CT – 2000/002

THE COMPETITION TRIBUNAL

IN THE MATTER OF the Competition Act, R.S. 1985, c. C-34, as amended;

IN THE MATTER OF an Application by the Commissioner of Competition under section 92 of the Competition Act;

AND IN THE MATTER OF the acquisition by Canadian Waste Services Inc. of certain assets of Browning-Ferris Industries Ltd., a company engaged in the solid waste business.

BETWEEN:

COMMISSIONER OF COMPETITION

Applicant

- and –

CANADIAN WASTE SERVICES HOLDINGS INC., CANADIAN WASTE SERVICES INC. AND WASTE MANAGEMENT, INC.

Respondents

AGREED STATEMENT OF FACTS

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I INTRODUCTION

1. The Applicant and the Respondents have agreed to the submission of this Agreed Statement of Facts, as proof of the facts set out herein, for the purpose of this proceeding only, and not for use in any other proceeding or for any other purpose, to facilitate an expedited hearing of this application.

2. The Applicant and the Respondents have agreed that all drafts of this Agreed Statement of Facts, whether or not exchanged between the parties are without prejudice, and shall remain so notwithstanding the introduction of this Agreed Statement of Facts into evidence. Without limiting the generality of the forgoing, no previous drafts of this Agreed Statement of Facts shall be tendered or admitted as evidence at the hearing of this application.

3. This Agreed Statement of Facts is intended to reflect the facts set out herein as of September 15, 2000. The parties anticipate providing a Supplementary Agreed Statement of Facts to the Tribunal. The parties acknowledge that the facts may change or be superseded by later developments, evidence of which the parties may record in a Supplementary Agreed Statement of Facts or seek to lead in evidence at the hearing of this application.

4. This Agreed Statement of Facts contains information with respect to possible future events. Nothing in this Agreed Statement of Facts is to be construed as an assessment of the likelihood of the occurrence of a future possible event, except where expressly stated to the contrary.

A. Definitions

5. The following definitions and abbreviations will be used in this Agreed Statement of Facts:

(a) "Allied" means Allied Waste Industries Inc.;

(b) "Annual Capacity" means the maximum amount of waste that may be received or disposed of at a Permanent Disposal Facility or Transfer Station in a year under the applicable permit;

(c) "Arbor Hills Contract" means the contract entered into on December 23, 1996, between the former Municipality of Metropolitan Toronto (now the City of Toronto) and BFII, BFIL and BFI Waste Systems of North America, Inc. for the disposal of waste from the City of Toronto at the Arbor Hills Landfill for a 5 year period, starting on January 1, 1998, and expiring on January 1, 2003;

(d) "BFI Canada" means BFI Canada Inc., a corporation that is not affiliated with BFIL, BFII or Allied;

(e) "BFII" means Browning–Ferris Industries, Inc.;

(f) "BFIL" means Browning-Ferris Industries Ltd.;

(g) "C&D Waste" means construction and demolition waste which is a distinct type of ICI Waste;

(h) "Certificate of Approval" means a certificate of approval or provisional certificate of approval issued under the *Environmental Protection Act* of Ontario that governs the construction and operation of a Permanent Disposal Facility or Transfer Station in Ontario;

(i) "Chatham-Kent" means the area under the governance of the Municipality of Chatham-Kent;

(j) "CWS" means the respondent Canadian Waste Services Inc.;

(k) "CWSH" means the respondent Canadian Waste Services Holdings Inc.;

(l) "Daily Capacity" means a maximum amount of waste that may be received or disposed of at a Permanent Disposal Facility or Transfer Station per day under the applicable permit;

(m) "Environmental Assessment" means an environmental assessment pursuant to the *Environmental Assessment Act* of Ontario;

(n) "Fill Rate" means the actual amount of waste that is received for disposal by a Permanent Disposal Facility in given period;

(o) "GTA" means the Greater Toronto Area which is comprised of the City of Toronto, and the Regional Municipalities of Durham, York, Peel, and Halton;

(p) "GVW" means gross vehicle weight, that is, the weight of the entire vehicle including cargo;

(q) "ICI Waste" means solid non-hazardous waste which is generated by institutional, commercial and industrial customers and includes C&D Waste;

(r) "MRF" means a materials recycling facility where waste materials are processed in order to separate the materials into categories such as paper and glass, and, in some cases, residual waste for disposal;

(s) "Municipality of Chatham-Kent" means the Intervenor in this application, the Corporation of the Municipality of Chatham-Kent;

(t) "MOE" means the Ministry of the Environment of the province of Ontario;

(u) "Onyx" means Onyx Arbor Hills Landfill Inc., a subsidiary of Vivendi SA, which now owns the Arbor Hills Landfill in Michigan. Onyx was formerly named Superior Arbor Hills Landfill, Inc.;

(v) "Original Stock Purchase Agreement" means the Stock Purchase Agreement dated as of May 14, 1999 pursuant to which Allied and BFII agreed to sell to CWS all of the issued and outstanding shares of BFIL;

(w) "Permanent Disposal Facility" means a landfill or incinerator that is used for the permanent disposal of waste;

(x) "Purchase Agreement" means the agreement dated March 31, 2000 between the Respondents, BFIL, BFII and Allied pursuant to which CWS acquired assets and shares comprising certain collection and disposal businesses of BFIL, including the Ridge Landfill near Blenheim, Ontario;

(y) "RCN Ltd." means Rail Cycle North Ltd., a wholly owned subsidiary of CWS;

(z) "Residential Waste" means waste which is municipal or domestic in origin;

(aa) "Ridge Host Community Agreement" means the agreement entered into between the Municipality of Chatham-Kent and BFIL in relation to the Ridge Landfill;

(bb) "Ridge Landfill" means the Ridge landfill near Blenheim in Chatham-Kent that was acquired by CWS from BFIL on March 31, 2000 and is the subject of this application;

(cc) "SNHW" is the type of waste in regard to which the Applicant alleges a likely substantial lessening or prevention of competition and means solid non-hazardous waste comprised of ICI Waste and Residential Waste but does not include Special Waste;

(dd) "Special Waste" means non-hazardous contaminated soils and industrial process wastes;

(ee) "T&D Price" means the combined price for transporting and disposing of waste at a Permanent Disposal Facility;

(ff) "ToR" means terms of reference as described in the *Environmental Assessment Act* of Ontario;

(gg) "Tipping Fee" means the fee charged by a Permanent Disposal Facility or Transfer Station for the disposal or receipt of waste at the facility, and does not include transportation to the facility;

(hh) "Toronto Bidding Process" means the five-stage Integrated Solid Waste Resource Management Process developed by the City of Toronto in November, 1998;

(ii) "Total Permitted Capacity" means the total amount of waste that can be permanently disposed of at a landfill over the course of its operating life under the applicable permit;

(jj) "Total Remaining Capacity" means, in the case of a landfill, the remaining total amount of waste that can permanently be disposed of at a landfill under the applicable permit at a given point in time. In the case of an incinerator, it means the Annual Capacity multiplied by the remaining permitted life of the incinerator;

(kk) "Transfer Stations" are facilities where waste collection vehicles may unload waste and where the waste is then consolidated with waste from other collectors for transport to Permanent Disposal Facilities;

(ll) "WMI" means the respondent Waste Management, Inc.

