

RECEIVED  
JUN 30 1999  
OFFICE OF U.S. DISTRICT JUDGE  
BRUCE S. JENKINS

FILED  
CLERK, U.S. DISTRICT COURT  
29 JUN 99 AM 10:53  
DISTRICT OF UTAH  
BY: [Signature]  
DEPUTY CLERK

UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

THE STATE OF UTAH,

Plaintiff,

vs.

ALLIED WASTE INDUSTRIES, INC.,

Defendant.

FINAL JUDGMENT

Civil No. 2:99-CV-00303J

WHEREAS, plaintiff, the State of Utah, and defendant Allied Waste Industries, Inc. ("Allied"), by its 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 that this Final Judgment shall settle all claims made by plaintiff in its Complaint filed on April 27, 1999;

AND WHEREAS, defendant, in its Stipulation for Final Judgment, has agreed to be bound by the provisions of this Final Judgment pending its approval by the Court:

AND WHEREAS, the State of Utah currently believes that entry of this Final Judgment

Entered on docket  
06/29/99 by:  
[Signature]  
Deputy Clerk

6

is in the public interest:

NOW, THEREFORE, this Court held a hearing on June 1, 1999 to consider whether to approve the proposed Final Judgment. Present at that hearing were <sup>Wayne Klein</sup> counsel for the State of Utah, Tom Smith, <sup>Christofer Shaw</sup> Washington D.C. counsel for Allied Waste, which participated by telephone, and local counsel for Allied Waste. During this hearing, the Court made inquiries regarding the subject of the Attorney General's lawsuit and the proposed judgment, heard representations by each of the parties, and heard representations that interested parties were given notice of the pendency of the proposed Final Judgment and of the Court's hearing. The Court, in reliance on the representations of counsel for the parties 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 parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

#### I. JURISDICTION

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

#### II. DEFINITIONS

As used in this Agreement:

A. "Allied" means Allied Waste Industries, Inc., a Delaware corporation with its

headquarters in Scottsdale, Arizona and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents and employees.

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

C. "commercial waste" means commercial small container waste in Washington County, Utah.

D. "commercial Waste Haulers" means commercial haulers who have commercial waste collection operations in Washington County and who dispose of that waste at the Washington County landfill.

E. "commercial waste hauling" means the collection and transportation to a disposal site of trash and garbage (but not medical waste; organic waste; special waste, such as contaminated soil; sludge; or recycled materials) from commercial and industrial customers. Commercial waste hauling means using front-end load and rear-end load trucks to service small containers in Washington County, Utah. Typical customers include office and apartment buildings and retail establishments (e.g. stores and restaurants).

F. "landfill Operation Agreement" means the contract between Allied and the Washington County Utah Special Service District No. 1, a special service district organized under the laws of the State of Utah, pursuant to which the District contracts out operation of the

Washington County Landfill to Allied.

G. "small container" means a 1 to 10 cubic yard container typically made of steel and often known as a dumpster.

H. "Washington County" means Washington County, Utah.

I. "Washington County landfill" means the landfill located in Washington County, Utah.

J. "Waste District" means the Washington County Special Service District No. 1, a special service district organized under the laws of the State of Utah.

### **III. APPLICABILITY**

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

B. Allied shall require, as a condition of the sale or other disposition of all or substantially all of its relevant hauling assets, that the acquiring party agree to be bound by the provisions of this Final Judgment.

### **IV. LIMITS ON ALLIED'S LANDFILL OPERATIONS**

Allied is enjoined and prohibited from using its operations of the Washington County landfill to give Allied any advantage or to cause any disadvantage to any other commercial waste

hauler utilizing services of the Washington County landfill. Thus:

A. Allied will not use the landfill property to store waste containers (including, without limitation, roll-off containers and front-load containers) or other equipment or materials used in its commercial or industrial waste business unless it provides the same opportunity to other commercial waste haulers. In the event Allied intends to use the landfill property for storage of equipment or materials, it will give at least 14 days advance notice, in writing, to all other Commercial Waste Haulers. A copy of this notice also shall be sent to the Utah Attorney General's Antitrust Unit.

