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Jos LaRose for / pour
REGISTRAR / REGISTRAIRE

PUBLIC VERSION

OTTAWA, ONT

002

COMPETITION TRIBUNAL

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IN THE MATTER of the *Competition Act*, R.S.C. 1985, c. C-34, and the *Competition Tribunal Rules*, SOR/94-290;

AND IN THE MATTER OF the acquisition by an indirect subsidiary of Clean Harbors, Inc. of all shares of Eveready Inc.;

AND IN THE MATTER of filing and registration of a consent agreement pursuant to section 105 of the *Competition Act*.

B E T W E E N :

THE COMMISSIONER OF COMPETITION

Applicant

– and –

CLEAN HARBORS, INC.

Respondent

CONSENT AGREEMENT

WHEREAS Clean Harbors, Inc. has agreed through a direct or indirect subsidiary to acquire all of the shares of Eveready Inc. pursuant to an Acquisition Agreement, dated April 29, 2009, among Clean Harbors, Inc., its wholly-owned subsidiary Clean Harbors Canada, Inc. (collectively, “Clean Harbors”), and Eveready Inc. (“Eveready”) (the “Transaction”);

AND WHEREAS the Commissioner of Competition (the “Commissioner”) has concluded that the Transaction is likely to lessen or prevent competition in the disposal of Class I solid hazardous waste in Class I landfills in Alberta, and Clean Harbors does not admit but will not contest the Commissioner's conclusion for the purposes of the enforcement of any provision of this Consent Agreement (“Agreement”), or in any subsequent proceeding, including in any proceedings under section 106 of the *Competition Act*, in relation to this Agreement;

AND WHEREAS the Commissioner is satisfied that the implementation of this Agreement will be sufficient to ensure that a likely substantial lessening or prevention of competition will not result from the completion of the Transaction;

AND WHEREAS Clean Harbors consensually attorns to the jurisdiction of the Competition Tribunal (the “Tribunal”) for the purposes of this Agreement and any proceeding initiated by the Commissioner relating to this Agreement;

AND WHEREAS the Commissioner and Clean Harbors agree to the immediate registration of this Agreement with the Tribunal by the Commissioner;

NOW THEREFORE Clean Harbors and the Commissioner agree as follows:

I. DEFINITIONS

[1] For the purposes of this Agreement, unless something in the subject matter or context is inconsistent therewith, the following capitalized terms have the following meanings:

- (a) “**Act**” means the *Competition Act*, R.S.C., 1985, c. C-34, as amended;
- (b) “**Affiliate**” means an affiliated corporation, partnership or sole proprietorship within the meaning of subsection 2(2) of the Act;
- (c) “**Agreement**” means this Consent Agreement entered into between Clean Harbors and the Commissioner pursuant to section 105 of the Act, including the schedules thereto;
- (d) “**Assets**” means (i) all of the outstanding equity interests in Pembina Area Landfill Ltd. and Pembina Area Landfill Limited Partnership, together with all of Clean Harbors’ right, title and interests in the assets and business now held and conducted by such Persons; or (ii) all of the assets and business now held and conducted by Pembina Area Landfill Ltd. and Pembina Area Landfill Limited Partnership and any such other assets used in the operation of the waste disposal facility owned by Eveready as of the date of this Agreement and located in or near Cynthia, Alberta. In either case, the Assets shall include, without limitation:
 - (i) all real and personal property;
 - (ii) all inventories;
 - (iii) all Intellectual Property;
 - (iv) all rights of Clean Harbors under any contract;
 - (v) all pending and issued governmental or third party approvals, registrations, consents, licences, permits, waivers and other authorizations held by Clean Harbors, including foreign equivalents with respect to the Assets;

- (vi) all rights under any warranty and guarantee;
 - (vii) all items of prepaid expense; and
 - (viii) all books, records, and files.
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- (e) “**Clean Harbors**” means Clean Harbors, Inc., and its Affiliates, successors and assigns;
 - (f) “**Closing Date**” means the date on which the Transaction is completed;
 - (g) “**Closing Period**” means the period set out in Confidential Schedule “A” to this Agreement;
 - (h) “**Commissioner**” means the Commissioner of Competition appointed pursuant to section 7 of the Act or any person designated by the Commissioner to act on her behalf;
 - (i) “**Confidential Information**” means competitively sensitive or proprietary information not independently known to a Person from sources other than the entity to which the information pertains, including, without limiting the generality of the foregoing, any and all information pertaining to the operation of the Assets including, but not limited to, manufacturing, operations and financial information, operating costs and revenues, customer lists, price lists, marketing methods, patents, technologies, processes or other trade secrets;
 - (j) “**Divest**” means to implement the Divestiture;
 - (k) “**Divestiture**” means, the sale, transfer, assignment, or other disposal of the Assets, such that Clean Harbors will have no direct or indirect interest in the Assets except as permitted herein or upon the consent of the Commissioner;
 - (l) “**Divestiture Agreement**” means a final and binding agreement, subject to customary closing conditions, between Clean Harbors and a Purchaser or, if necessary, between the Divestiture Trustee and a Purchaser, in each case to effect

the Divestiture;

