

WAYNE KLEIN (#3819)  
Assistant Attorney General  
MARK L. SHURTLEFF (#4666)  
Utah Attorney General  
Attorneys for the State of Utah  
160 East 300 South, 5<sup>th</sup> Floor  
P.O. Box 140872  
Salt Lake City, UT 84114-0872

**FILED**  
CLERK, U.S. DISTRICT COURT  
21 JAN 03 AM 10:21  
DISTRICT OF UTAH  
BY: \_\_\_\_\_  
DEPUTY CLERK

UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

<p>THE STATE OF UTAH,  Plaintiff,  vs.  STERICYCLE, INC., and BFI WASTE SYSTEMS OF NORTH AMERICA, INC.,  Defendants</p>	<p><b>FINAL JUDGMENT BY CONSENT</b></p> <p>Civil No.: 2:03cv49 Judge: JB</p>
---	--

WHEREAS, plaintiff, the State of Utah, and defendant, BFI Waste Systems of North America, Inc. ("BFI"), having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and intend that this Final Judgment shall settle all claims made by plaintiff against BFI in its Complaint filed January 13, 2003, as well as all claims that might be made by plaintiff against BFI and its employees, agents, and affiliated entities as a result of the acts described in the Complaint; and

WHEREAS, BFI, being represented by counsel, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this

3

Final Judgment constituting any evidence against or an admission by it with respect to any issue of law or fact herein; and

WHEREAS, BFI has agreed to settle this matter by stipulating to the entry of the Final Judgment, to avoid the expense and risks of litigation; and

WHEREAS, BFI denies violating any state or federal antitrust laws; and

WHEREAS, BFI agrees to be bound by the provisions of this Final Judgment pending its approval by the Court; and

WHEREAS, the State of Utah believes that entry of this Final Judgment is in the public interest;

NOW, THEREFORE, this Court having considered the pleadings and file in this matter, approves the entry of this Final Judgment. Accordingly, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the State of Utah and BFI, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

### **I. JURISDICTION**

This Court has jurisdiction over the State of Utah and BFI, and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against BFI under Sections 1 and 2 of the Sherman Act as amended (15 U.S.C. §§ 1 and 2), and Sections 76-10-914 (1) and (2) and 76-10-918 of the Utah Antitrust Act.

### **II. APPLICABILITY**

The provisions of this Final Judgment apply to BFI, its successors and assigns, *subsidiaries, directors, officers, managers, agents, and employees who shall have received actual notice of this Final Judgment by personal service or otherwise.*

### III. INJUNCTION

BFI Waste Systems of North America, Inc., its affiliates, assignees, subsidiaries, successors, and transferees, and their officers, directors, partners, agents, and employees, and all other persons acting or claiming to act on their behalf or in concert with them, who receive actual or constructive knowledge of this order, are hereby permanently enjoined from:

- A. Agreeing or conspiring with any other person or entity that is an actual or potential competitor of BFI or its affiliates in the collection, transportation, or disposal of medical waste to exchange or allocate any existing customers of either party to the agreement in the State of Utah (if the party giving up the customers will remain in the medical waste business) in violation of Utah or federal antitrust laws.
- B. Agreeing or conspiring with any other person or entity that is an actual or potential competitor of BFI or its affiliates in the collection, transportation, or disposal of medical waste to divide geographic territories or in any manner agree not to compete against the competitor for the business of existing or future medical waste customers in Utah (if both parties to the agreement will remain in the medical waste business) in violation of Utah or federal antitrust laws.
- C. Entering into any agreement with or purchasing part or all of the business of any competitor in the medical waste business in the State of Utah if the agreement or transaction would result in BFI increasing its market share in the State of Utah by 10% or more, without first providing at least sixty (60) days notice of the transaction to the Utah Attorney General; provided, however, that this prohibition

shall not apply if the proposed transaction has been reviewed by the Federal Trade Commission or the Antitrust Division of the U.S. Department of Justice, and all applicable waiting periods under the Hart Scott Rodino Premerger Notification Act have expired. This prohibition shall not extend to purchases of equipment or vehicles in the ordinary course of business which do not involve territorial market divisions, customer allocations, or agreements not to compete.

