

3. Pursuant to 15 U.S.C. §16 (d), the United States furnished copies of the Complaint, Hold Separate Order, proposed Judgment and Competitive Impact Statement to anyone requesting them.

4. Pursuant to 15 U.S.C. § 16(c), the United States published a summary of the terms of the proposed Final Judgment and the Competitive Impact Statement in *The Washington Post*, a newspaper of general circulation in the District of Columbia. A copy of the certificate of publication from *The Washington Post* appears in Exhibit 2.

5. Each defendant has certified that the requirements of 15 U.S.C. § 16(g) have been complied with, describing their communications with employees of the Department of Justice.

6. During the 60-day comment period following publication of notice in the *Federal Register* and *The Washington Post*, the United States received a total of 16 written comments on the proposed settlement. The comments were from:

- (a) Recycle Worlds Consulting Corp., Madison, WI (Ex. 3);
- (b) Honorable Henry J. Hyde, U.S. House of Representatives and Chairman of the House Judiciary Committee, (Ex. 4);
- (c) Solid Waste Association of North America, Silver Spring, MD (Ex. 5);
- (d) DuPage Mayors and Managers Conference, Oak Brook, IL (Ex. 6);
- (e) Village of Lisle, Illinois (Ex. 7);
- (f) U.S. Navy, Public Works Center, Great Lakes, IL (Ex. 8);
- (g) City of Naperville, IL (Ex. 9);
- (h) Fulton County, IL (Ex. 10);
- (i) Spoon River Valley Schools, Community Unit District Number 4 (Ex. 11);

- (j) West Cook County Solid Waste Agency (Ex. 12);
- (k) Solid Waste Agency of Northern Cook County (Ex. 13);
- (l) Solid Waste Agency of Lake County, IL (Ex. 14);
- (m) Honorable Lane Evans, U.S. House of Representatives (Ex. 15);
- (n) Village of Fairview, IL (Ex. 16);
- (o) Barry Taylor, Trustee, Village of Fairview, IL (Ex. 17); and
- (p) Department of Planning and Development, McHenry County, IL (Ex. 18)

7. The United States evaluated and responded to each of the comments it received.

The comments did not convince the United States that it should withdraw its consent to the proposed settlement. However, for the reasons set forth in the Memorandum of the United States in Support of Joint Motion for Entry of the Proposed Modified Final Judgment, the United States was persuaded to move for a modification of the proposed Final Judgment, allowing the defendants to substitute the divestiture of certain residential and rolloff waste collection routes for municipally franchised commercial routes. Copies of the comments and the responses of the United States appear in Exhibits 3-18.

a. General Comment on the Divestiture Relief in the Proposed Judgment

Recycle Worlds (Ex. 3), a private waste industry consultant, and the Solid Waste Association of North America (Ex. 5) 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 their view, these firms may be more inclined to cooperate with defendants in raising prices in some markets in order to avoid potential price wars with defendants elsewhere.

In response, we noted that the United States could not categorically conclude that selling the consent decree assets to a large national waste collection and disposal firm would be less competitive than a sale to a 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, that would make them in some respects more formidable competitors than small independent firms.

b. Comments on Divestiture Relief in the Chicago, IL Area

All of the other the public comments center on provisions of the proposed Judgment that require Allied to divest waste collection and disposal assets in the greater metropolitan Chicago market. Before summarizing these comments, it may be helpful to review the allegations of the government's complaint and the relief contained in the proposed decree.

The Complaint in this case charged that Allied's acquisition of BFI would substantially lessen competition in the disposal of municipal solid waste and the collection of small container commercial waste in many markets including the greater Chicago metropolitan market. The proposed Final Judgment would eliminate the competitive effects of the acquisition by requiring Allied to divest the disposal and commercial waste collection assets that Allied would acquire from BFI in the greater Chicago metropolitan market. The assets which must be divested include BFI's three major landfills (Orchard Hills, Zion and Spoon Ridge), five waste transfer stations (Melrose Park, Rolling Meadows, DuKane, Northbrook-Brooks, and Active/Evanston); and BFI's small container commercial waste collection routes (including the municipal franchise routes) in the City of Chicago and five surrounding Illinois counties.

Two of the three landfills have been divested to purchasers approved by the United States--the Orchard Hills and Zion landfills have been acquired by Superior Services Inc. (“Superior”), a company with no current hauling or disposal operations in the greater Chicago metropolitan market. As discussed below, Groot Industries, Inc. (“Groot”) is seeking approval to acquire the Spoon Ridge landfill. 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 has acquired one.

i. Proposed Divestiture of Spoon Ridge Landfill

Groot is presently in the due diligence stage of its proposed acquisition of the Spoon Ridge landfill. Several commentators -- Fulton County, IL (Ex. 10); Spoon River School District, IL (Ex. 11); Honorable Lane Evans, U.S. House of Representatives, State of Illinois (Ex. 15); and City of Fairview, IL and its trustee, Barry Taylor (Exs. 16 &17) -- are very concerned that requiring Allied to divest the Spoon Ridge Landfill is unnecessary for effective relief and might undermine the tax base of the local communities. Spoon Ridge Landfill is a relatively new site and the largest landfill in the state of Illinois. BFI recently closed the landfill, however, because it found the landfill was unable to attract enough waste from the Chicago area to make it viable, given other alternatives. By closing the landfill, BFI reduced its assessed value, and thus, the taxes that it paid to local communities. BFI nonetheless intended to reopen the landfill if it obtained a long term contract to dispose of New York City’s residential waste.