- (m) **“Divestiture Trustee”** means the Person appointed pursuant to paragraph 62 of this Agreement and any employees, agents or other Persons acting for or on behalf of the Divestiture Trustee;
- (n) **“Divestiture Trustee Sale”** means the Divestiture to be conducted by the Divestiture Trustee pursuant to Part VII of this Agreement;
- (o) **“Divestiture Trustee Sale Period”** means the period set out in Confidential Schedule “B”, within which the Divestiture Trustee is empowered to sell the Assets, or such longer period as directed by the Commissioner;
- (p) **“Eveready”** means Eveready, Inc. and its Affiliates;
- (q) **“Hold Separate Manager”** means the incumbent manager of the Assets and any employees, agents or other Persons acting for or on behalf of the Hold Separate Manager;
- (r) **“Hold Separate Period”** means the Initial Sale Period and, as applicable, the Divestiture Trustee Sale Period;
- (s) **“Initial Sale Period”** means the period set out in Confidential Schedule “A” to this Agreement;
- (t) **“Intellectual Property”** means all of the following related to the Assets:
 - (i) patents;
 - (ii) copyrights;
 - (iii) software;
 - (iv) trademarks;

- (v) trade secrets, know-how, techniques, data, inventions, practices, methods and other confidential or proprietary technical, business, research, development and other information, and all rights in any jurisdiction to limit the use or disclosure thereof;
- (vi) rights to obtain and file for patents and registrations thereof; and
- (vii) rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation or breach of any of the foregoing;

- (u) “**Monitor**” means the Person appointed pursuant to Part IV of this Agreement, and any employees, agents or other Persons acting for or on behalf of the Monitor;

- (v) “**Permitted Person**” means any Person employed by or on behalf of Clean Harbors to provide accounting, legal, business valuation or investment banking services (which shall include the process of selling the Assets), including any external provider of such services;

- (w) “**Person**” means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity, whether acting alone or in concert with another Person;

- (x) “**Purchaser**” means the Person that acquires the Assets pursuant to this Agreement, or the Persons that acquire the Assets where the Assets are sold to more than a single Person;

- (y) “**Technical Assistance**” means expert advice, assistance, and training relating to or in connection with the operation of any of the Assets;

- (z) “**Transaction**” means the Transaction as described in the recitals; and

- (aa) “**Tribunal**” means the Competition Tribunal established by the *Competition Tribunal Act*, R.S.C. 1985, c.19 (2nd Supp.), as amended.

All other terms defined in this Agreement have the meanings established elsewhere in this Agreement.

II. APPLICATION

[2] The provisions of this Agreement shall apply to:

- (a) Clean Harbors, and Clean Harbors shall cause each of its Affiliates to carry out their respective obligations under this Agreement;
- (b) each officer, director, employee, agent or other Person acting for or on behalf of Clean Harbors with respect to any of the matters referred to in this Agreement, and any successors and assigns of Clean Harbors;
- (c) all other Persons acting in concert or participating with one or more of those Persons listed in (a) and (b) above, with respect to the matters referred to in this Agreement, who shall have received actual notice of this Agreement;
- (d) the Commissioner;
- (e) the Hold Separate Manager;
- (f) the Monitor;
- (g) the Divestiture Trustee;
- (h) the Purchaser and the Purchaser's heirs, successors, legal representatives and assigns; and
- (i) the external auditors of Clean Harbors.

III. HOLD SEPARATE

[3] Effective immediately upon the Closing Date, the Hold Separate Manager shall manage and operate the Assets independently of Clean Harbors, as specified herein, during the Hold Separate Period.

[4] Clean Harbors shall be responsible for all fees and expenses properly charged or incurred by the Hold Separate Manager in the course of carrying out his duties and responsibilities under this Agreement, provided that the Hold Separate Manager shall not be authorized to make capital expenditures that are outside of the ordinary course of business except for those capital expenditures which, in the opinion of the Hold Separate Manager, acting reasonably, are necessary to maintain the viability, competitiveness and marketability of the Assets.

[5] Clean Harbors shall:

- (a) take all reasonable steps to ensure that, from and after the Closing Date, the Assets are independent of Clean Harbors, including transferring to the Hold Separate Manager all rights, powers and authority necessary for him to perform his duties and responsibilities under this Agreement; and
- (b) not exercise any direction or control, direct or indirect, over the management or operations of the Assets, except to the extent that Clean Harbors must exercise such direction and control to assure compliance with this Agreement and except as otherwise provided in this Agreement.

[6] The Hold Separate Manager shall be responsible for the management of the Assets and shall report directly to the Monitor. The Hold Separate Manager shall not have any access to any Confidential Information of Clean Harbors other than that relating to the Assets. During the term of this Agreement, the Hold Separate Manager shall not be involved in any way in the operations of the other businesses of Clean Harbors.

[7] The Hold Separate Manager shall have no financial interests affected by Clean Harbors' revenues, profits or profit margins, except that the Hold Separate Manager's compensation for managing the Assets may include economic incentives for him to operate the Assets at no less than current rates of operation, to achieve the objectives of this Agreement and to improve the financial performance of the Assets.

[8] Notwithstanding any other provision of this Agreement, Clean Harbors shall permit the Hold Separate Manager to use the external auditors of Clean Harbors to maintain, in accordance

with Canadian generally accepted accounting principles, separate and adequate financial ledger books and records of material financial information with respect to the Assets, provided that such external auditors shall sign a confidentiality agreement in a form determined by the Commissioner.

[9] Clean Harbors shall permit the Hold Separate Manager to use the managerial, administrative and operational (including maintenance) resources of Clean Harbors as reasonably necessary for the following purposes:

- (a) human resources and payroll;
- (b) accounts payable systems;
- (c) occupational health and safety;
- (d) environmental permitting and liability issues;
- (e) insurance, including notification of claims for which coverage is sought; and
- (f) financial services, including banking,

except that, in using such resources, the Hold Separate Manager shall not disclose any Confidential Information, other than as permitted herein.

