STATEMENT OF GROUNDS AND MATERIAL FACTS

I. INTRODUCTION

1. This Application is brought pursuant to section 92 of the *Competition Act* (the "*Act*") to prevent the substantial lessening or prevention of competition which is likely to result from the acquisition by the Respondents of the Ridge landfill facility at Blenheim, Ontario (the "Ridge").

2. The Respondents already own or control six landfills in southern Ontario. If they are permitted to keep the Ridge, they will control a significant proportion of the current solid waste disposal capacity in southern Ontario, which proportion is expected to increase by 2002.

3. The Ridge has been a strong competitor to the Respondents' disposal facilities, particularly those in southwestern Ontario. The Ridge recently underwent a significant expansion, which will enhance its ability to compete with the Respondents, so long as it remains in competitive hands.

4. If the Respondents are permitted to take control of the Ridge, they will thereby eliminate the Ridge as a competitor. For some southern Ontario communities, local disposal options are sufficient. However, for the Greater Toronto Area ("GTA"), and for the Chatham-Kent area, the Ridge is an important competitive disposal option which will be eliminated if retained by the Respondents. Acquisition of the Ridge will enable the Respondents to exercise market power in disposal markets relating to the GTA and the Chatham-Kent area.

5. Control of the Ridge by the Respondents will substantially lessen the disposal options for waste collected in the GTA. Apart from the Ridge, there will be little effective competition to the Respondents' facilities, and barriers to new entry or expansion are high. Transfer stations and waste collectors in the GTA will effectively be forced to either use the Respondents' facilities, or to incur additional costs and uncertainty by transporting their waste to distant sites in the United States.

6. In the Chatham-Kent area, the only disposal options are the Ridge and the Respondents' Gore landfill. If they acquire control of the Ridge, the Respondents will then control 100% of the Chatham-Kent waste disposal market.

7. Accordingly, the acquisition of the Ridge by the Respondents will likely result in a substantial lessening or prevention of competition in the following markets:

(a) The disposal of solid non-hazardous waste from the GTA; and

(b) The disposal of solid non-hazardous waste from the Chatham-Kent area.

8. In addition, because of the vertical relationship between disposal and collection markets, acquisition of the Ridge by the Respondents and the ensuing effects on disposal markets will also have anti-competitive effects in waste collection markets in the GTA and Chatham-Kent.

9. Therefore, the Commissioner seeks an Order requiring the divestiture of the Ridge, or such other relief as the Tribunal considers appropriate to address the substantial lessening or prevention of competition which is likely to result from the Respondents' acquisition of the Ridge.

II. THE PARTIES

10. The Applicant is the Commissioner of Competition ("the Commissioner"), appointed under section 7 of the *Act* and is charged with the administration of the *Act*.

11. The Respondent Canadian Waste Services Inc. ("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 non-hazardous solid waste.

12. The Respondent Canadian Waste Services Holdings Inc. ("CWSH") is incorporated pursuant to the laws of the State of Delaware, U.S.A. CWSH owns all of the issued and outstanding shares of CWS.

13. The Respondent Waste Management, Inc. ("WMI-U.S.") is the parent company of CWSH and is the largest waste management company in the United States. WMI-U.S. is incorporated pursuant to the laws of the State of Delaware, U.S.A.

14. Browning-Ferris Industries Ltd. ("BFIL") is an Ontario Corporation with its headquarters in Concord, Ontario. It is 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 includes the collection, compaction, recycling, resource recovery, transfer, transportation and disposal of non-hazardous solid waste.

15. BFIL is a subsidiary of Browning-Ferris Industries Inc. ("BFII"), a Delaware Corporation.

16. Allied Waste Industries, Inc. ("Allied"), a Delaware Corporation, purchased BFII and its subsidiaries, including BFIL, in July 1999. As part of a sale of certain waste management businesses to CWS in 1997, Allied entered into an agreement with CWS which stipulates that Allied will not compete in the waste management business in Canada for a period of 5 years.

III. CONSOLIDATION IN THE WASTE INDUSTRY IN CANADA

17. The solid waste industry in Canada has undergone significant consolidation in recent years. In particular:

(a) In 1996, CWS entered the Canadian market by acquiring the Canadian waste businesses of Philip Environmental Inc. and Sanifil Inc., in two separate mergers;

(b) In March 1997, CWS purchased the solid waste and recycling assets of Allied in Canada, formerly Laidlaw Waste Systems Ltd. and Laidlaw Waste Systems (Canada) Ltd. ("Laidlaw"). Laidlaw was at that time the largest participant in the solid waste business in Canada. In previous transactions, Laidlaw had acquired the businesses of Tricil, Intersan and part of the business of WMI Waste Management Inc. ("WMI") in Canada. Pursuant to a consent Order issued by the Competition Tribunal on April 16, 1997, CWS was required to divest certain Laidlaw assets in order to address the substantial lessening of competition which would otherwise have occurred. As a result, CWS sold certain assets to Capital Environmental Resources Inc. ("CER") in June 1997.