B. Allied will not solicit permission from the Waste District for Allied's commercial or industrial waste hauling trucks to enter the landfill outside the normal hours of operation of the landfill unless the District provides the same opportunity to other Commercial Waste Haulers. Should Allied seek such permission, it will give at least 14 days advance written notice to all other Commercial Waste Haulers and to the Attorney General's office.

C. In providing the "spotter" services for the Washington County landfill, Allied will apply the same standards regarding non-hazardous waste such as paint cans or other types of materials that are routinely discarded as trash but which are capable of being treated as hazardous waste, to other commercial waste haulers as it applies to its own commercial waste and residential waste hauling operations. If Allied's spotters at the landfill identify non-conforming waste from competing commercial haulers and require a hazardous cleanup or other remediation,

Allied will pay the expenses of the Waste District or an outside auditor (at the election of the Utah Attorney General) to conduct a random audit of the waste delivered to the landfill by Allied trucks. If not otherwise required in its landfill contract with the Waste District, Allied will notify the Waste District of all claims of non-conforming waste by each commercial waste hauler and by Allied's residential hauling operations at the landfill.

D. Allied is prohibited from offering free or reduced-price services to commercial waste hauling customers for products or services provided to Allied in its residential or landfill services. For example, any contracts for free or reduced-price commercial waste services in exchange for water being delivered to the landfill or for signs created for trucks or waste containers not directly tied to Allied's commercial waste operations (or similar types of services) are prohibited. Before July 1, 1999, any such contracts will be changed to have Allied collect a commercially reasonable rate for the commercial waste hauling services. On or before July 1, 1999, Allied will provide a report to the Utah Attorney General of compliance with this requirement and a summary of the contracts that were affected. Provided, however, that this prohibition does not restrict Allied from engaging in bartering of services directly related to its commercial hauling operations. It also does not proscribe Allied's providing waste collection services for recognized charitable organizations.

E. Pursuant to the landfill operation agreement, the Waste District may review the rate of compensation. Only the Waste District may, in its sole discretion, grant Allied a

compensation adjustment. In order to obtain such an adjustment, Allied must meet the necessary conditions for a compensation adjustment as provided in the landfill operation agreement. If Allied submits a request to the Waste District for an increase, Allied will give the Attorney General written notice of its intention at least 60 days before any hearing by the Waste District. Furthermore, Allied will not object to the participation by the Attorney General in hearings or other proceedings by the Waste District related to the requested increase in dumping fees or in compensation to Allied for its operation of the landfill.

#### **V. TYING OF SERVICES**

Allied will not tie the sale of its commercial waste services to the purchase of any other service or product offered by Allied. Allied also will not tie the sale of any other services or products to the purchase of commercial waste services from Allied. In particular, Allied is required to treat its cardboard recycling business as a separate product from its commercial waste hauling business. It will charge customers a separate fee for cardboard recycling and pickup services. Customers who purchase multiple services from Allied, such as recycling services and commercial waste services, will be billed for each service as a separate charge and customers will be free to choose any service without being required to use another.

#### **VI. CONTRACTUAL REVISIONS**

Allied shall alter the contracts it uses with its commercial waste customers to eliminate

the use of contracts with initial terms of more than two years and automatic renewal terms of longer than one year pursuant to the following:

A. Allied will not enter into any contracts with commercial waste service customers with an initial term of more than two years.

B. Any contracts entered into by Allied for the provision of commercial waste services shall not have any terms providing for automatic renewal of the contract for a period of longer than one year from the expiration of the initial term of the contract, or for successive periods of longer than one year.

C. With regard to existing contracts between either Allied or BFI and commercial waste customers, contracts which are currently in their initial terms and which have an initial term longer than two years will be deemed to expire two years from the date this Final Judgment is entered or on the scheduled expiration date, whichever is shorter. For those commercial waste customers whose contracts are currently in their automatic renewal periods, the contracts will be deemed to expire either one year from the date this Final Judgment is entered or on the scheduled date of expiration, whichever is shorter.

