

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

**STIPULATION REGARDING INTERPRETATION OF MFJ AND  
FOR ENTRY OF AN ENFORCEMENT ORDER**

WHEREAS, §§ II.C.1.a.(1) & (2) of the Modified Final Judgment (“MFJ”) in United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc., entered by this Court on May 19, 2000, required Allied Waste Industries, Inc. (“Allied”) to divest the SEMASS waste-to-energy incinerator (“SEMASS”) and related airspace disposal rights at Allied’s Fall River Landfill “for a period of time up to the closure or attainment of permitted capacity of the landfill” (the “Disposal Rights”) in order to preserve competition in the market for solid waste disposal in southeastern Massachusetts;

WHEREAS, pursuant to the MFJ, Allied divested both SEMASS and the Disposal Rights to American Ref-Fuel Company (“ARC”);

WHEREAS, to implement the Disposal Rights divested pursuant to the MFJ, Allied and ARC entered an agreement, effective October 1, 2000, (“Disposal Agreement”);

WHEREAS, the Antitrust Division of the United States Department of Justice reviewed and approved the Disposal Agreement as a condition of its approval of Allied’s acquisition of Browning-Ferris Industries, Inc.;

WHEREAS, on or about April 6, 2004, one subsection or “cell” (designated as Phase II,

Cell D) of the Fall River Landfill reached its capacity prior to the opening of a new cell causing a temporary suspension of the operation of the Fall River Landfill;

WHEREAS, Allied claimed that the Disposal Rights expired as a result of the temporary and unintended interruption in the availability of operating capacity at the Fall River Landfill and further claimed that as a result, Allied had discharged its obligations under the MFJ to accept ash and bypass waste from SEMASS at the Fall River Landfill;

WHEREAS, there is an action pending in the Superior Court for Massachusetts styled SEMASS Partnership v. Browning-Ferris Industries, Inc., Civil Action No. 03-3223 (Middlesex County) (the “State Court Action”), in which Allied contends, among other things, that it discharged its obligations under the Disposal Agreement to accept ash and bypass waste at the Fall River Landfill;

WHEREAS, SEMASS must be able to exercise the Disposal Rights in order to remain an effective competitor in the relevant market for solid waste disposal and to fulfill the terms of the MFJ;

WHEREAS, the United States on August 2, 2004, filed a Petition For An Order To Show Cause Why Respondent Allied Waste Industries, Inc., Should Not Be Found in Civil Contempt (“Petition to Show Cause”). The Petition to Show Cause alleged that: (1) the Disposal Rights did not expire upon the temporary interruption in the availability of permitted capacity, (2) Allied’s premature termination of the Disposal Rights violated § II.C.1.a.(2) of the MFJ, and (3) Allied remains obligated under the MFJ to accept ash and bypass waste from SEMASS at the Fall River Landfill for the remaining life of the landfill according to terms and conditions of the Disposal Agreement, which was reviewed and approved by the Antitrust Division;

AND WHEREAS, the United States and Allied have agreed upon a resolution of this matter without any admission or determination of wrongdoing by Allied and without any findings or adjudication with respect to any issue of fact or law arising from the Petition to Show Cause;

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned parties that:

1. This Court has jurisdiction of the subject matter of, and each of the parties to, this action.
2. A proposed Enforcement Order in the form attached hereto as Exhibit A may be

entered by the Court on the Court's own motion or the motion of the United States at any time, and without further notice to any party or any proceeding. From the signing of this Stipulation, Allied shall be bound by and comply with the terms of the proposed Enforcement Order as though they were in full force and effect as an order of the Court.

3. For the purposes of construing the provisions of the MFJ and this Stipulation, the term "Fall River Landfill" means the landfill located at 1080 Airport Road, Fall River, Massachusetts, and any expansions thereof.
4. For the purposes of construing the provisions of the MFJ and this Stipulation, the term "closure" means the permanent closure of the entire Fall River Landfill.
5. The Disposal Rights divested to ARC did not expire on or about April 6, 2004, when Phase II, Cell D of the Fall River Landfill attained its permitted capacity.
6. The Disposal Rights shall not expire upon any temporary interruption in operations at the Fall River Landfill, whatever the cause of such interruption.
7. The Disposal Rights shall not expire prior to the closure of the Fall River Landfill.
8. During the term of the MFJ, Allied shall accept ash and bypass waste from SEMASS according to the terms and conditions of the Disposal Agreement whenever the Fall River Landfill is open and accepting waste from any source regardless of any interruptions in the operation of the landfill.
9. Allied shall not use any ruling or judgment obtained in the State Court Action (or any other judicial, regulatory or arbitral forum) as grounds for refusing to accept ash and bypass waste from SEMASS at the Fall River Landfill according to the terms and conditions of the Disposal Agreement.
10. Any ruling or judgment obtained in the State Court Action (or any other judicial, regulatory or arbitral forum) shall not have any preclusive or any other effect (even for persuasive purposes) on the MFJ.
11. The parties' execution of this Stipulation and entry of the proposed Enforcement Order discharges and settles any and all claims of the United States arising out of the allegations asserted in the Petition to Show Cause.
12. Neither this Stipulation nor the proposed Enforcement Order shall be construed to

preclude the United States from bringing an action against Allied for any violation(s) of the MFJ other than the allegations described in the Petition to Show Cause.

Dated: August 2, 2004

ALLIED WASTE INDUSTRIES, INC.

\_\_\_\_\_/s/\_\_\_\_\_  
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UNITED STATES OF AMERICA

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