6. The following conversions have been used in this Agreed Statement of Facts:

1 kg.	=	2.205 lbs.
1 lb.	=	0.454 kg.
1 tonne	=	1,000 kg.
	=	2,205 lbs.
	=	1.1 ton
1 ton	=	2,000 lbs.
	=	908 kg.
	=	0.908 tonne
1 km	=	0.621 mi
1 mi	=	1.609 km

7. There are inherent difficulties in converting amounts of waste between various units of measurement such as cubic yards, tonnes or tons because

the conversion factor will vary significantly depending on the density of the waste that is being measured.

II THE PARTIES AND OTHERS

8. The Applicant, the Commissioner of Competition (the "Commissioner"), is charged with the administration of the *Competition Act*.

9. CWS is an Ontario corporation, having its head office in Oakville, Ontario. CWS is the largest waste management company in Canada and is engaged in the business of providing solid non-hazardous waste management services to institutional, commercial, industrial and residential customers located in Canada. These services include the collection, compaction, recycling, resource recovery, transfer, transportation and disposal of solid non-hazardous waste.

10. CWSH is an Ontario corporation. CWSH owns all of the issued and outstanding shares of CWS.

11. WMI is a Delaware corporation. WMI is the parent company of CWSH and is the largest waste management company in the United States.

12. BFIL is an Ontario corporation with its headquarters in Concord, Ontario. Prior to selling its assets to CWS and BFI Canada, BFIL was the second largest waste management company in Canada, providing solid non-hazardous waste management services to institutional, commercial, industrial and residential customers. The waste management business of BFIL included the collection, compaction, recycling, resource recovery, transfer, transportation and disposal of non-hazardous solid waste.

13. BFIL is a subsidiary of BFII, a Delaware corporation.

14. Allied, a Delaware corporation, purchased BFII and its subsidiaries, including BFIL, on July 30, 1999.

15. As part of a sale of certain waste management businesses to CWS in 1997, Allied entered into an agreement with CWS which stipulates that:

> 1. The Seller agrees that for a period of five years following the date of Closing, it shall not directly, or indirectly through a Subsidiary, without prior express written consent of the Purchaser:
>
> (a) (i) engage, whether as a corporation or on its own account, or shareholder, owner, partner, joint venturer, agent, independent contractor, consultant or advisor, in the business of operating material recycling facilities, processing curbside waste pickup, or performing residential, commercial and/or curbside Solid Waste collection, services in Canada;
>
> (ii) acquire by purchase or otherwise, lease, or enter into an operating agreement to operate a subtitle D landfill located in Canada; ...

16. BFI Canada is not affiliated with Allied, BFII or BFIL. On June 30, 2000, BFI Canada acquired the remaining businesses of BFIL in Canada that were not purchased by CWS.

17. The Municipality of Chatham-Kent is the host municipality of the Ridge Landfill and is a party to the Ridge Host Community Agreement with BFIL in respect of the Ridge Landfill.

III THE TRANSACTION

18. Pursuant to the Purchase Agreement dated March 31, 2000, CWS purchased assets and shares comprising certain collection and disposal businesses of BFIL, including the Ridge Landfill near Blenheim, Ontario.

19. Initially, in the Original Stock Purchase Agreement the Respondents proposed to acquire all of BFIL's businesses in Canada. That agreement was the subject of a filing under Part IX if the *Competition Act* in May 1999. The Commissioner conducted an extensive review of the transaction including obtaining approximately 80 orders under section 11 of the *Competition Act*. The Commissioner communicated to the parties in September, 1999 that he had numerous serious competition concerns relating to the transaction. In response to the Commissioner's concerns, the Respondents significantly reduced the assets sought to be acquired.

20. In particular, the Respondents agreed to not acquire landfills and Transfer Stations in Montreal, Winnipeg and Calgary and to not acquire waste collection businesses consisting primarily of commercial front end collection operations in Vancouver, Victoria, Kelowna, Calgary, Edmonton, Medicine Hat, Lethbridge, Winnipeg, Portage La Prairie, Thunder Bay, Windsor, London, Kitchener, Halton, Napanee, and Ottawa, as well as residential collection operations in Ontario and the entire BFIL collection business in Montreal.

21. In addition to the Ridge Landfill, CWS also purchased the following businesses in Ontario (as well as other businesses in other parts of Canada) from BFIL with the consent of the Commissioner:

(a) BFIL's exclusively industrial and recycling collection businesses;

(b) BFIL's predominantly industrial and recycling collection businesses relating to customers who require a combination of commercial, industrial and recycling collection services;

(c) BFIL's commercial collection businesses in the GTA (excluding Halton); and

(d) BFIL's Windsor Transfer Station.

22. The volume of waste associated with the BFIL collection operations in the GTA that were acquired by CWS averaged approximately 18,000 tonnes per month, in June, July and August, 2000.

23. The Purchase Agreement contains a non-solicitation provision that provides:

> Section 13.3 Non-Solicitation. (a) Seller Parent [Allied] agrees that for a period of five years following the Closing Date [March 31, 2000], it will not, and will cause its Affiliates (as defined in Section 5.15(b)) not to, solicit or accept business from any existing customer accounts of the Business with respect to existing service locations as of the Closing Date.
>
> (b) Seller Parent agrees that for a period of five years following the Closing Date, it will not, and will cause its Affiliates not to solicit business in Canada, including soliciting accounts, marketing services, and responding to or soliciting bids, except as permitted by Section 7.11.

IV THE WASTE INDUSTRY

A. General

24. In Ontario, both the public and the private sectors are involved in the management of waste. Waste collectors, Transfer Stations and Permanent Disposal Facilities may be owned and operated either by municipal or regional governments, or by private sector companies. In some cases, owners of Transfer Stations and Permanent Disposal Facilities are also involved in the collection of waste.

B. Waste Collection

25. The solid non-hazardous waste management collection businesses include the following:

(a) Commercial waste collection, often referred to as front-end or lift on board commercial service, involves the collection of waste from containers measuring from two to eight cubic yards. Front-end trucks (trucks that lift the bins over the cab of the truck to be tipped into the back of the truck) are typically used to lift the containers and empty the waste into the back of the truck. Rear-load trucks (that lift the bins into the back of the truck) are primarily used in the downtown core of urban areas due to limited space getting to or at the customer premises. Customers of commercial waste collection businesses include restaurants, offices, institutions, and small commercial establishments that generate solid non-hazardous waste and require scheduled pick-up. Commercial collection operations are typically conducted under contractual arrangements, which may have terms of up to five years and renewals of a like term;

(b) Industrial waste collection, often referred to as roll-off service, involves the collection of larger quantities of solid non-hazardous waste from containers measuring from ten to forty or more cubic yards using straight trucks. The trucks pull the roll-off bins onto the back of the truck for transport to a Transfer Station or Permanent Disposal Facility. Industrial waste collection business relating to customers who require service on an as-needed basis is known as temporary roll-off collection whereas service provided under contracts with scheduled pick-up is known as permanent roll-off collection business;

(c) Residential Waste collection involves the collection of Residential Waste from individual residences and apartments using rear-load or side-load trucks. This service is either performed in-house by city crews or by private collection companies pursuant to contracts that are awarded by the municipality on the basis of tenders;

(d) Recycling collection involves the collection of recyclable solid non-hazardous waste from individual residences, apartments, and commercial establishments. Residential recycling collection typically involves hand pick-up and is generally provided under contract with cities, towns, and municipalities which have been awarded on the basis of a tender. Commercial recycling collection involves the containerized collection of recyclable material and is

provided under contract with industrial, commercial and institutional customers.

