(Final)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK by ELIOT SPITZER, ATTORNEY GENERAL, Plaintiff, v. ALLIED WASTE INDUSTRIES, INC.; SUBURBAN CARTING CORP., CHESTNUT EQUIPMENT LEASING CORP., PAPER RECYCLING SYSTEMS, INC., PRIME CARTING, INC., RECYCLING INDUSTRIES CORP., C. C. BOYCE & SONS, INC., DOWLING INDUSTRIES, INC., MAMARONECK TRUCK REPAIR, INC., TROTTOWN TRANSFER, INC., 306 FAYETTE AVENUE REALTY CORP., THE MILO TRUST; and ADVANCED WASTE SYSTEMS, INC., DIVERSIFIED WASTE DISPOSAL, INC. AUTOMATED WASTE DISPOSAL, INC., NY-CONN WASTE RECYCLING, INC., ENVIRONMENTAL SYSTEMS, INC., SUPERIOR WASTE DISPOSAL, INC., ADVANCED RECYCLING CORP., Defendants.	00 Civil No. 0363 (JSR)

FINAL JUDGMENT

WHEREAS, plaintiff, the State of New York, by and through its Attorney General, Eliot Spitzer, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an

admission by any party with respect to any issue of law or fact herein; and that this Final Judgment shall settle all claims made by plaintiff in its Complaint filed on January 19, 2000;

AND WHEREAS, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is, in the event of the acquisition of certain assets of the Suburban and Gallante Companies by Allied, the prompt and certain divestiture of the identified assets to assure that competition is not substantially lessened;

AND WHEREAS, plaintiff requires Allied to make certain divestitures for the purpose of establishing a viable competitor in the commercial waste hauling business in the Westchester County area;

AND WHEREAS, Allied has represented to plaintiff that the divestitures ordered herein can and will be made and that Allied will later raise no claim of hardship or difficulty as grounds for asking the court to modify any of the divestiture provisions contained below:

NOW, THEREFORE, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I.

JURISDICTION

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants, as hereinafter defined, under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18) and Section 340 of the Donnelly Act, N.Y. Gen Bus. Law § 340 et seq.

II.

DEFINITIONS

As used in this Final Judgment:

A. "Allied" means defendant Allied Waste Industries, Inc., a Delaware corporation with its headquarters in Scottsdale, Arizona, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

B. "Suburban Companies" means defendants Suburban Carting Corp., Chestnut Equipment Leasing Corp., Paper Recycling Systems, Inc., Prime Carting Inc., Recycling Industries Corp., C. C. Boyce & Sons, Inc., Dowling Industries, Inc., Mamaroneck Truck Repair, Inc., Trottown Transfer, Inc., 306 Fayette Avenue Realty Corp, and The Milo Trust with their headquarters in Mamaroneck, New York, and includes their successors and assigns, and their subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

C. "Valley" means all existing business of Valley Carting Corp., a subsidiary of Allied, and all of Allied's other subsidiaries and operations located in Westchester County.

D. "Galante Companies" means defendants Advanced Waste Systems, Inc., Diversified Waste Disposal, Inc., Automated Waste Disposal, Inc., NY-Conn Waste Recycling, Inc., Environmental Systems, Inc., Superior Waste Disposal, Inc., and Advanced Recycling Corp. with their headquarters in Danbury, Connecticut, and includes their successors and assigns, and their subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

E. "Commercial waste hauling" means the collection and transportation to a disposal site of trash and garbage (but not medical waste, organic waste, special waste, such as contaminated soil; sludge; or recycled materials) from commercial and industrial customers. Commercial waste

hauling means using front-end load and rear-end load trucks to service small containers. Typical customers include office and apartment buildings and retail establishments such as stores and restaurants.

F. "Relevant Hauling Assets" means (1) all of Valley's small container commercial waste hauling routes as described in Exhibit A attached to the proposal Final Judgment including Saturday service in connection with the customers serviced on those routes; (2) Suburban Hauling Assets; (3) all tangible assets, including capital equipment, trucks and other vehicles, containers, interests, permits, supplies, except real property and improvements to real property (i.e., buildings) used in connection with those routes; and (4) all intangible assets, including hauling-related customer lists, contracts and accounts used in connection with those routes.

G. "Suburban Hauling Assets" means business representing at least one million dollars per annum of Suburban's small container commercial waste hauling as described in Exhibit A attached to the proposed Final Judgment including Saturday service in connection with the customers serviced on those routes.