(c) In June 1997, CWS acquired most of the assets of WMI in Canada, excluding parts of southern Ontario. In order to address competition concerns, CWS sold certain assets to CER prior to completion of the transaction. Then, in April, 1998, the Competition Tribunal issued a Consent Order to address competition concerns with respect to disposal in Edmonton;

(d) In August, 1998, CWS acquired the remaining assets of WMI in Canada, those being in parts of Ontario. In order to address competition concerns, CWS sold certain assets to CER immediately following completion of the transaction;

(e) In March, 1999, CWS entered into a merger with RCI Environmental Inc. in Quebec. In order to address competition concerns, CWS agreed to sell certain assets to a third party. That sale has not yet taken place;

(f) In 1999, CWS acquired additional waste management businesses in Canada.

IV. THE MERGER

18. Initially, CWS proposed to acquire all of BFIL's businesses in Canada. However, in response to competition concerns identified by the Commissioner, the Respondents changed the transaction by significantly reducing the assets to be acquired.

19. Pursuant to a Purchase Agreement dated March 31, 2000, CWS purchased certain assets and shares comprising collection and disposal businesses of BFIL, including the Ridge in Blenheim, Ontario (the "Merger").

20. The Respondents have consented to an interim "hold separate" order to maintain the independence of the Ridge pending disposition of this Application.

21. In addition to the Ridge, CWS purchased the following businesses:

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

(b) BFIL's commercial, industrial and recycling collection businesses in the GTA (excluding Halton), Halifax, St. John's, Brandon, Kenora and Nanaimo;

(c) Certain of BFIL's predominantly industrial and recycling collection businesses in Vancouver, Victoria, Kelowna, Calgary, Edmonton, Medicine Hat, Lethbridge, Winnipeg, Portage la Prairie, Thunder Bay, Windsor, London, Kitchener, Halton, and Ottawa relating to customers who require a combination of commercial, industrial and recycling collection services;

(d) BFIL's residential collection businesses in Canada, with the exception of residential collection businesses in Ontario;

(e) BFIL's landfill in Red Deer and BFIL's interest in a disposal business in Halifax, subject to receiving the required regulatory environmental approvals.

22. Apart from the anti-competitive effects arising from the acquisition of the Ridge, the Merger as presently constituted does not raise competition concerns due to low market shares and/or the existence of effective competition remaining in the markets in which these other businesses are located.

V. MARKET DEFINITION

23. Solid non-hazardous waste refers to waste that is generated by commercial, institutional, industrial and residential customers. Unless otherwise specified, references to waste herein are to solid non-hazardous waste.

24. "ICI waste" refers to waste generated by institutional, commercial and industrial customers.

25. "Residential waste" refers to waste generated by residents and collected pursuant to municipal contracts.

26. The non-hazardous waste management business comprises five distinct product markets, four in collection and one in disposal:

(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 are typically used to lift the containers and empty the waste into the transport truck. Rear-load trucks are

sometimes used in the downtown core of urban areas due to limited space getting to or at the customer premises. Customers in the commercial waste collection market include restaurants, offices, institutions, and small commercial establishments that generate significant quantities of solid non-hazardous waste and require scheduled pick-up. Commercial collection operations are typically conducted under contractual arrangements, which may vary from one to five years plus renewals for a like term. Due to the specialized nature of the equipment used in the process, there are no substitutes for commercial waste collection.

(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. 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 smaller quantities of 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 on the basis of tenders.

(d) **Recycling collection** involves the collection of recyclable solid waste from individual residences, apartments, and commercial establishments. Residential recycling collection typically involves hand pick-up and is 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 individual commercial and institutional customers.

(e) **Solid non-hazardous waste disposal** involves the provision of services to

collectors of solid non-hazardous waste for its ultimate disposal or destruction. Once collected, waste is delivered to transfer stations or directly to final disposal sites including landfills and incinerators. Transfer stations are commonly used in urban centres as facilities where waste is off-loaded and consolidated into larger open top transport trailers for delivery to final disposal sites located at some distance from the collection market. Transfer stations and landfills are owned and operated either by municipal or regional governments, or by private sector companies, some of whom are also involved in the collection and disposal of solid waste. Recyclable material that has been diverted from the waste stream destined for final disposal is processed at materials recycling facilities.

27. Solid non-hazardous waste disposal is the principal relevant product market in this application. Waste collection markets are also relevant product markets.

28. The relevant geographic market for commercial collection markets is local, typically corresponding to an approximate 50-km. radius from the dispatch hubs.

29. The geographic boundaries of disposal markets are typically local, but, in some cases, can be broader than collection markets. Disposal costs are a significant component of the total cost of providing solid waste collection and disposal services to customers, typically accounting for 30-50% of revenues for collection services. The price of disposal includes transportation costs plus the fee charged at a landfill (“tipping fee”). As a result, collection companies are often limited to disposal sites located in close proximity to their collection operations due to the higher transportation costs that are incurred when accessing more distant sites.

30. In some large urban centres, transfer stations are used as temporary depositories for waste. Once collected, waste can be taken to transfer stations where it is processed and/or temporarily stored, and then loaded into larger vehicles for transportation to another site for final disposal. By consolidation at transfer stations, waste can be disposed of at final disposal sites that are located outside of the collection market. Local transfer stations compete for solid non-hazardous waste collected by collection companies within a local collection market, and landfills located outside of the collection market can compete for waste from transfer stations for final disposal.

31. In this case, the geographic market for the disposal of waste generated in the Chatham-Kent area corresponds with the Chatham-Kent collection market. The geographic market for the disposal of waste generated in the GTA is southern Ontario. A small amount of GTA waste is disposed of at Michigan landfills and an even smaller amount, at New York sites. However, U.S. disposal facilities would not discipline a significant and non-transitory price increase by a hypothetical monopolist in southern Ontario.