26. Commercial and industrial waste collectors generally charge fees directly to the waste generator for waste removal services. The prices for these collection services may vary for reasons including location, type of waste and volume.

C. Waste Disposal

27. The waste disposal business involves the provision of disposal services to waste collectors, Transfer Stations, waste brokers and waste generators. Waste that is not diverted in some manner such as through recycling or composting must ultimately be permanently disposed of at a landfill or an incinerator.

28. Once waste is collected by waste collection vehicles it is delivered by the collection vehicle either to a Permanent Disposal Facility (that is, a landfill or an incinerator) or a Transfer Station.

D. Transfer Stations

29. Transfer Stations are temporary depositories for waste that enable waste collection vehicles to unload their waste and return to their collection routes. When a waste collection vehicle arrives at a Transfer Station, the truck is weighed and then unloaded. The unloaded waste is consolidated with waste from other collection vehicles. The consolidated waste is loaded onto large trailers that transport the waste to a Permanent Disposal Facility.

30. Transfer Stations facilitate transport of waste to more distant Permanent Disposal Facilities, outside of the collection area, usually at a lower transport cost per tonne than if the waste was transported directly by

waste collection vehicles to these same facilities. Transfer Stations allow collection vehicles to spend more of their available time collecting waste, and result in the geographic boundaries of disposal markets being larger than the collection market where the waste is generated. In some cases, the Certificates of Approval of Transfer Stations may limit the amount of waste that may be stored at the Transfer Station.

31. Transfer Stations typically charge collectors for unloading waste on a per-tonne basis. Prices charged for disposal at Transfer Stations may vary depending on factors such as the type of waste, the volumes received and whether the waste collector and the Transfer Station are under common ownership. The costs incurred by Transfer Stations include those relating to processing and transferring waste and, usually, those relating to the transport of waste to a Permanent Disposal Facility and the disposal of the waste at the Permanent Disposal Facility.

32. In some cases, Transfer Stations enter into tolling arrangements with waste collectors whereby the Transfer Station only provides transfer services to the waste collector who remains responsible for the transport and disposal of the waste.

33. In some cases, the waste collector may direct the Transfer Station to dispose of waste at a particular Permanent Disposal Facility.

E. Waste Brokers

34. Waste brokers are firms that contract with waste generators, waste collectors and Transfer Stations to provide for the disposal, and in some cases transport, of waste. As waste brokers do not own Permanent Disposal Facilities, they fulfil their obligations to dispose of waste by contracting with Permanent Disposal Facilities, and in some cases, with

transport firms. Waste brokers are able to consolidate volumes of waste in order to obtain lower T&D Prices than may otherwise be available to some waste generators, waste collectors and Transfer Stations.

F. Permanent Disposal Facilities

35. Landfilling involves the disposal of solid waste in controlled conditions by placing the waste in cells, compacting it and then covering the waste with soil on a daily basis. In order to ensure environmentally sound disposal, landfilling requires controlling the production and emission of leachate into the ground and surface water and the emission of gases to the atmosphere.

36. Landfills take different types of waste. Some landfills receive SNHW. Other landfills receive only Residential Waste. Some landfills receive only "dry" or non-putrescible ICI Waste such as C&D Waste. The kinds of waste a landfill can accept are set out in its Certificate of Approval.

37. Incinerators burn waste, and the residue is disposed of at a landfill. Incinerators can receive most kinds of combustible SNHW. The kind of waste an incinerator can receive may be limited by, among other things, its Certificate of Approval and its design.

38. Subject to any conditions in their Certificates of Approval, Permanent Disposal Facilities may accept waste from waste generators, waste collectors, waste brokers and Transfer Stations.

39. Some forms of C&D Waste that have not been mixed with other types of SNHW may be disposed of in permitted clean-fill sites which are landfills that are generally unlined and only permitted to receive inert waste. Prior to disposal, some forms of C&D Waste may be processed to remove recoverable materials such as wood and concrete. Concrete may be

disposed of in many non-regulated clean-fill sites, construction sites or in designated locations such as Lake Ontario at the end of the Leslie Street spit in Toronto. The parties anticipate providing information about some clean-fill sites that are permitted to receive some forms of C&D waste from the GTA.

G. Certificates of Approval for Transfer Stations and Permanent Disposal Facilities in Ontario

40. The Certificate of Approval for Transfer Stations and Permanent Disposal Facilities in Ontario sets out the terms and conditions under which the facility must be operated, including,

(a) the type of waste that can be accepted;

(b) the area or areas from which waste may be received; and

(c) any applicable capacity limitations.

These terms and limitations may limit the number of waste disposal alternatives available to waste collectors and Transfer Stations.

41. The process for applying for a new Certificate of Approval or amending an existing Certificate of Approval is set out below in Part IX.

(1) Types of Waste

42. Certificates of Approval may limit the type of waste that may be received at a Permanent Disposal Facility or Transfer Station. For example, a landfill may be authorized to receive only dry or non-putrescible ICI waste.

(2) Service Areas

43. Permanent Disposal Facilities in Ontario have geographic service areas specified in their applicable Certificate of Approval that designate the areas from which waste may be received. Service areas for Permanent

Disposal Facilities and Transfer Stations in Ontario can vary from a limited radius around the site, such as a municipality, to larger areas, such as the Province of Ontario.

44. Most municipally owned landfills in Ontario have service areas limited to the municipality's area of responsibility and, in some cases, the neighbouring region. Many municipal landfills will accept both Residential Waste and ICI Waste from the area designated by their Certificate of Approval. The parties anticipate providing information about municipally owned Permanent Disposal Facilities.

45. Certificates of Approval may also set out different service areas for different types of waste. For example, the Ridge Landfill is authorized to receive Residential Waste from 5 counties and ICI Waste from all of Ontario.

(3) Waste Volumes

46. Total Permitted Capacity limitations in an Ontario landfill's Certificate of Approval determine the total amount of waste that may be disposed of at that landfill. The Certificates of Approval specify an Annual Capacity and may specify a Daily Capacity.

H. Regulation of Permanent Disposal Facilities in Michigan and New York

47. In the mid-1980s there was a shortage of disposal capacity in Michigan. Numerous landfill expansions and new permit applications were made and granted in the late 1980s and early to mid-1990s, resulting in a current overall disposal capacity which is surplus to the needs of the State of Michigan.

48. Landfills in Michigan require two kinds of licences, an Operating Licence and a Licence to Construct, which specify Total Permitted Capacity, the

type of waste that may be received, and identify the land that has been approved for landfilling. The State of Michigan does not impose Annual Capacity limits. However, host community agreements may contain limits on the amount of out-of-state waste that the landfill may accept annually.

49. Landfill permits in New York specify Total Permitted Capacity, Total Annual Capacity and the type of waste that may be received, among other matters.

I. Transport and Disposal

50. Once waste is consolidated, there are two principal costs to a Transfer Station to dispose of waste: Tipping Fees and transport costs for the shipment of waste to a Permanent Disposal Facility. The consolidated amount is referred to as the T & D Price.

51. Tipping Fees for the disposal of SNHW may vary depending on factors including the type of waste, density and the overall volumes received from the customer. Tipping Fees may also vary depending upon the area from which waste is shipped, as some Permanent Disposal Facilities adjust the Tipping Fee to attract waste from more distant locations. Tipping Fees may also vary depending on whether they are charged in an arm's length transaction or charged to an affiliate or other division of the operator of the Permanent Disposal Facility.