H. "Relevant Transfer Station Rights" means certain disposal capacity of present Suburban and/or Galante transfer stations as described in Exhibit A attached to the proposed Final Judgment.

I. "Westchester" or "Westchester market" refers to the County of Westchester, New York.

J. "Small container" means a 1 to 10 cubic yard container typically made of steel and often known as a dumpster.

III.

APPLICABILITY

A. The provisions of this Final Judgment apply to defendants, their successors and assigns, subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Allied shall require, as a condition of the sale or other disposition of its Relevant Hauling Assets and Relevant Transfer Station Rights, that the acquiring party agree to be bound by the provisions of this Final Judgment.

IV.

DIVESTITURES

A. Allied is hereby ordered and directed in accordance with the terms of this Final Judgment, within ninety (90) calendar days after the filing of the Hold Separate Stipulation and Order in this case, or sixty (60) days after notice of the entry of this Final Judgment by the Court, whichever is later, to sell the Relevant Hauling Assets and the Relevant Transfer Station Rights as a viable, ongoing business to a single purchaser acceptable to plaintiff State of New York (or "New York").

B. Allied shall use its best efforts to accomplish the divestitures as expeditiously and timely as possible. New York, in its sole discretion, may extend the time period for any divestiture a reasonable additional time period(s).

C. In accomplishing the divestitures and other relief ordered by this Final Judgment, Allied promptly shall make known, by usual and customary means, the availability of the Relevant

Hauling Assets and Relevant Transfer Station Rights. Allied shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Allied also shall offer to furnish to all prospective purchasers, subject to customary confidentiality assurances, all information regarding the Relevant Hauling Assets and Relevant Transfer Station Rights customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Allied shall make available such information to the plaintiffs at the same time that such information is made available to any other person.

D. Allied shall not interfere with any negotiations by any purchaser to employ any Allied employee who works at, or whose principal responsibility concerns, any hauling business that is part of the Relevant Hauling Assets.

E. As customarily provided as part of a due diligence process, Allied shall permit prospective purchasers of the Relevant Hauling Assets to have access to personnel and to make such inspection of such assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information. Allied shall permit prospective purchasers of the Relevant Transfer Station Rights access to such information as is customary in transactions involving the sale and purchase of disposal rights.

F. Allied shall warrant to the purchaser of the Relevant Hauling Assets and Relevant Transfer Station Rights that each asset will be operational on the date of sale.

G. Allied shall not take any action, direct or indirect, that will impede in any way the operation or useability of the Relevant Hauling Assets and Relevant Transfer Station Rights.

H. Allied shall warrant to the purchaser of the Relevant Hauling Assets and Relevant Transfer Station Rights that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that with respect to all Relevant Hauling Assets and Relevant Transfer Station Rights, Allied will not undertake, directly or indirectly, following the divestiture of each asset, any challenges to the environmental, zoning, or other permits pertaining to the operation of the asset.

I. Unless New York otherwise consents in writing, the divestitures pursuant to Section IV, whether by Allied or by a trustee appointed pursuant to Section V of this Final Judgment, shall include all Relevant Hauling Assets and all Relevant Transfer Station Rights, and be accomplished by selling or otherwise conveying all the assets to a purchaser such as to satisfy New York that the Relevant Hauling Assets and Relevant Transfer Station Rights can and will be used by the purchaser as part of a viable, ongoing business engaged in waste hauling and MSW disposal. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser for whom it is demonstrated to New York's satisfaction that the purchaser: (1) has the capability and intent of competing effectively in the waste hauling business in the Westchester market; (2) has or soon will have the managerial, operational, and financial capability to compete effectively in the commercial waste hauling business in the Westchester market; and (3) is not hindered by the terms of any agreement between the purchaser and Allied which gives Allied the ability unreasonably to raise the purchaser's costs, lower the purchaser's efficiency, or otherwise interfere in the ability of the purchaser to compete effectively in the Westchester market.