[10] In addition to those Persons employed in connection with the Assets on the Closing Date, the Hold Separate Manager may employ such Persons as are reasonably necessary to assist him in managing and operating the Assets, including, without limitation, those providing administrative services, such as finance, information technology, employee relations, regulatory and legal, public relations, and customer relations services; provided that the Hold Separate Manager may not employ additional Persons if such services are reasonably capable of being provided by Persons employed solely in connection with the Assets, and not employed in connection with the operation of other businesses of Clean Harbors following the Closing Date, or through the use of the managerial, administrative and operational (including maintenance) resources of Clean Harbors in accordance with paragraph 9 above and the other terms and conditions of this Agreement. All costs associated therewith shall be borne by Clean Harbors.

[11] The Hold Separate Manager shall have the responsibility and be given by Clean Harbors any resources reasonably necessary to implement existing sales, marketing, research and development, and product development plans relating to the Assets and to modify existing plans, with the approval of the Monitor, consistent with previously approved goals, capital expenditure budgets and objectives. The Hold Separate Manager shall not have access to any other of Clean Harbors' confidential marketing materials unrelated to the Assets.

[12] The Hold Separate Manager shall deliver to the Monitor a copy of any communications between the Hold Separate Manager and Clean Harbors.

[13] If the Hold Separate Manager ceases to act or fails to act diligently or otherwise in accordance with this Agreement or any agreement between the Commissioner and the Hold Separate Manager, the Commissioner, or the Monitor with the approval of the Commissioner, shall be permitted to remove the Hold Separate Manager. In the event the Hold Separate Manager ceases to act in his role, the Commissioner shall select a substitute Hold Separate Manager after consultation with Clean Harbors and the Monitor, and transfer to the substitute Hold Separate Manager all rights, powers and authority necessary to permit such substitute Hold Separate Manager to perform the duties and responsibilities of the Hold Separate Manager pursuant to this Agreement.

[14] Pending the completion of the Divestiture, the Hold Separate Manager shall take all necessary steps to preserve the independence and competitive viability of the Assets, including, but not limited to, giving all necessary instructions to cause Persons employed in connection with the Assets to:

- (a) operate the Assets independently of Clean Harbors;
- (b) operate the Assets in compliance with all applicable laws;
- (c) maintain all approvals, registrations, consents, licences, permits, waivers, and other authorizations necessary for the operation of the Assets;
- (d) use commercially reasonable efforts to maintain and enhance the competitiveness and the customer base of the Assets and, in particular, continue to solicit business;

- (e) maintain and hold the Assets in good condition and repair, normal wear and tear excepted, and to standards at least equal to those that existed at the date of this Agreement;
- (f) establish all fees, deductions, discounts, credits or allowances with respect to the goods and services provided by the Assets;
- (g) take all commercially reasonable steps to honour all customer contracts and to maintain quality and service standards for customers of the Assets at the level that existed at the date of this Agreement;
- (h) ensure that the Assets are not engaged in any type of business other than the type of business conducted as of the date of this Agreement, except with the prior approval of the Monitor and the Commissioner;
- (i) not communicate any Confidential Information related to the Assets to anyone other than the Monitor, the Commissioner, or as otherwise permitted herein;
- (j) not knowingly take or allow to be taken any action that materially and adversely affects the competitiveness, operations or financial status of the Assets;
- (k) not materially curtail marketing, sales, promotional or other activities of the Assets in connection with the solicitation of existing or prospective customers except with the prior approval of the Monitor;
- (l) not alter to any material extent, or cause to be altered, the management of the Assets as it existed immediately prior to the date of this Agreement, except: (i) as may be necessary to comply with the terms of this Agreement; (ii) to replace employees that may resign; or (iii) with the prior approval of the Monitor;
- (m) not terminate or alter any current employment, salary or benefit agreements for Persons employed in connection with the Assets, without the prior approval of the Monitor;
- (n) maintain, in accordance with Canadian generally accepted accounting principles,

separate and adequate financial ledger books and records of material financial information with respect to the Assets; and

- (o) maintain inventory levels and payment terms materially consistent with the practices of Clean Harbors that existed, with respect to the Assets, prior to the date of this Agreement.

[15] In addition to the foregoing, Clean Harbors shall provide sufficient financial resources, as appropriate in the judgment of the Hold Separate Manager, with the concurrence of the Monitor:

- (a) to operate the Assets at least at the current rate of operation and to carry on, at least at their scheduled pace, all capital projects, research and development plans, business plans and promotional activities found in the Assets' most recent budgets, provided that failure to achieve production or sales goals shall not be a breach of this Agreement;
- (b) to continue, at least at their scheduled pace, any additional expenditures for the Assets authorized prior to the date of this Agreement;
- (c) to perform all maintenance to, and replacements of, the Assets; and
- (d) to maintain the viability, competitiveness and marketability of the Assets.

Such financial resources to be provided shall include, but shall not be limited to: (i) general funds; (ii) capital funds; (iii) working capital; and (iv) reimbursement for any operating losses, capital losses, or other losses.

[16] Clean Harbors shall not attempt to influence, direct or control the Hold Separate Manager.

[17] Clean Harbors shall indemnify the Hold Separate Manager and hold him harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the duties of the Hold Separate Manager, including all reasonable fees of counsel and other expenses incurred in connection with the preparation or defence of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims,

or expenses result from malfeasance, gross negligence or bad faith by the Hold Separate Manager.