VI. COMPETITIVE EFFECTS OF THE MERGER

32. The acquisition of the Ridge by CWS is likely to substantially lessen or prevent competition in the following markets:

(a) The disposal of solid non-hazardous waste from the GTA; and

(b) The disposal of solid non-hazardous waste from the Chatham-Kent area.

33. Due to the vertical relationship between disposal and collection, the ability of CWS to exercise market power in the disposal markets identified above will also have anti-competitive effects in the related collection markets.

A. SOLID WASTE DISPOSAL IN SOUTHERN ONTARIO

34. CWS presently owns and operates landfills at six locations in Ontario: Blackwell, LaSalle and Warwick in Sarnia; Petrolia in Petrolia; Gore in Blenheim; and Richmond in Napanee.

35. CWS is also part of the Rail Cycle North consortium which is developing the Adams Mines disposal facility near Kirkland Lake ("Adams Mine").

36. Through the Merger, CWS acquired BFIL's Ridge landfill at Blenheim, Ontario.

37. BFIL has owned and operated the Ridge since 1972. The Ridge is currently licensed to receive residential and ICI waste from the counties of Kent, Elgin, Oxford, Middlesex and Lambton, and ICI waste from the entire province.

38. Until recently, the annual permitted fill rate of the Ridge was 218,000 tonnes. However, in June 1998, BFIL received approval to increase the annual fill rate limit to 680,000 tonnes of waste plus 460,000 tonnes of contaminated soil for bio-remediation. This expansion became

operational in January 2000. The Ridge currently has an unused total capacity of approximately 13,600,000 tonnes.

39. Apart from CWS sites and the Ridge, the only other privately owned sites that can receive non-local waste from southern Ontario are the landfill owned by Green Lane Environmental Group in St. Thomas, Ontario ("Green Lane landfill") and the landfill owned by Walker Industries Holdings Limited in Thorold, Ontario ("Walker landfill")".

40. While there are numerous municipal landfills in Ontario, almost all such sites have service areas or wastesheds that are limited to their local area of responsibility and, in some circumstances, neighbouring municipalities. With the exception of the landfill owned and operated by the Essex Windsor Solid-Waste Authority ("EWSWA") ("Essex-Windsor landfill"), which has an Ontario wide service area, no other municipal sites accept waste from outside of their municipal jurisdiction.

41. Over the next few years, disposal capacity in Ontario is expected to undergo significant changes including the following:

a) Closure of the Keele Valley landfill owned by the City of Toronto, scheduled to close by 2002. This will result in a loss of approximately 1,625,000 tonnes of annual capacity;

b) Closure of the LaSalle and Blackwell landfills owned by CWS, also scheduled to close by 2002, for a further loss of 675,000 tonnes of annual capacity;

c) Expansion of CWS' Richmond and Warwick landfills. CWS has applied to the Ministry of Environment for these expansions. If approved, each of these landfills will likely be able to receive 750,000 tonnes of waste annually;

d) Development of the Adams Mine disposal facility, being developed by a consortium which includes CWS ("CWS/Rail Cycle North"). Adams Mine is not currently operational but has been approved to handle 1,330,000 tonnes of waste per year. While Adams Mine is located outside of southern Ontario, it is one of the sites currently being considered by the City of Toronto in its solid waste disposal tender process.

B. GREATER TORONTO AREA

42. Acquisition of the Ridge by CWS will likely result in a substantial lessening or prevention of competition in the market for the disposal of solid waste from the GTA. Both private transfer stations and waste collectors in the GTA as well as the City of Toronto will likely face substantially less choice and higher prices.

43. The GTA comprises the City of Toronto and the Regions of Durham, York, Peel and Halton. To manage waste more effectively, the City of Toronto co-operates with the Regions of Durham, York and Peel with the objective of defining potential GTA partnerships to secure long term solid waste management disposal capacity.

44. Waste collected in the GTA is currently disposed of at local municipal landfills or at various local municipal and privately owned transfer stations for subsequent delivery to more distant sites for final disposal.

Landfills located in the GTA

45. The City of Toronto owns and operates the Keele Valley landfill. Residential waste from the City of Toronto, as well as from York Region and Durham Region, is currently disposed of at this landfill. The Keele Valley landfill also accepts ICI waste from the GTA. The tipping fee at Keele Valley for ICI waste collected by the private sector is $55/ tonne.

46. The Region of Halton operates a landfill which is not accessible to waste collectors from outside the Halton area. Most of the waste received at this site is residential waste. Since the region of Halton charges tipping fees in excess of $100/ tonne, collectors of ICI waste generated in Halton generally do not use this site for disposal.

47. The Region of Peel currently operates the Brittania Road landfill. Only waste collected in the Peel region is disposed of at the Britannia Road landfill. The Region of Peel accepts ICI waste from Peel for $80/tonne. This facility is expected to close in approximately 2005. The KMS Peel Incinerator only accepts waste from Peel.

Transfer Stations located in the GTA

48. Because of the GTA's size and traffic congestion, several transfer stations are required throughout the GTA to service the needs of local waste collectors.

49. The City of Toronto operates seven transfer stations in the GTA. Most of these transfer stations do not have permitted fill rate limitations. Solid waste that is delivered to these transfer stations is ultimately taken to the Keele Valley landfill or to the Arbour Hills landfill in Michigan for final disposal. The contract between the City of Toronto and the Arbour Hills landfill is described more fully below.