V.
APPOINTMENT OF TRUSTEE

A. In the event that Allied has not sold the Relevant Hauling Assets and Relevant Transfer Station Rights within the time period specified in Section IV of this Final Judgment, or any extension thereof, the Court shall appoint, on New York's application, a trustee selected by New York, to effect the divestiture of each such asset not sold.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Relevant Hauling Assets and Relevant Transfer Station Rights. The trustee shall have the power and authority to accomplish any and all divestitures at the best price (but no minimum price) then obtainable upon a reasonable effort by the trustee, subject to the provisions of Section IV and VII of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section V(C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Allied any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestitures, and such professional and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestitures at the earliest possible time to a purchaser acceptable to New York, and shall have such other powers as this Court shall deem appropriate. Allied shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objection by Allied must be conveyed in writing to the plaintiff and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. The trustee shall serve at the cost and expense of Allied, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of each asset sold

by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Allied and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divested business and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Allied shall use its best efforts to assist the trustee in accomplishing the required divestitures, including best efforts to effect all necessary regulatory approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Allied shall develop financial or other information relevant to the businesses to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. Allied shall permit bona fide, prospective acquirors of the Relevant Hauling Assets to have reasonable access to personnel and to make such inspection of all physical facilities and any and all financial, operational or other documents and other information as may be relevant to the divestitures required by this Final Judgment. Allied shall permit prospective purchasers of the Relevant Transfer Station Rights access to such information as is customary in transactions involving the sale and purchase of disposal rights.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestitures ordered under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee

deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the business to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to sell the businesses to be divested.

F. If the trustee has not accomplished such divestitures within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by New York.

VI.
NOTIFICATION

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect any proposed divesture pursuant to Sections IV or V of this Final Judgment, Allied or the trustee, whichever is then responsible for effecting the divestiture, shall notify the Chief of the Antitrust Bureau of the New York Attorney

General's Office of the proposed divestiture. If the trustee is responsible, it shall similarly notify Allied. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the business to be divested that is the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by New York of such notice, New York may request from Allied, the proposed purchaser, or any other third party additional information concerning the proposed divestiture and the proposed purchaser. Allied and the trustee shall furnish any additional information requested from them within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after plaintiff have been provided the additional information requested from Allied, the proposed purchaser, and any third party, whichever is later, New York shall provide written notice to Allied and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If New York provides written notice to Allied and the trustee that it does not object, then the divestiture may be consummated, subject only to Allied's limited right to object to the sale under Section V(B) of this Final Judgment. Upon objection by New York, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Allied under the provision in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII.
AFFIDAVITS

A. Within twenty (20) calendar days of the filing of the Hold Separate Stipulation and Order in this matter and every thirty (30) calendar days thereafter until the divestiture has been

completed whether pursuant to Section IV or Section V of this Final Judgment. Allied shall deliver to the Chief of the Antitrust Bureau of the New York Attorney General's Office an affidavit as to the fact and manner of compliance with Sections IV of V of this Final Judgment. Each such affidavit shall include, *inter alia*, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the businesses to be divested, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that Allied has taken to solicit a buyer for any and all Relevant Hauling Assets and Relevant Transfer Station Rights and to provide required information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by New York to information provided by Allied, including limitations on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Hold Separate Stipulation and Order in this matter, Allied shall deliver to the Chief of the Antitrust Bureau of the New York Attorney General's Office an affidavit which describes in detail all actions Allied has taken and all steps Allied has implemented on an on-going basis to maintain the Relevant Hauling Assets pursuant to Section VIII of this Final Judgment and the Hold Separate Stipulation and Order entered by the Court. The affidavit also shall describe, but not be limited to, Allied's efforts to maintain and operate each Relevant Hauling Asset as an active competitor, maintain the management, staffing, sales, marketing and pricing of each asset, and maintain each asset in operable condition at current capacity configurations. Allied shall deliver to the Chief of the Antitrust Bureau of the New York

Attorney General's Office an affidavit describing any changes to the efforts and actions outlined in Allied's earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Until one year after such divestiture has been completed, Allied shall preserve all records of all efforts made to maintain the Relevant Hauling Assets, to effect the ordered divestitures.

VIII.

HOLD SEPARATE ORDER

Until the divestitures required by the Final Judgment have been accomplished, Allied shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the sale of the Relevant Hauling Assets and the Relevant Transfer Station Rights.

IX.

FINANCING

Allied is ordered and directed not to finance all or any part of any acquisition by any person made pursuant to Sections IV or V of this Final Judgment.

X.

