Federal Register

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Part II

Department of Justice

Antitrust Division

United States v. Allied Waste Industries, et al.; Response to Public Comments on Antitrust Consent Decree and Joint Motion for Entry of a Modified Final Judgment; Notice

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil No. 99–1962]

United States v. Allied Waste Industries, et al.; Response to Public Comments on Antitrust Consent Decree and Joint Motion for Entry of a Modified Judgment

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that on May 10, 2000, the United States filed its responses to public comments on the proposed Final Judgment in *United States* v. *Allied Waste Industries, Inc., et al.* (''Allied''), Civil No. 99–1962 (D.D.C. filed July 20, 1999), with the United States District Court in Washington, DC.

On July 20, 1999, the United States filed a civil antitrust complaint, which alleged that the proposed acquisition by Allied of Browning-Ferris Industries, Inc. (''BFI'') would violate section 7 of the Clayton Act, 15 U.S.C. 18, by substantially lessening competition in waste collection and/or disposal services, or both, in a number of markets around the country, including the greater Chicago metropolitan market.

The proposed Final Judgment, filed on July 20, 1999, requires Allied and BFI to divest commercial waste collection and/or municipal solid waste disposal operations in each of the geographic areas alleged in the Complaint. This includes the divestiture of commercial routes that serve the City of Chicago and Cook, DuPage, Will, Kane, McHenry and Lake counties, IL. These routes included municipal franchise waste business. Because of comments received objecting to the divestiture of the municipal franchises, the United States determined and Allied agreed that instead of the municipal franchise contract work being divested, Allied would be permitted to retain the municipal franchise contracts and divest instead additional assets which are not required to be divested by the proposed Final Judgment. These additional assets consist of residential and rolloff waste hauling business in the greater Chicago metropolitan market. A modified version of the proposed Judgment (Modified Final Judgment), filed on May 11, 2000, permits Allied to retain the municipal franchise business and to divest instead the residential and rolloff waste hauling business.

Public comment on the proposed Judgment was invited within the statutory 60-day comment period. The public comments and the United States responses thereto are hereby published in the **Federal Register** and have been filed with the Court. Copies of the Complaint, Hold Separate Stipulation and Order, proposed Final Judgment, Competitive Impact Statement, the United States Certificate of Compliance with Provisions of the Antitrust Procedures and Penalties Act (to which the public comments and the United States responses are attached), proposed Modified Final Judgment, and the Memorandum of the United States in Support of Entry of the Proposed Modified Final Judgment are available for inspection in Room 215 of the Antitrust Division, Department of Justice, 325 7th Street, NW., Washington, DC 20530 (telephone: 202–514–2481), and at the office of the Clerk of the United States District Court for the District of Columbia, Third Street and Constitution Avenue, NW., Washington, DC 20001.

Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations & Merger Enforcement, Antitrust Division.

Note: The letter dated October 5, 1999 from Peter Anderson of Recycle Worlds Consulting was not able to be published in the **Federal Register** but a copy can be obtained from the U.S. Department of Justice, Document Group, 325 7th Street, NW., Room 215, Washington, DC 20530 or you may call and request a copy at (202) 514–2481.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

Peter Anderson,
Recycle Worlds, 4513 Vernon Blvd., Suite 15, Madison, WI 53705–4964.

Re Comment on Proposed Final Judgment in United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. No. 99 CV 1962 (D.D.C., July 21, 1999).

Dear Mr. Anderson: This letter responds to your letter of October 5, 1999 commenting on the Final Judgment in this case on behalf of Recycle Works. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC, would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

In your letter, you urged the United States not to approve any asset divestiture under the proposed Final Judgment to one of the major integrated waste collection and disposal firms. In your view, these firms may be more inclined to cooperate with the defendants in raising prices in some markets in order to avoid potential price wars with the defendants elsewhere. You state that selling the assets to a major integrated company could reduce competition and result in increased prices.

The United States could not categorically conclude that selling the assets required to be divested under the proposed Final Judgment to a large national waste collection and disposal firm would be less competitive than a sale to a municipal agency or small independent firm, or that large waste companies are more prone to collude, when given the opportunity, than small independent firms. Also, large waste collection and disposal companies may enjoy some competitive advantages, such as better access to capital and more extensive experience. These advantages would make them in some respects more formidable competitors than small independent firms.

Thank you for bringing your concerns to our attention, and we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comments and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

House of Representatives

Committee on the Judiciary

October 5, 1999.

J. Robert Kramer II, Esq.,
Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530.

Re United States v. Allied Waste Industries, No. 99 CV 01962.

Dear Mr. Kramer: On August 6, 1999, the Department of Justice published a Tunney Act notice of a proposed final judgment in the above referenced case. 64 Fed. Reg. 42962 (August 6, 1999). As required by the Act, the Department has invited public comment on the proposed final judgment.

I have received correspondence from the DuPage Mayors and Managers Conference, representing most of the local governments in my district, and the Village of Lisle requesting, certain changes to the proposed final judgment. A copy of this correspondence is attached for your review.

In essence, the Conference asks that the consent decree not require local governments to rebid their waste collection contracts in the middle of the contract terms. I understand that these contracts tend to run from three to six years and that the current contracts are generally viewed as advantageous to the communities. By allowing current contracts to run their term, local governments will receive substantial savings, and the potentially procompetitive benefits of the consent decree will be delayed for only a short period. This strikes me as a reasonable short term accommodation, and I recommend it to you.

I appreciate your attention to my views and those of the local governments in my district.

Please place this letter in whatever public files are appropriate under applicable law. Please feel free to contact me if I may be of further assistance.

Sincerely,

Henry J. Hyde,

Chairman.

cc: Mr. Ronald S. Ghilardi, DuPage Mayors and Managers Conference; Ms. Barbara J. Adamec, Village of Lisle.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

Honorable Henry J. Hyde,
U.S. House of Representives, 2138 Rayburn Building, Washington, DC 20515–6216.

Re Comment on Proposed Final Judgment in (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. No. 99 CV 1962 (D.D.C., July 21, 1999)

Dear Congressman Hyde: This letter responds to your letter of October 5, 1999 commenting on the final Judgment in this case on behalf of the DuPage Mayors and Managers conference (''Conference'') and Village of Lisle. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC., would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

In your letter, you state that the Conference and the Village of Lisle express concern that the Final judgment, by ordering divestiture of BFI's small container commercial waste business, may interfere with BFI's existing government franchise contracts which also includes the disposal of the communities' residential waste. The local communities fear that requiring Allied to divest only the franchise commercial waste collection business would, in effect, split the collection business between two firms—the purchaser who would have the franchise commercial waste business; and Allied, which would retain the residential and recycling waste collection services. The communities believe that this will result in the purchaser providing a lower level of service, or result in additional trucks being sent down city streets.

In light of this concern raised by you and others, the United States and Allied reached agreement that instead of the municipal franchise contracts being divested, Allied would be permitted to retain the municipal franchise contracts and divest instead additional assets which are not required to be divested by the proposed modified Final Judgment. These additional assets include residential and rolloff waste hauling business. These assets have been acquired by Superior Services Inc., a purchaser approved by the United States. The United States has filed a motion with the Court to modify the proposed Final Judgment which would permit Allied to retain the municipal franchise contracts initially required to be divested. Allied has agreed to keep separate the municipal franchise contracts, which were required to be divested, until the Court's acceptance of the modification to the proposed Final Judgment.

I have responded directly to the Conference and the Village of Lisle addressing their concerns. Copies of my responses are enclosed.

Thank you for bringing your concerns and theirs to our attention, and we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comments and those of the Conference and Village of Lisle, and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

Robert Kramer II,

Chief, Litigation II Section.

DuPage Mayors and Managers Conference

September 22, 1999.

Anthony Harris,
Antitrust Division, U.S. Department of Justice, 1401 H Street, Northwest, Suite 3000, Washington, DC 20530.

Re United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc.—Case No. 1:99 CV 01962.

Dear Mr. Harris: The DuPage Mayors and Managers Conference, an association of the 35 municipalities located in DuPage County, Illinois, respectfully submits the following comments related to the proposed Final Judgment Order issued in United States v. Allied Waste Industries and Browning-Ferris Industries (BFI)

The proposed Final Judgment Order requires BFI to sell their small container commercial waste collection operations in several highly concentrated markets, including the Chicago region. BFI's divestiture of these operations will have the following adverse impacts on communities that have exclusive contracts with BFI for the provision of commercial and/or multi-family collection services;

(1) Since the proposed Final Judgment Order would allow BFI to maintain its hand pick-up collection services, it is likely that one company would be responsible for collecting small container solid waste from commercial and multi-family customers while BFI would still be responsible for the hand pick-up of recyclables from the same customers. This will undermine the policy decision made by many communities to have an exclusive contract with a single company to provide all waste collection services in the community.

(2) Many communities will have to re-bid their existing contracts to identify a new provider for small container commercial waste collection services.

The DuPage Mayors and Mangers Conference requests that the Department of Justice consider amending the proposed Final Judgment Order in a manner that would protect BFI's existing franchise agreements with units of local government.

The Conference supports consideration of the following suggestions previously submitted to the Department of Justice by the West Cook County Solid Waste Agency:

(1) Modify the definition of ''Collection of small container solid waste'' to exclude from the definition ''any collection of waste from customers that is being provided subject to the terms of a properly executed, legally binding contract or franchise agreement with a unit of local government,'' or

(2) Modify the proposed Final Judgment Order to limit the divestiture of commercial routes that ''serve any non-franchised or open competition ares.''

Implementing either of these two suggestions will avoid the adverse impacts to local governments that currently have franchise agreements with BFI, while also preserving the Department of Justice's goal of promoting competition in waste hauling services.

Sincerely,

Ronald S. Ghilardi,

President, DuPage Mayors and Managers Conference.

cc: House Speaker Dennis Hastert; U.S. Senator Dick Durbin; U.S. Senator Peter Fitzgerald; Congresswoman Judy Biggert; Congressman Henry J. Hyde.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

Ronald S. Ghilardi,
DuPage Mayors and Managers Conference, 1220 Oak Brook Road, Oak Brook, IL 60523–2203.

Re Comment on Proposed Final Judgment in (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. No. 99 CV 1962 (D.D.C., July 21, 1999).

Dear Mr. Ghilardi: This letter responds to your letter of September 22, 1999 commenting on the Final Judgment in this case on behalf of DuPage Mayors and Managers Conference. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC., would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

In your letter, you expressed concern that the Final Judgment, by ordering divestiture of BFI's small container commercial waste business, may interfere with BFI's existing government franchise contracts which also includes the disposal of the communities' residential waste. The local communities fear that requiring Allied to divest only the franchise commercial waste collection business would, in effect, split the collection

business between two firms—the purchaser who would have the franchise commercial waste business, and Allied, which would retain the residential and recycling collection services. The communities fear that this will result in the purchaser providing a lower level of service, or result in additional trucks being sent down city streets.

In light of this concern raised by you and others, the United States and Allied reached agreement that instead of the municipal franchise contracts being divested, Allied would be permitted to retain the municipal franchise contracts and divest instead additional assets which are not required to be divested by the proposed modified Natural Final Judgment. These additional assets include residential and rolloff waste hauling business. These assets have been acquired by Superior Services Inc., a purchaser approved by the United States. The United States has filed a motion with the Court to modify the proposed Final Judgment which would permit Allied to retain the municipal franchise contracts intially required to be divested. Allied has agreed to keep separate the municipal franchise contracts, which were required to be divested, until the Court's acceptance of the modification to the proposed Final Judgment.

Thank you for bringing your concerns to our attention, and we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comments and this response will be published in the **Federal Register** and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

Solid Waste Association of North America

October 5, 1999.

Mr. J. Robert Kramer II,

Chief, Litigation II Section, Anti Trust Division, U.S. Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530.

Re Proposed Consent Decree in United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc.—Case No. 1:99 CV 01962

Dear Mr. Kramer: With over 6,700 members, and 47 chapters in the U.S. and Canada, the Solid Waste Association of North America (SWANA) is the largest professional association in the solid waste management field. Our mission is to advance the practice of environmentally and economically sound municipal solid waste management. On behalf of SWANA, I am writing to offer comments regarding the draft Final Judgment order that has been filed with the U.S. District Court for the District of Columbia in the above referenced case.

SWANA supports, in principle, the proposed Final Judgment directive which requires Allied Waste Industries, Inc. (''Allied'') to divest itself of the Relevant Disposal Assets and Relevant Hauling Assets. One of SWANA's members, the West Cook County Solid Waste Agency (representing 36 local governments in Cook County, Illinois), has begun the process of pursuing its own interest in purchasing a portion of the Relevant Disposal Assets. The purchase of these assets by a unit of local government such as the Agency would enhance and foster competition in the marketplace. Yet the proposed timeline for the ordered divestitures in this case would make it virtually impossible for the Agency to successfully compete for this asset.