[18] The Hold Separate Manager shall not (and shall cause any Persons employed in connection with the Assets to not) communicate any Confidential Information acquired in the performance of their duties to any Person, except to the extent required or permitted by this Agreement. The Hold Separate Manager and any officers of Clean Harbors employed in connection with the Assets will each execute a confidentiality agreement in a form determined by the Commissioner.

[19] The Hold Separate Manager may provide Confidential Information to Permitted Persons only for the purposes of preparing standard financial and regulatory reports, tax returns and benefits administration, and to comply with applicable laws and requirements of governmental authorities in Canada or the United States, provided that:

- (a) prior to disclosure of any Confidential Information, each Permitted Person shall execute a confidentiality agreement in a form determined by the Commissioner; and
- (b) the Permitted Persons shall use the Confidential Information only for the purposes permitted by this Agreement and shall not disclose such information to any other Person, whether or not an employee of Clean Harbors.

[20] Clean Harbors shall not directly or indirectly receive or have access to or use or continue to use any Confidential Information relating to the Assets, except as permitted by this Agreement, and except to the extent that access to or use of such Confidential Information is necessary in the course of consummating the Transaction, defending investigations, defending or prosecuting litigation, obtaining legal advice, negotiating and meeting obligations under agreements to effect the Divestiture or grant licences pursuant to this Agreement, and to the extent otherwise required by law.

[21] Notwithstanding the above, Clean Harbors may be provided with summaries in aggregate form, such as revenue summaries, cash receipt summaries and volume sales summaries,

including all such items required for a public company to complete adequate financial reporting, with the prior consent and approval of the Commissioner.

[22] The Assets shall be staffed with sufficient employees, on a level consistent with past custom and practice, to maintain their viability and competitiveness. Persons employed in connection with the Assets shall include: (a) all personnel performing responsibilities primarily in connection with any of the Assets as of the Closing Date; and (b) any Persons subsequently hired in connection with the Assets. The Hold Separate Manager, with the approval of the Monitor, may replace departing or departed employees with Persons who have similar experience and expertise or determine not to replace such departing or departed employees.

[23] Clean Harbors shall not, during the Hold Separate Period, offer Persons employed in connection with the Assets positions with Clean Harbors until the Purchaser has had a reasonable opportunity to offer employment. The Purchaser shall have the option of offering employment to or retaining any Persons employed in connection with the Assets. Clean Harbors shall not interfere with the employment of such employees by the Purchaser, shall not offer any incentive to such employees to decline employment with the Purchaser or to accept other employment with Clean Harbors, and shall remove any impediments that may deter such employees from accepting employment with the Purchaser. Without limiting the generality of the foregoing, Clean Harbors shall waive any non-compete or confidentiality provisions of employment or other contracts that would affect the ability of such employees to be employed by the Purchaser; and shall pay or transfer to the employees all current and accrued bonuses, pensions and other current and accrued benefits to which such employees would otherwise have been entitled had they remained in the employment of Clean Harbors or Eveready.

[24] For a period of one (1) year following completion of the Divestiture, Clean Harbors shall not employ or make offers of employment to Persons employed in connection with the Assets who have accepted offers of employment with the Purchaser unless the individual employee has been terminated by the Purchaser.

[25] Clean Harbors shall ensure that Persons employed in connection with the Assets receive, during the Hold Separate Period, their salaries, all current and accrued bonuses, pensions and

other current and accrued benefits to which those employees would otherwise have been entitled and any such other payments made in accordance with Confidential Schedule “C”.

IV. MONITOR

[26] Immediately upon registration of this Agreement, the Commissioner shall appoint a Monitor responsible for monitoring the compliance of Clean Harbors and the Hold Separate Manager with this Agreement. Clean Harbors shall be responsible for all reasonable fees and expenses properly charged or incurred by the Monitor in the course of carrying out his duties under this Agreement, and those of any substitute Monitor appointed pursuant to this Agreement. The Monitor shall account for all fees and expenses incurred and such account shall be subject to the approval of the Commissioner only. The Monitor’s obligations and powers shall not expire under this Agreement until the Divestiture is completed.

[27] Within five (5) days of the appointment of the Monitor, Clean Harbors and the Monitor shall execute an agreement, subject to the approval of the Commissioner, reflecting the terms and conditions of this Agreement and that confers on the Monitor all of the rights and powers necessary to permit the Monitor to monitor Clean Harbors’ compliance with this Agreement.

[28] If the Monitor ceases to act or fails to act diligently or otherwise in accordance with this Agreement, the Commissioner shall appoint a substitute Monitor in accordance with the terms of this paragraph, subject to the consent of Clean Harbors, which shall not be unreasonably withheld. If Clean Harbors has not opposed the selection of the substitute Monitor in writing, including the reasons for the opposition, within ten (10) days after notice by the Commissioner to Clean Harbors of the identity of the substitute Monitor, Clean Harbors shall be deemed to have consented to the selection of the substitute Monitor. Clean Harbors and the substitute Monitor shall execute an agreement, subject to the approval of the Commissioner, reflecting the terms and conditions of this Agreement. In the event that Clean Harbors objects to the Commissioner’s appointment of a substitute Monitor, Clean Harbors may apply to the Tribunal for appropriate relief on five (5) days notice to the Commissioner. The notice must set out the grounds for the objection. The provisions of this Agreement shall apply, *mutatis mutandis*, to any substitute Monitor appointed pursuant to this paragraph.