ACQUISITIONS

Allied is hereby ordered and directed that for a period of five (5) years after notice of the entry of this Final Judgment, Allied shall not acquire, without at least forty-five (45) days prior written notification to and prior written approval of New York, directly or indirectly, any interest in any business, assets, capital stock, or voting securities of any small container commercial waste

hauling company doing business in Westchester County, any small container commercial waste hauling route in Westchester County, any transfer station handling MSW in Westchester County, or any of the Relevant Hauling Assets. However, as to any such acquisition, if the annual revenue in Westchester from small container commercial waste hauling and transfer station handling MSW is less than $500,000, then Allied shall give New York at least forty-five (45) days prior written notification of such transaction but need not obtain New York's approval of it. Notifications hereunder are to be made to the Chief of the Antitrust Bureau of the New York Attorney General's Office. Nothing herein shall preclude New York from investigating or taking legal action with respect to any acquisition by Allied.

XI.

COMPLIANCE INSPECTION

For purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of New York, upon written request of the Attorney General or the Chief of the Antitrust Bureau and on reasonable notice to Allied made to its principal offices, shall be permitted:

(1) Access during office hours of Allied to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Allied, who may have counsel present, relating to the matters contained in this Final Judgment and the Hold Separate Stipulation and Order. Allied shall consent to New York's representatives

inspecting and copying all reports or other written records of the Court-appointed Monitor pursuant to the stipulated Monitor's Agreement, or any modification thereof, in United States v. Suburban Carting Corporation, et al., S1 96 Cr. 466 (JSR), relating to the matters contained in this Final Judgment and the Hold Separate Stipulation and Order.

(2) Subject to the reasonable convenience of Allied and without restraint or interference from it, to interview, either informally or on the record, officers, employees, and agents, who may have counsel present, regarding any such matters. Allied shall consent to New York's representatives interviewing the Court-appointed Monitor pursuant to the stipulated Monitor's Agreement, or any modification thereof, in United States v. Suburban Carting Corporation, et al., S1 96 Cr. 466 (JSR), relating to the matters contained in this Final Judgment and the Hold Separate Stipulation and Order.

B. Upon the written request of the Attorney General or the Chief of the Antitrust Bureau, Allied shall submit such written reports, under oath if requested, with respect to any matter contained in the Final Judgment and the Hold Separate Stipulation and Order.

C. No information or documents obtained by the means provided in Section VII or XII of this Final Judgment shall be divulged by a representative of New York to any person other than a duly authorized representative of the executive branch of the State of New York, except in the course of legal proceedings to which New York is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Allied to plaintiffs, Allied represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Allied marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days notice shall be given by New York to Allied prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Allied is not a party.

XII.

ANTITRUST COMPLIANCE PROGRAM

Allied shall maintain an antitrust compliance program that shall include:

A. distributing within 60 days from the entry of this Final Judgment, a copy of the Final Judgment to all officers and directors, as well as to administrators with management authority over operations in Westchester.

B. distributing in a timely manner a copy of the Final Judgment to any person who succeeds to a position in the Paragraph XII(A);

C. briefing annually all administrators with management authority over operations in Westchester on the meaning and requirements of this Final Judgment, penalties for violation of this Final Judgment and the antitrust laws, including potential antitrust concerns raised by Allied;

D. obtaining from such officer or manager of Allied who has the principal management authority over Westchester operations an annual written certification that he or she reads, understands, and agrees to abide by this Final Judgment and is not aware of any violation of this Final Judgment; and

E. maintaining for inspection by the plaintiff a record of recipients to whom this Final Judgment has been distributed.

XIII.

RETENTION OF JURISDICTION

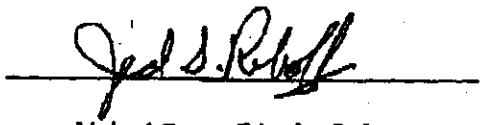
Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XIV.

TERMINATION

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

Dated: January 31, 2000



United States District Judge

EXHIBIT A TO FINAL JUDGMENT

Assets

1. The Relevant Hauling Assets include the following commercial waste hauling routes:

Name	Route	Approximate Revenue	Approximate Stops/Week
A. Valley routes	1	$874,000	375
	2	$1,020,000	405
	3	$1,260,000	430
	4	$900,000	380
	5	$996,000	410
B. Suburban Hauling Assets	Orange	$1,277,076	211

2. The Relevant Transfer Station Rights include the following disposal capacity for municipal solid waste:

A. Seventy-five tons per day of airspace at the New York/Conn. Transfer Station in Mount Kisco, New York.

B. Seventy-five tons per day of airspace at the Recycling Industries Transfer Station in Mamaroneck, New York.