

Affidavit of Roger Reaume

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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 disposal business.**BETWEEN:****COMMISSIONER OF COMPETITION**

- and -

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

COMMISSIONER OF COMPETITION		COMMISSIONER OF COMPETITION	
TRIBUNAL DE LA CONCURRENCE		TRIBUNAL DE LA CONCURRENCE	
CT-2000/002		CT-2000/002	
JUN 5 2000		JUN 5 2000	
REGISTRE DES APPLICANTS		REGISTRE DES APPLICANTS	
OTTAWA, ONT.		# 8 / 6	

Respondents**AFFIDAVIT OF ROGER REAUME**

1. I, Roger Reaume, am the Manager of Environmental Services, for the Municipality of Chatham-Kent and, as such, have knowledge of the matters hereinafter deposed to.
2. Chatham-Kent was officially created on January 1, 1998 by the amalgamation of the 21 lower tier municipalities comprising the County of Kent and the former separated City of Chatham. The new municipality covers 2200 sq. kilometres and has a population of 110,000. The principal concern of Chatham-Kent arising from the proposed merger is the fate of the Ridge Landfill.
3. Chatham-Kent has inherited most of its municipal policy regarding the Ridge from the former Township of Harwich, the host municipality prior to amalgamation. It was the opinion of Harwich that land filling operations create a variety of environmental and nuisance impacts which affect the livability and character of a municipality. Unlike other major industries which also exhibit these characteristics, there is no offsetting benefit in the way of property taxes or large payrolls which create the wealth and prosperity necessary to ameliorate any negative effects. Harwich, and now Chatham-Kent, believed, as a community expected by others to host a regional landfill in the interest of a greater common good, annual compensation payments were proper, even obligatory, to overcome negative perception arising from the mere existence of the site.

4. The Ridge was obtained by BFI in the early 1970's and transformed from a local dump to a regional landfill. By the late 1970's, the relationship between BFI and Harwich had become intensely adversarial over regulation of the landfill, culminating in an Environmental Assessment Board (EAB) Hearing in the fall of 1981, where BFI sought to significantly expand the landfill and Harwich sought to close it. A limited expansion was eventually granted but subject to much more stringent regulations under a new Certificate of Approval (C. of A.)
5. As BFI upgraded its operation, the relationship between Harwich and BFI improved to a point such that when BFI announced in 1989 it would seek further expansion of the site and an extension of its service area, the former Harwich Council was willing to consider a favourable response provided a local benefits program, implemented by the Commitments Report and Host Community Agreement, was included. BFI agreed.
6. This process led eventually to the approval of the service area extension in 1993 (all of Ontario for I.C.&I. waste) and an expansion of the site for another 13,600,000 tonnes of waste, with the annual limit raised to 680,000 from 218,000, a process in which Harwich, and later Chatham-Kent, was a key participant and a valuable supporter. Prior to the EA commencing, Harwich had adopted an amendment to its Official Plan (OPA 37) which recognized the landfill operation as a form of economic development, provided all social, financial and environmental impacts could be remedied, mitigated or compensated. The new Host Community Agreement, which was signed in early 1998, embodies those principles. It is critical to note that municipal support was based on the understanding that it would be in the best interest of BFI, as a major competitor in the North American waste industry, to maximize disposal capacity at the Ridge.
7. The Ridge received EAA approval for the expanded landfill June 24, 1998. Construction of the new landfill is completed and it is now capable of receiving waste.
8. The Host Community Agreement referred to in paragraph 5 is a comprehensive document which consists of two basic parts – provisions regarding the disposal of waste at the landfill and provisions regarding the treatment/disposal of leachate at the Chatham or Blenheim sewage treatment plants. The first part runs for the life of the landfill, 20 to 25 years if operated at or near its maximum capacity, and the second part covers leachate disposal for 100 years.