[29] The Monitor shall have, subject to any valid claim to a legally recognized privilege, full and complete access to all personnel, books, records, documents and facilities related to the Assets or to any other relevant information, including Confidential Information, as the Monitor may reasonably request. Clean Harbors and the Hold Separate Manager shall cooperate with any reasonable request of the Monitor. Neither Clean Harbors nor the Hold Separate Manager shall take any action to interfere with or impede the Monitor's ability to oversee Clean Harbors' performance of this Agreement. Neither Clean Harbors nor the Hold Separate Manager shall interfere with or impede the Monitor's compliance with this Agreement.

[30] The Monitor shall serve without bond or security, at the expense of Clean Harbors, on such reasonable and customary terms as are agreed with the approval of the Commissioner. If the Monitor and Clean Harbors fail to agree on terms within seven (7) days from the date of this Agreement, the Commissioner shall establish the terms of the Monitor's service. The Monitor shall have the authority to engage, at the cost and expense of Clean Harbors, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities under this Agreement. The Monitor shall account for all expenses incurred, including fees for services, and such account shall be subject to the approval of the Commissioner only.

[31] Clean Harbors shall indemnify the Monitor and hold him harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of his duties under this Agreement. This includes all reasonable fees of counsel and other expenses incurred in connection with the preparation or defence of any claim, whether or not such claim results in any liability, except to the extent that such liabilities, losses, damages, claims or expenses result from malfeasance, gross negligence or bad faith by the Monitor.

[32] The Monitor shall report in writing to the Commissioner concerning compliance with this Agreement by Clean Harbors and the Hold Separate Manager: (a) no later than thirty (30) days after the Closing Date and every thirty (30) days thereafter until the Divestiture contemplated by this Agreement is completed; (b) no later than thirty (30) days from the date all obligations in this Agreement are satisfied; and (c) within five (5) days following a request by the Commissioner or her staff for supplemental information.

[33] Neither Clean Harbors nor the Hold Separate Manager shall exert or attempt to exert any influence, direction or control over the Monitor.

[34] This Agreement shall not be construed as providing the Monitor with ownership, management, possession, charge or control of the Assets.

[35] The Monitor shall execute a confidentiality agreement in a form determined by the Commissioner, pursuant to which the Monitor will undertake not to disclose any Confidential Information acquired in the performance of the Monitor's duties to any Person, except as permitted by this Agreement.

[36] If the Monitor believes that Clean Harbors or the Hold Separate Manager is in breach of any of the terms of this Agreement, the Monitor shall immediately notify the Commissioner, Clean Harbors and the Hold Separate Manager of the breach, setting out particulars of such breach.

V. DIVESTITURE PROCEDURE

[37] The Divestiture shall be completed on the following general terms:

- (a) by sale, assignment, transfer, sale of shares or other disposition necessary to ensure that, by the completion of the Divestiture, Clean Harbors has no remaining title, right or interest, direct or indirect, in the Assets;
- (b) by way of disposition as a going concern;
- (c) to a Purchaser approved by the Commissioner;
- (d) to a Purchaser at arm's length from Clean Harbors and who can satisfy the Commissioner that they:
 - (i) are committed to carrying on the business of the Assets as a Class I waste disposal facility in the market in which the Assets are located;
 - (ii) have the managerial, operational and financial capability to compete effectively in the market in which the Assets are located; and

- (iii) will enter into a Divestiture Agreement prior to the expiry of the Initial Sale Period and complete the Divestiture either prior to the expiry of the Initial Sale Period or within the Closing Period;
- (e) by way of a commercially reasonable public tender, bidding or other procedure instituted in a manner to allow a fair opportunity for one or more *bona fide* prospective Purchasers to obtain notice of the prospective Divestiture and to make an offer to acquire the Assets pursuant to this Agreement; and
- (f) on usual commercial terms for transactions of the size and nature of those contemplated in this Agreement, including reasonable and ordinary commercial representations and warranties.

The determination of whether the above conditions are satisfied is at the sole discretion of the Commissioner. In exercising her discretion to approve a Divestiture to a Purchaser, the Commissioner may take into account, *inter alia*, the likely impact of the Divestiture on competition. The decision of the Commissioner as to whether to approve the Divestiture shall be in writing.

[38] Any Person making a *bona fide* inquiry of Clean Harbors or the Divestiture Trustee shall be notified that the sale is being made pursuant to this Agreement and shall be provided with a copy of this Agreement, with the exception of the provisions hereof which are confidential.

[39] Subject to paragraph 40, any prospective Purchaser with a *bona fide* interest in purchasing any of the Assets shall:

- (a) be furnished with all pertinent information regarding the Assets within fourteen (14) days of a request therefor;
- (b) be permitted to make reasonable inspection of the Assets and of all financial, operational or other non-privileged documents and information, including Confidential Information, which may be relevant to the Divestiture, except for any documents which, at the time of the request for inspection of such documents the Commissioner has agreed need not be disclosed; and

- (c) be given such full and complete access as is reasonable in the circumstances to the management personnel relating to the Assets;

If the Monitor is concerned as to the *bona fides* of any Person making an inquiry, the Monitor shall advise the Commissioner of such concern and the final determination of *bona fides* shall be made by the Commissioner alone.

[40] Access by a prospective Purchaser to the information identified in paragraph 39 shall be conditional on the execution of a standard confidentiality agreement in a form determined by the Commissioner containing, among other things, non-solicitation terms relating to personnel and suppliers.

[41] Clean Harbors shall allow any Purchaser an opportunity to enter into an employment contract with any Persons employed in connection with the Assets.