Requiring Allied to divest itself of these assets within 60 days after the approval of the Final Judgment by the Court creates an unfair and unreasonable bias towards large, highly liquid, waste hauling firms and denies smaller companies and local governments (either individually or in the form of a consortium) sufficient time to conduct proper due diligence and arrange for the necessary financing to be able to effectively bid on the available assets.

The proposed Final Judgment as drafted, would serve to exacerbate the decline in the number of local government agencies and independent solid waste companies that are able to compete in the marketplace. This would be especially true if, as according to recent press reports, Allied were to sell all assets in the Chicago area to only one entity. This would reduce competition to only three significant competitors—all of which would be vertically integrated and in a position to control pricing within the market. Such an event could create an anti-competitive market environment that could lead to increased prices that would clearly be harmful to municipalities and to the general business community.

Therefore, in order to ensure that all interested parties are provided a fair and equal opportunity to bid on one or more of the assets, SWANA strongly recommends that the proposed Final Judgment be modified to require Allied to take bids on the assets individually. Furthermore, SWANA recommends that the proposed Final Judgment be modified to require Allied to receive bids to acquire Relevant Disposal Assets and Relevant Hauling Assets for 180 days after the Final Judgment has been approved by the Court (rather than within a 60 day limit as specified in the proposed Final Judgment).

SWANA appreciates the opportunity provided by the Court to file these comments and looks forward to your favorable consideration of this request.

Sincerely,

John H. Skinner Ph.D.,

Executive Director and CEO.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

John H. Skinner,

SWANA, 1100 Wayne Avenue, Suite 700, Silver Spring, MD 20910.

Re Comment on Proposed Final Judgment in (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. No. 99 CV 1962 (D.D.C., July 21, 1999).

Dear Mr. Skinner: This letter responds to your letter of October 5, 1999 commenting on the Final Judgment in this case on behalf of SWANA. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC., would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

In your letter, you urged the United States not to approve any asset divestiture under the proposed Final Judgment to one of the major integrated waste collection and disposal firms. In your view, these firms may be more inclined to cooperate with the defendants in raising prices in some markets in order to avoid potential price wars with the defendants elsewhere. You state that selling the assets to a major integrated company could reduce competition and result in increased prices.

The United States could not categorically conclude that selling the assets required to be divested under the proposed Final Judgment to a large national waste collection and disposal firm would be less competitive than a sale to a municipal agency or small independent firm, or that large waste companies are more prone to collude, when given the opportunity, than small independent firms. Also, large waste collection and disposal companies may enjoy some competitive advantages, such as better access to capital and more extensive experience. These advantages would make them in some respects more formidable competitors than small independent firms.

Thank you for bringing your concerns to our attention, and we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comments and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

Village of Lisle

August 24, 1999.

Anthony Harris,

Anti Trust Division, U.S. Department of Justice, 1401 H. Street, Northwest, Suite 3000, Washington, DC 20503.

Re United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc.—Case No. 1:99 CV 0192.

Dear Mr. Harris: I am writing to you on behalf of the Village of Lisle Mayor and Board of Trustees, with regard to the above captioned matter.

With a population of 21,000, the Village of Lisle, Lisle, Illinois, is considered small compared to neighboring municipalities in the Chicago region. However, we are well known in this region and other parts of the United States as a leader in developing user fee based programs designed to significantly reduce solid waste to be landfilled. The Village has spent many hours and dollars developing creative, innovative programs

based on sound economic theories. Our programs have greatly reduced the municipal solid waste stream in Lisle and, when other communities have copied our programs, those communities have experienced similar starting results.

To demonstrate a few of the many ways we have impacted solid waste programs across the nation, please note the following accomplishments:

1. Signed the first user-fee based, comprehensive solid waste program for refuse, recyclable and yard waste in the State of Illinois. Developed the program in 1989 and implemented it in 1990. Subsequently, the majority of communities in northern Illinois have adopted similar plans with great results. The success in Illinois was parroted in neighboring states and as word spread, our program was copied in states across the county. Attached please find a copy of an article published in Resource Recycling magazine shortly after our program in Lisle began. We handled hundreds of calls from people requesting information on the program and, in fact, received requests for information from as far away as Great Britain and Brazil.

2. Lisle is unique in that over 53% of the living units in the Village are multi-family residences. Once the single family program was up and running smoothly, we developed a pilot multi-family recycling program and experimented with ways to encourage waste reduction through on-site recycling centers. After analyzing the results of our experiments, we developed a comprehensive; user fee based system for all of the multi-family units in Lisle, meaning townhouses, coach homes, apartments and condominiums. Typically these units have dumpsters (small containers) on the site for refuse disposal along with mini-recycling centers for recyclable. *One waste hauler collects both materials from the property* As you can see from the attached brochure, the program has been extremely successful.

The proposed Final Judgment Order, which requires BFI to sell for their small container commercial waste collection operations, would destroy our LEAP Multi-Family Program and would severely impact our LEAP Curbside Program. BFI currently holds an exclusive contract with the Village of Lisle to service all of our residential living units, both single-family and multi-family, and those services are intertwined. If BFI must diversify itself or just the container business, then our contract will be challenged.

The suggestion that we can re-bid the existing contract to identify a new provider will be a severe hardship for the Village of Lisle. We just spent several months this year completing a Request For Competitive Proposals For Solid Waste Services, which resulted in an exclusive contract with BFI effective June 1, 1999. Subsequently, we incurred the expense of mailings to our residents, the time taken to re-educate residents on changes to our programs, and the exposure to higher prices for services for our residents.

As far as competition is concerned, attached please find a copy of my analysis of the three proposals received. Note the wide gap in prices between the Waste Management and ARC bids. If the Village of Lisle's contract is voided, and BFI/Allied is removed from bidding process, it is very likely that Waste Management will submit similar prices or higher prices on dumpsters which would represent an increase over the current contract costs.

The proposed Final Judgment Order will have a negative impact on both of our programs and will probably increase costs to our residents because fewer vendors will be proposing/bidding on our contract. In past bidding sessions, Waste Management and BFI were the only bidders in close competition with respect to prices and equivalent services. With BFI out of the picture, the opportunity to secure the same or lower prices appears less likely.

With increased costs aside, the greatest loss of all will be the loss of a very innovative, comprehensive program for Lisle residents whereby the pickup of refuse, recyclables and yard waste are collected by one vendor in a smooth, seamless manner. This user fee based program has influenced solid waste programs across the country and the damage done to our program in Lisle will be a loss others communities as well because we will not be able to continue to fine tune and experiment with our program as designed.

Historically speaking, the waste industry has defined residential service as curbside service whereby residents place garbage in bags or cans at the curb. They also defined commercial service as service whereby refuse is placed in a dumpster. We decided to change the definition in 1993 to suit our own needs. Therefore, in Lisle we define residential service as service for our residents, to include all living units (single-family homes or multi-family homes). Commercial service is defined as non-residential service. Perhaps you should consider applying our definitions to the Final Judgment Order and force BFI/Allied to diversify their ''non-living unit'' accounts. Opening competition up in the commercial/business arena would allow small waste hauler to compete fairly, particularly considering the fact that most small waste haulers do not have the equipment and manpower needed to handle large-scale community programs.

To reduce municipal garbage, programs must offer recycling opportunities, and the convenience factor of both activities must be very high before people will participate. Thus, most municipal solid waste officials will tell you that refuse removal/collections and recycling programs should not be separated from each other, either by physical location or by different vendors. Programs that fall to address this ''marriage'' lack continuity and more often than not fall.

We would appreciate it if you would find way to protect our current franchise agreement with BFI so that our current single family and multi-family programs remain intact and the Village of Lisle can continue to develop additional methods to reduce the municipal solid waste stream.

Sincerely,

Village of Lisle,

Barbara J. Adamec,

Assistant Village Manager.

Enclosures:
LEAP Curbside Program brochure
LEAP Multi-Family Program brochure
Illinois Recycling Association newsletter—4–9–93
Analysis A—Overview Analysis of Solid Waste Services
Village of Lisle Mayor & Board of Trustees
Carl Doerr, Village Manager

U.S. Department of Justice

Antitrust Division

May 10, 2000.

Barbara J. Adamec,
Assistant Village Manager, Village of Lisle, 1040 Burlington Avenue, Lisle, IL 60532–1898,

Re Comment on Proposed final Judgment in the (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc., No. 99 CV 1962 (D.D.C. July 21, 1999).

Dear Ms. Adamec: This letter responds to your letter of August 24, 1999 commenting on the Final Judgment in this case on behalf of the Village of Lisle. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC., would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, is approved by the Court, would establish one of more new competitors in this market for which relief was sought.

In your letter, you express concern that the Final Judgment, by ordering divestiture of the BFI's small container commercial waste business, may interfere with BFI's existing government franchise contract which also includes the disposal of the village's residential waste. The Village of Lisle fears that requiring Allied to divest only the franchise commercial waste collection business would, in effect, split the collection business between two firms—the purchaser who would have the franchise commercial waste business; and Allied, which would retain the residential and recycling waste collection services. You believe that this will result in the purchases providing a lower level of service, or result in additional trucks being sent down city streets.

In light of this concern raised by you and others, the United States and Allied reached agreement that instead of the municipal franchise contracts being divested, Allied would be permitted to retain the municipal franchise contracts and divest instead additional assets which are not required to be divested by the proposed modified Final Judgment. These additional assets include residential and rolloff waste hauling business. These assets have been acquired by Superior Services Inc., a purchaser approved

by the United States. The United States has filed a motion with the Court to modify the proposed Final Judgment which would permit Allied to retain the municipal franchise contracts initially required to be divested. Allied has agreed to keep separate the municipal franchise contracts, which were required to be divested, until the Court's acceptance of the modification to the proposed Final Judgment.

Thank you for bringing your concerns to our attention, and we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comments and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

Department of the Navy

September 17, 2000.

Mr. J. Robert Kramer II,

Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530.

Dear Mr. Kramer: I am forwarding information for your consideration in making a Final Judgment regarding the merger between Allied Waste Industries (Allied) and Browning Ferris Industries (BFI). The Department of the Navy contracts for the collection and disposal of residential and commercial solid waste generated at the Naval Training Center, Great Lakes, Illinois. This installation has a population of some 40,000 sailors, families and civilian employees. Current solid waste services are provided by BFI under two separate contracts.

The proposed Final Judgment requires that BFI divest the Zion landfill, commercial waste collection routes within Lake County, and transfer stations in Northern Cook County. Historically, the Navy has received only two competitive proposals for our waste service at this location—Waste Management and BFI. I am concerned that divesting the transfer and commercial collection routes from the Zion landfill operations will significantly reduce the competitive position of one of only two regional service providers. This concern could result in increased cost and decreased service quality due to a lack of competition.

Your consideration of this information in making a Final Judgment is appreciated. For further information, contact Mr. Mark Schultz, Environmental Director at (847) 688–5999, extension 40.

Sincerely,

E.J. Katzwinkel,

Captain, Civil Engineer Corps, U.S. Navy, Commanding Officer, Navy Public Works Center and Engineering Field Activity, Midwest.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

E.J. Katzwinkel,

Captain, Civil Engineer Corps, U.S. Navy, Navy Public Works Center, Bldg. 1–A, 201 Decatur Avenue, Great Lakes, IL 60088–5600.

Re Comment on Proposed Final Judgment in (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc., No. CV 1962 (D.D.C., July 21, 1999)

Dear Captain Katzwinkel: This letter responds to your letter of September 17, 1999 commenting on the Final Judgment in this case on behalf of the Department of the Navy. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC., would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

In your letter, you express concern that the Final Judgment, by ordering divestiture of BFI's small container commercial waste business, may interfere with BFI's existing government franchise contract which also includes the disposal of the Great Lakes residential waste. You fear that requiring Allied to divest only the franchise commercial waste collection business would, in effect, split the collection business between two firms—the purchaser who would have the franchise commercial waste business; and Allied, which would retain the residential and recycling waste collection services. You believe that this will result in the purchaser providing a lower level of service, or result in additional trucks being sent down the streets of Great Lakes.

In light of this concern raised by you and others, the United States and Allied reached agreement that instead of the municipal franchise contracts being divested, Allied would be permitted to retain the municipal franchise contracts and divest instead additional assets which are not required to be divested by the proposed modified Final Judgment. These additional assets include residential and rolloff waste hauling business. These assets have been acquired by Superior Services Inc., a purchaser approved by the United States. The United States has filed a motion with the Court to modify the proposed Final Judgment which would permit Allied to retain the municipal franchise contracts initially required to be divested. Allied has agreed to keep separate the municipal franchise contracts, which were required to be divested, until the Court's acceptance of the modification to the proposed Final Judgment.

Thank you for bringing your concerns to our attention, and we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comments and this response will be published in the **Federal Register** and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

City of Naperville

September 15, 1999.

Mr. J. Robert Kramer II,

Chief Litigation II Section, Anti-Trust Division, United States Department of Justice, 1401 H Street, Northwest, Suite 3000, Washington, DC 20530.

Regarding United States vs. Allied Waste Industries, Inc. and Browning-Ferris Industries Inc.; Case 199 CV 01962.