52. Transport services are generally quoted either on the basis of a truck load of waste or per tonne from a particular Transfer Station to a particular Permanent Disposal Facility. Costs incurred by transport firms may include driver wages, fuel, vehicle acquisition and maintenance, highway tolls, transportation delays, vehicle licensing requirements, customs

brokerage fees, traffic and weight violation fines, and loading and unloading time.

53. Transport and disposal may be purchased separately or together. Some Transfer Stations and waste brokers handle transport internally. Some vertically integrated firms may not need to purchase third party transport and/or disposal.

54. Waste brokers obtain disposal capacity at Permanent Disposal Facilities to resell to Transfer Stations or waste generators, and combine the waste of two or more firms in order to obtain volume discounts.

55. Customers of Permanent Disposal Facilities may compare T&D Prices to various Permanent Disposal Facilities in assessing disposal options. Permanent Disposal Facilities that want to receive waste may make similar comparisons when determining what Tipping Fee to offer potential customers.

V PERMANENT DISPOSAL FACILITIES

56. The parties will refer to a number of Permanent Disposal Facilities, and will provide further information about those facilities.

A. The Ridge Landfill

57. BFIL owned and operated the Ridge Landfill until March 31, 2000. The Ridge Landfill is located near Blenheim, Ontario and is permitted to receive Residential Waste from the counties of Kent, Elgin, Oxford, Middlesex and Lambton, and ICI Waste from the entire province. Until 1999, the Annual Capacity of the Ridge Landfill was 218,000 tonnes. However, in June 1998, BFIL received approval to increase the Annual Capacity to 680,000 tonnes. The Ridge Landfill had a Total Remaining

Capacity of approximately 21,000,000 cubic metres as of early 2000, when the expansion of the Ridge became operational.

VI GTA

A. Waste Generated in the GTA

58. Over 3 million tonnes of GTA SNHW is disposed of annually, which is comprised of roughly one third Residential Waste and two thirds ICI Waste.

59. Of the GTA SNHW disposed of in 1999, approximately 1.5 million tonnes was disposed of at Keele Valley either directly, or through Transfer Stations. Approximately 1.5 million tonnes of GTA SNHW was transferred at municipal or private Transfer Stations for shipment to Permanent Disposal Facilities outside of the GTA. Additional GTA SNHW originating in Halton and Peel was disposed of at Permanent Disposal Facilities in the Regional Municipalities of Halton and Peel.

60. All Residential Waste is managed by municipalities in the GTA. Some of this waste is processed in privately owned Transfer Stations under tolling arrangements with the City of Toronto and other municipalities in the GTA. ICI waste is managed both by the City of Toronto and the private sector.

B. Waste Managed by the City of Toronto

61. The City of Toronto manages the disposal of all of the Residential Waste from Toronto, Durham, and York. The Regions of Halton and Peel presently manage their own Residential Waste. The City of Toronto also manages a portion of the ICI waste generated in the GTA.

62. In December 1996, the City of Toronto entered into Arbor Hills Contract to dispose of a portion of the waste managed by the City of Toronto at Arbor Hills landfill, in order to prolong the life of the Keele Valley Landfill. The contract specifies that the City can dispose of up to 250,000 tonnes in 1998, 325,000 tonnes in 1999, and 450,000 tonnes in each of 2000, 2001 and 2002 at Arbor Hills. The Arbor Hills Contract expires on January 1, 2003.

63. Following the acquisition of BFII by Allied, Allied agreed to divest the Arbor Hills Landfill in order to address antitrust concerns of the U.S. Department of Justice arising out of that transaction. Accordingly, on or about March 31, 2000, Allied sold the Arbor Hills landfill to Onyx, a subsidiary of Vivendi on March 31, 2000. As part of that sale, the Arbor Hills Contract was subcontracted, with the consent of the City of Toronto, to Onyx.

64. In 1998 and 1999, the City of Toronto disposed of over 1.8 million tonnes of SNHW. Table 1 below shows the sources of SNHW managed by the City of Toronto, as reported by the City of Toronto.

Table 1
Sources of Waste Managed by the City of Toronto

Type of waste	*Amount of waste (tonnes)*	
	1998	*1999*
Toronto Residential	758,000	783,000
Toronto Agencies, Boards, Commissions and Departments	202,000	116,000
Privately collected ICI	616,000	613,000
SNHW from York and Durham regions	300,000	308,000

SNHW disposed of in landfills	**1,876,000**	**1,820,000**
SNHW waste diverted through recycling and composting	246,000	256,000
Total waste managed by the City of Toronto	2,122,000	2,076,000

65. Table 2 below shows the landfills used by Toronto in 1998 and 1999 to dispose of this waste.

Table 2 **Destination of Waste Managed by the City of Toronto**		
Destination	*Amount of waste (tonnes)*	
	1998	*1999*
Keele Valley Landfill	1,625,400	1,497,400
Arbor Hills Landfill (Pursuant to Arbor Hills Contract)	254,600	322,600

66. Confidential Appendix A is a table prepared by the City of Toronto showing the Tipping Fees and Fill Rates of City of Toronto facilities for the years 1989 to 1999.

C. Transfer Stations located in the GTA

67. There are approximately 35 Transfer Stations in the GTA that receive waste from local waste collectors. Seven of these are operated by the City of Toronto. CWS also has seven Transfer Stations in the GTA. The remaining 21 transfer stations are referred to as "independent" Transfer

Stations. Confidential Appendix B provides further information about these Transfer Stations.

68. The City of Toronto Transfer Stations receive both Residential Waste and ICI Waste. The City of Toronto currently receives ICI Waste from private waste collectors at its Transfer Stations at $70 per tonne and at the Keele Valley Landfill at $55 per tonne. The waste delivered to these Transfer Stations is taken to Keele Valley or Arbor Hills landfill for final disposal.

69. CWS has seven Transfer Stations in the GTA: Clarington, Mavis, Unwin, Fewster, Brydon, Recycle Canada and Wentworth-Conwaste. Fewster currently does not receive waste from waste collectors, but only receives residue generated from its CWS MRF recycling operations.

70. BFIL owned a Transfer Station licence for a facility in the GTA, but did not operate any Transfer Stations in the GTA. In 1999, BFIL brought the waste it collected to various independent Transfer Stations in the GTA, including Complete Disposal System, Wasteco, Pebblestone, Miller, Can-Sort, Kermecho, Simtor, Leferink, CER and Walker-Norjohn and to the CWS Wentworth-Conwaste and Mavis Transfer Stations. Most of the waste that BFIL brought to CWS Transfer Stations was brought under a tolling arrangement whereby BFIL was charged for the transfer service only, and arranged for the transport and disposal of the waste from the CWS Transfer Stations.

71. As shown in Table II of Confidential Appendix B, waste brought by BFIL to independent Transfer Stations was generally directed by BFIL to Permanent Disposal Facilities operated by BFIL or its affiliates.

72. CWS occasionally uses independent Transfer Stations and City of Toronto Transfer Stations, in addition to its own Transfer Stations. When it uses

independent Transfer Stations for the transfer of waste, CWS or WMI Permanent Disposal Facilities may receive that waste, resulting in "internalization" of the waste.

73. Instances of such direction (by BFIL) and internalization (by CWS) are recorded in Table II of Confidential Appendix B.

74. Any waste that is collected on contract for municipal governments in the GTA is disposed of at the Permanent Disposal Facility as directed by the municipal government.

