

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Petitioner,

v.

ALLIED WASTE INDUSTRIES, INC.,

Respondent.

Supplemental to  
Civil Action No. 99-01962 – RU

Date: August 2, 2004

Judge Ricardo M. Urbina

**ENFORCEMENT ORDER**

WHEREAS, the United States, having filed its Petition for an Order To Show Cause Why Respondent Allied Waste Industries, Inc. Should Not Be Found in Civil Contempt (“Petition to Show Cause”), on August 2, 2004, and the Respondent, Allied Waste Industries, Inc. (“Allied”), having consented to the entry of this Enforcement Order without trial or adjudication of any issue of fact or law and without this Enforcement Order constituting any evidence against or an admission by Allied with respect to any allegation contained in the Petition to Show Cause;

AND WHEREAS, Allied, by Stipulation, has agreed to be bound by the provisions of this Enforcement Order;

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon the 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, and each of the parties to, this action. The Petition to Show Cause states a claim upon which relief may be granted against Allied under 18 U.S.C. § 401(3) and under Section XIII of the Modified Final Judgment (“MFJ”) entered in this Court on May 19, 2000, in United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc., No. 1:99 CV 01962.

II.  
APPLICABILITY AND EFFECT

- A. The provisions of this Enforcement Order shall be binding upon Allied, its successors and assigns, and those persons in active concert or participation with Allied who receive actual notice of this Enforcement Order.
- B. This Enforcement Order constitutes a full and complete disposition of the violation alleged by the United States in its Petition to Show Cause, and shall be a bar to any proceeding under the antitrust laws (15 U.S.C. § 1, *et seq.*, 18 U.S.C. § 401) or any provision of the MFJ by the United States against Allied exclusively based or arising out of the same violation.
- C. Nothing in this Enforcement Order shall bar the United States from seeking, or the Court from imposing, on Allied any other relief available under any applicable provision of law for violation of the MFJ or this Enforcement Order, other than those arising out of the allegations in the Petition to Show Cause.

III.  
ENFORCEMENT PROVISIONS

- A. For the purposes of construing the provisions of the MFJ and this Order, the term “Fall River Landfill” means the landfill located at 1080 Airport Road, Fall River, Massachusetts, and any expansions thereof.
- B. For the purposes of construing the provisions of the MFJ and this Order, the term “closure” means the permanent closure of the entire Fall River Landfill.
- C. The airspace disposal rights divested by Allied to American Ref-Fuel Company (“ARC”) pursuant to the MFJ (“Disposal Rights”) shall expire only upon the earlier of the closure

of the Fall River Landfill or the expiration of the MFJ. The Disposal Rights shall not expire upon any temporary interruption in operations at the Fall River Landfill, whatever the cause of such interruption.

- D. Pursuant to the MFJ, Allied shall accept ash and bypass waste from the SEMASS waste-to-energy incinerator divested to ARC pursuant to the MFJ according to the terms and conditions of the Disposal Agreement, entered into by Allied and ARC and effective October 1, 2000, at all times when the landfill is open and accepting waste from any source until the expiration of the MFJ.
- E. Allied shall not use any ruling or judgment in the Superior Court for Massachusetts action styled SEMASS Partnership v. Browning-Ferris Industries, Inc., Civil Action No. 03-3223 (Middlesex County), and any related or similar action, as grounds for refusing to accept ash and bypass waste from ARC at the Fall River Landfill according to the terms and conditions of the Disposal Agreement.
- F. Allied shall, within five days of the filing of this Order, notify ARC that: 1) the Disposal Rights at Allied's Fall River Landfill did not terminate upon the closing of Phase II, Cell D; 2) Allied will offer disposal space at the Fall River Landfill to SEMASS as required by the MFJ when the landfill is operational pursuant to the terms and conditions of the Disposal Agreement; and 3) the Disposal Rights will be available at any time the Fall River Landfill is operating and shall not expire until the expiration of the MFJ.

#### IV. COMPLIANCE PROVISIONS

- A. No later than fifteen (15) days after the entry of this Enforcement Order, Allied shall designate a Compliance Officer to oversee and coordinate compliance with the MFJ and this Enforcement Order. Allied shall provide the name of the individual serving as the Compliance Officer to the United States within thirty (30) days of the entry of this Enforcement Order.
- B. No later than thirty (30) days after the entry of this Enforcement Order, Allied shall create and provide to the United States a written directive setting forth Allied's policies regarding compliance with the MFJ and this Enforcement Order, including the potential disciplinary actions Allied shall take in the event of a violation, and a description of the procedures to be followed to comply with the MFJ and this Enforcement Order. No later than forty-five (45) days after the entry of this Enforcement Order, Allied shall distribute to each officer, director, management employee, and anyone responsible for the Disposal

Rights, a copy of the MFJ, this Enforcement Order, and the written directive setting forth Allied's policies regarding compliance with the MFJ and this Enforcement Order. In addition, Allied shall inform in writing each officer, director, management employee, and anyone responsible for the Disposal Rights that noncompliance with the MFJ or this Enforcement Order shall result, in every instance, in disciplinary action by Allied, which may include dismissal, and that noncompliance may also result in conviction for contempt of court and imprisonment and/or fine.

- C. No later than forty-five (45) days after entry of this Enforcement Order and annually thereafter, Allied shall obtain from each person to whom notice is given pursuant to Section III.B of this Enforcement Order, a certificate in substantially the following form:

The undersigned hereby (1) acknowledges receipt of the MFJ, Enforcement Order, and a written directive setting forth Allied's policy regarding compliance with the MFJ and the Enforcement Order; (2) represents that the undersigned has read such MFJ, Enforcement Order, and written directive and understands his or her obligations for ensuring compliance with the MFJ and the Enforcement Order; (3) acknowledges that he or she has been advised and understands that noncompliance with the MFJ and/or the Enforcement Order shall result, in every case, in disciplinary measures by Allied which may include dismissal, and that such noncompliance may also result in conviction for contempt of court and imprisonment and/or fine; and (4) represents and affirms that he or she (a) is not aware of any violations of the MFJ or Enforcement Order occurring after entry of the Enforcement Order, or (b) promptly notified the Compliance Officer of any violations of which he or she has become aware.

All such certifications shall be retained by Allied, and be available for inspection pursuant to Section V of this Enforcement Order.

- D. No later than sixty (60) days after the entry of this Enforcement Order and annually thereafter, Allied shall submit to the United States certifications signed under oath by the Compliance Officer that: (1) all steps required by this Enforcement Order and the MFJ have been accomplished; (2) the Compliance Officer is not aware of, nor has been informed of, any violations of either this Enforcement Order or the MFJ after the entry of

the Enforcement Order. Any suspected violations shall be identified, and the nature of such suspected violations and any investigation conducted by Allied shall be described in the Certification; and (3) the Compliance Officer has made a reasonable, good faith effort to investigate any suspected violations of this Enforcement Order or the MFJ of which the Compliance Officer has become aware.

V.  
VISITORIAL RIGHTS

The monitoring and visitation provisions of Section XII of the MFJ shall apply to the activities of Allied mandated under this Enforcement Order.

VI.  
DURATION OF ENFORCEMENT ORDER

This Enforcement Order shall terminate upon the expiration of the MFJ, including any extensions.

VII.  
RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Enforcement Order to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Enforcement Order, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

\_\_\_\_\_/s/\_\_\_\_\_  
Hon. Ricardo M. Urbina  
United States District Court Judge  
District of Columbia

Dated: August 9, 2004