

ELIOT SPITZER (ES 9830)
Attorney General for the State of New York
120 Broadway, (25th Floor)
New York, New York 10271
(212) 416-8280
Attorney for Plaintiff

00 CIV. 0363

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK by ELIOT SPITZER,
ATTORNEY GENERAL,

Plaintiff,

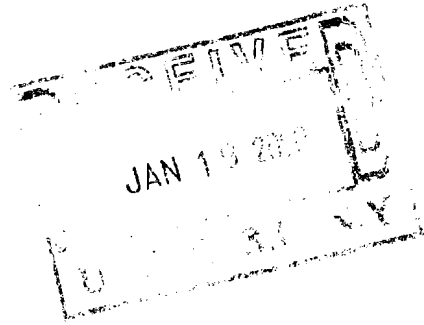
v.

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.,
TROT TOWN 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.



Civil No (JSR)

COMPLAINT FOR
INJUNCTIVE RELIEF
(Jury Trial Demanded)

COMPLAINT FOR INJUNCTIVE RELIEF

The State of New York, by and through its Attorney General, Eliot Spitzer, brings this civil antitrust action to enjoin the acquisition by Defendant Allied Waste Industries, Inc. (or "Allied") of the Defendant Suburban Companies (as hereinafter defined) and the Defendant Galante Companies (as hereinafter defined) and to obtain equitable and other relief as is appropriate. Plaintiff complains and alleges as follows:

I.

SUMMARY OF ALLEGATIONS

1. Allied has plans to acquire the Suburban Companies pursuant to certain understandings, including a Letter of Intent dated July 30, 1999.
2. Allied has plans to acquire the assets and business in Westchester County, New York of the Galante Companies pursuant to certain understandings, including a Letter of Intent dated August 19, 1999.
3. Defendants Allied, the Suburban Companies and the Galante Companies directly compete with one another in small container commercial waste hauling and disposal in Westchester County, and each is among the four largest small container commercial waste hauling and disposal firms in that market. The Suburban Companies constitute in revenues the largest such firm. The combination of the defendants would reduce the number of major competitors in Westchester from four to two. The remaining competitors are relatively small and weak firms.
4. These acquisitions violate Section 7 of the federal Clayton Act and Section 340 of New York's Donnelly Act. Unless they are enjoined, consumers of small container waste hauling

and disposal services likely will pay higher prices and receive fewer services as a consequence of the elimination of competition among defendants.

5. The defendants' understandings and acquisition plans substantially may lessen competition in violation of Section 7 of the federal Clayton Act and are in restraint of trade in violation of Section 340 of New York State's Donnelly Act.

II.

JURISDICTION AND VENUE

6. This action is filed by the State of New York under Section 16 of the Clayton Act, 15 U.S.C. § 26, and under Section 342 of the Donnelly Act, New York Gen. Bus. Law § 340 et seq. to prevent and restrain the violation by defendants of Section 7 of the Clayton Act, 15 U.S.C. § 18 and Section 340 of the Donnelly Act.

7. Defendants Allied, the Suburban Companies and the Galante Companies are located in and transact business in the Southern District of New York. Venue is therefore proper in this district under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391(c).

8. Defendants Allied, the Suburban Companies and the Galante Companies collect municipal solid waste from both residential and commercial customers in Westchester County. In their waste collection and disposal businesses, defendants make sales and purchases in interstate commerce, ship waste in the flow of interstate commerce, and engage in activities substantially affecting interstate commerce. The Court has jurisdiction over this action and over the parties pursuant to 15 U.S.C. § 22 and 28 U.S.C. §§ 1331 and 1337. The Court has supplemental jurisdiction over the action and parties as to the plaintiff's claims pursuant to the Donnelly Act.

III.

DEFINITIONS

9. “Municipal solid waste” (“MSW”) means solid putrescible waste generated by households and commercial establishments such as retail stores, offices, restaurants, warehouses, and non-manufacturing activities in industrial facilities. MSW does not include special handling waste (*e.g.*, waste from manufacturing processes, regulated medical waste, sewage, and sludge), hazardous waste, or waste generated by construction or demolition sites.

