

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Case No. 1:99 CV 01962
)	
v.)	
)	JUDGE: Ricardo M. Urbina
ALLIED WASTE INDUSTRIES, INC., and)	
BROWNING-FERRIS INDUSTRIES, INC.,)	DECK TYPE: Antitrust
)	
Defendants.)	DATE STAMP: 07/20/1999
)	

HOLD SEPARATE STIPULATION AND ORDER

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I.

DEFINITIONS

As used in this Hold Separate Stipulation and Order:

A. "Allied" means defendant 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 defendant 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. "Relevant Disposal Assets" means, unless otherwise noted, with respect to each landfill, incinerator, or transfer station listed and described herein, all of defendants' rights, titles

and interests in any tangible assets, including all fee and leasehold and renewal rights in the listed landfill, incinerator or transfer station; the garage and related facilities; offices; any related assets including capital equipment, trucks and other vehicles, scales, power supply equipment, interests, permits, and supplies; and all of defendants' rights, titles and interests in any intangible assets, including any customer lists, contracts, and accounts, or options to purchase any adjoining property.

Relevant Disposal Assets, as used herein, includes each of the following properties:

1. Incinerator and Landfills

a. Boston, MA

BFI's American Refuel SEMASS waste-to-energy incinerator facility, located at 141 Cranberry Highway (Route 28), Rochester, MA 02576;

b. Chicago, IL

BFI's Zion Landfill, located at 701 Green Bay Road, Zion, IL 60099, BFI's Orchard Hills Landfill, located at 8290 Highway 251, Davis Junction, IL 60120; and BFI's Spoon Ridge Landfill, located at Route 1 and Highway 97, Fairview, IL, 61432;

c. Denver, CO

Allied's Denver Regional Landfill, located at 1141 Weld County Road #6, Erie, CO;

d. Detroit, MI

BFI's Arbor Hills Landfill, located at 10690 West Six Mile Road, Northville, MI 48167;

e. Evansville, IN

Allied's Blackfoot Landfill, located at 2726 East State Road, Winslow, IN 47598;

f. Joplin/Lamar/Springfield, MO

Allied's option to purchase the proposed Southwest Regional Landfill, located at Missouri State Highway M, Township 30N, Range 32 West, Section 34, in Jasper County, MO, which option Allied must exercise or extend such that it will not expire any sooner than 12 months following the entry of the proposed Final Judgment;

g. Moline, IL

BFI's Quad Cities Landfill, located at 13606 Knoxville Road, Milan, IL 61264;

h. Oakland, CA

BFI's Vasco Road Landfill, located at 4001 North Vasco Road, Livermore, CA; and

i. Oklahoma City, OK

BFI's Oklahoma Landfill, located at 7600 SW 15th Street, Oklahoma City, OK 73128.

2. Transfer Stations

a. Akron/Canton, OH

Allied's RC Miller Refuse Transfer Station, located at 1800 19th Street, Canton, OH;

b. Atlanta, GA

- (i) Allied's Southern States Environmental Transfer Station, located at 129 Werz Industrial Boulevard, Newnan, GA 30263;
- (ii) Allied's Fayette County Transfer Station, located at 211 First Manassas Mile Road, Fayetteville, GA 30214; and
- (iii) BFI's Marble Mill Road Transfer Station, located at 317 Marble Mill Road, Marietta, GA 30060;

c. Boston, MA

BFI's Holliston Transfer Station, located at 115 Washington Street, Holliston, MA 01746;
BFI's Auburn Transfer Station, located at 15 Hardscrabble Road, Auburn, MA 01501; and
BFI's Braintree Transfer Station, located at 257 Ivory Street, Braintree, MA 02184;

d. Charlotte, NC

Allied's Charlotte Transfer Station, located at 3130 I-85 Service Road North, Charlotte,
NC 28206;

e. Chicago, IL

BFI's Melrose Park 73300 Transfer Station, located at 4700 W. Lake Street, Melrose
Park, IL 60160; BFI's Rolling Meadows Transfer Station, located at 3851 Berdnick Street,
Rolling Meadows, IL 60008; BFI's DuKane Transfer Station, located at 3 N 261 West
Powis Road, West Chicago, IL 60185; BFI's Northbrook-Brooks Transfer Station, located
at 2750 Shermer Road, Northbrook, IL 60062; and BFI's Active/Evanston Transfer
Station, located at 1712 Church Street, Evanston, IL 60201;

f. Denver, CO

Allied's Summit Waste Jordan Road Transfer Station, located at 7120 S. Jordan Road,
Denver, CO;

g. Detroit, MI

BFI's SDMA Transfer Station, located at 28315 Grosbeck Highway, Roseville, MI 48066;
and BFI's Schaefer Road Transfer Station, located at 3051 Schaefer Road, Dearborn, MI
48126;

h. Evansville, IN

Allied’s Koester Transfer Station, located at 12800 Warrick-County Line Road,
Evansville, IN 47711;

i. Kalamazoo/Battle Creek, MI

BFI’s Kalamazoo Transfer Station, located at 28002 Cork Street, Kalamazoo, MI 49001;
and

j. Springfield, MO

Allied’s Tates Transfer Station, located at Route 2, Box 69, Verona, MO 65769.