Dear Mr. Kramer: The City of Naperville, as one of the largest municipalities in Illinois, contracts for waste services for the majority of our 125,000 residents. We competitively bid our refuse and landscaping service contract in 1998 and awarded a five-year contract to Browning-Ferris Industries, Inc. (also known as BFI.) In reviewing the proposed final judgment, we are concerned that the proposed final judgment in the antitrust action against BFI will have an adverse impact on the City's five-year contract with BFI. The City is also concerned that if BFI is unable to find a successor to parts of its Naperville contract under the specific terms and conditions of the contract, the City may be forced to re-bid all or portions of the City's largest monetary contract within an unacceptably short time frame of sixty days. I believe that the final judgment, if implemented as presented, will create serious problems for the City of Naperville.

The City has three specific concerns related to the final judgment:

1. The final judgment dictates that BFI must sell the only transfer station within DuPage County. Three years ago, the City considered siting a transfer station when the nearest landfill closed. We declined because industry experts assured us that private haulers would site transfer stations. BFI was the only company in the area that pursued this goal and it took them until a few months ago to open a transfer station. As part of our contract with BFI, we receive collection service at a guaranteed rate per ton utilizing this transfer station. We are concerned that the sale of BFI's transfer station and its possible unavailability for Naperville's solid waste, may result in longer driving distances and increased disposal costs. The City needs written assurance that any successor to Naperville's contract with BFI will be bound by the terms and conditions of the contract, particularly the cost of $34.75 per ton for the cost of landfill, incinerator, or transfer station tipping fees.

2. The proposed divestiture of all small container collection services may require the City to waive its no-subcontract provision of its contract with BFI to accommodate BFI's commitments contained within the final judgment. We believe that to bid small container collection service separately from the rest of our services in the future will work to our economic disadvantage. That yard waste is not included in the decision and is collected at several City sites in small containers further complicates this situation.

3. If successors to BFI's small container collection service will not be bound by the terms and conditions already present in our contract with BFI, the sixty-day divestiture time frame does not provide the City with adequate time to prepare, release and evaluate bids on the services voided by the final judgment.

Finally, as you determine the wisest course of action to ensure competitiveness throughout the United States, please consider that municipalities such as Naperville face the possibility of rebidding entire collection agreements. If Naperville's agreement with BFI is re-bid, the proposed final judgment may impair Allied/BFI's ability to compete, and we believe invalidate the Justice Department's goal by resulting in an environment where there is less competition than currently exists.

If you or your staff would like to discuss the issues raised in this letter further please contact Mr. David Barber, Director of Public Works, 630/420–6096.

Thank you for your consideration.

Sincerely,

A. George Pradel,

Mayor, City of Naperville.

cc: U.S. Senator Richard Durbin, Congressman William O. Lipinski, Congressman Rod Blagojevich, Congressman Danny Davis, Congresswoman Judy Biggert, Mr. Peter T. Burchard, City Manager, U.S. Senator Peter Fitzgerald, Congressman Luis Gutierrez, Congressman Henry Hyde, Congressman Dennis Hastert, City Council Members.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

A. George Pradel,

Mayor, City of Naperville, 400 South Eagle Street, Naperville, IL 60566–7020.

Re Comment on Proposed Final Judgment in (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. No. 99 CV 1962 (D.D.C., July 21, 1999).

Dear Mr. Pradel: This letter responds to your letter of September 15, 1999 commenting on the Final Judgment in this case on behalf of the City of Naperville. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC., would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

In your letter, you express concern that the Final Judgment, by ordering divestiture of BFI's small container commercial waste business, may interfere with BFI's existing government franchise contract which also includes the disposal of the city's residential waste. The city fears that requiring Allied to divest only the franchise commercial waste collection business would, in effect, split the collection business between two firms—the purchaser who would have the franchise commercial waste business; and Allied, which would retain the residential and recycling waste collection services. The city believes that this will result in the purchaser providing a lower level of service, or result in additional trucks being sent down city streets.

In light of this concern raised by you and others, the United States and Allied reached agreement that instead of the municipal franchise contracts being divested, Allied would be permitted to retain the municipal franchise contracts and divest instead additional assets which are not required to be divested by the proposed modified Final Judgment. These additional assets include residential and rolloff waste hauling business. These assets have been acquired by Superior Services Inc., a purchaser approved by the United States. The United States has filed a motion with the Court to modify the proposed Final Judgment which would permit Allied to retain the municipal franchise contracts initially required to be divested. Allied has agreed to keep separate the municipal franchise contracts, which were required to be divested, until the Court's acceptance of the modification to the proposed Final Judgment.

Thank you for bringing your concerns to our attention, and we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comments and this response will be published in the **Federal Register** and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

Fulton County Board

September 14, 1999.

Mr. J. Robert Kramer II,

Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20005.

Re Allied/BFI Consent Decree Case No. 1:99CV01962.

Dear Mr. Kramer: The purpose of this letter is provide comment on the proposed Consent Decree which requires Allied Waste Industries, Inc. to sell certain assets in connection with its acquisition of Browning Ferris Industries, Inc. Specifically, the County of Fulton objects to the Department of Justice requirement that Allied divest itself of the Spoon Ridge Landfill located in Fairview, Fulton County, Illinois.

In your analysis of the Chicago market, it is stated that Allied's divestiture of the Spoon Ridge Landfill would insure that the benefits of competition, lower prices and better service would be preserved. It is the opinion of the County of Fulton that the Spoon Ridge Landfill is not an important waste disposal operation for the Chicago market. Requiring the divestiture of the Spoon Ridge Landfill would eliminate an opportunity for Allied to send waste from New York City to Spoon Ridge Landfill as previously planned by BFI. As such, the divestiture removes an important potential economic development opportunity for the County of Fulton.

Spoon Ridge Landfill/BFI is the second largest tax payer in the County of Fulton. It has a current assessed valuation of $2,292,970.00. It pays and annual tax to the various taxing districts in the County of Fulton slightly in excess of $232,077.00.

It is the understanding of the County of Fulton that Spoon Ridge Landfill was designated as a primary landfill site for waste from the City of New York. Spoon Ridge Landfill has been closed for the approximate last year. The New York contract previously secured by BFI would have caused the reopening and continued operation of Spoon Ridge Landfill.

It is the understanding of the County of Fulton that Allied was to receive benefit of the New York contract and would have continued with the plan to dispose of the New York waste at the Spoon Ridge Landfill.

It is the Country's understanding that the Spoon Ridge Landfill is proposed to be conveyed to another landfill/waste disposal firm known as Republic. It is the understanding of the County that Republic, if it acquires this site, would have no immediate plans to reopen the facility and would not be accepting any waste from New York.

The Spoon Ridge Landfill has previously entered into an agreement with the County of Fulton for payments of certain sums to the County of Fulton as and for or in lieu of a solid waste tippage fees. The County of Fulton is required by state law to have a solid waste management plan and implement its terms. The agreement between Spoon Ridge Landfill and the County of Fulton has generated for the County of Fulton since April of 1995; $180,000.00 to implement such plan.

If the Spoon Ridge Landfill is required by the proposed Consent Decree to go to another landfill operator, such as Republic, there does not appear to be much of a likelihood that Spoon Ridge Landfill will open, operate, or generate funds for the County of Fulton to implement its Solid Waste Management Plan.

The County of Fulton would disagree with a premise upon which the proposed Consent Decree has been based. The City of Chicago is 200 miles or more away from the Spoon Ridge Landfill site in Fulton County, Illinois. There is no direct rail access from Chicago to Spoon Ridge Landfill. Further, there is no direct interstate highway from Chicago to Spoon Ridge Landfill.

As previously indicated in this letter, Spoon Ridge Landfill has been closed for the approximate last year or so, except for opening for a day or two during the summer of 1999 to accept waste. If this facility was part of the Chicago geographic area, it would seem that there would be a steady stream of waste coming from Chicago to this site in Fulton County. Real economic facts have made the transportation of waste from the Chicago market to the County of Fulton cost prohibitive.

The County of Fulton and a number of affected taxing districts will likely suffer

extreme if not devastating economic consequences if the proposed Consent Decree requires Allied to divest this property to a concern such as Republic. This landfill facility is the second largest tax payer in the County. If this facility is not reopened, certainly a fair argument could be made that its assessed valuation is over valued. If the assessment is reduced, the County of Fulton and a certain school district will see adverse financial consequences. Finally, if this facility can not have a ready stream of waste, then, the County of Fulton will be without sufficient funds to meet a state mandate requiring further implementation of a Solid Waste Management Plan.

It is respectfully requested that the Department of Justice reconsider and amend its Consent Decree with regard to the requirement that Allied divest itself of the Spoon Ridge Landfill. I remain.

Sincerely yours,

Mr. Bernard Oaks,

Chairman of the Fulton County Board.

cc: U.S. Senator Richard J. Durbin, U.S. Senator Peter G. Fitzgerald, Congressman Lane Evans, Governor George H. Ryan, State Senator George P. Shadid, State Representative Michael K. Smith, Mr. Thomas VanWeelden, President, Allied Waste Industries, Inc.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

Bernard Oaks,

Chairman, Fulton County Board, Fulton County Courthouse, 100 North Main Street, Lewistown, IL 61542.

Re Comment on Proposed Final Judgment in United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. No. 99 CV 1962 (D.D.C., July 21, 1999).

Dear Mr. Oaks: This letter responds to your letter of September 14, 1999 commenting on the Final Judgment in this case on behalf of Fulton County. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC., would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

In your letter, you express concern that the Final Judgment, by requiring Allied to divest the Spoon Ridge landfill, is unnecessary for effective relief and might undermine the tax base of the local communities. The Spoon Ridge landfill is a relatively new site and the largest landfill in the State of Illinois. BFI recently closed the landfill because it found that the landfill was unable to attract enough waste from the Chicago area to make it viable. By closing the landfill, BFI reduced its assessed value, and thus, the taxes it paid to local communities. BFI intended to reopen the landfill if it obtained a long-term contract to dispose of New York City's residential waste.

You stated that the future viability of Spoon Ridge depends on its ability to attract waste from New York City. By requiring Allied to divest this landfill to an independent competitor, ostensibly to help alleviate competitive problems in the Chicago market, the Final Judgment unnecessarily limits Allied's ability to compete for the contract to dispose of New York City's waste, and undermines the chances of Spoon Ridge ever opening again.

The fact is that requiring Allied to divest Spoon Ridge to a new competitor in no way prevents Allied or any other firm from later contracting with the new owner to dispose of any New York City's waste. Indeed, the new owner would be free to make the landfill's disposal capacity available to any person who wishes to bid and enhance competition for the contract to dispose of New York City's waste. If the new owner believes, however, that the space in the landfill is much more valuable to use in competing for the disposal of waste from the city of Chicago, then the new owner can choose to commit the landfill to competing in that market. Leaving Spoon Ridge with Allied, which already controls nearly 35% of all disposal capacity in the greater Chicago metropolitan market, would ensure that a single firm could dominate waste disposal, and therefore, set the price of disposal in the Chicago market. While this may make the landfill more valuable to the local community, it would adversely affect the prices paid by consumers for the disposal of their municipal solid waste.

Thank you for bringing your concerns to our attention, and we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comments and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

Spoon River Valley Schools

September 13, 1999.

Mr. J. Robert Kramer, II,

Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW, Suite 3000, Washington, D.C. 20005.

In Re Allied/BFI Consent Decree Case No. 1.99CV01962.

Dear Mr. Kramer: The purpose of this letter is to provide comment on the proposed consent decree which requires Allied Waste Industries, Inc. to sell certain assets in connection with its acquisition of Browning Ferris Industries, Inc. Specifically the Spoon River Valley Community Unit School District No. 4 Board of Education wishes to comment on the requirement that Allied divest itself of the Spoon Ridge Landfill located in Fairview, Illinois.

Spoon River Valley CUSD No. 4 Overview

Spoon River Valley CUSD No. 4 is a rural school district comprised of 157 square miles in Fulton and Knox Counties. The school district serves the communities of Ellisville, Fairview, London Mills, Maquon, and Rapatee. The enrollment of the school district in grades K–12 as of August 31, 1999 was 429. The current equalized assessed valuation of the school district is $27,665,810. The current tax rate of $5.7774 generates $1,598,365 of local revenue for the school district. The total budgeted revenue for the school district is $3,717,512. Therefore, local property taxes represent 43% of the total budgeted revenue for the school district.

Spoon River Valley CUSD No. 4 Concerns

The current assessed valuation of the Spoon Ridge Landfill is approximately $2,000,000 or about 7.2% of the total assessed valuation of the school district. The landfill generates about $115,548 in property taxes for the district which is the equivalent of four (4) full-time teacher salaries. The Board of Education is naturally concerned with decisions related to Spoon Ridge Landfill that could have adverse consequences for the school district. We are concerned that the company that owns the landfill will have the necessary resources both in operating capital and viable disposal contracts to adequately maintain and operate the landfill so that it remains a major source of property tax income for the school district. The loss of this source of income would definitely have adverse affects upon the quality of education that we now provide to the students of the Spoon River Valley School District.

