities, these laws and regulations can dictate which disposal facilities can compete for waste from these local jurisdictions and how a hauler can set up its routes.

The Complaint alleges that USA Waste's acquisition of Sanifill would substantially lessen competition for the provision of small containerized hauling service in the Houston and Johnstown markets. Actual and potential competition between USA Waste and Johnstown for the provision of small containerized hauling service in the Houston and Johnstown markets will be eliminated.

USA Waste and Sanifill are two of the largest providers of small containerized hauling service in the Houston and Johnstown markets. In the Houston market, USA Waste has a 24 percent share and Sanifill has a 7 percent share. The acquisition would increase the Herfindahl-Hirschmann Index (HHI) by about 325 to about 2225.

In the Johnstown market, USA Waste has a 31 percent share and Sanifill has a 14 percent share. The acquisition would increase the HHI by about 850 to about 2550.

Solid waste hauling is an industry highly susceptible to tacit or overt collusion among competing firms. Overt collusion has been documented in more than a dozen criminal and civil antitrust cases brought in the last decade and a half. Such collusion typically involves customer allocation and price fixing, and where it has occurred, has been shown to persist for many years.

The elimination of one of a small number of significant competitors, such as would occur as a result of the proposed transaction in the alleged markets, significantly increases the likelihood that consumers in these markets are likely to face higher prices or poorer quality service.

A new entrant cannot constrain the prices of larger incumbents until it

achieves minimum efficient scale and operating efficiencies comparable to the incumbent firms. In small containerized hauling service, achieving comparable operating efficiencies requires achieving route density comparable to existing firms, which typically takes a substantial period of time. A substantial barrier to entry is created by the use of long-term contracts coupled with selective pricing reductions to specific customers to deter new entrants into small containerized hauling service and to hinder them in winning enough customers to build efficient routes. Further, even if a new entrant endures and grows to a point near minimum efficient scale, the entrant will often be purchased by an incumbent firm and will be removed as a competitive threat.

B. Landfill Disposal Services

Most commercial solid waste is taken by haulers to landfills for disposal. Access to a suitable MSW landfill at a competitive price is essential to a hauling company performing commercial containerized hauling service because disposal costs account for approximately 30–50 percent of the revenues received for this service. Suitable MSW landfills are difficult and time consuming to obtain because of the scarcity of appropriate land, high capital costs, local resident opposition, and government regulation. Several years are required to process an application, with no guarantee of success.

In Texas, dry waste can be taken to what are referred to as a MSW (Type 1) landfill or to a dry waste (Type 4) landfill. Access to a suitable landfill at a competitive price is essential to a hauling company collecting dry waste because disposal costs can account for over 60% of the revenues for this service. Dry waste landfills are difficult and time consuming to obtain because to permit and build a Type 4 landfill in Texas, one must go through a process similar to that for permitting a Type 1 landfill. Several years are required to process an application, with no guarantee of success.

USA Waste's acquisition of Sanifill would substantially lessen competition for the provision of MSW landfill and dry waste landfill service in the Houston market. Actual and potential competition between USA Waste and Sanifill for the provision of MSW and dry waste landfill service in the Houston market will be eliminated.

USA Waste and Sanifill are two leading providers of MSW landfill and dry waste landfill services in the Houston market. There are nine MSW landfills (owned by four firms) and approximately 18 dry waste landfills (owned by seven firms) in the Houston area. USA Waste and Sanifill each operate one MSW landfill; Sanifill has 11 dry waste landfills (four operating) and USA Waste has one dry waste landfill.

As a result of the acquisition, the concentration of MSW and dry waste landfill services in the Houston market will be substantially increased, which is likely to result in price increases. The acquisition would increase the HHI in MSW landfill disposal service by 225 points to 3550; and in dry waste landfills by 650 points to 4000. In the Houston market, there are no alternative types of facilities available for the disposal of either MSW waste or dry waste. Although dry waste can be taken to either a MSW landfill or a dry waste landfill, prices at the MSW landfill are significantly higher than at the dry waste landfill, so that MSW landfills are not normally used for dry waste. Accordingly, haulers are not likely to switch to another disposal service despite an increased concentration in the ownership of MSW or dry landfills and a likely price increase resulting from the merger.

C. Harm to Competition as a Consequence of the Acquisition

The Complaint alleges that the transaction would have the following effects, among others: competition for the provision of small containerized hauling service in the Houston and Johnstown markets and landfill disposal service in the Houston market will be substantially lessened; actual and potential competition between USA Waste and Sanifill in the provision of small containerized hauling service and landfill disposal service in the Houston market will be eliminated; and prices for small containerized hauling service in the Houston and Johnstown markets and landfill disposal service in the Houston market are likely to increase above competitive levels.