D. “Relevant Hauling Assets,” unless otherwise noted, means with respect to each commercial waste collection route or other hauling asset described herein, all tangible assets, including capital equipment, trucks and other vehicles, containers, interests, permits, supplies, real property and improvements to real property (*i.e.*, buildings and garages); and it includes all intangible assets, including hauling-related customer lists, contracts, leasehold interests, and accounts.

Relevant Hauling Assets, as used herein, includes the assets in the following locations:

1. Akron, OH

Allied’s front-end and rear-end loader truck small container commercial routes (hereinafter, “commercial routes”) that serve the cities of Akron and Canton and Summit, Stark and Portage counties, Ohio;

2. Boston, MA

Allied's commercial routes and any commercial routes acquired by BFI from Allied or any other person since January 1, 1999 that serve the City of Boston and Bristol, Essex, Middlesex, Norfolk, Suffolk, and Worcester counties, MA;

3. Charlotte, NC

BFI's commercial routes that serve the City of Charlotte and Mecklenburg County, NC;

4. Chicago, IL

BFI's commercial routes that serve the City of Chicago and Cook, DuPage, Will, Kane, McHenry, and Lake counties, IL;

5. Dallas, TX

BFI's commercial routes that serve any nonfranchised or "open competition" areas of the City of Dallas and Dallas County, TX;

6. Davenport, IA/Moline, IL

BFI's commercial routes that serve the cities of Davenport and Bettendorf, IA; Moline, East Moline, and Rock Island, IL; and Rock Island County, IL and Scott County, IA;

7. Denver, CO

Allied's commercial routes that serve the City of Denver, and Denver, Arapahoe, Adams, Douglas and Jefferson counties, CO;

8. Detroit, MI

BFI's commercial routes that serve the City of Detroit, Wayne, Oakland and Macomb counties, MI;

9. Evansville, IN

Allied’s commercial routes that serve the City of Evansville, IN and Vanderburgh County, IN, including all of its commercial routes that operate out of Allied’s Evansville and Huntingburg garage facilities;

10. Kalamazoo/Battle Creek, MI

BFI’s commercial routes that serve the cities of Kalamazoo and Battle Creek and Kalamazoo and Calhoun counties, MI;

11. Oklahoma City, OK

BFI’s commercial routes that serve Oklahoma City and Oklahoma County, OK;

12. Rock Falls/Dixon, IL

BFI’s commercial routes that serve the cities of Rock Falls and Dixon and Lee and Whiteside counties, IL;

13. Rockford, IL

Allied’s commercial routes that serve the City of Rockford and Ogle and Winnebago counties, IL; and

14. Springfield, MO

Allied’s commercial routes that serve the City of Springfield and Greene and Christian counties, MO.

E. “Hauling” means the collection of waste from customers and the shipment of the collected waste to disposal sites. Hauling, as used herein, does not include collection of roll-off containers.

F. “Waste” means municipal solid waste.

G. “Disposal” means the business of disposing of waste into approved disposal sites.

II.

OBJECTIVES

The Final Judgment filed in this case is meant to ensure defendants' prompt divestitures of the Relevant Disposal Assets and the Relevant Hauling Assets for the purpose of establishing viable competitors in the waste disposal business or the commercial waste hauling business, or both, to remedy the effects that the United States alleges would otherwise result from Allied's acquisition of BFI. This Hold Separate Stipulation and Order ensures, prior to such divestitures, that the Relevant Disposal Assets and the Relevant Hauling Assets are independent, economically viable, and with the exception of assets listed in Sections I (C)(1)(f) and (2)(b)(iii), ongoing business concerns that will remain independent and uninfluenced by Allied (or BFI); and that competition is maintained during the pendency of the ordered divestitures.

III.

JURISDICTION AND VENUE

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 United States District Court for the District of Columbia.

IV.

COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT

A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with 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), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it 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.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Hold Separate Stipulation and Order.

D. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event (1) the United States has withdrawn its consent, as provided in Section IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

F. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

V.