50. The City of Toronto transfer stations receive both residential and ICI waste. Access is currently available to private collectors of ICI waste at a fixed price of $70/ tonne.

51. CWS owns and operates seven transfer stations in the GTA. The total permitted annual fill rate at CWS transfer stations is in excess of 900,000 tonnes. Pre-Merger, BFIL owned a transfer station licence at one of its facilities, but did not operate any transfer stations in the GTA.

52. There are also a number of independent transfer stations located in the GTA. The annual permitted fill rates of these third party transfer stations total in excess of 2 million tonnes.

53. Since BFIL did not operate its own transfer station in the GTA, it used City of Toronto or privately owned transfer stations.

GTA Disposal Needs

54. The majority of residential waste generated in the GTA is managed and disposed through the City of Toronto facilities. The City of Toronto also participates in the market for the disposal of ICI waste generated in the GTA by offering its facilities to private waste collectors and privately owned transfer stations.

55. In 1998, the City of Toronto managed, through diversion and disposal, approximately 2,122,000 tonnes of solid non-hazardous waste. Of this amount, approximately 246,000 tonnes of residential solid waste were diverted through recycling and composting. The balance of approximately 1,876,000 tonnes of residential and ICI waste was disposed of at two landfills:

about 1,625,383 tonnes (86%) were disposed of at Keele and about 254,000 tonnes (14%) were disposed of at the then BFII-owned Arbour Hills landfill in Michigan.

56. To prolong the life of Keele Valley, the City of Toronto entered into a 5 year disposal agreement in 1998 with BFIL, BFII, and Browning Ferris Industries of Southern Michigan Inc., whereby a portion of the waste managed by the City of Toronto would be disposed of at the Arbour Hills landfill in Michigan. This agreement expires in 2002.

57. Waste managed by the City of Toronto in 1998 originated from the following sources:

Residential	758,000
Agencies, Boards Commissions and Departments	202,000
ICI	616,000
York Region	174,000
Durham Region	126,000
TOTAL	1,876,000 tonnes

58. As indicated above, approximately 616,000 tonnes of ICI waste collected by private waste collectors were disposed of at City of Toronto facilities. Of this amount, approximately 429,000 tonnes were sent directly to Keele Valley, while approximately 187,000 tonnes were taken to the City of Toronto's transfer stations and then sent to Keele Valley or Arbour Hills.

59. While the City of Toronto currently manages a portion of ICI waste generated in the GTA, it is not legally obliged to receive ICI waste at its transfer stations or Keele Valley landfill. If the City of Toronto ceases to accept ICI waste or if prices at its disposal facilities significantly increase, private waste collectors or transfer stations which currently dispose of their waste at the Keele Valley landfill or at the City of Toronto transfer stations would have to find alternate disposal options.

60. In addition to approximately 616,000 tonnes of ICI waste managed by the City of Toronto in 1998, a further 1.2 million tonnes of ICI waste generated in the GTA were managed by privately owned transfer stations.

61. These transfer stations require access to final disposal sites. While several privately owned transfer stations currently use the City of Toronto's Keele Valley landfill, many transfer

stations deliver waste to final disposal sites located outside of the GTA. When Keele Valley closes in 2002, the demand for disposal sites outside the GTA will increase.

62. CWS transports a significant proportion of the waste delivered to its transfer stations to its own landfills or to WMI-U.S. landfills. In addition, when CWS or BFIL use independent transfer stations, they often specify or direct that their waste ultimately be delivered to a CWS- or BFIL- affiliated disposal facility. As a result, a significant amount of ICI waste generated in the GTA is ultimately disposed of at final disposal sites that are owned by or affiliated with CWS or BFIL.

Market Shares

63. Table 1 below identifies the disposal sites owned by CWS, BFIL and third parties in southern Ontario that have non-local service areas and that are capable of receiving waste from the GTA. The current permitted annual fill rates of these landfills have also been included.

TABLE 1: LANDFILLS WITH NON-LOCAL SERVICE AREAS CAPABLE OF RECEIVING WASTE FROM THE GTA

COMPANY (LANDFILL NAME)	PERMITTED ANNUAL FILL RATE (tonnes)
CWS (Blackwell, Lasalle, Richmond)	802,000
BFIL (Ridge)	680,000
CWS/BFIL	1,482,000
City of Toronto (Keele Valley)	1,625,000
Niagara Waste Systems (Walker)	617,000
EWSWA(Essex-Windsor)	140,000*
Green Lane Environmental (Green Lane)	280,000
TOTAL	**4,144,000**

* Essex-Windsor has a total permitted annual fill rate of 320,000, but is only permitted to receive 140,000 tonnes of non-local waste.

64. If CWS is permitted to retain the Ridge, it will control approximately 36% of the licensed disposal capacity of landfills in southern Ontario that are capable of receiving waste from the GTA.

65. However, as described above, several changes are anticipated by 2002, including the closure of Keele Valley and expansions at CWS landfills. Table 2 below shows the projected capacity of landfills in southern Ontario expected to be available in 2002 for disposal of waste from the GTA. With the exception of Essex-Windsor, municipal landfills have not been included due to their local service area restrictions.