D. Summary of destination and direction of GTA waste

75. Table 3 shows the destination of GTA waste managed by the City of Toronto, CWS Transfer Stations in the GTA, and independent Transfer Stations in the GTA as taken from Confidential Appendix B:

Table 3
Destination of GTA Waste in 1999

	Tonnes disposed of in:			
Waste managed by:	*Ontario*	*Michigan*	*New York*	*Total*
City of Toronto	1,497,400	322,626	0	1,820,026
CWS and Independent Transfer Stations	863,263	267,327	69,703	1,200,293
Total	2,360,663	589,953	69,703	3,020,319

76. In 1999 approximately 2.3 million cubic yards of SNHW from Ontario was disposed of in Michigan landfills, according to Michigan Department of Environmental Quality reports, which do not provide specific information on SNHW from the GTA.

E. Transport Trucks

77. Vehicle regulations and GVW regulations in the State of Michigan are generally comparable to those enforced by the Ontario Ministry of Transportation. Michigan has a higher GVW limit than Ontario, while New York's GVW is lower. The GVW limits in Ontario, Michigan and New York are as follows:

Ontario	63,500 kg
Michigan	69,800 kg
New York	36,300 kg
New York	48,500 kg with Divisible Load Permit

(Note: Michigan and New York numbers have been converted and rounded to the nearest 100 kg)

F. The Toronto Bidding Process

78. In anticipation of the closure of the Keele Valley Landfill, the City of Toronto developed the Toronto Bidding Process in November, 1998 to solicit disposal proposals from qualified candidates in the private sector.

79. The City of Toronto is using the Toronto Bidding Process to acquire the necessary disposal capacity to meet its solid waste disposal needs, as well as to advance its diversion goals through diversion technologies and new and emerging technologies.

80. The Toronto Bidding Process may yield a winning proposal and the Regions of Durham, York and Peel have been invited to partner with the City of Toronto and may choose to avail themselves of this proposal. The Region of Halton has determined that it has no interest in partnering with the City of Toronto in regard to waste disposal. The Region of Peel does

not currently use any element of the City of Toronto's waste management system.

(1) Stages of the Toronto Bidding Process

81. The five stages of the Toronto Bidding Process are as follows:

(a) Stage One: Preparation of planning document;

(b) Stage Two: Requests for expressions of interest ("REOI") pertaining to each of the 3 categories: 1) proven diversion, 2) disposal and 3) new, emerging and innovative technologies;

(c) Stage Three: requests for proposals, as may be issued pertaining to one or more of the categories;

(d) Stage Four: due diligence reviews and contract negotiations, pertaining to top qualified proposals; and

(e) Stage Five: award of contract.

82. Stage One occurred from November 23, 1998 to March 5, 1999.

83. Stage Two commenced on April 26, 1999. The REOI was intended to develop a short list of qualified bidders whose basic technical and commercial abilities were determined to be capable of meeting the City of Toronto's long-term waste management needs.

84. In response to its REOI regarding proven disposal capacity, the City of Toronto received Expressions of Interest from the following seven qualified bidders :

(a) Agra Resource Management who anticipated building an incinerator in Innisfil Township and incinerating approximately 750,000 tonnes of waste annually;

(b) BFIL who proposed using the Ridge as well as various BFII Permanent Disposal Facilities in the United States including Arbor Hills, to manage approximately 1.2 million tonnes of waste per year.

(c) Essex Windsor Solid Waste Authority proposed to receive 100,000 tonnes of City of Toronto waste annually at the Essex-Windsor landfill;

(d) Green Lane Environmental proposed to receive approximately 200,000 tonnes per year at the Green Lane landfill, and indicated that its facility could be expanded;

(e) CWS, through its partnership in Rail Cycle North ("RCN"), proposed hauling by rail approximately 1,300,000 tonnes per year over a 20-year period to the Adams Mine landfill at Kirkland Lake;

(f) Ref-Fuel Canada Ltd. proposed disposing of 400,000 tonnes of waste per year at its incinerator in the Niagara Falls, N. Y. This facility is 50% owned by Allied; and

(g) Republic Services of Canada, Inc. proposed to accept up to 2 million tonnes of waste per year at its Carleton Farms landfill in Michigan.

85. RCN is a consortium composed of CWS (which owns RCN Ltd.), Notre Development Corporation, Miller Waste Systems, Canadian National Railway and Ontario Northern Railway. Apart from its participation in RCN, CWS did not submit a bid in respect of any of its existing landfills.

86. On October 5, 1999, the City of Toronto commenced Stage Three by issuing the Request for Proposal No. 9119-99-01899 Disposal of Solid Waste. Proposals were to be submitted by December 15, 1999.

87. By December 15, 1999 all but Agra Resource Management had submitted their proposals. The BFIL proposal had been modified and no longer involved using the Ridge landfill, only U.S. landfills and an incinerator also located in the United States.

88. On February 22, 2000, the City of Toronto identified five top qualified proposals to advance to stage four of the process. These were Onyx (Superior), Essex-Windsor, Green Lane, CWS/RCN and Republic. Agra withdrew from the process and Ref-Fuel did not meet the specified bid requirements regarding a financial instrument.

89. In determining the top qualified bidders to advance to stage four of the Process, the City of Toronto took into account the following:

(a) Facility operations, maintenance, monitoring, reporting procedures regarding environmental regulatory compliance;

(b) Corporate/facility environmental management systems;

(c) Site agreements;

(d) Land-use regulatory compliance;

(e) Labour relations and occupational health and safety regulatory compliance;

(f) Inter-jurisdictional matters (e.g. circumstances of the Canada-USA border re exportation regulation and policy);

(g) Commercial regulatory compliance;

(h) Project financing and economics.

90. The proposals of each bidder in stage four of the Toronto Bidding Process, as summarized by the City of Toronto, are outlined in Appendix C.

(2) Staff Report of June 19, 2000

91. On June 19, 2000 the Commissioner of Works and Emergency Services presented a Report to the Joint Committee (the "June 19th Report") outlining the following three principal marketplace options identified through the Toronto Bidding Process:

(a) Adams Mine Landfill, Kirkland Lake – RCN;

(b) Carleton Farms Landfill, Michigan, U.S.A. – Republic Services of Canada;

(c) A Combination of Three/Four Landfill Sites – Essex-Windsor, Green Lane, Arbor Hills and/or Carleton Farms.

92. The June 19th Report also reviewed the feasibility of further extending the service life of the Keele Valley Landfill to the end of 2006 by reducing the annual volume of waste disposed of at the Keele Valley Landfill from 1,300,000 to 700,000 tonnes.

93. The June 19th Report advised that extending the service life of Keele Valley was "the best financial/operational option" for the City of Toronto. However, the Ontario government subsequently indicated that it did not support the extension of the life of the Keele Valley landfill.

(3) Staff Report of July 14, 2000

94. On July 14, 2000 the Commissioner of Works and Emergency Services issued another staff report (the "July 14th Report") to recommend alternatives to the recommendation in the June 19th Report. The July 14th Report recommends a dual contract award process, with RCN disposing of the Residential Waste of the City of Toronto and the GTA Regional Municipalities of Peel, York and Durham under the terms and conditions

of the Memorandum of Understanding between the participating municipalities, and Republic Canada Inc. disposing of the private ICI Waste managed by the City of Toronto. The recommended contracts were as follows:

(a) a "no put or pay" contract with RCN for the disposal of all of its Residential Waste, for up to 1.3 million tonnes of Residential Waste per year, for a term of 20 years starting on January 1, 2003; and

(b) a "no put or pay" contract with Republic Services of Canada, Inc. to dispose of up to 500,000 tonnes of ICI Waste at Carlton Farms landfill in Michigan, of which 100,000 tonnes would be on a "put or pay" basis, for a flexible combined term of up to 20 years.