Summary

The Spoon River Valley CUSD No. 4 Board of Education respectfully requests that the Department of Justice re-examine its decision requiring that Allied divest itself of the Spoon Ridge Landfill. We ask that the Department re-evaluate its decision based upon what is best for the residents and students who would most closely be affected by this decision.

Sincerely,

David D. Smith,

President, Board of Education.

cc: U.S. Senator Richard J. Durbin, U.S. Senator Peter G. Fitzjerald, Congressman Lane Evans, Governor George H. Ryan, State Senator George P. Shadid, State Representative Michael K. Smith, Mr. Thomas VanWeelden, President, Allied Waste Industries, Inc.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

David D. Smith,

President, Board of Education, Spoon River Valley Schools, Community Unit Dist. No. 4, Rt. 1, London Mills, IL 61544.

Re Comment on Proposed Final Judgment in (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc., No. 99 CV 1962 (D.D.C., July 21, 1999).

Dear Mr. Smith: This letter responds to your letter of September 13, 1999 commenting on the Final Judgment in this case on behalf of the Spoon River County

Schools. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC, would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

In your letter, you express concern that the Final Judgment, by requiring Allied to divest the Spoon Ridge landfill, is unnecessary for effective relief and might undermine the tax base of the local communities and the Spoon River Valley School District. The Spoon Ridge landfill is a relatively new site and the largest landfill in the State of Illinois. BFI recently closed the landfill because it found that the landfill was unable to attract enough waste from the Chicago area to make it viable. By closing the landfill, BFI reduced its assessed value, and thus, the taxes it paid to local communities. BFI intended to reopen the landfill if it obtained a long-term contract to dispose of New York City's residential waste.

The fact is that requiring Allied to divest Spoon Ridge to a new competitor in no way prevents Allied or any other firm from later contracting with the new owner to dispose of any New York City's waste. Indeed, the new owner would be free to make the landfill's disposal capacity available to any person who wishes to bid and enhance competition for the contract to dispose of New York City's waste. If the new owner believes, however, that the space in the landfill is much more valuable to use in competing for the disposal of waste from the city of Chicago, then the new owner can choose to commit the landfill to competing in that market. This should ensure that the landfill remains a major source of property tax income for the school district. Leaving Spoon Ridge with Allied, which already controls nearly 35% of all disposal capacity in the greater Chicago metropolitan market, would ensure that a single firm could dominate waste disposal, and therefore, set the price of disposal in the Chicago market. While this may make the landfill more valuable to the local community, it would adversely affect the prices paid by consumers for the disposal of their municipal solid waste.

Thank you for bringing your concerns to our attention, and we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comments and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

West Cook County Solid Waste Agency

August 13, 1999.

Mr. J. Robert Kramer II,
Chief, Litigation II Session, Anti Trust Division, U.S. Department of Justice, 1401 H Street, Northwest, Suite 3000, Washington, D.C. 20530.

Re United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc.—Case No. 1:99 CV 01962.

Dear Mr. Kramer: On behalf of the 36 local governments represented by the West Cook County Solid Waste Agency (Cook County, Illinois) (hereinafter, the ''Agency''). I am writing to offer our comments and objections regarding the draft Final Judgement order that has been filed with the U.S. District Court for the District of Columbia (''Court'') in the above referenced case.

The Agency strongly supports, in principle, the proposed Final Judgement directive which requires Allied Waste Industries, Inc. (''Allied'') to divest itself of the Relevant Disposal Assets and Relevant Assets. However, the Agency objects to the time line by which Allied must divest of the Relevant Disposal Assets and Relevant Hauling Assets. The Agency has begun the process of pursuing its own interest in purchasing a portion of the Relevant Disposal Assets—namely the Browning-Ferris Industries, Inc. (''BFI'') Melrose Park Transfer Station, located at 4700 W. Lake Street, Melrose Park, IL 60160 (''Melrose Park Facility''). The purchase of the Melrose Park Facility by a unit of local government such as the Agency would enhance and foster competition in the marketplace. Yet the proposed time line for the ordered divestitures in this case would make it virtually impossible for the Agency to successfully compete for this asset.

Requiring Allied to divest itself of these assets within 60 days after the approval of the Final Judgement by the Court creates an unfair and unreasonable bias towards large, highly liquid waste hauling firms and denies smaller companies (either individually or in the form of a consortium) and local governments sufficient time to conduct proper due diligence and arrange for the necessary financing to be able to effectively bid on the available assets. By denying small waste hauling companies and local governments fair access to the opportunity to bid on these assets, *the proposed Final Judgement itself serves to restrict and retard competition.* This is contrary to the intent and purpose of the proposed Final Judgement.

This bias is of great concern to the Agency given that competition in the solid waste services industry within the Agency's jurisdiction has been dramatically reduced in recent years as a result of previous consolidation efforts by Allied as well as Republic Services, Inc. (''Republic''). For example, whereas in 1997 there were eight non-vertically integrated solid waste companies serving the Agency's municipal/residential waste services needs, today there are only two such firms remaining.

By allowing the proposed Final Judgement to stand as drafted, the Court would serve to exacerbate this decline in the number of local, independent solid waste companies that are able to compete in the Agency's marketplace, thereby reducing competition to only three significant competitors—all of which would be vertically integrated and in a position to control pricing within the market. This would clearly by harmful to the Agency and its member local governments by creating an anti-competitive market environment. This, in turn, will increase costs to the Agency, its 36 member municipalities and to the general business community.

Consequently, the Agency respectfully recommends that the proposed Final Judgement be modified to allow Allied to divest itself of the Relevant Disposal Assets and Relevant Hauling Assets in the Chicago Metropolitan Area (collectively the ''Assets'') within 180 days after the Final Judgement has been approved by the Court (rather than the current 60-day limit as specified in the proposed Final Judgement). Furthermore, the Agency strongly recommends that the proposed Final Judgement be modified to *require* Allied to divest itself of the Assets individually rather than as a package in order to ensure that all interested parties are provided a fair and equal opportunity to bid on one or more of these assets.

Specific to this objection is the fact that Republic notified the Agency on August 4, 1999 (only 15 days after the proposed Final Judgement order was filed with the Court) of its intent to purchase the Melrose Park Facility as part of a larger acquisition of all the Assets from Allied pursuant to the proposed Final Judgement. The Agency strongly objects to the sale of all of the Assets to Republic for all of the reasons stated above. In addition, the Agency objects to the fact that Republic has reportedly executed a definitive letter of intent to purchase the Assets, including the Melrose Park Facility, within days after the proposed Final Judgement was filed with the Court. *This has not allowed the Agency* (or any other prospective purchaser) *sufficient time to pursue its interest in bidding for the Melrose Park Facility.* Given that the Agency, as a statutory unit of local government in Illinois, must follow a strict set of procedures which are designed to protect the public interest when attempting to purchase fixed assets such as the Melrose Park Facility, and given that the Agency must follow strict procedures in order to secure public debt, it is not fair or reasonable, nor is it in the best interest of the public, for the Court to allow Republic to purchase the Melrose Park Facility in such a hurried and non-competitive manner.

Therefore, the Agency respectfully requests that the United States exercise its authority as provided for in Article IV. Section A. of the Final Judgement order and withhold its approval of the sale of the Assets (particularly the Melrose Park Facility) to Republic for at least 180 days after the Final Judgement has been approved by the Court. This would allow the Agency and any other interested parties sufficient time to complete their due diligence process and secure the necessary financial commitments to fairly and equitably bid on any or all of the Assets.

The Agency's third point of comment and objection to the proposed Final Judgement is specific to the definition in Article II. Section H., ''Collection of small container solid waste.'' In the context of the use of this phrase in the proposed Final Judgement, the definition would serve to force Allied to

divest itself of a subset of customers from which it is now obligated to collect waste. This subset of customers is part of a larger group of customers serviced in accordance with legally binding contracts between BFI/Allied and nine municipalities within the Agency's jurisdiction. This issue is also relevant to and will affect dozens of other municipalities throughout the Chicago Metropolitan Area.

In addition, since this part of the Final Judgement, as drafted, only applies to municipal solid waste, the order would have the effect of causing one company to be responsible for collecting waste from the affected customers who are served by the exclusive municipal contract, while Allied would still be responsible for collecting recyclable from those same customers! As a practical matter, this part of the order will force each municipality to void its current valid and binding refuse and recycling collection contract and rebid the very same contract or issue two contracts—one for the collection of small container solid waste only, and one for hand pick-up waste collection services and all recycling services. Philosophically, then, *the Final Judgement would undermine and interfere with local government's authority to determine the most appropriate way to protect the health, safety and welfare of its community.*

This part of the proposed order would not serve to enhance competition within the affected communities, but rather would cause serious disruption to the municipalities' traditional cost-effective methods of competitively procuring waste collection services for their communities. Furthermore, it would unnecessarily and unduly burden the affected communities by interfering with their existing contracts and forcing them to rewrite and rebid their contracts for solid waste services. *All of this would come at considerable expense to the communities.*

Therefore, the Agency respectfully requests that the Department of Justice recommend to the Court that the definition in Article II. Section H of the proposed Final Judgement to modified to exclude from the definition ''any collection of waste from customers that is being provided subject to the terms of a properly executed, legally binding contract or franchise agreement with a unit of local government.'' Alternatively, in keeping with the precedent set with respect to the City of Dallas and Dallas County, TX in Article II. Section D. Paragraph 5., the proposed Final Judgement could be modified universally to limit the divestiture of commercial routes, in all cases, to only those commercial routes that ''serve any nonfranchised or open competition areas.''

The Agency appreciates the opportunity provided by the Court to file these comments and objections. If appropriate, the Agency would be available to discuss these matters in more detail.

Sincerely yours,

Timothy R. Hansen,

Chair, West Cook County Solid Waste Agency, President, Village of LaGrange, IL.

cc: U.S. Senator Richard Durbin, U.S. Senator Peter Fitzgerald, Congressman William O. Lipinski, Congressman Luis Guiterrez, Congressman Rod Blagojevich, Congressman Henry Hyde, Congressman Danny Davis, David M. Foster, Esq. (for BFI) Tom D. Smith, Esq. (for Allied)

West Cook County Solid Waste Agency

December 9, 1999.

Mr. J. Robert Kramer, II,

Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, Northwest, Suite 3000, Washington, DC 20530.

Re United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries Inc.—Case No. 1: 99 CV 01962.

Dear Mr. Kramer: The West Cook County Solid Waste Agency (Agency) is writing to respectfully request that the Agency be informed when Allied Waste Industries submits a potential buyer for approval by the Department of Justice, concerning the proposed divested assets located in or relevant to the Chicago metropolitan areas marketplace. These assets are:

BFI Orchard Hills landfill
BFI Zion landfill
BFI Spoon Ridge landfill
BFI Active transfer station
BFI Brooks transfer station
BFI Rolling Meadows transfer station
BFI Melrose Park transfer station
BFI DuKane transfer station
All BFI small container commercial collection routes in Cook, Lake, DuPage McHenry and Will countries, Illinois

As you may recall, the Agency previously submitted comments concerning the proposed Final Judgement of August 13, 1999. Since this time, the proposed sale of the above assets to Republic Services Inc. has been terminated and through press accounts, another sale to Superior Waste Services has been announced. However, the details of the proposed sale to Superior were not disclosed—namely which assets in the Chicago metropolitan area are included or excluded.

In order for the Agency to provide comments to the Department of the potential impact on the solid waste market place that a potential sale would have, the details of the proposed sale or sales of these assets needs to be known. Therefore, the Agency respectfully requests that the Department inform the Agency of all pending sales of the before mentioned assets prior to the Department granting approval of these sales.

Sincerely,

Allen P. Bonini,

Solid Waste Director.

U.S. Department of Justice

Antitrust Division

May 10,2000.

Timothy R. Hansen,

Chair, West Cook County Solid Waste Agency, President, Village of LaGrange, IL, 1127 S. Mannheim Road, Suite 102, Westchester, IL 60154–2551.

Re Comment on Proposed Final Judgment in (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. No. 99 CV 1962 (D.D.C., July 21, 1999).

Dear Mr. Hansen: This letter responds to your letter of August 13, 1999 and Allen P. Bonini's letter of December 9, 1999, commenting on the Final Judgment in this case on behalf of the West Cook County Solid Waste Agency (''Agency''). The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in the federal district court in Washington, DC., would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

In your letter, you express concern that the Final Judgment, by ordering divestiture of BFI's small container commercial waste business, may interfere with BFI's existing government franchise contracts which also includes the disposal of the communities' residential waste. The local communities fear that requiring Allied to divest only the franchise commercial waste collection business would, in effect, split the collection business between two firms—the purchase who would have the franchise commercial waste business; and Allied, which would retain the residential and recycling waste collection services. The communities fear that this will result in the purchase providing a lower level of service, or result in additional trucks being sent down city streets.