HOLD SEPARATE PROVISIONS

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

A. Defendants shall preserve, maintain, and with the exception of assets listed in Sections I (C)(1)(f) and (2)(b)(iii), operate the Relevant Disposal Assets and the Relevant Hauling Assets as independent competitive businesses, with management, sales and operations of such assets held entirely separate, distinct and apart from those of defendants' other operations. Defendants shall not coordinate the marketing of, or negotiation or sales by, any Relevant Disposal Asset and Relevant Hauling Asset with defendants' other operations. Within twenty (20) days after the filing of the Hold Separate Stipulation and Order, or thirty (30) days after the entry of this Order, whichever is later, defendants will inform the United States of the steps defendants have taken to comply with this Hold Separate Stipulation and Order.

B. Defendants shall take all steps necessary to ensure that (1) the Relevant Disposal Assets and Relevant Hauling Assets will be maintained and, with the exception of the assets listed in Sections I (C)(1)(f) and (2)(b)(iii), operated as independent, ongoing, economically viable and active competitors in the waste disposal business or commercial waste hauling business, or both; (2) management of the Relevant Disposal Assets and Relevant Hauling Assets will not be influenced by Allied (or BFI); and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning the Relevant Disposal Assets and Relevant Hauling Assets will be kept separate and apart from defendants' other operations. Defendants' influence over the Relevant Disposal Assets and Relevant Hauling Assets shall be limited to that necessary to carry out defendants' obligations under this Hold Separate Stipulation and Order and the proposed Final Judgment.

C. Defendants shall use all reasonable efforts to maintain and increase the sales and revenues of the Relevant Disposal Assets, with the exception of assets listed in Sections I (C)(1)(f) and (2)(b)(iii), and the Relevant Hauling Assets, and shall maintain at 1998 or at previously approved levels, whichever are higher, all promotional, advertising, sales, technical assistance, marketing and merchandising support for the Relevant Disposal Assets and Relevant Hauling Assets.

D. Defendants shall provide sufficient working capital to maintain the Relevant Disposal Assets, with the exception of the assets listed in Sections I (C)(1)(f) and (2)(b)(iii), and the Relevant Hauling Assets as economically viable, and competitive ongoing businesses.

E. Defendants shall take all steps necessary to ensure that the Relevant Disposal Assets, with the exception of assets listed in Sections I (C)(1)(f) and (2)(b)(iii), and the Relevant Hauling Assets are fully maintained in operable condition at no lower than their current capacity or sales, and shall maintain and adhere to normal repair and maintenance schedules for the Relevant Disposal Assets and Relevant Hauling Assets.

F. Defendants shall not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any of the Relevant Disposal Assets or Relevant Hauling Assets.

G. Defendants shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of the Relevant Disposal Assets and Relevant Hauling Assets.

H. Except in the ordinary course of business or as is otherwise consistent with this Hold Separate Stipulation and Order, defendants shall not hire, transfer, terminate, or otherwise alter the salary agreements for any Allied or BFI employee who, on the date of defendants' signing of this Hold Separate Stipulation and Order, either: (1) works at a Relevant Disposal Asset or Relevant Hauling Asset, or (2) is a member of management referenced in Section V(I) of this Hold Separate Stipulation and Order.

I. Until such time as the Relevant Disposal Assets and Relevant Hauling Assets are divested pursuant to the terms of the Final Judgment, the Relevant Disposal Assets and Relevant Hauling Assets of Allied and BFI shall be managed by Richard J. Wojahn. Mr. Wojahn shall have complete managerial responsibility for the Relevant Disposal Assets and Relevant Hauling Assets of Allied and BFI, subject to the provisions of this Order and the proposed Final Judgment. In the event that Mr. Wojahn is unable to perform his duties, defendants shall appoint, subject to the approval of the United States, a replacement within ten (10) working days. Should defendants fail to appoint a replacement acceptable to the United States within ten (10) working days, the United States shall appoint a replacement.

J. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestitures pursuant to the Final Judgment to purchasers acceptable to the United States.

K. This Hold Separate Stipulation and Order shall remain in effect until consummation of the divestitures contemplated by the proposed Final Judgment or until further order of the Court.

Dated: July 19, 1999.

FOR PLAINTIFF
UNITED STATES OF AMERICA

_____/s/_____
Anthony E. Harris, Esquire
U.S. Department of Justice
Antitrust Division
Litigation II Section
1401 H Street, NW, Suite 3000
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(202) 307-6583

FOR DEFENDANT
ALLIED WASTE INDUSTRIES, INC.

_____/s/_____
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FOR DEFENDANT
BROWNING-FERRIS INDUSTRIES, INC.

_____/s/_____
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(202) 662-4517

O R D E R

IT IS SO ORDERED by the Court, this ____ day of _____.

United States District Judge