The commentators reason that the future viability of Spoon Ridge Landfill depends on its ability to attract waste from New York City. They argue that by requiring Allied to divest this landfill to an independent competitor, ostensibly to help alleviate competitive problems in the

Chicago market, we unnecessarily limit Allied's ability to compete for the contract to dispose of New York City's waste, and in that way, undermine the chances of this landfill's ever opening again.

In our response, we point out that while the United States disagrees with the communities about the long range prospect of Spoon Ridge Landfill's ability to compete in the Chicago market, 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 waste. Indeed, the new owner would be free to make the landfill's disposal capacity available to any person who wishes to bid and the decree would 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, of course, 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 Chicago area, would ensure that a single firm could dominate waste disposal -- and hence, set the price of disposal in the greater Chicago area. 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.

ii. Effect of the Ordered Divestitures on BFI's Existing Contracts With Local Governments to Collect and Dispose of Their Municipal Solid Waste

Several commentators -- Honorable Henry J. Hyde, U.S. House of Representatives, State of Illinois, and Chairman of the House Judiciary Committee (Ex. 4); DuPage Mayors and Managers Conference (Ex. 6); Village of Lisle, IL (Ex. 7); U.S. Navy Public Works Center (Ex.

8); City of Naperville, IL (Ex. 9); West Cook County Solid Waste Agency (Ex. 12); Solid Waste Agency of Northern Cook County (Ex. 13); and Solid Waste Agency of Lake County, IL (Ex. 14) -- expressed concern that the Final Judgment, by ordering the divestiture of BFI's small container commercial waste business, may interfere with BFI's existing contracts to dispose of the communities' residential waste. As currently drafted, the Final Judgment requires the defendants to divest BFI's small container commercial waste collection business in each of six counties, including the waste collection routes in areas in which BFI has the "government franchise" for collecting the area's waste. In franchise areas, the government typically contracts with a single firm for the provision of all waste collection services, including residential and commercial waste hauling and pickup of residential recycling services.

The local communities fear 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 recycling and residential waste collection services. This, the communities fear, may (a) result in the franchise commercial waste services sold being less profitable, and the purchaser providing a lower level of service, or (b) result in additional trucks being sent down city streets, with some trucks devoted to picking up residential and recycling material and others, owned by a different firm, picking up commercial waste.

Pursuant to the originally proposed Final Judgment, defendants are required to divest about \$6 million in commercial work covered by municipal franchise contracts in the greater Chicago metropolitan market. As described above, many of the franchisors (municipalities) and others filed comments objecting to the divestiture of the franchises to another company. In light of these objections, the United States and Allied reached agreement 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 include approximately \$10 million in residential and rolloff waste hauling business in the greater Chicago metropolitan market. This is in addition to the approximate \$43.7 million in open commercial (non-franchise) work to be divested pursuant to the proposed Final Judgment. Allied has agreed to divest all of these assets to Superior and Groot, purchasers acceptable to the United States.

The proposed modification to the Final Judgment originally proposed is reflected on page 9 of the Modified Final Judgment at Section II.D.(4) (Chicago, IL), which adds the following language: “provided, however, defendants may substitute, for franchised commercial routes, BFI’s residential routes that serve the cities of Northbrook, Wilmette and Winnetka, IL; Allied’s residential routes that serve the cities of Deerfield and Golf, IL; and BFI’s rolloff routes that serve Cook and DuPage counties, IL.”

Pursuant to a letter agreement between the United States and Allied dated March 29, 2000, Allied was permitted to close on this transaction with Superior (and did so on March 31, 2000) subject to the following conditions: the United States will seek, as soon as practicable, the modification to the proposed Final Judgment to permit Allied to retain the municipal franchise contracts initially required to be divested and permit Allied to divest instead the residential and rolloff waste hauling business; and if Allied elects to close on the transaction before this modification is accepted by the court, Allied agrees to keep separate the municipal franchise contracts required to be divested under the proposed Final Judgment until the court’s acceptance of the modification to the proposed Final Judgment. (See Exhibit A attached to the Memorandum

of the United States in Support of Joint Motion for Entry of the Proposed Modified Final Judgment.)

8. Pursuant to 15 U.S.C. §§ 16(b)-(h), the United States has arranged to publish in the *Federal Register* a copy of the comments and the United States's responses.

9. With these steps having been taken, the parties have fulfilled their obligations under the APPA. Pursuant to the Hold Separate Stipulation and Order that the Court entered on July 20, 1999, the Court may now enter the proposed Modified Final Judgment, if it approves of the modification and determines that the entry of the proposed Modified Final Judgment is in the public interest. For the reasons set forth in the Competitive Impact Statement, its responses to the public comments, and in its Memorandum in Support of Joint Motion for Entry of the Proposed Modified Final Judgment, the United States strongly believes that the proposed Final Judgment, as modified, is in the public interest and that the Court therefore should enter it.

Dated:

Respectfully submitted,

Arthur A. Feiveson
Illinois Bar No. 3125793

United States Department of Justice
Antitrust Division, Litigation II
1401 H Street, NW, Suite 3000
Washington, DC 20530
(202) 307-0901