In light of this concern raised by you and others, the United States and Allied reached agreement that instead of the municipal franchise contracts being divested, Allied would be permitted to retain the municipal franchise contracts and divest additional assets which are not required to be divested by the proposed modified Final Judgment. These additional assets include residential and rolloff waste hauling business. These assets have been acquired by Superior Services Inc., a purchaser approved by the United States. The United States has filed a motion with the Court to modify the proposed Final Judgment which would permit Allied to retain the municipal franchise contracts initially required to be divested. Allied has agreed to keep separate the municipal franchise contracts, which were required to be divested, until the Court's acceptance of the modification to the proposed Final Judgment.

Mr. Bonini requests that the Agency be informed of all pending sales of the assets to be divested pursuant to the proposed Final Judgment. These assets include the three BFI landfills; five BFI transfer stations; an the BFI small container commercial routes in Cook, Lake, DuPage, McHenry and Will Counties, Illinois. He states that the Agency would evaluate the potential impact the sales may have on its solid waste marketplace.

Under the terms of the Final Judgment, the defendants must sell all of the relevant disposal and hauling assets described in the Final Judgment to a purchaser or purchasers

acceptable to the United States, in its sole discretion. In approving a purchase, we always consider the competitive impact in the local market of that purchaser's acquisition of the hauling or disposal assets.

The Orchard Hills and Zion landfills have been acquired by Superior Services, Inc. a purchaser approved by the United States. Superior has no current hauling or disposal operations in the greater Chicago metropolitan market. Groot Industries is a potential purchaser of the Spoon Ridge landfill and is in the process of conducting a due diligence evaluation. The five transfer stations have also been divested with the approval of the United States—Superior has acquired four of the transfer stations, and Groot Industries has acquired one.

The BFI small container commercial routes in the five counties have been divested to Superior except for the municipal franchise contracts. These will be retained Allied if the court approves a modification to the Final Judgment. The United States and Allied have field a motion to have the court modify the Final Judgment to permit Allied to retain the franchise work which initially had to be divested.

Thank you for bringing your concerns to our attention and thank Mr. Bonini for bringing his concerns to our attention. We hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C.16(d), a copy of your comments and Mr. Bonini's comments and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

Solid Waste Agency of Northern Cook County

September 2, 1999.

Mr. J. Robert Kramer II, Esquire,
Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, Suite 3000, Washington, DC 20005.

Re Proposed Consent Decree in United States of America v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc.

Dear Mr. Kramer: The Solid Waste Agency of Northern Cook County (SWANCC or the Agency) is a unit of local government formed in 1988 by 23 Illinois municipalities having a total population of 700,000. The Agency's role in solid waste management is to provide for the efficient and environmentally sound disposal of waste generated by residences and businesses within its member municipalities.

SWANCC member municipalities collect residential waste themselves or by contracting with private entities. Most of that residential waste passes through a SWANCC-owned transfer station, managed by a private contractor, that processes over 250,000 tons of residential waste annually. That waste is disposed of in a private sector landfill.

The concerns expressed in this letter relate to the commercial and business waste stream. We estimate that the commercial and business sector in the Agency's territory—in which over 500,000 persons are employed—generates over 600,000 tons of waste annually. Currently a number of private entities compete for the collection and hauling of commercial and business waste in the SWANCC territory. An ever decreasing number of transfer and disposal locations process that waste.

The Agency is greatly concerned about the impact of the proposed consent decree (at least as Allied-BFI currently plan to satisfy it) on the commercial hauling and transfer services offered to the businesses located in our territory. For the reasons described more fully below, we ask that the proposed consent decree be modified (1) to prohibit the sale of the BFI transfer stations and landfill assets to any entity that currently operates a trnasfer station or landfill in northern Cook or Lake Counties and (2) to permit BFI, or its successor in the merger, to continue to provide small container commercial collection service when it does so as part of a franchise or contract for residential waste collection.

I. The Proposed Sale of Transfer Stations and Landfill Assets to Republic Services Would Reduce Competition and Likely Lead to Higher Prices

Unless there is competition in hauling, transfer and disposal services offered to our members and to businesses in the Agency's territory, the Agency's interests in a cost effective system will not be met, and residents and businesses will pay unnecessary amounts for this essential service.

In 1988 twelve private sector firms provided hauling, transfer and disposal services in the area; after entry of the proposed order, it will be four. The consolidation trend over the last decade has seen all but one of the independent operators in the area acquired by national firms. The proposed merger involves the joinder of two national firms. The divestiture that the combined Allied-BFI proposes to make to satisfy the consent decree merely would move some of the assets from one large national firm in the area to another.

Specifically, in metropolitan Chicago, the proposed consent decree currently would require that the following divestitures take place:

—BFI Zion landfill, Zion, Illinois
—BFI Active transfer station, Evanston, Illinois
—BFI Brooks transfer station, Northbrook, Illinois
—BFI Rolling Meadows transfer station, Rolling Meadows, IL
—BFI Melrose Park transfer station, Melrose Park, Illinois
—BFI DuKane transfer station, West Chicago, Illinois
—All BFI small container commercial collection routes in Cook, Lake, DuPage, McHenry, and Will counties, Illinois.

These proposed divestitures involve significant assets. Depending on the identity of the purchaser, they could increase competition in the solid waste collection and disposal markets in the Chicago metropolitan area. On the other hand, the sale of a portion of these assets to an existing competitor in the market place could further reduce competition in the solid waste collection and disposal market.

According to press accounts, Allied has entered into an agreement to sell the to-be-divested assets to Republic Services Inc. (''Republic''). If the BFI Active transfer station in Evanston, Illinois, the BFI Brooks transfer station in Northbrook, Illinois the BFI Rolling Meadows transfer station in Rolling Meadows, Illinois and the BFI Zion landfill in Zion, Illinois are sold to a single company like Republic that already operates in northern Chicago metropolitan area will be negatively impacted through the loss of one significant competitor. The only other remaining major competitor in northern Cook and Lake Counties would be Waste Management Inc., with Groot Industries existing as a minor nonintegrated (no landfill ownership) competitor.

Focusing on the prospective reduction in the number of competing transfer stations in the SWANCC territory illustrates the problems that are likely to result if Republic buys the disposal assets described above. The heavy congestion in the Chicago metropolitan area (specifically including northern Cook County) reduces to about 10–15 miles (for FEL trucks) and 8–10 miles (for roll-off trucks) the distance that a commercial waste collection firm can travel economically to a transfer station. Indeed, BFI's own transfer station development over the past two years demonstrates the limited economic travel distance for REL and FEL trucks. The three facilities that BFI developed were the Rolling Meadows transfer station, Melrose Park transfer station and the DuKane transfer station. These facilities are all within 15 miles of each other (see attachment A) and demonstrate the reduced economic travel time in the Chicago metropolitan area.[1]

In the attached map (Attachment B), we have shown the locations and owners of the privately operated transfer stations and landfills in northern Cook and Lake Counties. As shown in Attachment A, if Republic is allowed to purchase all of the proposed divested Allied-BFI assets in northern Cook and Lake Counties, the number of significant competitors for the disposal of solid waste would be reduced from three to two; Groot Industries would remain a minor nonintegrated competitor.[2]

With the choices of realistic disposal options reduced from three to two significant competitors, price competition will be

[1] If transporting waste 50 miles was economical in the Chicago area (as the Department of Justice suggested generally in ¶ 37 of the Complaint) then BFI would have built one large transfer station instead of three to reduce capital costs. In fact, BFI's Melrose Park transfer station has the capacity to handle all of the waste transferred through the three facilities.

[2] In addition, the two nearest transfer stations available for use outside of northern Cook and Lake Counties would be the to-be-divested BFI DuKane and BFI Melrose transfer stations, which Republic also proposes to buy. The closest landfills would be the Waste Management Woodlands landfill in Kane County and the Waste Management Pheasant Run landfill in Kenosha County, Wisconsin. The nearest fully integrated competitor would be the Allied National Transfer Station located in the City of Chicago, over 22 miles away through heavy Chicago traffic.

reduced, and the firms that collect and haul commercial and business waste in the SWANCC territory will face the prospect of substantial price increases as a result. Significantly, the Complaint in this matter acknowledges that having only two significant competitors and one minor competitor would be unacceptable; see ¶ 50, complaining that ''In Chicago, the merger would reduce from four to three the number of significant competitors in the disposal of MSW * * *''

For the above reasons, the Agency respectfully requests that the divested assets located in northern Cook and Lake Counties not be sold to a company that already has a disposal presence, either a transfer station or landfill, in that area. Otherwise, the proposed divestiture is likely to have the perverse result of itself substantially reducing competition and increasing costs for business and commercial customers in northern Cook and Lake Counties.

II. The Proposed Divestiture of BFI's Small Container Commercial Collection Routes Would Disrupt Current Efficient Residential Waste Collection in Several Communities

A second and distinct problem would result from the provision in the proposed consent decree that would require Allied-BFI to divest all of BFI's small container commercial waste collection service in the Chicago metropolitan area. The DOJ defines this service in the Competitive Impact Statement as ''* * * the collection of MSW from commercial businesses such as offices and apartment buildings and retail establishments * * *''.

The divestiture of all of BFI's small container commercial collection routes would have significant impact on the current franchises and contracts of a number of municipalities in northern Cook County. All municipalities in northern Cook County have either franchises or contracts with a single hauler to collect residential waste—including, to varying degrees, waste from apartment buildings. BFI has four franchises or contracts with SWANCC municipalities pursuant to which BFI collects waste from apartment buildings as part of the arrangement.

Requiring the divestiture of small container commercial collection service that includes residential waste (i.e., from apartment buildings) that is collected as part of a franchise or contract for residential waste would be burdensome to the municipalities involved—for example, by increasing the number of solid waste collection vehicles in the community—and could increase costs due to the loss of route density. Further, it is likely that the relatively small amounts of apartment waste collected separately from other residential waste after the proposed divestitures would need to be combined for further disposal with waste from unknown sources from outside the municipality. That is likely to increase the costs of disposal and the potential environmental liability of these municipalities.

In addition, two BFI municipal franchises or contracts in northern Cook County provide for BFI to collect all residential *and* commercial waste in the jurisdiction. The inclusion of commercial waste as part of a residential contract provides benefits for those municipalities by lowering the cost of residential service and reducing the number of large solid waste vehicles in the community. These benefits are likely to be lost if the commercial component of the service is divested as proposed in the consent decree.

As a result, we respectfully request that small container commercial collection service that is part of a municipal franchise or contact in northern Cook County be excluded from the assets of Allied-BFI to be divested pursuant to the proposed consent decree.

The Agency appreciates the opportunity to provide these comments and would be pleased to provide any additional information that may be helpful.

Respectfully submitted,

C. Brooke Beal,

Executive Director.

Note: Attachments A & B of the letter dated September 2, 1999 from C. Brooke Beal, Executive Director of Solid Waste Agency of Northern Cook County was not able to be published in the **Federal Register** but a copy can be obtained from the U.S. Department of Justice, Document Group, 325 7th Street, NW., Room 215, Washington, DC 20530 or you may call and request a copy at (202) 514–2481.

Solid Waste Agency Of Northern Cook County

December 9, 1999.

Mr. J. Robert Kramer, III, Esquire,
Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1400 H Street, Suite 3000, Washington DC 20005.

Re Proposed Consent Decree in United States of America v. Allied Waster Industries, Inc. and Browning Ferris Industries, Inc.

Dear Mr. Kramer: The Solid Waste Agency of Northern Cook County (the Agency) is writing to request that the Agency be informed when Allied Waste Industries submits a potential buyer for approval concerning the proposed divested assets located in the Chicago metropolitan area. These assets are:

—BFI Orchard Hills landfill
—BFI Zion landfill
—BFI Active transfer station
—BFI Rolling Meadows transfer station
—BFI Melrose Park transfer station
—BFI DuKane transfer station
—All BFI small container commercial collection routes in Cook, Lake, DuPage, McHenry, and Will counties, Illinois.

As you already know, the Agency submitted previous comments concerning the proposed consent decree on September 2, 1999. Since this time, the proposed sale of the above assets to Republic Services, Inc. has been terminated and through press accounts, another sale to Superior Waste Services has been announced. Furthermore, the details of the proposed sale to Superior were not disclosed as to what assets in the Chicago metropolitan area are included or excluded.

In order for the Agency to provide comments to the Department on the potential impact, either negative or positive, on the solid waste market place that a potential sale would have, the details of the proposed sale or sales of these assets needs to be known.

In conclusion, we respectfully request that the Department inform the Agency of all pending sales of the before mentioned assets prior to the Department granting approval of these sales.

Sincerely,

C. Brooke Beal,

Executive Director.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

C. Brooke Beal,
Solid Waste Agency of Northern Cook County, 1616 East Gold Road, Des Plains, IL 60016.

Re Common on Proposed Final Judgment in (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. No. 99 CV 1962 (D.D.C., July 21, 1999))

Dear Mr. Beal: This letter responds to your letters of September 2, 1999 and December 9, 1999, commenting on the Final Judgment in this case on behalf of Solid Waste Agency of Northern Cook County (''Agency''). The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, D.C., would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

In your September 2nd letter, you express concern that the Final Judgment, by ordering divestiture of BFI's small container commercial waste business, may interfere with BFI's existing government franchise contracts which also includes the disposal of the communities' residential waste. The local communities fear that requiring Allied to divest only the franchise commercial waste collection business would, in effect, split the collection business between two firms—the purchaser who would have the franchise commercial waste business; and Allied, which would retain the residential and recycling waste collection services. The communities fear that this will result in the purchaser providing a lower level of service, or result in additional trucks being sent down city streets.