TABLE 2: ANTICIPATED LANDFILL CAPACITY IN 2002

COMPANY (LANDFILL NAME)	ANTICIPATED PERMITTED ANNUAL FILL RATE (TONNES)
CWS (Warwick)	750,000
CWS (Richmond)	750,000
BFIL (Ridge)	680,000
TOTAL: CWS/BFI	2,180,000
EWSWA-(Essex-Windsor)	140,000*
Green Lane Environmental (Green Lane)	280,000
Walker Brothers (Walker)	617,000
TOTAL	**3,217,000**

* Essex-Windsor has a total permitted annual fill rate of 320,000, but is only permitted to receive 140,000 tonnes of non-local waste.

66. Therefore, if CWS is permitted to retain the Ridge, based on the anticipated changes in landfill capacity described above, CWS will likely control approximately 68% of the projected capacity of landfills in southern Ontario in 2002 that are capable of receiving waste from the

GTA. In addition, CWS is a partner in the Adams Mine consortium (CWS/Rail Cycle North) which is actively bidding on the City of Toronto disposal tender process, and which, if selected by the City of Toronto, would provide CWS with additional capacity of approximately 1,330,000 tonnes.

Acceptable Substitutes -- Solid Waste Disposal -- GTA

67. There are no acceptable substitutes for the disposal of solid waste in landfills or incinerators. While some waste can be diverted for recycling purposes, the majority of waste generated must be disposed of at approved landfills or incinerators.

Barriers to Entry -- Solid Waste Disposal -- GTA

68. The barriers to entry into solid waste disposal markets are high and include the following:

(a) Regulatory and environmental requirements; and

(b) Sunk costs

69. The establishment or expansion of a landfill requires numerous regulatory approvals. Potential applicants must prepare and submit a Terms of Reference document pursuant to the *Environmental Assessment Act* ("EAA"). Following this, an environmental assessment is required by the EAA. After receiving EAA approval, applicants must submit technical design and operating documents in order to receive a Certificate of Approval under the *Environmental Protection Act*. Obtaining these approvals is uncertain and has historically taken 3-7 years. Approval costs can be in excess of $3.5 million, excluding hearing costs. Applicants must also address municipal planning and zoning issues.

70. Once regulatory approvals have been obtained, additional significant investment is required to develop or expand the capacity at the site. The majority of this investment is a sunk cost. New guidelines and regulations affecting the design, environmental performance and financial assurance of new and expanded landfills, recently implemented by the Ontario Ministry of Environment, are likely to lead to higher landfill development costs.

Removal of a Vigorous and Effective Competitor – Solid Waste Disposal -- GTA

71. The Ridge has been a strong competitor to CWS in the disposal of solid waste from the GTA. Competition would have been enhanced by its recent expansion from 218,000 tonnes to 680,000 tonnes of annual permitted capacity.

72. The Ridge is located at a similar distance from the GTA as the CWS Warwick, Blackwell and LaSalle landfills. The cost of transporting waste from the GTA to these four landfills is roughly equivalent.

73. The Ridge and the CWS Blackwell and LaSalle landfills have been each other's closest competitors for ICI waste generated in the GTA. Although Blackwell and LaSalle are scheduled to close in 2002, the anticipated expansion of CWS' Warwick landfill is expected to replace the capacity at these two sites. Since Warwick is located in close proximity to Blackwell and LaSalle, it is expected that CWS and the owner of the Ridge would continue to be each other's closest competitors if the Ridge remains independent of CWS.

74. Acquisition of the Ridge by CWS will result in significantly less choice for independent transfer station operators seeking to dispose of waste generated in the GTA and will allow CWS to exercise market power.

Effective Remaining Competition – Solid Waste Disposal – GTA

75. In southern Ontario, the only other privately owned landfill sites that can receive GTA waste are the Green Lane and Walker landfills.

76. Green Lane Environmental Group owns and operates the Green Lane landfill located in St. Thomas, Ontario, near London. This landfill has a permitted annual capacity limit of 280,000 tonnes. Green Lane Environmental is required to pay a significant community host fee on every tonne of waste brought to the Green Lane landfill.

77. Walker Industries Holdings Limited owns the Walker landfill in Thorold, Ontario. This landfill has a permitted annual capacity of 617,000 tonnes. Walker utilizes virtually all of its annual permitted capacity and is therefore capacity constrained. A significant amount of the volume of waste received at the Walker landfill is brought in by CWS.

78. Municipal landfills in southern Ontario generally charge higher prices than privately owned landfills. Municipalities do not wish to receive waste generated outside of their mandated areas so as to prolong the life of their landfills. With the exception of the Essex-Windsor landfill owned by the EWSWA, which has an Ontario-wide service area, municipal landfills in southern Ontario are not permitted to accept waste from outside of their municipal area.

79. The Essex-Windsor landfill has an annual permitted fill rate of 320,000 tonnes, but it is only permitted to receive 140,000 tonnes annually from outside of its local service area.

80. Operators of independent transfer stations require access to competitively priced disposal facilities. If CWS is permitted to retain the Ridge, the disposal options available to independent transfer stations in the GTA will be significantly reduced.

81. While the City of Toronto's Keele Valley landfill has been an effective disposal option in the GTA, the extent to which the City of Toronto will continue to offer competitive disposal options to transfer stations once Keele Valley has closed will be determined by the City of Toronto's current bid process. As discussed below, BFIL's proposed sale of the Ridge to CWS has significantly reduced the choices available to the City under that bid process.