III

Explanation of the Proposed Final Judgment

A. The Houston Market

The provisions of the proposed Final Judgment are designed to eliminate the anticompetitive effects of the acquisition in small containerized hauling services in the Houston market by establishing a new, independent and economically viable competitor in that market. The proposed Final Judgment requires USA Waste and Sanifill, within 90 days of August 30, 1996, to divest, as viable ongoing businesses, the Houston Hauling Assets, Houston Landfill Site and the Houston Airspace Assets. The divestitures would include the small containerized hauling service assets, landfill disposal assets, and such other assets as may be necessary to insure the viability of the small container and landfill businesses. If USA Waste and Sanifill cannot accomplish these divestitures within the above-described period, the Final Judgment provides that, upon application (after consultation with the State of Texas) by the United States as plaintiff, the Court will appoint a trustee to effect divestiture.

The proposed Final Judgment provides that the assets must be divested in such a way as to satisfy plaintiff United States (after consultation with the State of Texas) that the operations can and will be operated by the purchaser or purchasers as viable, ongoing businesses that can compete effectively in the relevant market. The defendants must take all reasonable steps necessary to accomplish the divestitures, shall cooperate with bona fide prospective purchasers and, if one is appointed, with the trustee.

If a trustee is appointed, the proposed Final Judgment provides that USA Waste and Sanifill 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 divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the parties will make recommendations to the Court which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

In addition, the proposed Final Judgment intends to eliminate the anticompetitive effects of the acquisition in the Houston area market for MSW disposal services by requiring USA Waste and Sanifill to sell the rights to disposal of 2 million tons of MSW waste over ten years at their only two MSW landfills in the area. The Final Judgment limits the amount disposed of in any one year to 270,000 tons and requires that USA Waste and Sanifill will provide the necessary services to dispose of the waste to the purchaser or any agents designated by the purchaser in a nondiscriminatory manner. The 270,000 ton limit is approximately 80%

of the total capacity used in 1995 at the Sanifill MSW landfill. Sanifill will retain some of the hauling operations that used this landfill in 1995 and needs some capacity to compete for large disposal contracts against its two larger landfill competitors in the area. The availability of this significant capacity limits the impact of any increase in MSW landfill concentration in the Houston market. The availability of this landfill capacity further helps to ensure the success of any entity purchasing the Houston Hauling Assets in competing with other haulers in the Houston market.

Pursuant to its terms, the proposed Final Judgment mandates that USA Waste also divest its sole dry waste (Type 4) landfill in the Houston area market. USA Waste's divestiture of the North County Landfill eliminates any possible anticompetitive effect related to the merger and its impact on dry waste landfills in the Houston area market.

Finally, the requirement of the proposed Final Judgment that defendants provide 30 days written notice of any proposed purchase of significant waste hauling or disposal companies in the Houston market insures that the U.S. Department of Justice and the State of Texas General's Office will be able to review, consider and oppose if necessary any future consolidation in the market for a period of ten years.

B. The Johnstown Market

The proposed Final Judgment also requires USA Waste and Sanifill to offer less restrictive contracts to small containerized hauling customers in the Johnstown area market. These changes to the contracts involve substantially shortening the term of contracts USA Waste and Sanifill use from three years to one year, substantially reducing the amount of liquidated damages, and eliminating other terms that could make entry more difficult. The proposed Final Judgment generally requires that these revised contracts shall be offered immediately to all new small containerized hauling customers. Within 30 days of the entry of the proposed Final Judgment, USA Waste and Sanifill must offer the revised contract to all their non-municipal small containerized hauling service customers in the Johnstown market. These changes in the contract will make it easier for a new entrant to gain customers and set up an efficient route or for a small hauler to expand its route if prices increase. In the Johnstown area, a rural market in which most haulers offer rearload small containerized hauling services and there are a number of small containerized haulers, contract relief should substantially eliminate any anticompetitive effects in the small containerized hauling market.

The proposed Final Judgment further limits any anticompetitive effect in the small containerized hauling market related to the USA Waste acquisition of Sanifill in the Johnstown market in several ways. *First*, the defendants are required to make available specified MSW landfill airspace rights to independent haulers for a ten year period. Defendants are obliged to accept up to 200 tons per day and up to 62,400 tons per year during this period at the Pelligrene landfill under non-price terms no less favorable than those provided to defendants' vehicles or the vehicles of any municipality in the Johnstown market. *Second*. USA Waste and Sanifill are required to refrain from opposing in any way the addition of new or existing landfills to any county landfill plan in the Johnstown market from entry of the Final Judgment and refrain from opposing any permit application for a new landfill or expansion of an existing landfill for a period of ten years. *Finally*, the requirement that defendants provide at least 30 days written notice of any proposed purchase of significant waste hauling or disposal companies in the Johnstown area market insures that the U.S. Department of Justice and the Commonwealth of Pennsylvania Attorney General's Office will be able to review, consider and oppose if necessary any future consolidation in the market for a period of ten years.