10. “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.

11. “Small container” means a 1 to 10 cubic yard container typically made of steel and often known as a dumpster.

12. “Transfer station” means an intermediate disposal site, often used in more densely populated urban areas, for processing and temporary storage of solid waste before transfer, in bulk, to more distant facilities for final disposal.

13. “Westchester” or “Westchester market” refers to the County of Westchester, New York.

14. "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.

15. "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.

16. "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.

IV.

DEFENDANTS

17. Allied is a Delaware corporation with its principal office in Scottsdale, Arizona. Allied is engaged in providing waste hauling and disposal services throughout the United States, including in substantial portions of Westchester County. In 1998, Allied reported total revenues of nearly \$1.6 billion.

18. The Suburban Companies are New York corporations with their principal offices in Mamaroneck, New York. The Suburban Companies are engaged in providing small container waste hauling and disposal services in substantial portions of Westchester County.

19. The Galante Companies are Connecticut and New York corporations with their principal offices in Danbury, Connecticut and Mt. Kisco, New York. The Galante Companies are engaged in providing small container waste hauling and disposal services in substantial portions of Westchester County.

V.

TRADE AND COMMERCE

A. The Relevant Service Markets

Small Container Commercial Waste Hauling Service

20. Small container commercial waste hauling firms, or “haulers”, collect municipal solid waste from residential, commercial and industrial establishments, and transport the waste to a disposal site, such as a transfer station, sanitary landfill or incinerator, for processing and disposal. Private waste haulers typically contract directly with customers for the collection of waste generated by commercial accounts. Waste generated by residential customers, on the other hand, is often collected by either local governments or by private haulers pursuant to contracts bid by, or franchises granted by, municipal authorities.

21. Small container commercial waste hauling differs in important respects from the collection of residential or other types of waste. An individual commercial customer typically generates substantially more MSW than a residential customer. To efficiently handle this high volume of commercial waste, haulers provide commercial customers with small containers or

dumpsters for storing the waste. Haulers organize their commercial accounts into routes, and collect and transport the waste generated by these accounts in vehicles uniquely well suited for commercial waste collection -- primarily front-end loader ("FEL") trucks and rear-end loader ("REL") trucks.

22. On a typical small container commercial waste hauling route, an operator drives an FEL or REL vehicle to the customer's container and engages a mechanism that grasps and lifts the container, and empties it into the vehicle's storage section, where the waste is compacted and stored. The operator continues along the route, collecting MSW from each of the commercial accounts until the vehicle is full. The operator then drives the truck to a disposal facility, such as a transfer station, landfill or incinerator, and empties the contents of the vehicle.

23. In contrast to a commercial route, a residential waste collection route typically is a more labor intensive operation. The customer's MSW is stored in much smaller containers (*e.g.*, garbage bags or trash cans) and waste collection firms routinely use trucks with larger crews (usually, two- or three-person teams). On residential routes, the crews generally hand-load the customer's MSW, typically by tossing garbage bags and emptying trash cans into the vehicle's storage section. Because of the differences in the collection process, residential customers and commercial customers are organized, as a rule, into separate routes. For a variety of reasons, other types of collection activities, such as roll-off containers (typically used for construction debris) and collection of liquid or hazardous waste, usually are not combined with commercial waste hauling activities.

24. The differences in the types and volume of MSW collected and in equipment used in their collection activities distinguish small container commercial waste hauling firms from all

other types of waste collection activities. For this reason, small container commercial waste hauling firms profitably can increase their charges for small container commercial waste hauling services without losing significant sales or revenues to firms engaged in the provision of other types of waste collection services. Thus, small container commercial waste hauling service is a relevant market for purposes of analyzing the effects of the acquisitions.