In light of this concern raised by you and others, the United States and Allied reached agreement that instead of the municipal franchise contracts being divested, Allied would be permitted to retain the municipal franchise contracts and divest instead additional assets which are not required to be divested by the proposed modified Final Judgment. These additional assets include

residential and rolloff waste hauling business. These assets have been acquired by Superior Services Inc., a purchaser approved by the United States. The United States has filed a motion with the Court to modify the proposed Final Judgment which would permit Allied to retain the municipal franchise contracts initially required to be divested. Allied has agreed to keep separate the municipal franchise contracts, which were required to be divested, until the Court's acceptance of the modification of the proposed Final Judgment.

In your December 9th letter, you requested that the Agency be informed of all pending sales of the assets to be divested to the proposed Final Judgment. These assets include the two BFI landfills; five BFI transfer stations; and the BFI small container commercial routes in Cook, Lake, DuPage, McHenry and Will Counties, Illinois. You further state that the Agency would evaluate the potential impact the sales may have on its solid waste marketplace.

Under the terms of the Final Judgment, the defendants must sell all of the relevant disposal and hauling assets described in the Final Judgment to a purchaser or purchasers acceptable to the United States, in its sole discretion. In approving a purchase, we always consider the competitive impact in a local market of that purchaser's acquisition of the hauling or disposal assets.

The Orchard Hills and Zion landfills have been acquired by Superior Services, Inc. a purchaser approved by the United States. Superior has not current hauling or disposal operations in the greater Chicago metropolitan market. The five transfer stations have been divested with the approval of the United States—Superior has acquired four of the transfer stations; and Groot Industries has acquired one.

The BFI small container commercial routes in the five counties have been divested to Superior except for the municipal franchise contracts. These will be retained by Allied if the court approves a modification to the Final Judgment. The United States and Allied have filed a motion to have the court modify the Final Judgment to permit Allied to retain the franchise work which initially had to be divested.

Thank you for bringing your concerns to our attention, and we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comments and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

Solid Waste Agency of Lake County, IL

September 1, 1999.

Mr. J. Robert Kramer II,

Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530.

Dear Mr. Kramer: The Solid Waste Agency of Lake County (Agency) is a joint action municipal agency formed to manage solid waste in Lake County Illinois. The Agency is made up of 36 municipalities and Lake County. The Agency has contracts for waste disposal capacity in landfills owned by Browning Ferris Industries (BFI) and Waste Management. The landfills are located within Lake County and nearby in the state of Wisconsin. The Agency also works with its members to obtain solid waste collection services for residents and businesses. In the past, the Agency had contracts with BFI for recycling services provided to commercial accounts with the Village of Gurnee.

The Agency is located within one of the areas (Chicago) where it is alleged that the combination of BFI and Allied would lessen competition. Currently, BFI serves an estimated 42% of the residential population. Allied serves approximately 9% of the residential population. Waste Management and one independent private hauler serve the remaining residential population. It is my opinion that the commercial accounts in Lake County reflect a similar distribution of service.

The Agency reviewed the proposed Final Judgment regarding the merger between Allied Waste Industries (allied) and BFI. Within Lake County, the proposed final judgment will require BFI to divest the Zion Landfill and its commercial waste collection routes. In northern Cook County, BFI will divest transfer stations in Melrose Park, Rolling Meadows, Brooks-Northbrook and Active-Evanston. These transfer stations serve a portion of southern Lake County. Further, FBI will divest the DuKane transfer station in DuPage County which serves the Southwest portion of Lake County.

According to press reports and informal contacts between the Agency and BFI, these assets will be sold to Republic Waste Industries. As part of the sale, Allied will be allowed to use these divested facilities to dispose of waste for a period of two years. This agreement will enable Allied to maintain waste collection service to over 50% of Lake County residential customers. This represents a population of over 300,000 residents.

The divestiture brings to Lake County, a waste company with little operating experience in the County. It also places that company in a position to effectively replace the former Allied/BFI Company at the expiration of the two-year period. The newly merged Allied Company will be unable to retain its current level of service in Lake County without disposal and transfer assets. The economic conditions created by the Final Judgment will also affect the company's ability to add new customers because of the loss of these disposal assets. Allied will be required to develop new disposal assets in Lake County to remain competitive. A more likely scenario is that Allied will sell their remaining assets to Republic and cease competitive marketing in Lake County.

The realities of today's waste market lend itself to vertical integration of assets. Waste companies rely upon their assets to manage the waste collected. Optimization enables companies to deliver services at the lowest cost to the customer. A review of the waste disposal records, at the two landfills in Lake County, reveals little cross utilization of assets by competing companies. This means that companies ''drive by'' landfill sites owned by competitors to dispose of waste at their own disposal sites. Vehicles drive twenty to thirty additional roundtrip miles to use their facilities.

The Chicago market is unique to others within the U.S., because public participation in the market is facilitated through contractual arrangements solicited in a competitive bid process. Public entities, by in large, do not compete with the private sector for waste collection opportunities. Public entities cannot raise the capital necessary to develop, operate and maintain a waste collection system. Therefore, the industry consolidation represents a considerable threat to a competitive market. The new Allied Company will be unable to effectively participate in this process because of a lack of disposal/transfer capacity.

It is unfortunate that this Final Judgement requires the divesture of these assets by Allied. The Melrose Park, DuKane and Rolling Meadows transfer facilities were developed within the last two years. They represent, to BFI, the optimum collection and disposal configuration to serve their customer base. While Republic has control of these facilities, Lake County customers will lose a choice in waste collection service provided by the formerly independent BFI and Allied. The only other waste disposal or transfer site not controlled by Republic or Waste Management is located in Racine, Wisconsin, which is approximately 25 miles from Lake County. This facility cannot serve southern Lake County in any competitive situation without a transfer station asset located in either Lake or northern Cook Counties. The travel realities of the metropolitan Chicago area are that travel over 10 to 15 miles rarely can be achieved in an efficient manner.

It is noted that the Department of Justice (DOJ) took unusual pains to describe the impacts upon the commercial waste collection market. Yet, the DOJ gave little consideration to the residential collection routes which are serviced by essentially the same type of vehicles in terms of weight and size. The divestiture will inevitably result in these Allied assets being sold to Republic after the two year period. Municipalities, with contracts formerly with BFI or Allied, will be faced with renewing or extending those contracts or re-bidding those contracts in a competitive environment with one less competitor.

It is an unintended consequence that the Final Judgement will not foster a truly competitive environment. Allied must develop additional and controversial waste disposal assets within Lake County or northern Cook County. The cost of these new assets will be borne by Allied customers. The impact of the transfer vehicles and other assets will be borne by the host communities. As the Complaint for Injunctive Relief noted these facilities are expensive and difficult to site. Local public opposition can be strenuous and difficult to overcome.

It seems that a re-examination of the Final Judgement is needed to maintain a competitive environment. Allied should be able to maintain at least one or two of its transfer station assets to allow it to compete.

This will diminish the need to develop new transfer/disposal facilities and optimize its service to their customer base. Alternatively, the Final Judgement can be modified to require that Allied divest its Chicago assets to at least a third party (in addition to Republic) to foster competition. If the divestiture is maintained as proposed, Republic Waste Industries will effectively replace two solid waste companies. Therefore, the proposed settlement is not ''within the reaches of the public interest''.

This Agency will provide additional information upon request by the Department of Justice, Attached is a study of the divestiture, which was provided to the Agency Board of Directors on August 25, 1999.

Very truly yours,

Andrew H. Quigley,

Executive Director.

CC: Richard Durbin, U.S. Senator; Peter Fitzgerald, U.S. Senator; Philip Crane, U.S. Representative; John Porter, U.S. Representative; Henry Hyde, U.S. Representative; Dorothy R. Schofield, SWALCO Board Chairman, Lake Barrington; Marilyn Shineflug, SWALCO Executive Committee Chairman, Antioch; Bill Pailey, SWALCO Legislative Committee Chairman, Kildeer; Jim Labelle, Lake County Board Chairman; Larry Clark, SWALCO General Counsel.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

Andrew H. Quigley,

Executive Director, Solid Waste Agency of Lake County, IL, 1300 N. Skokie Highway, Suite 103, Gurnee, IL 60031.

Re Comment on Proposed Final Judgment in (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. No. 99 CV 1962 (D.D.C., July 21, 1999).

Dear Mr. Quigley: This letter responds to your letter of September 1, 1999 commenting on the Final Judgment in this case on behalf of SWALCO. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC, would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

In your letter, you express concern that the divestiture of the disposal assets in the greater Chicago metropolitan market required by the Final Judgment will lead to less competition. You state that the purchaser of these assets will not be competitive because of a lack of disposal assets—a landfill and/or a transfer station. You also express concern that municipalities, who have commercial franchise contracts with BFI or Allied will be placed in a less competitive environment if Allied is forced to divest these franchise contracts.

Divestiture of the landfills (Orchard Hills and Zion) that serve municipalities and customers in Lake County has been made to a purchaser approved by the United States—Superior Services Inc., a company with no current hauling or disposal operations in the greater Chicago metropolitan market. The five waste transfer stations have also been divested with the approval of the United States. Superior has acquired four of the transfer stations and Groot Industries has acquired one. The divestiture of these disposal assets should make the new purchasers major competitive forces in Lake County and the surrounding countries.

In light of the concern raised by you and others regarding the possible divestiture of municipal franchise contracts, the United States and Allied reached agreement that instead of the municipal franchise contracts being divested, Allied would be permitted to retain the municipal franchise contracts and divest instead additional assets which are not required to be divested by the propsoed modified Final Judgment. These additional assets include residential and rolloff waste hauling business. These assets have been acquired by Superior Services Inc., a purchaser approved by the United States. The United States has filed a motion with the Court to modify the proposed Final Judgment which would permit Allied to retain the municipal franchise contracts initially required to be divested. Allied has agreed to keep separate the municipal franchise contracts, which were required to be divested, until the Court's acceptance of the modification to the proposed Final Judgment.

Thank you for bringing your concerns to our attention, and we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C.16(d), a copy of your comments and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

House of Representatives

August 13, 1999.

Mr. J. Robert Kramer,

Antitrust Division, U.S. Department of Justice, 1401 H Street NW, Washington, DC 20005

Dear Mr. Kramer: I am writing on behalf of the Village of Fairview regarding the Department of Justice proposed rules that Allied Waste Industries must sell certain landfills in connection with its acquisition of Browning Ferris Industries (BFI). The Village of Fairview has expressed objections to the requirement that Allied divest itself of the Spoon Ridge Landfill located in Fairview.

Enclosed is a copy of a letter from the Village of Fairview regarding their concerns with the proposed Allied consent decree. I would appreciate the Department of Justice consideration and review of this issue.

Thank you for your assistance and attention to this matter.

Sincerely,

Lane Evans,

Member of Congress.

Enclosures.

Village of Fairview

August 9, 1999.

Mr. J. Robert Kramer, II,

Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20005.

In re Allied/BFI Consent Decree, Case No. 1.99CV01962.

Dear Mr. Kramer: The purpose of this letter is to provide comment on the proposed consent decree which requires Allied Waste Industries, Inc. to sell certain assets in connection with its acquisition of Browning Ferris Industries, Inc. Specifically, the Village of Fairview strenuously objects to the Department of Justice requirement that Allied divest itself of the Spoon Ridge Landfill located in Fairview, Illinois.

In your analysis of the Chicago market, it is stated that Allied's divestiture of the Spoon Ridge Landfill would insure that the benefits of competition, lower prices and better service would be preserved. It is the opinion of the Village of Fairview that the Spoon Ridge Landfill is not an important waste disposal operation for the Chicago market. Requiring the divesture removes an important potential economic development opportunity for the Village of Fairview.

Fairview and Fulton County Overview

The Village of Fairview is a small west central Illinois community located in Fulton County, nearly 200 miles from Chicago. Fairview has a population of approximately 500 people.

At the turn of this century, Fulton County was a prosperous, dynamic area. Agriculture was productive and viable. A large number of underground coal mines were attracting immigrant to the area, increasing the population and wealth of Fulton County. International Harvester Company was growing in Canton, the largest city in the county.

A number of significant changes to the area occurred in the 1950's. Most were negative except for Caterpillar's expansion in Peoria, Illinois. The Mining operations changed from shaft to strip-mining. This mining method was much more efficient and used a much smaller work force. During this period, Caterpillar expanded in the Peoria area and many Fairview and Fulton County workers were able to secure work at Caterpillar. Through the 1960's and 1970's, about 2,500 people worked for International Harvester; about 1,000 people worked for several large strip mines in Fulton County; and about 1,700 people commuted to work for Caterpillar in Peoria.