The United States concluded divestiture was not necessary in the Johnstown market. It determined that a change in the type of contracts used with small containerized hauling service in this market, combined with the additional notice and landfill capacity agreements reached with the parties, will adequately address the competitive concerns posed by USA Waste's acquisition of Sanifill. A number of factors led to that decision, including the number of existing competitors in the market; the size of the population; the number, location and density of commercial establishments requiring small containerized hauling service; and the extensive use of rear-end load mixed (hand and containerized) collection routes. Absent the long-term contracts and limitations on landfill access, these firms could be expected to expand significantly their containerized hauling operations in response to an anticompetitive price increase. Requiring USA Waste and Sanifill to offer less restrictive contracts within the market and to provide access to landfill capacity to independent haulers eliminates a major barrier to entry and expansion, thus constraining any possible anticompetitive price increase by the post-acquisition firm.

The relief sought in the various markets alleged in the Complaint has been tailored to insure that, given the specific conditions in each market, the relief will protect consumers of small containerized hauling services and landfill disposal services from higher prices and poorer quality service in those markets that might otherwise result from the acquisition.

IV

Remedies Available to Potential Private Litigants

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

V

Procedures Available for Modification of the Proposed Final Judgment

The United States and defendant 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 to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and

published in the Federal Register. Written comments should be submitted to: J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, N.W., Suite 3000, Washington, D.C. 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, litigation against defendants USA Waste and Sanifill. The United States could have brought suit and sought preliminary and permanent injunctions against USA Waste's acquisition of the voting stock Sanifill. The United States is satisfied, however, that the divestiture of the described assets, the provision of significant landfill capacity to competitors, and the contract relief outlined in the proposed Final Judgment will encourage viable waste hauling and disposal competitors in the markets identified by the United States as requiring the relief implemented. The United States is satisfied that the proposed relief will prevent the acquisition from having anticompetitive effects in those markets. The divestiture, the provision of landfill capacity and the proposed contractual relief will restore the markets to the structure that existed prior to the acquisition, will preserve the existence of independent competitors in those areas, and will allow for new entry and expansion by existing firms in those markets where contract relief is sought. For the reasons discussed above, *infra* at pages 17–18, the United States concluded divestiture was not necessary in the Johnstown market because the contractual, notification, and landfill capacity agreements reached with the parties adequately address the competitive concerns.

VII

Standard of Review Under the APPA for Proposed Final Judgment

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

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

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

15 U.S.C. 16(e) (emphasis added). As the Court of Appeals for the District of Columbia Circuit recently held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States v. Microsoft,* 56 F.3d 1448 (D.C. Cir. 1995).

In conducting this inquiry, ''the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [1] Rather,

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

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

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) *quoting United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir.), *cert. denied,* 454 U.S. 1083 (1981); see also, *Microsoft,* 56 F.3d 1448 (D.C. Cir. 1995). Precedent requires that

the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the 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.[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.' (citations omitted).'' [3]

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.

For Plaintiff United States of America:

Dated: September 6, 1996.

J. Robert Kramer II,

PA Bar #23963.

Willie L. Hudgins,

DC BAR #37127.

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David R. Bickel,

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Michael K. Hammaker,

DC Bar #233684.

[1] 119 Cong. Rec. 24598 (1973). *See, United States* v. *Gillette Co.,* 406 F.Supp. 713, 715 (D.Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See,* H.R. 93–1463, 93rd Cong. 2d Sess. 8-9, *reprinted in* (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[2] *United States* v. *Bechtel,* 648 F.2d at 666 (citations omitted) (emphasis added); *see United States v.* BNS. Inc., 858 F.2d at 463; *United States* v. *National Broadcasting Co.,* 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.,* 406 F. Supp. at 716. *See also United States* v. *American Cynamid Co.,* 719 F.2d at 565.

[3] *United States* v. *American Tel. and Tel Co.,* 552 F. Supp. 131, 150 (D.D.C. 1982) *aff'd sub nom. Maryland* v. *United States, 460 U.S. 1001 (1983) quoting United States* v. *Gillette Co., supra,* 406 F. Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.,* 505 F. Supp. 619, 622 (W.D. Ky 1985).