Disposal of MSW

25. MSW has physical characteristics that readily distinguish it from other liquid or solid waste. Federal, state and local safety, environmental, zoning, and permit laws and regulations dictate critical aspects of storage, handling, transportation, processing and disposal of MSW. An MSW sanitary landfill, incinerator or transfer station must be located on approved types of land and operated under prescribed procedures. For instance, most MSW is disposed of in sanitary landfills, which are permitted and regulated by the states and municipalities in which they are located. Local ordinances and permit restrictions often impose severe limitations on the type (nonhazardous waste), origin (*e.g.*, no out-of area waste), and total and daily amount of waste that can be disposed of at sanitary landfills. Anyone who fails to dispose of MSW in an approved facility can be subject to severe civil and criminal penalties. Firms that compete in the disposal of MSW profitably can increase their charges to haulers for MSW disposal without losing significant sales to any other firms.

26. For these reasons, there are no good substitutes for the disposal of MSW. Disposal of MSW is a relevant market for purposes of analyzing the effects of the acquisitions.

B. The Relevant Geographic Markets

Small Container Commercial Waste Hauling Service

27. Small container commercial waste hauling services are generally provided in relatively localized areas because, in order to operate efficiently and profitably, a hauler must have sufficient density in its commercial waste hauling operations; *i.e.*, a large number of commercial accounts that are reasonably close together. In addition, an FEL or REL vehicle cannot be efficiently driven very long distances without collecting significant amounts of MSW, which makes it economically impractical for a small container commercial waste hauling firm to serve major metropolitan areas from a distant base.

28. Because the costs of transporting MSW to a disposal site are a substantial component of the overall costs of collection services, the proximity of disposal sites to a hauler's MSW routes is a major determinant of the hauler's competitiveness and profitability. Generally, for MSW hauled over 50 miles, a commercial hauling firm will find that it is more economical to use a transfer station to combine a number of truck loads of MSW to be shipped to a disposal site on a single large transfer trailer truck, instead of sending a number of individual FEL or REL trucks to a distant disposal site. In any event, transportation and processing costs sharply limit the geographic area in which a small container commercial waste hauling firm can economically operate.

29. Local small container commercial waste hauling firms in Westchester operate exclusively or primarily in Westchester and can profitably increase charges to local customers

without losing significant sales to more distant competitors. Westchester is a relevant market for the purpose of analyzing the effects of the acquisition under Section 7 of the Clayton Act.

Disposal of MSW Service

30. Hauling companies that dispose of their waste at landfill sites or incinerators must pay gate rates or tipping fees. These fees and other disposal costs account for a large percentage of revenues for waste collection or hauling services. Therefore, access to a suitable all-purpose MSW landfill or incinerator at competitive prices is essential. Haulers often are limited to landfills or incinerators located in close proximity to the areas from which they collect waste because of the high transportation costs. Moreover, natural barriers and congested highways contribute to substantial travel time in getting to more distant landfills or incinerators..

31. Firms that compete in disposal of MSW in the Westchester area profitably can increase their charges for disposal of MSW without losing significant sales to more distant disposal sites.

32. Disposal of MSW from Westchester is a relevant geographic market for assessing the competitive effects of the acquisition under Section 7 of the Clayton Act.

C. Reduction in Competition As a Consequence of the Merger

33. Allied, through its Valley Carting Corp. subsidiary, the Suburban Companies and the Galante Companies directly compete in small container commercial waste hauling service in substantial portions of Westchester. In the Westchester market, Allied, the Suburban Companies and the Galante Companies each accounts for a substantial share of total revenues from small container commercial waste hauling services.

34. As defined and explained in Appendix A hereto, the post-acquisition HHI in the small container commercial waste hauling market in the Westchester market would be approximately 2700, an increase of over 1300 points.

35. Allied's acquisitions would also reduce from 4 to 2 the number in the Westchester market of significant competitors in small container commercial waste hauling service. After the acquisitions, Allied would control over half or more of total market revenues, which are approximately \$32 million annually.

36. Apart from Allied and a subsidiary of Waste Management, A-1, the only other competitors engaged in small container waste hauling services in Westchester after Allied's acquisitions are relatively marginal and weak firms.

37. The acquisitions also would reduce competition between the Suburban Companies and the Galante Companies in the MSW disposal services offered by their respective transfer stations.