D. Requiring or inducing medical waste customers to:

- i. Agree not to use any medical waste collection, transportation, or disposal services of any of *BFI's* competitors as a condition to entering into a multi-year contract with BFI;
- ii. Agree to any contract for the collection, transportation, or disposal of medical waste having an initial term of longer than two years; or
- iii. Agree to any contract for the collection, transportation, or disposal of medical waste with any provision for automatic renewal of the contract unless (a) the contract is terminable at the will of the customer upon no more than 180 days notice to BFI, (b) the contract is terminable at the will of the customer by paying liquidated damages in an amount equal to three monthly payments, or (c) the renewal term is not greater than one year and the customer is given at least 60 days notice that the contract term is expiring and will be automatically renewed. Any such notice must be provided to customers separately from billing notices and must permit the

customer at least 30 days to give notice to BFI that it does not wish the contract to be renewed.

#### **IV. PAYMENT OF INVESTIGATIVE EXPENSES**

BFI will pay to the Attorney General the amount of \$150,000 as reimbursement of attorneys' fees and investigative costs incurred by the Attorney General in the investigation of this matter. This amount will be paid to the Utah Attorney General within ten (10) days of the entry of this Order and shall be paid into the Attorney General Litigation Fund created by the Utah Antitrust Act, § 76-10-922, Utah Code Ann. (Supp. 2002).

#### **V. ENHANCING COMPETITION**

In addition to the investigative expenses and attorneys fees specified in section IV, BFI will contribute the amount of \$100,000 to a non-profit entity designated by the Attorney General for use in funding analyses of ways to increase competition for the collection, transportation, or disposal of medical waste and to fund new entry or expansion by entities engaged in the collection, transportation, or disposal of medical waste generated by entities in Utah. This amount will be paid by BFI within thirty (30) days of the Utah Attorney General notifying BFI of the entity or entities to receive the funds.

#### **VI. COMPLIANCE INSPECTIONS**

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

- A. Duly authorized representatives of the Utah Attorney General's office, upon written request, and on reasonable notice to Defendant BFI, made to its principal offices, shall be permitted:

- (i) Access during office hours of BFI to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of BFI, which may have counsel present, relating to the matters contained in this Final Judgment; and
- (ii) Subject to the reasonable convenience of BFI and its officers, employees, and agents, who may have counsel present, inquiry regarding any such matters.

B. Upon the written request of the Utah Attorney General's office, BFI shall submit such written reports, under oath if requested, with respect to any matter contained in the Final Judgment.

#### **VII. DELIVERY OF FINAL JUDGMENT**

Within sixty (60) days of the date of this Final Judgment, BFI shall cause a copy of this Final Judgment to be delivered to all its officers and directors as well as all managers or other employees of the company engaged in the collection, transportation, or disposal of medical waste in Utah and shall obtain from each such employee a signed acknowledgment that the employee has read and understands the Final Judgment.

#### **VIII. RETENTION OF JURISDICTION**

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

**IX. ENTIRE AGREEMENT**

This Final Judgment constitutes the entire agreement between the parties. There are no other understandings or agreements between the parties which are not described in this Final Judgment.

**X. TERMINATION**

*This Final Judgment, including the injunction herein, will expire on the fifth anniversary of the date of its entry.*

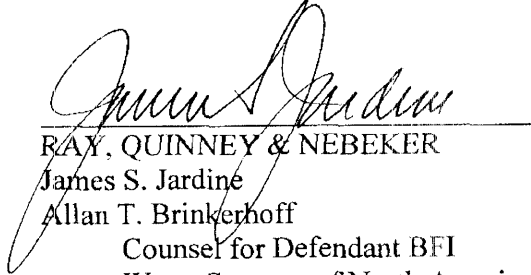
**XI. PUBLIC INTEREST**

Entry of this Final Judgment is in the public interest.

DATED this 21<sup>st</sup> day of January, 2003.