95. The July 14th Report also recommended that the contract awarded to Republic Services of Canada Inc. commence January 1, 2001 at a rate of 300,000 tonnes of SNHW per year for two years less a day in order to allow the Keele Valley landfill to operate until December 31, 2002, and from and after January 1, 2003, on the basis of the "no put or pay" contract set out above.

96. At its meeting on August 1-4, 2000, Toronto City Council authorized the Commissioner of Works and Emergency Services to conduct final contract negotiations in accordance with the recommendations made in the July 14th Report.

97. The City of Toronto Commissioner of Works and Emergency Services is currently negotiating contracts with RCN and Republic.

98. The final T&D price per tonne offered by RCN and Republic (as of the reference date of January 1, 2001) and the estimated price at the conclusion of a twenty-year contract based on changes in the Consumer Price Index are shown in Table 4, including GST:

Table 4 RCN and Republic Prices			
	2001	2022*	Cost Escalation Factor
RCN	$51.02	$73.88	65% of the change in CPI for landfill and rail components. 100% for truck haulage.
Republic	$50.82	$75.99	75% of the change in CPI for landfill and truck haulage components.

Additional information on estimated prices during the contract term, as estimated by the City of Toronto, are found at Confidential Appendix D, a document prepared by the City of Toronto on July 31, 2000.

99. On September 6, 2000, the Regional Municipality of York's Solid Waste Strategy Committee adopted a recommendation to proceed to contract with RCN to address its disposal needs, after reviewing other proposals from Republic and American Ref-Fuel. On September 14, 2000 York Council approved this recommendation.

100. The Regional Municipalities of Durham and Peel are also considering the RCN proposal.

101. The parties will provide further information on developments with respect to the Toronto Bidding Process and the Adams Mine project in a Supplementary Agreed Statement of Facts.

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* Assumes CPI at 2.5 percent per annum

VII POSSIBLE FUTURE EVENTS

A. Landfill Closures

102. Table 5 shows landfills that are scheduled or anticipated to close, along with their scheduled or anticipated closing date and the resulting loss of Annual Capacity on closure:

Table 5
Landfills Scheduled or Anticipated to Close

Landfill	*Scheduled or anticipated closing date*	*Resulting loss of Annual Capacity (tonnes)*
Keele Valley	December 31, 2002	1,400,000
CWS – Blackwell (Sarnia)	February, 2001	310,000
CWS – LaSalle (Sarnia)	Spring, 2002	365,000
Total scheduled or anticipated loss of Annual Capacity		2,075,000

103. The December 31, 2002, closing date for Keele Valley is predicated on reducing the volume of waste disposed of at Keele Valley by disposing of 300,000 tonnes of waste annually in 2001 and 2002 under the proposed contract with Republic Services of Canada Inc. described above. Otherwise, the City of Toronto anticipates that at the current annual Fill Rate of 1.4 million tonnes, Keele Valley would close by the end of March, 2002.

104. Similarly, the anticipated closure date for LaSalle is based on an expected amendment to the operating permit whereby LaSalle will be permitted to increase its Annual Capacity from 365,000 tonnes to 680,000 tonnes. CWS applied to the MOE for this expansion on July 18, 2000. It expects to receive regulatory approval in approximately December 2000. If

regulatory approval is not obtained CWS anticipates that LaSalle will close in mid-2003.

B. Applications for New Landfills or Expansions of Landfills

105. Table 6 shows some pending applications that have been made for new landfills or to expand landfills in Ontario, as well as the additional Annual Capacity applied for:

Table 6
Applications to Expand Landfills

Landfill	*Additional Annual Capacity applied for (tonnes)*
CWS – Warwick	694,000
CWS – Richmond	625,000
Total expansion applied for	1,319,000

Further details about these applications are given below.

(1) Expansion of CWS-Warwick (Watford) and CWS-Richmond (Napanee)

106. CWS has applied to expand the CWS-Warwick (Watford) and CWS-Richmond (Napanee) Landfills. Both expansion applications are subject to environmental review under the Ontario *Environmental Protection Act* and the *Environmental Assessment Act*. The expansions were designated under the *Environmental Assessment Act* as requiring Environmental Assessments on April 16, 1998. More details regarding the regulatory process for expanding landfills or permitting new landfills is set out in Part IX below.

107. CWS submitted final Terms of Reference for the Environmental Assessments of these proposed expansions to the MOE on October 14, 1999, in the case of CWS-Warwick (Watford), and June 23, 1999, in the case

of CWS-Richmond (Napanee). Environmental Assessments for both proposed expansions are currently proceeding.

108. CWS expects to submit applications under the *Environmental Protection Act* for a Certificate of Approval that will govern the construction and operation, and provide for any restrictions on the two sites if the Environmental Assessments are approved.

109. Regulatory approval for both of the CWS-Warwick (Watford) and CWS-Richmond (Napanee) proposed expansions is required before the expansions can proceed. In each case, approval could be granted for the full expansion and service area applied for, for a smaller expansion or more limited service area, or denied. Approval of these expansions as proposed by CWS would result in a maximum total increase of 1,319,000 tonnes of Annual Capacity.

110. If approval is granted for one or both expansions, in whole or in part, CWS currently anticipates that the expansions would be operational in the fall of 2002. In making these estimates, CWS is allowing approximately three to six months for the construction of the necessary improvements, which cannot begin until the Certificate of Approval is granted.

(2) Adams Mine Project

111. The proposed Adams Mine landfill has a provisional Certificate of Approval for the construction of a landfill in an open pit mine at Kirkland Lake with an Annual Capacity of 1,330,000 tonnes per year. The Adams Mine is located 620 km from Toronto. CWS has an option to buy the owner of Adams Mine, Notre Development Corporation, which it intends to exercise if the City of Toronto enters into a contract with CWS/RCN as a result of the Toronto Bidding Process discussed above.

112. To develop the landfill, a considerable volume of water must be pumped out, a leachate conveyance system must be constructed, the mine floor must be overlaid with granular material, and other improvements must be made before the landfill will be operational. Construction of the improvements has not yet begun.

(3) Expansion of Green Lane

113. Green Lane indicated to the City of Toronto in its bid for the waste managed by the City of Toronto, that it would be possible for it to expand the capacity of its landfill in St. Thomas. Green Lane has not made the application that would be necessary to expand the capacity of its landfill.

(4) W12A

114. The City of London and the County of Middlesex began considering long term disposal options in 1995. One of the several options under consideration was expanding the service area of the City of London's W12A Landfill to a province-wide service area. W12A's service area is currently limited to the London area. No decisions have been made as a result of this process, and no applications have been made.

115. In May, 1999, the City of London considered responding to the City of Toronto's Request for Expressions of Interest. On May 17, 1999, the London Municipal Council resolved not to submit a response to the City of Toronto Request for Expressions of Interest.

C. United States

116. Pursuant to the Commerce Clause of the U.S. Constitution, States are not permitted to regulate the flow of out of state waste.