D. Entry Into Commercial Waste Hauling

38. Significant new entry into small container commercial waste hauling service in Westchester is difficult and time-consuming. A new entrant into small container commercial waste hauling service cannot provide a significant competitive constraint on the prices charged by market incumbents until it achieves minimum efficient scale and operating efficiencies comparable to existing firms. In order to obtain comparable operating efficiency, a new firm must achieve route density comparable to existing firms. However, the incumbents' current use of price discrimination and long-term contracts, as well as their control of transfer stations, prevents new

entrants from winning a large enough base of customers to achieve efficient routes within two years or at pre-entry prices.

E. Harm to Competition

39. In the Westchester market, Allied's acquisition of the Suburban Companies and acquisition of the assets of the Galante Companies would remove significant competitors in the small container commercial waste hauling service and in the provision of commercial waste disposal services at transfer stations in already concentrated and difficult-to-enter markets. The resulting substantial increase in concentration, loss of actual and potential competition, and absence of a reasonable prospect of significant new entry or expansion by market incumbents will result in consumers paying substantially higher prices for collection of small container commercial waste following Allied's acquisitions.

V.

VIOLATIONS ALLEGED

40. On or about July 30, 1999, Defendants Allied and the Suburban Companies signed a Letter of Intent pursuant to which, and to subsequent negotiations and agreements, Allied will acquire the voting securities of the Suburban Companies for approximately \$80 million.

41. On or about August 19, 1999, Defendants Allied and the Galante Companies signed a Letter of Intent pursuant to which, and to subsequent negotiations and agreements, Allied will acquire certain assets of the Galante Companies, including the Galante Companies' assets and business in Westchester, for approximately \$40 million.

42. The likely effect of both of Allied's acquisitions may be to substantially lessen competition and to tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act.

43. The defendants' agreements, arrangements and combinations are in restraint of trade, and are likely to establish a monopoly, in violation of Section 340 of the Donnelly Act.

44. The transactions likely will have the following effects, among others:

- (A) Competition will be lessened generally in small container commercial waste hauling service and commercial waste disposal services in transfer stations in Westchester County.
- (B) Competition between Allied and the Suburban Companies and the Galante Companies in waste hauling service and transfer station services in the Westchester market will be eliminated;
- (C) Prices charged by small container commercial waste hauling firms for such service and for transfer station service will be increased.

VI.

REQUESTED RELIEF

Plaintiff requests:

1. That the Court adjudge and declare that Allied's proposed acquisition of the Suburban Companies and acquisition of the assets of the Galante Companies is in violation of Section 7 of the Clayton Act and Section 340 of the Donnelly Act.

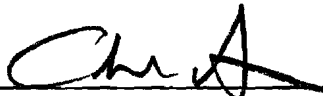
2. That defendants be permanently enjoined from carrying out said acquisitions or from entering into or carrying out any agreement, understanding or plan, the effect of which would be to combine the businesses or assets of defendants;

3. That plaintiff receive such other and further relief as the case requires and the Court deems proper; and

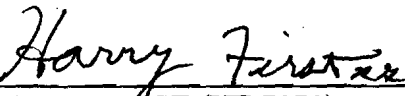
4. That plaintiff recover the costs of this action and reasonable attorneys' fees.

Dated: January 19, 2000
New York, New York

Respectfully submitted,



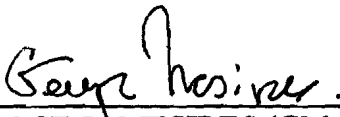
ELIOT SPITZER (ES 9830)
Attorney General
State of New York



HARRY FIRST (HF 7870)
Chief, Antitrust Bureau



RICHARD E. GRIMM (RG 6891)
Assistant Attorney General



GEORGE R. MESIRES (GM 0058)
Assistant Attorney General

Office of the Attorney General
State of New York
120 Broadway
New York, New York 10271-0332
(212) 416-8280
(212) 416-6015 (facsimile)

APPENDIX A

HERFINDAHL-HIRSCHMAN INDEX CALCULATIONS

"HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty, and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise antitrust concerns under the Horizontal Merger Guidelines (1992) issued by the U.S. Department of Justice and the Federal Trade Commission. See *Merger Guidelines* §1.51.