D. Commercial waste customers who have contracts of specified lengths with Allied (including BFI contracts being assumed by Allied) will be sent written notice by Allied six months before the expiration of that contract. This notice will inform the customers of the scheduled expiration of the contract and, if applicable, that the contract provides that it will



automatically renew for a stated period not to exceed one year. This notice will inform the commercial waste customers that they can give written notice to Allied at any time between six months and 30 days before the scheduled expiration of the contract if they wish to terminate the contract and that if they do not give such a notice, the contract will automatically renew for a stated period not to exceed one year. A similar notice will be sent to all commercial waste customers whose contracts are in effect because of an automatic renewal.

E. By July 1, 1999, Allied will send to each commercial waste customer who, as of the date this Final Judgment is entered, has a contract with more than six months remaining, a notice identifying the date on which the contract is scheduled to expire and informing the commercial waste customer that Allied will send written notice six months before the expiration of the contract, as required by Section VI.D. of this Final Judgment. For any commercial waste customers whose contracts will expire earlier than scheduled as a result of the requirements of Section VI.C. of this Final Judgment, Allied will also inform those customers that their contracts are being treated as two year contracts only. This notice will be of a form not objected to by the Utah Attorney General.

F. If a commercial waste customer has not been given the required six-month's advance notice of the scheduled expiration of the contract (and anticipated automatic renewal) or the notice required by Section VI.E., Allied will treat the contract with the customer as a short term contract and the customer may cancel the contract on 30 days written notice to Allied.

### **VII. BELOW COST SALES, MEETING COMPETITION DEFENSE**

So long as Allied has more than 60% of the commercial small container waste hauling market in Washington County, Utah, it will not provide any commercial waste hauling services at a price below its fully-allocated cost of providing those services. It is not permitted to meet a price offered by a competitor if that price is below Allied's own fully-allocated cost of providing the service. In other words, Allied is precluded from relying on the "meeting competition" defense for any below-cost sales. If Allied believes that its market share has dropped below 60% and it intends to offer some contracts at a price below its own cost, it shall notify the Utah Attorney General at least ninety (90) days in advance of the time when Allied intends to no longer be bound by this requirement.

### **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 Allied, made to its principle offices, shall be permitted:

- (1) Access during office hours of Allied to inspect and copy all books, ledgers, accounts correspondence, memoranda, and other records and documents in the possession or under the control of Allied, who may have counsel present, relating

to the matters contained in this Final Judgment: and

- (2) Subject to the reasonable convenience of Allied 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, Allied shall submit such written reports, under oath if requested, with respect to any matter contained in the Final Judgment.

C. No information or documents obtained by the means provided in Section VIII of this Final Judgment shall be divulged by a representative of the plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States or the Attorney General's office of a state which brought an antitrust action regarding this merger, except in the course of legal proceedings to which the Attorney General is a party (including grand jury proceedings), or for the purposes of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents furnished by Allied to plaintiff, Allied represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Allied marks each pertinent page of such material. "Subject to claim of protection under

Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days notice shall be given by plaintiff to Allied prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Allied is not a party.

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

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

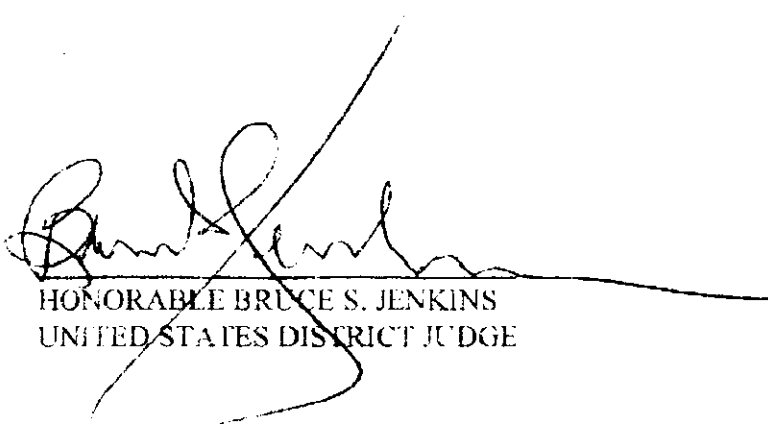
#### **X. TERMINATION**

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

#### **XI. PUBLIC INTEREST**

Entry of this Final Judgment is in the public interest.

DATED This 28 day of June, 1999.

  
HONORABLE BRUCE S. JENKINS  
UNITED STATES DISTRICT JUDGE