117. For the last decade the Senate and House of Representatives of the United States Congress have debated bills that would allow states to exercise

some control over the flow of out of state waste. None of the bills introduced have become law as none of them have been passed by both the Senate and the House of Representatives.

118. In May 1999 the Governor of the State of Michigan established the Michigan Solid Waste Importation Task Force within the Michigan Department of Environmental Quality. The Task Force was charged with 3 responsibilities:

(a) identify trends, causes, and consequences of the importation of solid waste;

(b) meet with members of the Michigan Congressional Delegation and other members of Congress to encourage passage of federal legislation to allow Michigan to control the importation of solid waste; and

(c) provide recommendations to the Governor and the Director of the Michigan Department of Environmental Quality concerning the control of interstate and international waste imports.

It is currently anticipated that the Task Force will deliver its recommendations by the end of 2000.

119. In April, 1999, a Bill was introduced into the Michigan State House of Representatives that would require that beginning January 1, 2004, Michigan adopt the US federal truck weight standard, which establishes a maximum vehicle weight of 80,000 lbs (approximately 36,300 kg). This Bill, House Bill 4503, was referred to the Committee on Transportation on April 20, 1999. It has not proceeded further, and will die at the end of the 90th Session on December 31, 2000, if not passed before then.

D. International Agreements

120. Canada is a party to a multilateral agreement on transboundary movement of waste called the *Basel Convention on the Control of Transboundary Movement of Hazardous [And Other] Wastes* (the *"Basel Convention"*). The U. S. has signed the Basel Convention but is not a party to it.

121. In 1986, Canada and the U.S. entered into the *Agreement Between the Government of Canada and the Government of the United States of America Concerning the Transboundary Movement of Hazardous Waste* C.T.S. 1986, No. 39. This agreement was amended in 1992 by an exchange of notes.

122. Canada and the U.S. are also parties to several international trade agreements, namely the General Agreement on Trade and Tariffs 1994, WTO Agreement on Technical Barriers to Trade, WTO Agreement on the Application of Sanitary and Phytosanitary Measures, the General Agreement on Trade in Services, and the North American Free Trade Agreement.

VIII DIVERSION

123. Diversion is the use of manual, mechanical, chemical and biological processing of waste, in some cases to recover materials that have economic value, with the result that the diverted materials do not need to be disposed of at Permanent Disposal Facilities.

124. Toronto currently diverts approximately 25% of the Residential Waste generated in the City. The City of Toronto has identified waste diversion as a critical element of its waste management strategy. The City of Toronto has adopted a 50% diversion target to be achieved by 2006. York, Peel,

Halton and Durham have similar diversion rates and also have set targets with a view to increased diversion.

125. The City of Toronto's waste diversion program consists of or has in the recent past involved a range of initiatives that include:

(a) Blue Box recycling for containers;

(b) Grey Box recycling for paper;

(c) Green Pail recycling for food;

(d) composting of yard waste and Christmas trees;

(e) home composting of organic materials such as food;

(f) grass-cycling;

(g) used goods charitable donations;

(h) ICI Waste reduction programs;

(i) white goods collection; and

(j) household hazardous waste management.

126. In addition to the above core initiatives, the following activities have been initiated by the City of Toronto as pilot programs in order to increase diversion:

(a) enhanced diversion from apartment buildings;

(b) program to maximize diversion from the curbside;

(c) curbside collection of textiles;

(d) intensive household waste management promotion and collection;

(e) free back yard composter distribution;

(f) residential food waste collection;

(g) commercial food waste collection;

(h) residential diaper collection;

(i) Kensington Market neighbourhood vermi-composting project;

(j) kraft bag leaf and yard waste collection;

(k) backyard composter distribution;

(l) waste-watch volunteer program;

(m) commercial "cherry picked" organic waste collection; and

(n) office and institutional waste recycling activity demonstration programs at Toronto's municipal buildings.

127. In the Toronto Bidding Process, requests for proposals were also made with respect to "New, Emerging and Innovative Technologies", which were defined as technologies that have been proven at the laboratory or as pilot scale projects but have not yet been applied to larger waste volumes.

128. In response to the Toronto Bidding Process's request for new, emerging and innovative technologies proposals, eleven submissions (eight of which qualified for Stage 3 of the Request for Proposals) were received for consideration.

129. The City of Toronto also plans to expand existing diversion programs. A pilot project will be underway at the Dufferin Transfer Station where construction has begun on a prototype mixed waste processing and composting facility that will receive and process up to 15,000 tonnes of mixed waste, or up to 25,000 tonnes per year of organic material from residents and businesses. In this regard, technology to facilitate diversion is likely to improve in the future and result in increased diversion.

IX REGULATION AND COSTS OF NEW OR EXPANDED PERMANENT DISPOSAL FACILITIES AND TRANSFER STATIONS IN ONTARIO

A. Landfills and incinerators

(1) Regulatory Approval Process

130. A person wanting to establish a new landfill or incinerator or expand the Annual Capacity, Total Permitted Capacity or service area of an existing landfill or incinerator will need some or all of the following regulatory approvals:

(a) A Certificate of Approval pursuant to the *Environmental Protection Act* R.S.O. 1990, c. E. 19 ("EPA");

(b) Approval following the Environmental Assessment process pursuant to the *Environmental Assessment Act* R.S.O. 1990, c. E.18 ("EAA");

(c) Zoning and other municipal approvals.

(2) Certificate of Approval

131. Section 27 of the EPA requires that every landfill and incinerator must have a Certificate of Approval in order to operate. A person wanting to enter the market for permanent waste disposal must apply for a Certificate of Approval for the proposed landfill or incinerator. Similarly, a person wanting to expand in or into a market by expanding the Annual Capacity or service area of an existing landfill or incinerator must apply for the appropriate amendments to that landfill or incinerator's Certificate of Approval.

132. A proposed Permanent Disposal Facility may also require approvals under Section 9 of the EPA for discharge of contaminants into the natural environment, or under Section 53 of the *Ontario Water Resources Act* ("OWRA") for sewage works. These approval processes are generally simpler, cheaper and take less time than the Section 27 process.

(3) Environmental Assessment

133. The EAA allows the provincial government to "designate" major private-sector proposals to undergo an Environmental Assessment. In practice any significant proposed new landfill or expansion of Total Permitted Capacity of a landfill or incinerator will require an Environmental Assessment under the EAA. The term "Environmental Assessment" is frequently applied both to the document that the proponent must prepare, and to the process as a whole. For greater clarity, the Environmental Assessment document is referred to below as the "EA", and the process, as the "EA process".

134. The EA process comprises the following three major phases:

(a) Preparation, submission and review of Terms of Reference;

(b) Preparation, submission and review of Environmental Assessment; and

(c) Decision by the Minister of the Environment or public hearing.

135. The proponent of a new landfill or an expansion of an existing landfill must prepare and submit Terms of Reference ("ToR") to the MOE. The ToR must, among other things, set out in detail the requirements for the preparation of the EA. The proponent must conduct public consultations as part of the process of preparing the ToR and must describe and report on the results of these consultations in the ToR. The proponent bears the cost of preparing the ToR.

136. The MOE reviews the ToR and approves them if it is satisfied that an Environmental Assessment prepared in accordance with them will be consistent with the purpose of the EAA and the public interest.