  
\_\_\_\_\_  
United States District Judge

Approved As To Form:

  
\_\_\_\_\_  
RAY, QUINNEY & NEBEKER  
James S. Jardine  
Allan T. Brinkerhoff  
Counsel for Defendant BFI  
Waste Systems of North America, Inc.

687724

jmo

United States District Court  
for the  
District of Utah  
January 21, 2003

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:03-cv-00049

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

R. Wayne Klein, Esq.  
UTAH ATTORNEY GENERAL'S OFFICE  
160 E 300 S  
PO BOX 140872  
SALT LAKE CITY, UT 84114-0872  
EMAIL

James S. Jardine, Esq.  
RAY QUINNEY & NEBEKER  
36 S STATE ST STE 1400  
PO BOX 45385  
SALT LAKE CITY, UT 84145-0385  
JFAX 9,5327543



WAYNE KLEIN (#3819)  
Assistant Attorney General  
MARK L. SHURTLEFF (#4666)  
Utah Attorney General  
Attorneys for the State of Utah  
160 East 300 South, 5<sup>th</sup> Floor  
P.O. Box 140872  
Salt Lake City, UT 84114-0872

19 JUN 03 10:41 AM  
DISTRICT CLERK  
BY: \_\_\_\_\_  
DEPT. OF JUSTICE

UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

THE STATE OF UTAH,

Plaintiff,

vs.

STERICYCLE, INC., and BFI WASTE  
SYSTEMS OF NORTH AMERICA, INC.,

Defendants.

**STIPULATION FOR  
FINAL JUDGMENT**

Civil No.

Filed:

Judge: \_\_\_\_\_

2:00 PM 06/03 03

Plaintiff, the State of Utah, and Defendant, Stericycle, Inc. ("Stericycle"), in order to avoid prolonged litigation, hereby stipulate and agree as follows:

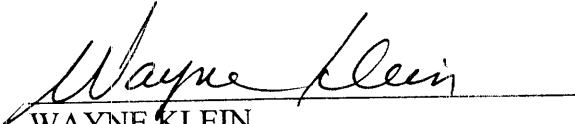
1. Defendant admits the jurisdiction of this Court over the subject matter of this proceeding and over it in this action.
2. Plaintiff has authority to bring this action and the Complaint filed in this matter states a cause of action for injunctive relief under Utah antitrust laws and the Sherman Act.
3. The Final Judgment attached hereto may be entered against Defendant and it

hereby consents to the entry thereof without further notice to it or further hearings in this matter.

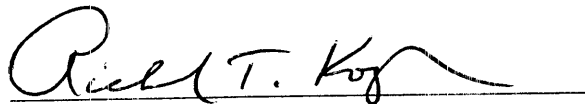
4. The accompanying Final Judgment shall constitute a final resolution of all issues presented in Plaintiff's Complaint as to Defendant and may be presented to the Court immediately or at any time convenient to the Court without the necessity of findings of fact or conclusions of law or further pleadings or proceedings in this matter.
5. Defendant agrees to be bound by the provisions of the Final Judgment pending its approval by the Court.

DATED this 13<sup>th</sup> day of January, 2003.

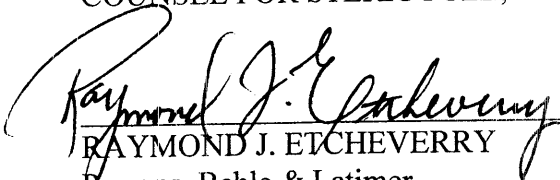
FOR PLAINTIFF  
STATE OF UTAH

  
WAYNE KLEIN  
Assistant Attorney General

FOR DEFENDANT  
STERICYCLE, INC.

  
Name: Richard T. Kogler  
Title: Vice President

COUNSEL FOR STERICYCLE, INC.