82. If CWS is permitted to retain the Ridge, disposal options for independent transfer stations in the GTA will be limited to CWS or WMI-controlled landfills, or to the Essex-Windsor, Green Lane or Walker landfills. Waste generated in the GTA is not currently delivered to the Essex-Windsor landfill. The community host fee paid by Green Lane Environmental has made this landfill less cost competitive than other landfills. The Walker landfill is capacity constrained. Therefore, other landfills in southern Ontario would not be able to constrain an exercise of market power by CWS.

83. Existing incinerators in southern Ontario have limited service areas and cannot accept some forms of waste. They are not effective competitors to landfills.

Foreign Competition – Solid Waste Disposal – GTA

84. If CWS retains the Ridge, the only other option for independent transfer station operators in the GTA will be to incur substantial transportation costs, risk and uncertainty associated with transporting waste across national boundaries.

85. Some disposal sites in Michigan and New York receive limited amounts of waste from the GTA. However, the ability of these sites to effectively compete for waste from the GTA is constrained by higher transportation costs, regulatory constraints and cross-border issues.

86. Table 3 below shows the disposal sites in Michigan which have received waste from southern Ontario, together with approximate tonnage received in 1996, 1997, 1998 and 1999, measured in tonnes. Only a portion of the tonnage received at these sites came from the GTA.

TABLE 3: MICHIGAN DISPOSAL SITES RECEIVING WASTE FROM ONTARIO

COMPANY (LANDFILL NAME)	TONNAGE RECEIVED IN 1996	TONNAGE RECEIVED IN 1997	TONNAGE RECEIVED IN 1998	TONNAGE RECEIVED IN 1999
WMI-U.S. (Venice Park)	18,228	83,481	58,142	2,500
WMI-U.S. (Woodland Meadows)	242,444	267,603	102,110	95,775
WMI-U.S. (Pine Tree Acres)	--	26,416	7,153	22,253
WMI-U.S. (Tri-City Recycling)	6,195	9,003	150	17,000
Allied/BFII (Arbour Hills Landfill)	220,345	226,460	477,000[1]	374,450[1]
Allied[2] (Citizens Disposal)	33,524	128,140	168,000	30,500
Allied[2] (Vienna Junction)	---	---	---	134,083
Allied[2] (Sauk Trail Hills)	---	---	256	9,936
Republic (Carleton Farms)	72,007	332,300	17,000	34,000
Republic (Brent Run)	---	---	---	2,844
City of Riverview (Riverview Land Preserve)	247,472	22,453	---	11,700
TOTAL	**840,215**	**1,095,856**	**829,811**	**735,041**

1. Arbour Hills received approximately 250,000 tonnes of waste in 1998 and 325,000 tonnes of waste in 1999 from the GTA pursuant to a 5-year contract with the City of Toronto,

2. Allied has a non-compete agreement with CWS in Canada.

3. Carleton Farms was previously owned by WMI-U.S. until Republic purchased it in February 1999.

87. Four of the Michigan landfills which have received Ontario waste are owned by WMI-U.S. Another three landfills (plus an incinerator in New York that is described below) are owned

by Allied, which has a non-compete agreement with CWS in Canada. The Arbour Hills landfill was owned by BFII and then by Allied, but has recently been sold by Allied to Superior Services Inc. Most of the waste received at Arbour Hills from Ontario has been delivered pursuant to a special contract with the City of Toronto.

88. Of the small amount of waste from the GTA which has been transported to Michigan or New York, a large proportion has been directed and/or internalized by CWS and BFIL.

89. Transportation costs are a significant component of the cost of waste disposal. For each additional kilometre travelled from a collection market to a final disposal site, waste collectors and transfer stations requiring access to final disposal must incur higher transportation costs, including increased incremental fuel and other operating costs as well as increased opportunity costs.

90. The closest Michigan sites to the GTA which are not controlled by CWS or WMI-U.S., and which are not subject to a non-compete agreement with CWS in Canada, are approximately 120 kilometres further from the GTA than the Ridge, Blackwell and LaSalle landfills. As a result, transportation costs from the GTA to independent Michigan sites are approximately 33% - 43% higher than to the Ridge.

91. There are several initiatives in the United States, at both the federal and state levels, that have been and continue to be actively pursued with a view to restrict or otherwise limit the flow of waste across the border. As a result, there is substantial risk and uncertainty in relying on U.S. landfills for the disposal of waste generated in southern Ontario.

92. In addition, the prospect of limitations in Canada on the export of large quantities of waste from Ontario to the United States also adds to the risk and uncertainty of relying on U.S. sites.

93. Vehicle regulations and gross vehicle weight ("GVW") regulations in the State of Michigan are generally comparable to those enforced by the Ontario Ministry of Transportation. The maximum allowable GVW limit in Michigan is approximately 161,000 lbs and is higher than Ontario's GVW limit of approximately 140,000 lbs. However, bills have been tabled in the Michigan State House of Representatives seeking to amend the Michigan Vehicle Code in order to lower the maximum allowable GVW limit. Lower GVW limits would have the effect of

increasing transportation costs for shipping waste from southern Ontario to Michigan disposal sites.

94. The additional transportation costs involved in transporting waste to Michigan sites, together with the risk and uncertainty involved in transporting waste across national borders, make it unlikely that disposal sites in Michigan could constrain an exercise of market power by CWS if it retains the Ridge.