137. Once the ToR are approved, the proponent prepares an EA and submits it to the MOE. The EAA requires that an EA must include, among other things, a description of the undertaking, its rationale, its effect on the environment, actions that might be taken to remedy or mitigate environmental effects, and an evaluation of the advantages and disadvantages of the undertaking. The EA must also deal with alternative methods of carrying out the undertaking and alternatives to the undertaking. The proponent must carry out public consultations as part of preparing the EA and must describe and report on these consultations in the EA. The proponent bears the cost of preparing the EA.

138. Preparation of an EA involves obtaining numerous studies about the potential environmental impact of the proposed undertaking. In the case of a landfill, a proponent may need to conduct the following assessments, among others: noise and vibration; air quality; traffic impact; landfill gas; economic; agricultural; natural environment; social; and hydrogeology and geotechnical.

139. The EA is a public document. Members of the public can submit comments to the MOE on the EA.

140. The MOE prepares a review of the EA, taking into account comments from the public. The MOE review is a public document and anyone can make comments on it.

141. The Minister can approve the application with or without conditions, or refuse to approve the application. Instead of deciding the application, the Minister can refer the matter to a hearing by the Environmental Assessment Board ("EAB"). Before making a decision, the Minister can refer the matter to mediation (which the proponent must pay for).

142. Landfill owners may negotiate host community agreements as part of the approvals process in order the increase municipal support for the new landfill or landfill expansion.

(4) Municipal Approvals

143. Depending on the municipality within which the proposed site is to be situated, an applicant may require approvals under the *Planning Act*, such as an Official Plan amendment, re-zoning, and/or a site plan approval, with associated fees. Rezoning may require an additional concept plan and a site plan approval will require detailed site plans for the site and surrounding lands, beyond those otherwise required. These processes may be followed concurrently and may take approximately one year if no appeals, or approximately two years with appeals. A joint board of the Ontario Municipal Board and EAB may be struck to deal with the entire range of approvals as one process. A municipality may also have by-laws regarding the establishment, maintenance and operation of a waste management system, and additional licensing and fee requirements, as permitted under the *Municipal Act*.

(5) Time and cost to complete regulatory approval process

144. The time required to complete the an EA process for a new landfill or a significant landfill expansion includes:

(a) time for planning of the project within the applicant's organisation and performing appropriate feasibility studies;

(b) approximately six months for pre-submission consultation with the MOE, considering that time invested in this period should decrease the likelihood of significant time delays later in the process; and

(c) from one to three years, approximately, for the setting of terms of reference for the EA process, the full EA itself, the MOE review and the issuance of a decision by the EAB or the Minister.

145. Significant new landfill or expansion applications have historically required 3 to 7 years review before approval by the Minister of Environment or a hearing by an administrative tribunal. The process outlined above is the result of legislative amendments that were designed to streamline the approval process.

146. The cost of the EAA/EPA process for a significant expansion of an existing landfill is approximately $4-5 million exclusive of any hearing costs.

(6) Some Previous Applications

147. The parties will provide information on some previous EAA/EPA expansions.

(7) Capital costs and time to develop new capacity

148. After receiving regulatory approval for a new landfill or an expansion to an existing landfill, the landfill owner incurs a number of capital costs.

149. In the case of a new landfill, capital costs include:

(a) cost to purchase land;

(b) cost to develop landfill capacity, including:

(i) environmental monitoring;

(ii) excavation of cells;

(iii) lining of cells;

(iv) leacheate management;

(v) gas collection system;

(c) cost to purchase equipment;

(d) cost to construct access roads, office, etc.

150. In the case of an expansion application, CWS estimated the costs of expanding Richmond to add approximately 21 million tonnes of total capacity, if approval is received, to be as set out in Confidential Appendix E.

151. Additional capital costs involved in expanding an existing landfill may include new equipment and other costs.

B. Transfer stations

152. A person wanting to establish or expand a Transfer Station will require a Certificate of Approval or an amendment to its existing Certificate of Approval.

153. Environmental Assessments may be required to develop or expand transfer stations.

154. Municipal approvals may be required to develop or expand a transfer station. In particular, if the zoning of the site of the proposed Transfer Station does not allow a Transfer Station, then a zoning variance would be required.

155. The time and financial resources required to obtain regulatory approval for the construction of a transfer station are generally significantly less than those required for the construction of a Permanent Disposal Facility.

Dated: October 2, 2000.

Counsel for the Applicant

Counsel for the Respondents

APPENDIX C

SUMMARY OF PROPOSALS IN TORONTO BIDDING PROCESS

Bidding Party	Term	Volume	Site	Haul Mode	Contingency Site
Essex-Windsor Solid Waste Authority	20 year contract with mutually agreeable renewal points at five year increments	100,000 tonnes per year for a period of 20 years or less	Essex-Windsor Regional Landfill, Essex County, Ontario	Truck haul using as yet to be names sub-contractor from Toronto Transfer Stations	Carleton Farms, Wayne County Michigan
Green Lane Environment Group Ltd.	5 years with an option to extend for additional five-year terms, up to 20 years	100,000 to 125,000 tonnes per year	Green Lane Landfill Site, Elgin County, Ontario	Truck haul using Green Lane Environmental Group from Toronto Transfer Stations	Carleton Farms, Wayne County, Michigan
Rail Cycle North Ltd.	20 years	Different scenarios presented for a 20-year period including put-or-pay in which Toronto would provide a minimum tonnage volume of 700,000 tonnes yearly for the initial 10 years of the contract, 600,000 tonnes thereafter; or no put-or-pay in which Toronto would provide all of its municipal waste for disposal or an initial quantity of 1.3 million tonnes per year (no penalty as long as reduction is due to increased diversion)	Adams Mine Landfill, Kirkland Lake, Ontario	Truck haul using fully enclosed intermodal containers from Toronto Transfer Stations to CN's MacMillan Yard in Vaughan for loading onto flat-bed train cars (80 cars comprise a train). One train daily would travel from Vaughan to North Bay, at which point the train would transfer to the jurisdiction of Ontario Northland Railway and continue to the Adams Mine site.	Woodland Meadows, Van Buren Landfill site, Wayne County, Michigan; Pine Tree Acres Landfill Acres, Macomb County, Michigan
Republic	Flexible option to	All or any part of Toronto's	Carleton Farms	Truck proposal which involves	Brent Run Landfill site; Genesee

Bidding Party	Term	Volume	Site	Haul Mode	Contingency Site
Services (Canada Inc.)	contract within a range of five to 20 years (including five year increments)	waste	Landfill, Wayne County, Michigan, U.S.	Wilson Logistics of Etobicoke using closed top truck trailers and transporting waste from Transfer Stations to the Carleton Farms; or Train proposal which involves Wilson Logistics trucking waste from Toronto Transfer Stations in intermodal containers to a CPR railhead (either to Milton for smaller tonnage or to a reactivated Junction Triangle yard for larger tonnage). CPR would then transport to Detroit intermodal yard for truck haul to landfill site	County, Michigan
Onyx Arbour Hills Landfill, Inc. (Superior)	Five years with an option to extend for additional five-year terms, up to 15 years	450,000 tonnes per year	Arbour Hills Landfill, Washtenaw County, Michigan	Truck haul using Verspeeten Cartage, Ltd. of Ingersoll, Ontario to transport waste from Toronto Transfer Stations to Arbour Hills	American Ref-Fuel, Niagara Falls, N.Y., ash disposal at Niagara Recycling landfill, Niagara Falls, N.Y.; or Carbon Limestone Landfill site, Mahoning County, Ohio, Sauk Hills Landfill Site, Wayne County, Michigan