  
RAYMOND J. ETCHEVERRY  
Parsons, Behle & Latimer

WAYNE KLEIN (#3819)  
Assistant Attorney General  
MARK L. SHURTLEFF (#4666)  
Utah Attorney General  
Attorneys for the State of Utah  
160 East 300 South, 5<sup>th</sup> Floor  
P.O. Box 140872  
Salt Lake City, UT 84114-0872

FILED  
DISTRICT COURT  
21 JAN 03 PM 2:31  
DISTRICT OF UTAH  
BY: \_\_\_\_\_  
DEPUTY CLERK

UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

<p>THE STATE OF UTAH,  Plaintiff,  vs.  STERICYCLE, INC., and BFI WASTE SYSTEMS OF NORTH AMERICA, INC.,  Defendants.</p>	<p><b>FINAL JUDGMENT BY CONSENT</b></p> <p>Civil No. 2:03cv49 Filed: DB Judge:</p>
--	--

WHEREAS, plaintiff, the State of Utah, and defendant, Stericycle, Inc. having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and intend that this Final Judgment shall settle all claims made by plaintiff against Stericycle in its Complaint filed January 13, 2003, as well as all claims that might be made by plaintiff against Stericycle and its employees, agents, and affiliated entities as a result of the acts described in the Complaint; and

WHEREAS, Stericycle, being represented by counsel, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without

Entered on Docket  
by: \_\_\_\_\_  
Deputy Clerk

5

this Final Judgment constituting any evidence against or an admission by it with respect to any issue of law or fact herein; and

WHEREAS, Stericycle has agreed to settle this matter by stipulating to the entry of the Final Judgment, to avoid the expense and risks of litigation; and

WHEREAS, Stericycle consents to this judgment without admitting or denying the allegations in the Complaint; and

WHEREAS, Stericycle agrees to be bound by the provisions of this Final Judgment pending its approval by the Court; and

WHEREAS, the State of Utah believes that entry of this Final Judgment is in the public interest;

NOW, THEREFORE, this Court having considered the pleadings and file in this matter, approves the entry of this Final Judgment. Accordingly, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the State of Utah and Stericycle, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

#### **I. JURISDICTION**

This Court has jurisdiction over the State of Utah and Stericycle, and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against Stericycle under Sections 1 and 2 of the Sherman Act as amended (15 U.S.C. §§ 1 and 2), and Sections 76-10-914 (1) and (2) and 76-10-918 of the Utah Antitrust Act.

## **II. APPLICABILITY**

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

## **III. INJUNCTION**

Stericycle, Inc., its affiliates, assignees, subsidiaries, successors, and transferees, and their officers, directors, partners, agents, and employees, and all other persons acting or claiming to act on their behalf or in concert with them, who receive actual or constructive knowledge of this order, are hereby permanently enjoined from, in any manner, directly or indirectly, continuing, maintaining, or renewing the agreements described in the Complaint, or from engaging in any other combination, conspiracy, agreement, undertaking, plan, program, or arrangement in Utah having the same effect as the alleged violations including:

- A. Agreeing or conspiring with any other person or entity that is an actual or potential competitor of Stericycle or its affiliates in the collection, transportation, or disposal of medical waste to exchange or allocate any existing customers of either party to the agreement in the State of Utah (if the party giving up the customers will remain in the medical waste business) in violation of Utah or federal antitrust laws.
- B. Agreeing or conspiring with any other person or entity that is an actual or potential competitor of Stericycle or its affiliates in the collection, transportation,

or disposal of medical waste to divide geographic territories or in any manner agree not to compete against the competitor for the business of existing or future medical waste customers in Utah (if both parties to the agreement will remain in the medical waste business) in violation of Utah or federal antitrust laws.