[42] No later than thirty (30) days before the date upon which the Divestiture is completed, Clean Harbors shall: (a) provide to the Purchaser a list of all Persons employed in connection with the Assets; (b) allow the Purchaser an opportunity to interview such employees; and (c) allow the Purchaser to inspect the personnel files and other documentation relating to such employees, to the extent permissible under applicable laws.

[43] Clean Harbors shall, to the extent permissible under applicable laws: (a) not offer any incentive to any Persons employed in connection with the Assets to decline employment with any Purchaser; (b) remove any contractual impediments with Clean Harbors or Eveready that may deter any such employee from accepting employment with any Purchaser, including, but not limited to any non-compete or confidentiality provisions of employment or other contracts with Clean Harbors that would affect the ability of the employee to be employed by the Purchaser; (c) not interfere with the employment by any Purchaser of any such employee; and (d) continue employee benefits offered by Clean Harbors or as continued from Eveready until the Divestiture has been completed, including regularly scheduled raises and bonuses, and regularly scheduled vesting of all pension benefits.

[44] At the option of the Purchaser or, as applicable, the Divestiture Trustee, Clean Harbors shall, no later than ten (10) days from the date upon which the Divestiture is completed, vest all current and accrued pension benefits in employees who accept an offer of employment from the Purchaser as of the date of transition of employment.

[45] For a period of one (1) year from the date this Agreement is registered, Clean Harbors shall not, directly or indirectly, hire or enter into any arrangement for the services of any Person employed by any Purchaser, unless such Person's employment has been terminated by the Purchaser without the consent of the Person.

[46] Upon request of the Purchaser, pursuant to an agreement that receives the prior approval of the Commissioner, Clean Harbors shall provide Technical Assistance to the Purchaser, for a period not to exceed two (2) months from the date upon which the Divestiture is completed, sufficient to enable the Purchaser to operate the Assets in substantially the same manner as that employed by Clean Harbors prior to the Divestiture; provided, however, that Clean Harbors shall not: (a) require the Purchaser to pay compensation for Technical Assistance that exceeds the direct cost of providing such goods and services; or (b) terminate its obligation to provide Technical Assistance because of a material breach by the Purchaser of any agreement to provide such assistance, in the absence of a final order of a court of competent jurisdiction.

[47] For the purpose of determining or securing compliance with this Agreement and subject to any valid claim to a legally recognized privilege, Clean Harbors shall permit the Monitor and any duly authorized representative of the Commissioner to:

- (a) access Clean Harbors' place of business in Canada and the Assets during regular office hours, after a minimum of two (2) days notice, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of Clean Harbors or the Hold Separate Manager relating to compliance with this Agreement; and
- (b) interview directors, officers or employees of Clean Harbors or other persons employed in connection with the Assets, after a minimum of two (2) days notice, on matters relating to compliance with this Agreement. Such interviews are to be

conducted without restraint or interference from Clean Harbors or the Hold Separate Manager.

[48] Except as provided by this Agreement, Clean Harbors shall not: (i) provide, disclose or otherwise make available any Confidential Information to any Person; or (ii) use any Confidential Information.

[49] Clean Harbors shall disclose Confidential Information: (i) only to those Persons who require such information for the purposes permitted under this Agreement; (ii) only to the extent such part of the Confidential Information is so required; and (iii) only to those Persons who execute a confidentiality agreement in the form approved by the Commissioner.

[50] Clean Harbors shall enforce the terms of this Part as to any Person and take such action as is necessary to cause each such Person to comply with the terms of this Part, including training and all other actions that Clean Harbors would take to protect its own trade secrets and proprietary information.

VI. DIVESTITURE OF THE ASSETS (INITIAL SALE PERIOD)

[51] Clean Harbors unconditionally agrees to Divest the Assets. For greater certainty, any third party consents, approvals, waivers or other conditions required to facilitate a Divestiture are the responsibility of Clean Harbors and Clean Harbors shall proceed to effect same forthwith, and any failure to obtain or satisfy any such consents, approvals, waivers or conditions shall be no basis on which to resile from Clean Harbors' obligation to Divest.

[52] During the Initial Sale Period, Clean Harbors shall Divest the Assets absolutely and in good faith. The Divestiture shall be to a Person approved by the Commissioner and pursuant to a Divestiture Agreement approved by the Commissioner.

[53] Clean Harbors shall notify the Commissioner as soon as possible of any negotiations with a prospective Purchaser that may lead to a sale and shall forward copies to the Commissioner of any agreement that it signs with a prospective Purchaser, including non-binding expressions of interest.

[54] Clean Harbors shall promptly notify the Commissioner of its intention to enter into a Divestiture Agreement with respect to any proposed Divestiture.

[55] Within ten (10) days of receipt of the notice described in the immediately preceding paragraph, the Commissioner may request additional information concerning the proposed Divestiture. If further additional information is requested by the Commissioner, it will be requested within five (5) days of all of the information received from the prior request.

[56] The Commissioner shall notify Clean Harbors in writing of the approval of, or the objection to, the proposed Divestiture within ten (10) days of the receipt of all additional information requested, pursuant to the immediately preceding paragraph.

[57] If the Commissioner does not require additional information as a result of the notification of Clean Harbors referred to in paragraph 54, the Commissioner shall notify Clean Harbors in writing of the approval of, or the objection to, the proposed Divestiture within fifteen (15) days of receiving the notice referred to in paragraph 54.

[58] Clean Harbors shall not provide financing for any part of the Divestiture except with the consent of the Commissioner.

[59] Clean Harbors shall notify the Commissioner forthwith of any material change in the value of the Assets, or any change in the status of the Assets that could materially affect their market value or saleability.