Attorneys, U.S. Department of Justice, Antitrust Division, 1401 H St., N.W., Washington, D.C. 20530, (202) 307–1168.

Certification of Service

I hereby certify that a copy of the foregoing has been served upon USA Waste Services, Inc., Sanifill, Inc., the Office of the Attorney General of the State of Texas, and the Office of the Attorney General of the Commonwealth of Pennsylvania, by placing a copy of this Competitive Impact Statement in the U.S. mail, directed to each of the above-named parties at the addresses given below, this 6th day of September, 1996.

USA Waste Services, Inc.: c/o James R. Weiss, Preston, Gates, Suite 500, 1735 New York Ave., NW, Washington, DC 20006

Sanifill, Inc.: c/o Kirk K. Van Tine, Baker & Botts, LLP, 1299 Pennsylvania Ave., NW, Washington, DC 20004

State of Pennsylvania: James A. Donahue, III, Senior Deputy Attorney General, Antitrust Section, 14th Floor, Strawberry Square, Harrisburg, PA 17120

State of Texas: Mark Tobey, Assistant Attorney General, Deputy Chief for Antitrust, Office of the Attorney General of Texas, P.O. Box 12548, Austin, TX 78711–2548

David R. Bickel,

Attorney, U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530, (202) 307–1168.

[FR Doc. 96–23700 Filed 9–16–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Blue Band II Consortium

Notice is hereby given that, on August 27, 1996 pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), parties to the Blue Band II Consortium filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objective of the joint venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Boston University, Boston, MA; Hewlett-Packard Company, Palo Alto, CA; Massachusetts Institute of Technology, Cambridge, MA; SDL, Inc., San Jose, CA; University of New Mexico, Albuquerque, NM; University of Utah, Salt Lake City, Utah; The University of Texas, Austin, TX; and Xerox Palo Alto Research Center, Palo Alto, CA. The objective of the joint venture is the rapid commercialization of optoelectronic components operating in the blue and ultraviolet portion of the optical spectrum.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–23697 Filed 9–16–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Inter Company Collaboration for AIDS Drug Development

Notice is hereby given that, on August 23, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), Inter Company Collaboration for AIDS Drug Development (The Collaboration) filed written notifications simultaneously with the Attorney General and the Federal Trade Commission. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The Collaboration is planning to have an independent third party collect and distribute information about the amount of resources its members devote to various AIDS-related research and development activities. It is the Collaboration's intent to use the results of the survey to identify potential areas in which further cooperation among its members may be appropriate pursuant to the Act. The company conducting the survey is a nonprofit institution with extensive experience in conducting confidential surveys of parmaceutical companies. A questionnaire will be sent to each of the member companies of the Collaboration. Upon receipt of the completed questionnaires, the company will compile the data and circulate aggregated results to each member of the collaboration in a manner that prevents the identification of the company that submitted particular data.

No other changes have been made in either the membership or planned activities of the Collaboration. Membership in the Collaboration remains open, and the Collaboration intends to file additional written notifications disclosing all changes in membership.

On May 27, 1993, the Collaboration filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on July 6, 1993 (58 FR 36223). The last notification was filed with the Department on June 26, 1996. A notice was published in the Federal Register on July 23, 1996 (61 FR 38215).

Constance D. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–23699 Filed 9–16–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—International 300 MM Initiative, Inc.

Notice is hereby given that, on August 15, 1996, pursuant to § 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), the International 300 MM Initiative, Inc. (''I300I'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to § 6(b) of the Act, the identities of the parties are: AMD, Inc., Austin, TX; Hyundai Electronics Industries Co., Ltd., Kyoungki-do, KOREA; International 300 MM Initiative, Inc., Austin, TX; International Business Machines Corporation, Essex Junction, VT; Intel Corporation, Santa Clara, CA; LG Semicon Co., Ltd., Cheongju, KOREA; Lucent Technologies Inc., Murray Hill, NJ; Motorola, Inc., Austin, TX; Philips Semiconductors International B.V., Eindhoven, NETHERLANDS; Samsung Electronics Company, Ltd., Seoul, KOREA; SGS Thomson Microelectronics, Inc., Crolles Cedex, FRANCE; Siemens Components, Inc., Cupertino, CA; Taiwan Semiconductor Manufacturing Co., Hsin-Chu, TAIWAN; and Texas Instruments, Inc., Dallas, TX.

I300I's area of planned activity is to facilitate the transition to the manufacturing of semiconductors on 300 millimeter wafers and to encourage the commercial availability of equipment, materials and software from suppliers by (a) developing common performance targets for manufacturing equipment, materials, software and facilities; (b) characterizing and demonstrating 300mm capable