- C. Entering into any agreement with or purchasing part or all of the business of any competitor in the medical waste business in the State of Utah if the agreement or transaction would result in Stericycle increasing its market share in the State of Utah by 10% or more without first providing at least sixty (60) days notice of the transaction to the Utah Attorney General; provided, however, that this prohibition shall not apply if the proposed transaction has been reviewed and approved by the antitrust division of the U.S. Department of Justice. This prohibition shall not extend to purchases of equipment or vehicles in the ordinary course of business which do not involve territorial market divisions, customer allocations, or agreements not to compete.
- D. Requiring or inducing medical waste customers in the State of Utah to:
- i. Agree not to use any medical waste collection, transportation, or disposal services of any of Stericycle's competitors during the term of a multi-year contract with Stericycle;
  - ii. Agree to any contract for the collection, transportation, or disposal of medical waste having an initial term of longer than two years; or
  - iii. Agree to any contract for the collection, transportation, or disposal of

medical waste with any provision for automatic renewal of the contract unless (a) the contract is terminable at the will of the customer upon no more than 180 days notice to Stericycle or (b) the contract is terminable at the will of the customer by paying liquidated damages in an amount equal to three monthly payments; or (c) the renewal term is not greater than one year and the customer is given at least 60 days notice that the contract term is expiring and will be automatically renewed. Any such notice must be provided to customers separately from billing notices and must permit the customers at least 30 days to give notice to Stericycle that it does not wish the contract to be renewed.

- E. Threatening to raise or raising disposal prices for any third-party haulers or competitors in the collection, transportation, or disposal of medical waste based on the hauler's or competitor's solicitation of business from medical waste customers of Stericycle located in Utah.
- F. Threatening to terminate or terminating access to medical waste incineration or disposal facilities owned or controlled by Stericycle to any third-party haulers or competitors in the collection, transportation, or disposal of medical waste based on the hauler's or competitor's solicitation of business from medical waste customers of Stericycle located in Utah.

#### **IV. CIVIL PENALTY**

Stericycle will pay to the Utah Attorney General a civil penalty in the amount of

\$580,000. This amount will be paid in three installments. The first payment, in the amount of \$300,000, shall be paid within ten (10) days of the entry of this Order. The second payment, in the amount of \$200,000, shall be made on or before the one-year anniversary of the entry of this Order. The third payment, in the amount of \$80,000 shall be made on or before the two-year anniversary of the entry of this Order. All payments shall be paid into the Attorney General Litigation Fund created by the Utah Antitrust Act, § 76-10-922, Utah Code Ann. (Supp. 2002).

#### **V. ENHANCING COMPETITION**

Within thirty (30) days of the entry of this Final Judgment, Stericycle will take steps sufficient to accomplish the following:

##### *No Exclusivity*

- A. Stericycle will not enter into or enforce any contract term with any generator or transporter of medical waste in Utah where that contract term requires the generator or transporter of medical waste to conduct business exclusively with Stericycle or to refrain from transacting business with any other collector, transporter, or disposer of medical waste. This provision shall not be interpreted to prevent contract terms containing volume discounts or tiered pricing so long as any discounts are not conditioned on exclusivity or on using Stericycle for any percentage of the customer's medical waste needs.

##### *Initial Term of Customer Contracts*

- B. Stericycle will not require or enforce any contract term with any generator or transporter of medical waste in Utah where that contract term provides for an



initial contract length of greater than two (2) years unless such contract provides that it may be terminated on not more than one hundred eighty (180) days notice by the customer.

*Automatic Renewals of Contracts*

- C. Stericycle will not enter into or enforce any contract term with any generator or transporter of medical waste in Utah where that contract term provides for automatic renewal of that contract unless the renewal term of the contract is not more than 12 months and the customer is given at least sixty (60) days advance, separate written notice of the upcoming automatic renewal and provided at least thirty (30) days in which to decline any renewal of the contract.

*Notice to Customers of Termination Dates*

- D. When any customer in Utah sends a written request to Stericycle seeking to know the termination date of the customer's contract or requesting a copy of the customer's contract with Stericycle, Stericycle will respond to the customer in writing within fifteen (15) days of receipt of the customer's written request. If Stericycle fails to provide the written information specified in this paragraph, within the time specified, the customer shall be entitled to terminate the contract on sixty (60) days advance notice to Stericycle.

*Incinerator Access*

- E. Stericycle will accept all medical waste generated within the State of Utah delivered by third-party haulers or generators of medical waste to Stericycle's

incinerator located in North Salt Lake, Utah.