[60] Clean Harbors shall provide to the Commissioner and to the Monitor every three (3) weeks a report describing the progress of its efforts to effect the Divestiture. The report shall include a description of: (a) contacts, negotiations and offers regarding the Assets and the identity of all parties contacted and prospective Purchasers who have come forward; (b) the information provided to each prospective Purchaser; and (c) other information sufficient to permit the Commissioner to determine whether Clean Harbors has complied with its obligations under paragraph 39 of this Agreement. Clean Harbors shall, within three (3) days, respond to any request by the Commissioner for additional information regarding the Divestiture.

[61] Where:

- (a) A Divestiture Agreement has not been entered into and approved by the Commissioner during the Initial Sale Period; or
- (b) A Divestiture Agreement has been entered into and approved by the Commissioner, but the Divestiture has not been completed during the Initial Sale Period or the Closing Period,

then the Divestiture shall be carried out by the Divestiture Trustee.

VII. DIVESTITURE TRUSTEE SALE

[62] The Commissioner may appoint the Divestiture Trustee twenty (20) days before the expiry of the Initial Sale Period. Immediately following the appointment of the Divestiture Trustee, and prior to the expiry of the Initial Sale Period, Clean Harbors shall provide the Divestiture Trustee with complete access to all information relating to the Assets, including Confidential Information, to facilitate the Divestiture of the Assets by the Divestiture Trustee.

[63] Clean Harbors consents to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

- (a) subject to oversight and approval by the Commissioner only, the Divestiture Trustee shall have the exclusive authority to control the Divestiture process and, subject to this Agreement, to accomplish the Divestiture by whatever procedure the Divestiture Trustee believes in its sole discretion is suitable for completing the Divestiture as soon as practicable within the Divestiture Trustee Sale Period, or such longer period as directed by the Commissioner;
- (b) Clean Harbors will not be included in the Divestiture process, including negotiations, nor will Clean Harbors have contact with prospective Purchasers except with the prior approval of the Commissioner; however, the Divestiture Trustee may consult with Clean Harbors in the presence of a representative of the Commissioner when the Divestiture Trustee considers such consultation to be appropriate and the Commissioner consents;

- (c) notwithstanding any term of this Agreement, the Divestiture Trustee's obligations and powers under this Agreement shall not expire until the Divestiture is completed;
- (d) the Divestiture Trustee shall execute a confidentiality agreement in a form determined by the Commissioner and shall refrain from communicating any Confidential Information to anyone except to the extent reasonably required to effect the Divestiture;
- (e) the Commissioner may extend the Divestiture Trustee Sale Period as the Commissioner considers necessary, in her sole discretion, to effect the Divestiture;
- (f) the Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities related to the Assets and to any other information, including Confidential Information, deemed relevant by the Divestiture Trustee to effect the Divestiture. Clean Harbors shall take no action to interfere with or impede the Divestiture Trustee's efforts to complete the Divestiture;
- (g) Clean Harbors shall fully and promptly respond to all requests from the Divestiture Trustee and shall provide all information the Divestiture Trustee may request. Clean Harbors shall identify an individual who shall have primary responsibility for responding to such requests from the Divestiture Trustee on behalf of Clean Harbors;
- (h) the Divestiture Trustee shall use commercially reasonable efforts to negotiate favourable terms and conditions available for the Divestiture at that time in accordance with the terms in Confidential Schedule "B". The Divestiture Trustee's opinion of what constitutes favourable terms and conditions is subject to the Commissioner's approval only;
- (i) the Divestiture Trustee shall have the sole authority to determine, and Clean Harbors shall provide, all reasonable and ordinary commercial covenants,

representations, warranties and indemnities for the purpose of completing the Divestiture, including representations, warranties and indemnities relating to environmental matters typically included in transactions of the size and nature contemplated in this Agreement;

- (j) the Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Clean Harbors, and on such reasonable and customary terms and conditions as the Commissioner may set;
- (k) Clean Harbors shall pay all reasonable invoices submitted by the Divestiture Trustee on a monthly basis. Any outstanding monies owed to the Divestiture Trustee by Clean Harbors shall be paid out of the proceeds of the Divestiture;
- (l) the Divestiture Trustee shall have the authority to employ, at the expense of Clean Harbors, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities;
- (m) Clean Harbors shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation or defence of any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from malfeasance, gross negligence or bad faith by the Divestiture Trustee;
- (n) if the Divestiture Trustee ceases to act or fails to act diligently or otherwise in accordance with this Agreement or any agreement between the Commissioner and the Divestiture Trustee, the Commissioner may appoint a substitute Divestiture Trustee in the same manner as provided in this Part for the initial Divestiture Trustee;