9. The benefits to Chatham Kent of the Host Community Agreement are as follows:

- a) Host Community Fee – BFI has agreed to pay \$1.40 per tonne of waste deposited at the Ridge, exclusive of waste generated by Chatham-Kent itself. This increases to \$1.50 should the leachate be treated at the Blenheim plant by way of an existing force main sanitary sewer, rather than trucked to Chatham.
- b) Disposal fee – The disposal fee charged Chatham-Kent reduces from \$36.06 per tonne (225,000 tonnes) to \$26.32 per tonne (645,000 tonnes), based on overall annual disposal volumes.
- c) Buy-back of Chatham-Kent reserve – the agreement reserves a 35,000 tonne “window” for Chatham-Kent waste, utilizing the sliding scale disposal fee noted above. However, BFI has agreed to buy back from Chatham-Kent each tonne of the reserve not utilized by Chatham-Kent up to 10,000 tonnes (i.e., a reduction of Chatham-Kent waste landfilled to 25,000 tonnes), the buy-back rate per tonne being \$0.00 up to 310,000 tonnes site volume and rising to \$12.00 at 645,000 tonnes.

10. Presuming the site operates at maximum, 655,000 tonnes outside waste and 25,000 tonnes Chatham-Kent waste, the benefit to the municipality would be as follows:

- (i) Host community fee – 655,000 tonnes @ \$1.50 = \$ 982,500
- (ii) Disposal fee savings--(\$36.06-\$26.32) @ 25,000 = 243,500
- (iii) Reserve buy-back – 10,000 tonnes @ \$12.00 = 120,000

Total \$1,346,000

11. Money earned under the HCA would be earmarked to offset fixed municipal costs associated with the landfill operation, and fund community projects such as a comprehensive waste diversion program. This clearly demonstrates the principle of tying the host community fee to the profitability of the site as best evidenced by the volume of waste received, a principle of negotiation promoted by BFI and accepted by Chatham-Kent, based on the understanding that a rational course of action by BFI would be to maximize disposal at the Ridge.

12. Other Community Benefits under the Host Community Agreement include:

- a) Commitment Report – BFI has agreed to continue a property value protection program as well as financial compensation offered directly to local residents for social and environmental impacts. The total value of

the Commitment Report varies from \$125,775 to \$172,200 depending on the volumes received.

- b) Water Line – BFI agreed to provide funding for a local water line in the amount of \$700,000 (indexed to 1991). This commitment was tied to expansion approval.
 - c) Community Trust Fund – BFI has agreed to fund a Community Trust in the amount of \$0.70 per tonne, the trust to be controlled by trustees appointed from a local citizen's group (WE CARE) and its solicitor, to be used for community and environmental-related projects.
13. Municipal support of the Ridge Landfill was based on the concept that waste disposal, if done appropriately, can be considered as a form of economic development with spin-off community benefits. Without these benefits, serious harm is done to the image and livability of a community by a landfill's mere presence. The Host Community Agreement, the Commitments Report and the Community Trust agreements are all clearly based on the notion that the expanded landfill would be a competitively promoted waste management asset and profit centre.
 14. Of all of the CWS landfills, the Ridge will be furthest from the Toronto area and will compete internally within the CWS operation with the Warwick Landfill for all I.C. & I. waste west of Toronto and with Warwick, Richmond and possibly Kirkland Lake, for waste in the Toronto area itself.
 15. It may well be that a rational course of action for CWS would be to maximize the waste capacity at Warwick, Kirkland Lake and Richmond prior to the Ridge with potentially significant financial impact on Chatham-Kent.
 16. Residential and I.C. & I. Waste generated and collected within Chatham-Kent is disposed of at one of two landfills – the Ridge Landfill ("the Ridge") and the Blenheim Landfill. CWSI owns the Blenheim Landfill.
 17. The Ridge and the Blenheim landfills compete for solid waste generated within Chatham-Kent. By the acquisition of the Ridge site, the Respondent controls the predominant share of the waste disposal capacity in Chatham-Kent. There are no other landfills or transfer stations in Chatham-Kent.
 18. The acquisition of the Ridge Landfill by the Applicant will have the effect of lessening or preventing competition in the market for the disposal of solid waste from the Chatham-Kent area and impact tendering prices for the collection and disposal of waste by the Municipality.

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- 19. The divestiture of the Ridge may have a major and as yet unknown environmental and economic effect on Chatham-Kent.
- 20. I make this Affidavit for no improper purpose.

SWORN before me at the)
 Municipality of Chatham-Kent,)
 Province of Ontario, this 5th)
 day of June, 2000.)



 ROGER REAUME



 A Commissioner, etc.

Clerk/COMPETITION TRIBUNAL AFFIDAVIT.DOC

JOSHUA SCOTT HENDERSON, a Commissioner, etc.,
 Municipality of Chatham-Kent, for the Corporation of
 The Municipality of Chatham-Kent.
 Expires September 30, 2002.