- F. This waste will be accepted for incineration or other disposal at a rate of not more than \$0.24 per pound. This rate can escalate each year beginning in January 2004 by not more than the average price increase imposed by Stericycle on its other medical waste customers in Utah.
- G. Stericycle may decide to incinerate all such waste delivered to it or to transport waste not required to be incinerated for treatment at an autoclave or by other permissible disposal processes.
- H. Stericycle may require third-party haulers or generators who deliver waste to its North Salt Lake facility for disposal to sign contracts with Stericycle containing commercially reasonable terms including:
  - i. The hours during which deliveries will be accepted at the facility.
  - ii. Requiring third-party haulers or generators reasonably to comply with governmental regulations applicable to disposal of medical waste such as packaging and labeling requirements.
  - iii. Requiring third-party haulers or generators to give up to two business days' advance notice to Stericycle of the time of delivery and volume of medical waste to be delivered.
  - iv. Requiring that haulers and generators pay Stericycle up to thirty (30) days in advance of delivery for the expected volume of waste to be delivered to the facility.

- v. For any waste volumes in excess of the prepaid amount, Stericycle will accept the waste on an “as available” basis and can require payment at the time of delivery of the waste.
- I. For any third-party haulers who used the North Salt Lake facility previously and whose access was terminated by Stericycle before the expiration of a contract (including any renewals of that contract), Stericycle will honor the disposal rate and terms contained in the contracts prematurely terminated, at the option of the hauler, for a period equal to the remainder of the term of each hauler’s contract which remained at the time each contract was terminated.

Stericycle will have a designated officer of the Company provide a report for the Attorney General certifying that the requirements of this section have been satisfied. This report shall be provided not later than sixty (60) days after the date of this Final Judgment.

#### **VI. TRAINING OF EMPLOYEES**

Stericycle will take adequate steps to ensure that all employees having responsibility for the North Salt Lake facility or dealing with any Utah generators or third-party haulers of medical waste generated in Utah are provided copies of this Final Judgment and obtain, within ninety (90) days of the date of this Final Judgment, signed verifications from each such employee that the employee has read and understands the requirements of this Final Judgment. Stericycle shall conduct training of those employees, and any new employees with similar duties, within ninety (90) days of the entry of this Final Judgment and at least annually thereafter regarding the requirements of this Final Judgment.

Additionally, two agents of Stericycle have delivered to the Utah Attorney General written affirmations acknowledging their knowledge of the requirements of this Final Judgment and agreeing to abide by the terms of the injunction contained in this Final Judgment.

#### **VII. ANNUAL REPORT**

Within thirty (30) days after each anniversary of this Final Judgment, Stericycle shall cause an officer knowledgeable about the matter to submit a report to the Attorney General, under oath, attesting that Stericycle is in compliance with the requirements of this Final Judgment or, alternatively, explaining why Stericycle is not in compliance with the Final Judgment.

#### **VIII. COMPLIANCE INSPECTIONS**

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

- A. Duly authorized representatives of the Utah Attorney General's office, upon written request, and on reasonable notice to Defendant Stericycle, made to its principal offices, shall be permitted:
  - i. Access during office hours of Stericycle to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Stericycle, who may have counsel present, relating to the matters contained in this Final Judgment; and
  - ii. Subject to the reasonable convenience of Stericycle and without restraint

or interference from it, to interview, either informally or on the record, its officers, employees, and agents, who may have counsel present, regarding any such matters.

- B. Upon the written request of the Utah Attorney General's office, Stericycle shall submit such written reports, under oath if requested, with respect to any matter contained in the Final Judgment.

#### **IX. RETENTION OF JURISDICTION**

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

#### **X. ENTIRE AGREEMENT**

This Final Judgment constitutes the entire agreement between the parties. There are no other understandings or agreements between the parties which are not described in this Final Judgment.


**XI. TERMINATION**

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

**XII. PUBLIC INTEREST**

Entry of this Final Judgment is in the public interest.

DATED This 20<sup>th</sup> day of January, 2003.

  
\_\_\_\_\_  
United States District Judge