The economic base of the area diminished in the period between 1980 and 1984. All of the large strip mines were closed. The International Harvester Plant in Canton closed in 1983. Caterpillar reduced employment by about 15,000 people in the 1980's. The net effect was that the number of Caterpillar employees in Fulton County

dropped from about 1,700 people to about 900 people. Consequently, there was a loss of over 4,000 well paid jobs in Fulton County in the 1980's.

The overall effect of these events was devastating to the area. The population declined, property values plummeted, young people moved away, and the Fairview and Fulton County area realized that the prosperity had ended.

Project Background

In 1989, Gallatin National Company received approval from the Village of the Fairview to site a landfill within the Village limits. A siting, or host community, agreement was signed which secured for the Village a tipping fee of $1.00 per ton of garbage disposed at the landfill. The landfill was sited on a 3,000 acre tract of derelict, unreclaimed strip-mine property which, at that time, generated a paltry $5,000.00 in property taxes. The landfill was permitted by the Illinois Environmental Protection Agency in 1991 and opened for business in May, 1993.

Gallatin planned to take advantage of the impending closure of Chicago area landfills and provide a large regional landfill for the Chicago market. This plan failed when some of the Chicago market landfills expanded, garbage volumes dropped due to recycling, and Gallatin had no market hauling presence. The failure to competitively transport waste from the Chicago market to Fairview led to the demise of Gallatin National Company and the sale of its landfill to BFI.

BFI purchased the landfill from Gallatin National Company in December, 1994. It was understood that BFI needed the landfill because its sole operating Chicago area landfill, Mallard Lake, was rapidly filling up. Further, BFI's two other Chicago market landfills located in Davis Junction and Zion were closed and having difficulty obtaining siting approval for expansion. The Spoon Ridge Landfill in Fairview was intended to be the long term Chicago market disposal site for BFI.

Chicago market changes occurred shortly after the purchase of the Spoon Ridge Landfill by BFI. It was determined that the Mallard Lake Landfill had more site life than previously predicted. Also, BFI's landfills located in Davis Junction and Zion both received expansion siting approval. Additionally, BFI's competitors obtained expansion siting approval for landfills close to the Chicago market. These changes resulted in a glut of landfill air space in the Chicago market and rendered Spoon Ridge Landfill unable to compete.

In June, 19998, BFI decided to close Spoon Ridge Landfill after reportedly losing millions of dollars and determining that the facility could not, at least in the short term, compete in the Chicago market.

New York City

In 1998, the Department of Sanitation of the City of New York solicited a request for proposals for the disposal of approximately 13,000 tons per day of residential garbage. This request for proposals was made pursuant to a court order to close the Fresh Kills Landfill in the borough of Staten Island in 2001. BFI responded to the request for proposals and named Spoon Ridge Landfill as one of the locations at which it would dispose of the New York waste. Included in the response to the request for proposals was an endorsement of the project by the Village of Fairview. A copy of the letter from the Village of Fairview to the New York Department of Sanitation supporting and endorsing the disposal of New York City waste at Spoon Ridge Landfill is attached.

The New York Department of Sanitation awarded BFI the opportunity to negotiate for the disposal of 3,900 tons per day of New York garbage. BFI hoped to secure a contract from the Department of Sanitation at the end of this year. As BFI further analyzed their New York proposal, they reported that the Spoon Ridge Landfill appeared to be the most efficient and logical location for the disposal of New York waste.

If New York waste were disposed at the Spoon Ridge Landfill, the economic benefits to the VIllage of Fairview and the surrounding area would be tremendous. The estimated host community tipping fees would be approximately $1,000,000.00 per year. Property taxes approaching $250,000.00 per year and approximately 40 good paying jobs would also be secured for the area. In order for Allied to executive the New York proposal which it inherited from BFI, Allied must retain ownership of Spoon Ridge Landfill.

Summary

The Village of Fairview strongly objects to the Department of Justice requirement that Allied divest itself of the Spoon Ridge Landfill. Two companies, Gallatin National and BFI, have failed to make the landfill competitive in the Chicago market. Therefore, Spoon Ridge Landfill should not be considered important in minimizing the Department of Justice anti-competitive concerns for the market.

The economic development opportunity for the Village of Fairview and surrounding area from the receipt of New York garbage at Spoon Ridge Landfill is staggering. With a population of just 500 in an economically depressed county, the millions of dollars in revenue realized from this project would provide a once in a lifetime financial boost to the area.

Therefore, it is respectfully requested that the Department of Justice reconsider and change its consent decree with regard to the requirement that Allied divest itself of the Spoon Ridge Landfill.

Sincerely,

Village of Fairview

Gerald R. Hilton,

President.

cc: U.S. Senator Richard J. Durbin; U.S. Senator Peter G. Fitzgerald; Congressman Lane Evans; Governor George H. Ryan; State Senator George P. Shadid; State Representative Michael K. Smith; Mr. Thomas VanWeelden, President, Allied Waste Industries, Inc.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

Honorable Lane Evans,

U.S. House of Representatives, 2335 Rayburn Building, Washington, DC 20515–1317.

Re Comment on Proposed Final Judgment in (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. No. 99 CV 1962 (D.D.C., July 21, 1999)).

Dear Congressman Evans: This letter responds to your letter of August 13, 1999 commenting on the Final Judgment in this case on behalf of the Village of Fairview. You enclosed a letter from Gerald R. Hilton, president of the Village of Fairview. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC., would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

I have responded directly to Mr. Hilton addressing his concerns. A copy of my response to Mr. Hilton is enclosed. Thank you for bringing the Village of Fairview's concerns to our attention. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comments and those of Mr. Hilton, and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

Gerald R. Hilton,

President, Village of Fairview, P.O. Box 137, Fairview, IL 61432.

Re Comment on Proposed Final Judgment in (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. No. 99 CV 1962 (D.D.C., July 21, 1999)).

Dear Mr. Hilton: This letter responds to your letter of August 9, 1999 commenting on the Final Judgment in this case on behalf of the Village of Fairview. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC., would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

In your letter, you express concern that the Final Judgment, by requiring Allied to divest the Spoon Ridge landfill, is unnecessary for

effective relief and might undermine the tax base of the local communities. The Spoon Ridge landfill is a relatively new site and the largest landfill in the State of Illinois. BFI recently closed the landfill because it found that the landfill was unable to attract enough waste from the Chicago area to make it viable. By closing the landfill, BFI reduced its assessed value, and thus, the taxes it paid to local communities. BFI intended to reopen the landfill if it obtained a long-term contract to dispose of new York City's residential waste.

You stated that the future viability of Spoon Ridge depends on its ability to attract waste from New York City. By requiring Allied to divest this landfill to an independent competitor, ostensibly to help alleviate competitive problems in the Chicago market, the Final Judgment unnecessarily limits Allied's ability to complete for the contract to dispose of New York City's waste, and undermines the changes of Spoon Ridge ever opening again.

The fact is that requiring Allied to divest Spoon Ridge to a new competitor in no way prevents Allied or any other firm from later contracting with the new owner to dispose of any New York City's waste. Indeed, the new owner would be free to make the landfill's disposal capacity available to any person who wishes to bid and enhance competition for the contract to dispose of New York City's waste. If the new owner believes, however, that the space in the landfill is much more valuable to use in competing for the disposal of waste from the city of Chicago, then the new owner can choose to commit the landfill to competing in that market. Leaving Spoon Ridge with Allied, which already controls nearly 35% of all disposal capacity in the greater Chicago metropolitan market, would ensure that a single firm could dominate waste disposal, and therefore, set the price of disposal in the Chicago market. While this may make the landfill more valuable to the local community, it would adversely affect the prices paid by consumers for the disposal of their municipal solid waste.

Thank you for bringing your concerns to our attention, and we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comments and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

Village of Fairview

August 9, 1999.

Mr. J. Robert Kramer, II,

Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW, Suite 3000, Washington, D.C. 20005.

In Re Allied/BFI Consent Decree Case No. 1.99CV01962

Dear Mr. Kramer: The purpose of this letter is to provide comment on the proposed consent decree which requires Allied Waste Industries, Inc. to sell certain assets in connection with its acquisition of Browning Ferris Industries, Inc. Specifically, the Village of Fairview strenuously objects to the Department of Justice requirement that Allied divest itself of the Spoon Ridge Landfill located in Fairview, Illinois.

In your analysis of the Chicago market, it is stated that Allied's divestiture of the Spoon Ridge Landfill would insure that the benefits of competition, lower prices and better service would be preserved. It is the opinion of the Village of Fairview that the Spoon Ridge Landfill is not an important waste disposal operation for the Chicago market. Requiring the divestiture of the Spoon Ridge Landfill will eliminate an opportunity for Allied to send waste from New York City to Spoon Ridge as planned by BFI. As such, the divestiture removes an important potential economic development opportunity for the Village of Fairview.

Fairview and Fulton County Overview

The Village of Fairview is a small west central Illinois community located in Fulton County, nearly 200 miles from Chicago. Fairview has a population of approximately 500 people.

At the turn of this century, Fulton County was a prosperous, dynamic area. Agriculture was productive and viable. A large number of underground coal mines were attracting immigrants to the area, increasing the population and wealth of Fulton County. International Harvester Company was growing in Canton, the largest city in the county.

A number of significant changes to the area occurred in the 1950's. Most were negative except for Caterpillar's expansion in Peoria, Illinois. The mining operations changed from shaft to strip-mining. This mining method was much more efficient and used a much smaller work force. During this period, Caterpillar expanded in the Peoria area and many Fairview and Fulton County workers were able to secure work at Caterpillar. Through the 1960's and 1970's, about 2,500 people worked for International Harvester; about 1,000 people worked for several large strip mines in Fulton County; and about 1,700 people commuted to work for Caterpillar in Peoria.

The economic base of the area diminished in the period between 1980 and 1984. All of the large strip mines were closed. The International Harvester Plant in Canton closed in 1983. Caterpillar reduced employment by about 15,000 people in the 1980's. The net effect was that the number of Caterpillar employees in Fulton County dropped from about 1,700 people to about 900 people. Consequently, there was a loss of over 4,000 well paid jobs in Fulton County in the 1980's.

The overall effect of these events was devastating to the area. The population declined, property values plummeted, young people moved away, and the Fairview and Fulton County area realized that the prosperity had ended.

Project Background

In 1989, Gallatin National Company received approval from the Village of Fairview to site a landfill within the Village limits. A siting, or host community, agreement was signed which secured for the Village a tipping fee of $1.00 per ton of garbage disposed at the landfill. The landfill was sited on a 3,000 acre tract of derelict, unreclaimed strip-mine property which, at that time, generated a paltry $5,000.00 in property taxes. The landfill was permitted by the Illinois Environmental Protection Agency in 1991 and opened for business in May, 1993.

Gallatin planned to take advantage of the impending closure of Chicago area landfills and provide a large regional landfill for the Chicago market. This plan failed when some of the Chicago market landfills expanded, garbage volumes dropped due to recycling, and Gallatin had no market hauling presence. The failure to competitively transport waste from the Chicago market to Fairview led to the demise of Gallatin National Company and the sale of its landfill to BFI.

BFI purchased the landfill from Gallatin National Company in December, 1994. It was understood that BFI needed the landfill because its sole operating Chicago area landfill, Mallard Lake, was rapidly filling up. Further, BFI's two other Chicago market landfills located in Davis Junction and Zion were closed and having difficulty obtaining siting approval for expansion. The Spoon Ridge Landfill in Fairview was intended to be the long term Chicago market disposal site for BFI.

Chicago market changes occurred shortly after the purchase of the Spoon Ridge Landfill by BFI. It was determined that the Mallard Lake Landfill had more site life than previously predicted. Also, BFI's landfills located in Davis Junction and Zion both received expansion siting approval. Additionally, BFI's competitors obtained expansion siting approval for landfills close to the Chicago market. These changes resulted in a glut of landfill air space in the Chicago market and rendered Spoon Ridge Landfill unable to compete.

In June, 1998, BFI decided to close Spoon Ridge Landfill after reportedly losing millions of dollars and determining that the facility could not, at least in the short term, compete in the Chicago market.

New York City

In 1998, the Department of Sanitation of the City of New York solicited a request for proposals for the disposal of approximately 13,000 tons per day of residential garbage. This request for proposals was made pursuant to a court order to close the Fresh Kills Landfill in the borough of Staten Island in 2001. BFI responded to the request for proposals and named Spoon Ridge Landfill as one of the locations at which it would dispose of the New York waste. Included in the response to the request for proposals was an endorsement of the project by the Village of Fairview. A copy of the letter from the Village of Fairview to the New York Department of Sanitation supporting and endorsing the disposal of New York City waste at Spoon Ridge Landfill is attached.

The New York Department of Sanitation awarded BFI the opportunity to negotiate for the disposal of 3,900 tons per day of New York garbage. BFI hoped to secure a contract from the Department of Sanitation at the end of this year. As BFI further analyzed their

New York proposal, they reported that the Spoon Ridge Landfill appeared to be the most efficient and logical location for the disposal of New York waste.