- (o) the Divestiture Trustee shall have no obligation or authority to operate or maintain the Assets;
- (p) the Divestiture Trustee shall report in writing to the Commissioner every twenty-one (21) days, and upon the Commissioner's request within three (3) days, concerning the Divestiture Trustee's efforts to complete the Divestiture. Such reports shall contain reasonable detail on the steps being taken by the Divestiture Trustee to complete the Divestiture, including but not limited to: the identity of prospective Purchasers; the status of negotiations with such prospective Purchasers; and any additional information requested by the Commissioner;
- (q) the Divestiture Trustee shall notify the Commissioner of any proposed Divestiture. Such notice shall include: the identity of the proposed Purchaser; the details of the proposed Divestiture; information concerning whether, in the view of the Divestiture Trustee, the proposed Purchaser would likely satisfy the terms of this Agreement; and any additional information requested by the Commissioner;
- (r) the Divestiture Trustee shall only divest the Assets to a Purchaser or Purchasers as approved in writing by the Commissioner;
- (s) if the Commissioner notifies the Divestiture Trustee that she has approved a proposed Divestiture, the Divestiture Trustee shall forthwith notify Clean Harbors, in writing, of such proposed Divestiture. Such notice shall include the identity of the proposed Purchaser and the details of the proposed Divestiture;
- (t) Clean Harbors may not object to or challenge the performance of the Divestiture Trustee's duties under this Agreement or any Divestiture Trustee Sale on any grounds other than the Divestiture Trustee's malfeasance, gross negligence or bad faith in executing its obligations hereunder. If Clean Harbors objects to the terms and conditions of a Divestiture that has been proposed by the Divestiture Trustee on the grounds of malfeasance, gross negligence or bad faith by the Divestiture Trustee, Clean Harbors or the Commissioner may apply to the Tribunal for

directions, but in no event shall any such dispute serve to suspend the Divestiture Trustee Sale Period; and

- (u) upon expiration of the Initial Sale Period, any confidential terms in this Agreement shall immediately become public.

VIII. FAILURE OF DIVESTITURE TRUSTEE SALE

[64] If the Assets have not been Divested at the end of the Divestiture Trustee Sale Period (including any extensions), or if the Commissioner is of the opinion that the Divestiture will not likely be completed prior to the end of the Divestiture Trustee Sale Period, the Commissioner may apply to the Tribunal for such order as is necessary to effect the Divestiture.

[65] Clean Harbors agrees that the Tribunal has jurisdiction to grant such relief as is required to give effect to this Agreement and complete the Divestiture.

IX. NOTIFICATION

[66] Clean Harbors shall provide a copy of this Agreement to each of its own and its Affiliates' officers, employees, or agents having managerial responsibility for any obligations under this Agreement, no later than ten (10) days from the date this Agreement is registered.

[67] Notices, reports and other communications required or permitted pursuant to any of the terms of this Agreement or in any proceedings arising herefrom before the Tribunal, shall be in writing and shall be considered to be given if dispatched by personal delivery, registered mail, facsimile transmission or by other electronic (internet or email) transmission to the parties:

- (a) **If to the Commissioner:**

Commissioner of Competition
Competition Bureau
Industry Canada
Place du Portage, 21st Floor
50 Victoria Street, Phase I
Gatineau, Quebec K1A 0C9

Attention: Interim Commissioner of Competition

Fax: (819) 953-5013

With a copy to:

Competition Law Division
Department of Justice
Place du Portage, 22nd Floor
50 Victoria Street, Phase I
Gatineau, Quebec K1A 0C9

Attention: Bill Miller
Fax: (819) 954-0964

(b) If to Clean Harbors:

Clean Harbors, Inc.
42 Longwater Drive
P.O. Box 9149
Norwell, MA 02061-9149

Attention: General Counsel
Fax: (781) 792-5903

With a copy to:
Gowling Lafleur Henderson LLP
2600-160 Elgin Street
Ottawa, ON K1P 1C3

Attention: William Vanveen
Fax: (613) 563-9869

X. DURATION

[68] Clean Harbors shall be bound by the terms of this Agreement until the Divestiture is completed and all other obligations are discharged in accordance with this Agreement or the Tribunal orders otherwise.

[69] The Divestiture shall be considered to be completed when all right, title and interest of Clean Harbors in the Assets has been conveyed to a Purchaser in accordance with the terms of this Agreement.

[70] Upon fulfillment of the terms and conditions of this Agreement, any remaining confidential terms hereof shall be made public.

XI. GENERAL

[71] Clean Harbors consents to the immediate registration of this Agreement by the Commissioner with the Tribunal.

[72] The Commissioner may, in her sole discretion, reasonably extend any of the time periods applicable to the Divestiture contemplated by this Agreement. Clean Harbors and the Commissioner may agree to amend this Agreement in any manner pursuant to subsection 106 (1) of the Act.

[73] The computation of any time periods contemplated by this Agreement shall be in accordance with the *Interpretation Act*, R.S.C. 1985, c. I-21. For the purpose of this Agreement, the definition of “holiday” in the *Interpretation Act* shall include Saturday.

[74] This Agreement constitutes the entire agreement between the Commissioner and Clean Harbors with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral.

[75] Notwithstanding any provision of this Agreement, nothing in this Agreement shall be construed to abrogate the notification obligations set out in Part IX of the Act.

[76] In the event of a dispute as to the interpretation, application or implementation of this Agreement, including any decision by the Commissioner pursuant to this Agreement or any breach of this Agreement by Clean Harbors, the Commissioner, the Monitor or Clean Harbors shall be at liberty to apply to the Tribunal for a further order. In no event shall any dispute serve to suspend the Initial Sale Period or the Divestiture Trustee Sale Period except by order of the Tribunal.

[77] This Agreement may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument. In the event

of any discrepancy between the English language and French language versions of this Agreement, the English language version shall prevail.

DATED this 27th day of July, 2009.

[Original signed by "Melanie L. Aitken"]

Melanie L. Aitken
Interim Commissioner of Competition

[Original signed by "James M. Rutledge"]

James M. Rutledge,
Executive Vice President and CFO
Clean Harbors, Inc.

CONFIDENTIAL SCHEDULE "A"

[CONFIDENTIAL]

CONFIDENTIAL SCHEDULE “B”

[CONFIDENTIAL]

CONFIDENTIAL SCHEDULE “C”

[CONFIDENTIAL]