95. Landfills or incinerators in New York State are rarely used by transfer stations or private waste collectors located in Ontario. New York State has more stringent GVW restrictions than Ontario. Without special permits, the maximum allowable GVW for vehicles entering NY State is only 80,000 lbs. With a special permit, the maximum allowable GVW can increase to approximately 107,000 lbs, which is still lower than the Ontario standard of 140,000 lbs. Lower GVW limits have the effect of increasing transportation costs for shipping waste from southern Ontario to New York disposal sites.

96. The Modern Disposal landfill in Buffalo, New York, is affiliated with a Niagara-based waste collection firm, namely Modern Disposal. Modern Disposal is the only collector of Ontario-generated waste that uses this site on a consistent basis.

97. The American Ref-Fuel incinerator located in New York was 50% owned by a BFIL affiliate. This ownership interest is currently held by Allied. American Ref-Fuel has an annual capacity of 821,000 tonnes but has received only a small amount of waste from Ontario.

98. Disposal sites in New York are not in a position to constrain an exercise of market power by CWS if it retains the Ridge.

Conclusion – Private Transfer Stations and Waste Collectors in the GTA

99. If CWS is allowed to keep the Ridge, it will likely be able to exercise market power over private transfer stations and waste collectors in the GTA.

Impact on the City of Toronto Disposal Tender Process

100. In addition to its effect on private transfer stations and waste collectors, the acquisition of the Ridge by CWS will likely result in a substantial lessening or prevention of competition for the disposal of solid waste managed by the City of Toronto.

101. In anticipation of the 2002 closure of the Keele Valley landfill, the City of Toronto developed a four-stage Integrated Solid Waste Resource Management Process to solicit disposal proposals. The four stages are as follows:

Stage One:	Preparation of Planning Document.
Stage Two:	Requests for Expressions of Interest ("REOI") pertaining to each of the 3 categories: diversion, disposal and new, emerging and innovative technologies.
Stage Three:	Requests for Proposals, as may be issued pertaining to one or more of the categories.
Stage Four:	Due Diligence Reviews and Contract Negotiations, pertaining to top qualified proposals.

102. Stage One occurred from November 23, 1998 to March 5, 1999. Stage Two was commenced on April 23, 1999. The REOI was intended to determine the marketplace respondents' basic technical and commercial abilities to serve the City of Toronto's long-term waste management needs.

103. The City of Toronto received Expressions of Interest from seven qualified bidders. These were as follows:

(i) Agra Resource Management anticipated building an incinerator in Innisfil Township and taking approximately 750,000 tonnes per annum.

(ii) BFIL proposed using the Ridge as well as various BFII facilities in the U.S., including Arbour Hills, to manage approximately 1.2 million tonnes per annum.

(iii) EWSWA offered to accept 100,000 tonnes of City of Toronto waste annually at the Essex-Windsor landfill.

(iv) Green Lane Environmental proposed to manage approximately 200,000 tonnes

per year at the Green Lane landfill.

(v) CWS, through its partnership in Rail Cycle North, proposed hauling by rail up to 30 million tonnes of solid waste over a 20-year period to the Adams Mine landfill at Kirkland Lake. Adams Mine has been approved for up to 1,330,000 tonnes per year.

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

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

104. Apart from its participation in CWS/Rail Cycle North, CWS did not submit a bid in respect of any of its existing landfills.

105. On October 4, 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.

106. As a result of the then proposed sale of BFIL to CWS, BFII modified BFIL's proposal to exclude the Ridge. The revised proposal submitted by BFII involved only Arbour Hills landfill in Michigan.

107. On February 22, 2000, the City of Toronto identified five top qualified proposals to be advanced to stage four. These were BFII, EWSWA, Green Lane, CWS/Rail Cycle North and Republic. Agra withdrew from the process and Ref-Fuel did not meet specified bid requirements.

108. As indicated above, only three of the five qualified bidders could individually meet all or almost all of the City of Toronto's disposal needs. These were CWS/Rail Cycle North, BFII and Republic.

109. The exclusion of the Ridge from the City of Toronto's bidding process removes an important competitive option for the City of Toronto. BFIL's original proposal in Stage Two of the bidding process involved using the Ridge for a portion of the City of Toronto's disposal

needs. With annual capacity of the Ridge at 680,000 tonnes, the Ridge would not be able to meet all of the disposal needs of the City of Toronto. However, the City of Toronto could have combined the capacity available at the Ridge with other available capacity. Bundling of service providers would have provided a viable competitive option to the City of Toronto when negotiating its contract for long-term disposal needs.

110. The elimination of the Ridge from the City of Toronto's bidding process effectively reduces the City of Toronto's options to two. One option is to send most or all of the waste to sites in Michigan. The other option is to accept the CWS/Rail Cycle North proposal for the use of the Adams Mine site, which is located approximately 600 km north of the GTA. Both of these options involve landfills that are far away from the GTA. Due to uncertainties involved in transporting waste to Michigan, the City's only viable option may be to accept the CWS/Rail Cycle North proposal using Adams Mine. This is likely to result in higher disposal costs for the City of Toronto and consequently higher prices for any private waste collectors or transfer stations seeking to dispose of waste through the City of Toronto facilities.

111. If CWS is allowed to keep the Ridge, it will likely be able to exercise market power in the City of Toronto's tender process. This will have an impact on both the City of Toronto itself as well as private waste collectors who will likely face higher tipping fees for ICI waste at City of Toronto transfer stations.

