

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
U.S. Department of Justice
Antitrust Division
1401 H Street, N.W., Suite 3000
Washington, DC 20530,

Petitioner,

v.

ALLIED WASTE INDUSTRIES, INC.
15880 N. Greenway-Hayden Loop
Suite 100
Scottsdale, Arizona 85260,

Respondent.

Supplemental to
Civil Action No. 99-01962 – RU

Judge Ricardo M. Urbina

Date Stamp: August 2, 2004

**PETITION BY THE UNITED STATES FOR AN ORDER
TO SHOW CAUSE WHY RESPONDENT ALLIED WASTE INDUSTRIES, INC.
SHOULD NOT BE FOUND IN CIVIL CONTEMPT**

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, presents this Petition for an Order requiring Respondent Allied Waste Industries, Inc. to show cause why it should not be found in civil contempt of the Final Judgment filed on July 20, 1999, in United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc., Civil Action No. 99-01962, and entered by this Court as modified on May 19, 2000. A copy of the Modified Final Judgment (“MFJ”) is appended as Exhibit 1. The United States represents as follows:

I.
DESCRIPTION OF THE RESPONDENT

1. Respondent Allied Waste Industries, Inc., (“Allied”) is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 15880 N. Greenway-Hayden Loop, Suite 100, Scottsdale, Arizona 85260.

II.
JURISDICTION OF THE COURT

2. This Court has inherent power to enforce compliance with its Orders. Section XIII of the MFJ similarly provides:

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.

III.
BACKGROUND

3. On July 20, 1999, the United States filed a civil antitrust Complaint under Section 7 of the Clayton Act, 15 U.S.C. § 18, to block the merger of Allied and Browning-Ferris Industries, Inc. (“BFI”), alleging that the transaction would substantially lessen competition in numerous waste collection and disposal markets across the country, including the market for waste disposal in the Boston, Massachusetts area. Concurrently, and with Allied’s consent, the United States filed a proposed Final Judgment designed to preserve competition in the affected

markets by requiring the divestiture of critical waste disposal assets, the “Relevant Disposal Assets.” MFJ, § IVA.

4. In the Boston area, the Final Judgment required the divestiture of both (1) the “SEMSS waste-to-energy incinerator facility” (then controlled by BFI) and (2) SEMSS’s associated “airspace disposal rights” (“Disposal Rights”) at the Fall River Landfill (originally owned by BFI and now owned by Allied). Id. at § II.C.1.a.

5. The Disposal Rights do not expire until “the closure or attainment of permitted capacity” of the Fall River Landfill or “any modifications, amendments, or extensions thereto.” Id. at § II.C.1.a.(2).

6. The MFJ imposed an additional restriction on Allied not to “take any action, direct or indirect, that will impede in any way the operation of the Relevant Disposal Assets . . .” Id. at § IV.G.

7. The Court entered the MFJ on May 19, 2000. The MFJ differs only slightly from the proposed Final Judgment filed on July 20, 1999, and the modification did not affect any of the relevant provisions.

8. Pursuant to the MFJ, Allied divested both the SEMSS incinerator and the Disposal Rights to American Ref-Fuel Company (“ARC”).

9. To implement the Disposal Rights divested pursuant to the MFJ, Allied and ARC entered an agreement, effective October 1, 2000, (“Disposal Agreement”). In addition to providing for the disposal of SEMSS ash and bypass waste at the Fall River Landfill, the

Disposal Agreement obligated Allied to deliver approximately 229,000 tons of municipal solid waste (“MSW”) to SEMASS each year and to pay ARC tipping fees for such waste. The Disposal Agreement had been reviewed and approved by the United States as part of the purchaser approval process under the MFJ during the divestiture of the SEMASS incinerator and the Disposal Rights in 2001.

10. In 2003, a dispute between Allied and ARC arose concerning the amount of the tipping fees that Allied pays to ARC. When negotiations for a reduction in the tipping fees failed, Allied contended that the Disposal Agreement would terminate when a subsection or “cell” of the Fall River Landfill reached capacity. Allied asserted this position notwithstanding that one or more cells previously had reached permitted capacity since the entry of the MFJ without termination of the Disposal Agreement. ARC filed a declaratory relief action, which is still pending, in Massachusetts Superior Court to determine whether the Disposal Agreement remained in effect.

IV. VIOLATION OF THE FINAL JUDGMENT

11. Allied terminated ARC’s Disposal Rights on or about April 6, 2004, when a cell of the Fall River Landfill reached capacity.

12. However, under the MFJ, the Disposal Rights expire upon the closure or attainment of permitted capacity of the Fall River Landfill, not a subsection thereof.

13. The Fall River Landfill has only suspended operations temporarily while Allied

completes construction of and extension of its permitting to another subsection or “cell” that is expected to be operational in or about October 2004.

14. By prematurely terminating the Disposal Rights, Allied knowingly violated an Order of this Court and is in civil contempt.

V.
PRAYER

WHEREFORE, for the foregoing reasons, the United States respectfully requests that this Court enter an Order directing Allied to appear before this Court at a time and place to be fixed in said Order, to show cause why it should not be adjudged in civil contempt of this Court.

THEREAFTER, issue an order adjudging Allied in civil contempt of this Court’s Order and Final Judgment, and further:

1. Order Allied within five days to restore ARC’s Disposal Rights at the Fall River Landfill to be available at any time the Fall River Landfill is operational during the term of the MFJ;
2. Require Allied to pay an amount not less than \$10,000 for each day Allied is in violation of the Court’s Order to comply with the MFJ;
3. Order Allied to implement a comprehensive compliance program for all management-level employees with responsibilities related to ARC’s Disposal Rights.
4. Award the United States its costs and attorneys’ fees incurred in filing this Petition to Show Cause; and

5. Grant any and all other relief as the Court may deem justified by Allied's actions.

Dated: August 2, 2004

Respectfully submitted,

_____/s/_____
R. HEWITT PATE (D.C. Bar # 473598)
Assistant Attorney General

_____/s/_____
KERRIE FREEBORN

_____/s/_____
THOMAS O. BARNETT
Deputy Assistant Attorney General

_____/s/_____
LOWELL STERN (D.C. Bar # 440487)
Trial Attorneys
U.S. Department of Justice
Antitrust Division
Litigation II Section
1401 H Street, N.W., Suite 3000
Washington, DC 20008
Telephone: 202/353-3956
Facsimile: 202/514-9033

_____/s/_____
J. ROBERT KRAMER II
Director of Operations and Civil Enforcement

_____/s/_____
MARIBETH PETRIZZI (D.C. Bar # 435204)
Chief, Litigation II Section