If New York waste were disposed at the Spoon Ridge Landfill, the economic benefits to the Village of Fairview and the surrounding area would be tremendous. The estimated host community tipping fees would be approximately $1,000,000.00 per year. Property taxes approaching $250,000.00 per year and approximately 40 good paying jobs would also be secured for the area. In order for Allied to execute the New York proposal which it inherited from BFI, Allied must retain ownership of Spoon Ridge Landfill.

Summary

The Village of Fairview strongly objects to the Department of Justice requirement that allied divest itself of the Spoon Ridge Landfill. Two companies, Gallatin National and BFI, have failed to make the landfill competitive in the Chicago market. Therefore, Spoon Ridge Landfill should not be considered important in minimizing the Department of Justice anti-competitive concerns for the market.

The economic development opportunity for the Village of Fairview and surrounding area from the receipt of New York garbage at Spoon Ridge Landfill is staggering. With a population of just 500 in an economically depressed county, the millions of dollars in revenue realized from this project would provide a once in a lifetime financial boost to the area.

Therefore, it is respectfully requested that the Department of Justice reconsider and change its consent decree with regard to the requirement that Allied divest itself of the Spoon Ridge Landfill.

Sincerely,

Village of Fairview,

Gerald R. Hilton,

President.

cc: U.S. Senator Richard J. Durbin, U.S. Senator Peter G. Fitzjerald, Congressman Lane Evans, Governor George H. Ryan, State Senator George P. Shadid, State Representative Michael K. Smith, Mr. Thomas VanWeelden, President, Allied Waste Industries, Inc.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

Gerald R. Hilton,

President, Village of Fairview, P.O. Box 137, Fairview, IL 61432.

Re Comment on Proposed Final Judgment in (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. No. 99 CA 1962 (D.D.C., July 21, 1999).,

Dear Mr. Hilton: This letter responds to your letter of August 9, 1999 commenting on the Final Judgment in this case on behalf of the Village of Fairview. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC, would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

In your letter, you express concern that the Final Judgment, by requiring Allied to divest the Spoon Ridge landfill, is unnecessary for effective relief and might undermine the tax base of the local communities. The Spoon Ridge landfill is a relatively new site and the largest landfill in the State of Illinois. BFI recently closed the landfill because it found that the landfill was unable to attract enough waste from the Chicago area to make it viable. By closing the landfill, BFI reduced its assessed value, and thus the taxes it paid to local communities. BFI intended to reopen the landfill if it obtained a long-term contract to dispose of New York City's residential waste.

You stated that the future viability of Spoon Ridge depends on its ability to attract waste from New York City. By requiring Allied to divest this landfill to an independent competitor, ostensibily to help allievate competitive problems in the Chicago market, the Final Judgment unnecessarily limits Allied's ability to compete for the contract to dispose of New York City's waste, and undermines the chances of Spoon Ridge ever opening again.

The fact is that requiring Allied to divest Spoon Ridge to a new competitor in no way prevents Allied or any other firm from later contracting with the new owner to dispose of any New York City's waste. Indeed, the new owner would be free to make the landfill's disposal capacity available to any person who wishes to bid and enhance competition for the contract to dispose of New York City's waste. If the new owner believes, however, that the space in the landfill is much more valuable to use in competing for the disposal of waste from the city of Chicago, then the new owner can choose to commit the landfill to competing in that market. Leaving Spoon Ridge with Allied, which already controls nealry 35% of all disposal capacity in the greater Chicago metropolitan market, would ensure that a single firm could dominate waste disposal, and therefore, set the price of disposal in the Chicago market. While this may make the landfill more valuable to the local community, it would adversely affect the prices paid by consumers for the disposal of their municipal solid waste.

Thank you for bringing your concerns to our attention, and we hope this information will help alleviate them. Purusant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 169d), a copy of your comments and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

United States Senate

October 22, 1999.

Mr. Joel Klein,

Assistant Attorney General, U.S. Department of Justice, 950 Pennsylvania Avenue, N.W., #3109, Washington, DC 20530.

Dear Mr. Klein: Enclosed you will find a copy of a letter from a constituent who is concerned about an order issued by the Department of Justice that requires the sale of those Spoonridge landfill to Republic Waste. The order was issued in conjunction with the buyout of B.F.I. by Allied Waste.

Please provide an explanation of this decision to Mr. Taylor, and send a copy of your respond to David Lieber in my Washington office.

Thank you for your time and consideration.

Sincerely,

Richard J. Durbin,

United States Senator.

Barry Taylor

August 11, 1999.

Dear Sir: I am writing you in an effort to enlist your help in maintaining the financial stability of the village of Fariview Illinois. The United States Department of Justice has issued an order in the buyout of B.F.I. by Allied Waste which would require the sale of Spoonridge landfill to Republic Waste. They claim the retention of Spoonridge by Allied would create a monopoly situation in the Chicago market. This is not true, Spoonridge was originally built to service the Chicago metro area. But changes in the industry made this an unprofitable proposition.

B.F.I. then changed their strategy and decided to seek refuse from all over the country. This move was endorsed by both the village and county boards. As it began to look like the plan was working (B.F.I. hearing a contract with New York city) the sale took place and the justice department stepped in. It now appears Republic Waste will be purchasing Spoonridge. With Republic having ample landfill space in the Chicago market we believe Spoonridge will be indefinitely mothballed.

Fairview and B.F.I. had been participating in a public private partnership, which has been a great help to the village in providing needed services to the citizens. The fees paid by B.F.I have enabled the village to install a new water system. This was made necessary because the E.P.A. had determined our water to be unfit to drink. If the landfill is mothballed and the revenues to the village are lost it will cause a severe budge crisis.

We are against monopolies and the high prices they cause. But we feel that the Department of Justice has not gotten the correct picture in this case. If the order stands we feel the only ones to suffer will be the citizens of he Fairview area. The loss of the landfill revenue and the possible reduction in property taxes will endanger the village, school system and the other taxing bodies that depend on these funds. It is our hope that you will help persuade the Department of Justice to take a closer look at this situation. As a small village we are trying to provide quality of life without putting undo strain on the taxpayers. We hope you can help us achieve our goal.

Thank You,

Barry Taylor,

Fairview Village Trustee.

Barry Taylor

August 8, 1999.

Subject: J Robert Kramer re Allied/BFI consent decree.

Dear Sir: I am writing you to protest a ruling by your agency that was meant to prevent a monopoly from being formed in the Chicago area. As a small part of this order Allied is ordered to sell the Spoonridge landfill in Fairveiw Illinois. The result of this action will not effect the price of waste disposal in the Chicago area, but will instead devestate a small rural community in west central Illinois. The Spoonridge landfill was built to service the Chicago metro area, but this never became finacialy competitive. B.F.I. then changed their strategy to attract waste from other parts of the country. This move was endorsed by both the village and county boards. As this process was nearing completion with a contract from New York city we are derailed by a ruling from your agency. The sell of this facility to Republic Waste will, we fear this will leave the site mothballed and eliminate the finacial benefit to the villiage. These funds are being used to pay for a new water system for the villiage which was forced upon us by the E.P.A.

Your agency's ruling is going to force the village of Fairview into near bankruptcy, while in no way changing the balance of waste disposal in the Chicago area. I plead with you to have your people review and dig a little deeper into this issue, before they make the citizens of Fairview pay a high price for Spoonridge being lumped into the Chicago area without any basis in fact.

Thank You,

Barry Taylor,

Village Trustee, Fairview Il.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

Barry Taylor,

Fairview Village Trustee, 580 Main Street, Box 261, Fairview, IL 61432..

Re Comment on Proposed Final Judgment in (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. No. 99 CV 1962 (D.D.C., July 21, 1999).

Dear Mr. Taylor: This letter responds to your letters of August 8 and 11, 1999 commenting on the Final Judgment in this case on behalf of the Village of Fairview. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC., would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

In your letter, you express concern that the Final Judgment, by requiring Allied to divest the Spoon Ridge landfill, is unnecessary for effective relief and might undermine the tax base of the local communities. The Spoon Ridge landfill is a relatively new site and the largest landfill in the State of Illinois. BFI recently closed the landfill because it found that the landfill was unable to attract enough waste from the Chicago are to make it viable. By closing the landfill. BFI reduced its assessed value, and thus, the taxes it paid to local communities. BFI intended to reopen the landfill if it obtained a long-term contract to dispose of New York City's residential waste.

You stated that the future viability of Spoon Ridge depends on its ability to attract waste from New York City. By requiring Allied to divest this landfill to an independent competitor, ostensibly to help alleviate competitive problems in the Chicago market, the Final Judgment unnecessarily limits Allied's ability to complete for the contract to dispose of New York City's waste, and undermines the chances of Spoon Ridge ever opening again.

The fact is that requiring Allied to divest Spoon Ridge to a new competitor in no way prevents Allied or any other firm from later contracting with the new owner to dispose of any New York City's waste. Indeed, the new owner would be free to make the landfill's disposal capacity available to any person who wishes to bid and enhance competition for the contract to dispose of New York City's waste. If the new owner believes, however, that the space in the landfill is much more valuable to use in competing for the disposal of waste from the city of Chicago, then the new owner can choose to commit to landfill to competing in that market. Leaving Spoon Ridge with Allied, which already controls nearly 35% of all disposal capacity in the greater Chicago metropolitan market, would ensure that a single firm could dominate waste disposal, and therefore, set the price of disposal in the Chicago market. While this may make the landfill more valuable to the local community, it would adversely affect the prices paid by consumers for the disposal of their municipal solid waste.

Thank you for bringing your concerns to our attention, and we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comments and this response will be published in the Federal Register and filed with the Court.

CC: Office of the Honorable Richard J. Durbin, ATTN.: David Lieber, United States Senate, 364 Russell Senate Office Building, Washington, DC 20510–1304.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

McHenry County Department of Planning and Development

December 14, 1999.

Mr. J. Robert Kramer, III, Esquire,

Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, Suite 3000, Washington, DC 20005.

Re Proposed Consent Decree in United States of America v. Allied Waste Industries, Inc. and Browning Ferris Industries, Inc. (Civil No. 1:99CVO1962).

Dear Mr. Kramer: We respectfully request that the Solid Waste Sector of the McHenry County Department of Planning & Development (Department) be informed of all pending sales of the following assets prior to your Division granting final approval of the sales. The details of the proposed sale or sales of these assets would be used by this Department to evaluate the potential impact the sales may have on our solid waste market place. If an impact has been determined, the Department would submit comments, either negative or positive, for your review prior to final approval. The assets of concern in the Chicago Metropolitan area are:

- Two (2) BFI Landfills;
- Five (5) Transfer Stations; and
- All BFI small container commercial collection routes in Cook, Lake, DuPage, McHenry, and Will counties, Illinois.

Thank you, in advance, for your assistance in this matter. I may be reached at (815) 334–4560 or by e-mail at Imbuckle@co.mchenry.il.us.

Sincerely,

Leonore Buckley,

CPG, Solid Waste Coordinator.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

Leonore Buckley,

Solid Waste Coordinator, Department of Planning and Development, McHenry County Government Center, Annex Building A, 2200 North Seminary Avenue, Woodstock, IL 60098.

Re Comment on Proposed Final Judgment in (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. No. 99 CV 1962 (D.D.C., July 21, 1999).

Dear Ms. Buckley: This letter responds to your letter of December 14, 1999 commenting on the Final Judgment in this case on behalf of the Department of Planning and Development of McHenry County. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC., would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competition in this market for which relief was sought.

In your letter, you request that the Department of Planning and Development (''Department'') be informed of all pending sales of the assets to be divested pursuant to the proposed Final Judgment. These assets include the two BFI landfills; five BFI transfer stations; and the BFI small container commercial routes in Cook, Lake, DuPage, McHenry and Will Counties, Illinois. Your

further state that the Department would evaluate the potential impact the sales may have on its solid waste marketplace.

Under the terms of the Final Judgment, the defendants must sell all of the relevant disposal and hauling assets described in the Final Judgment to a purchaser or purchasers acceptable to the United States, in its sole discretion. In approving a purchase, we always consider the competitive impact in the local market of that purchaser's acquisition of the hauling or disposal assets.

The Orchard Hills and Zion landfills have been acquired by Superior Services, Inc. a purchaser approved by the United States. Superior has no current hauling or disposal operations in the greater Chicago metropolitan market. The five transfer stations have also been divested with the approval of the United States—Superior has acquired four of the transfer stations, and Groot Industries has acquired one.

The BFI small container commercial routes in the five counties have been divested to Superior except for the municipal franchise contracts. These will be retained by Allied if the court approves a modification to the Final Judgment. The United States and Allied have filed a motion to have the court modify the Final Judgment to permit Allied to retain the franchise work which initially had to be divested.

Thank you for bringing your concerns to our attention, and we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), as copy of your comments and this response will be published in the Federal Register and filed with the court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

[FR Doc. 00–13019 Filed 06–06–00; 8:45 am]

BILLING CODE 4410–11–M