Conclusion – Solid Waste Disposal -- GTA

112. Acquisition of the Ridge by CWS will likely result in a substantial lessening or prevention of competition in the market for disposal of solid waste from the GTA, both for private transfer stations and waste collectors in the GTA, and for the City of Toronto.

Impact on Commercial Collection Markets -- GTA

113. The substantial lessening or prevention of competition that is likely to result in the disposal market for waste from the GTA will likely have anti-competitive effects in commercial collection markets in the GTA.

114. At the present time, there are a number of effective commercial collection competitors in the GTA collection markets. In order to continue to be effective commercial collection competitors, these firms require access to competitively priced disposal options.

115. The acquisition of the Ridge by CWS limits disposal options available to other commercial collection operators in at least two ways:

(a) The elimination of the Ridge from the City of Toronto bidding process is likely to make the disposal options offered by the City of Toronto less attractive;

(b) The Ridge will no longer represent a competitive disposal option for commercial waste collectors or transfer stations in the GTA.

116. Disposal costs are a major cost component for commercial collection firms and can range from approximately one-third to one-half of total operating costs. A new or incumbent collection-only (that is, non-integrated) firm will face a further barrier to entry or expansion if it does not have access to a competitively priced disposal facility. If its collection competitor also controls access to available landfills, the non-integrated firm may find itself in a cost-price squeeze should the vertically-integrated incumbent raise tipping fees or impose restrictive conditions on the use of the disposal facility. Even in markets where the landfill is owned and operated by a third party such as a municipal authority, the new entrant is disadvantaged if the incumbent benefits from volume discounts that the new entrant cannot obtain.

117. Collection firms which are vertically integrated and which are able to internalize disposal costs have a competitive cost advantage over non-integrated collection firms.

118. Internalization of waste refers to the amount of waste collected by a vertically integrated that is delivered to its own disposal site. Because final disposal is a substantial cost of an integrated waste management business, internalization of waste is an important profit maximizing strategy. While high rates of internalization could have the effect of lowering costs for the integrated firms, existing or potential collection firms which are not vertically integrated may be subject to cost-price squeezes by a dominant vertically integrated firm, particularly if they are reliant on the vertically integrated firm for disposal.

119. CWS is now the only vertically integrated commercial collection firm in the GTA. The ability of non-integrated collection firms to compete effectively is largely dependent on their ability to obtain competitive disposal prices. If CWS is allowed to keep the Ridge, the ability of non-integrated collection firms to obtain competitive disposal prices will be substantially reduced. CWS would be in a position to use its control over disposal facilities to subject its collection competitors to cost-price squeezes.

120. Accordingly, the acquisition of the Ridge by CWS will likely have anti-competitive effects on commercial collection markets in the GTA.

C. CHATHAM-KENT

121. The Municipality of Chatham-Kent ("Chatham-Kent") was created on January 1, 1998, and consists of 21 lower tier municipalities comprising the County of Kent and the former City of Chatham. Chatham-Kent covers 2200 square kilometres and has a population of 110,000.

122. There are no transfer stations located in Chatham-Kent. Residential and ICI waste generated and collected within Chatham-Kent is disposed of at one of the two local landfills. Chatham-Kent is a relevant geographic market for disposal.

Market Shares

123. The Ridge and CWS' Gore are the two local landfills that compete for solid waste generated in Chatham-Kent. Therefore, if it retains the Ridge, CWS will control 100% of the Chatham-Kent disposal market.

Acceptable Substitutes – Solid Waste Disposal – Chatham-Kent

124. There are no substitutes for the disposal of solid waste, as discussed above.

Barriers to Entry – Solid Waste Disposal – Chatham-Kent

125. The barriers to entry into solid waste disposal markets are high and include the following:

(a) Sunk costs, as discussed above;

(b) Regulatory and environmental requirements, as discussed above.

Remaining Competition – Solid Waste Disposal – Chatham-Kent

126. Apart from the Ridge and Gore, there are no landfills or transfer stations in Chatham-Kent. More distant landfill sites do not compete for waste generated in this area.

Conclusion – Chatham-Kent

127. Acquisition of the Ridge by CWS will likely result in a substantial lessening or prevention of competition in the Chatham-Kent solid waste disposal market. CWS will likely control 100% of the disposal market and waste collectors in the Chatham-Kent area will likely face higher disposal prices. In addition, as the only vertically integrated competitor, CWS will likely be in a position to use its control of disposal facilities to subject other commercial collection firms in the area to cost-price squeezes. Therefore, the acquisition of Ridge will also have anti-competitive effects in the commercial collection market.

VII. CONCLUSION

128. The acquisition of the Ridge by CWS will likely result in a substantial lessening or prevention of competition in the markets for the disposal of solid waste from the GTA and from the Chatham-Kent area, and anti-competitive effects in corresponding collection markets. CWS should not be allowed to retain the Ridge.

VIII. RELIEF SOUGHT

129. The Commissioner requests the following relief:

(a) an Order or Orders against the Respondents pursuant to section 92 of the *Competition Act* requiring the Respondents to divest the Ridge and all associated assets;.

(b) such further and other orders as may be appropriate

IX. PROCEDURAL

130. The Commissioner requests that the hearing of this application be held in Ottawa, Ontario, and that the proceeding be conducted in the English language.

131. For purposes of this application, service of all documents on the Commissioner can be served on:

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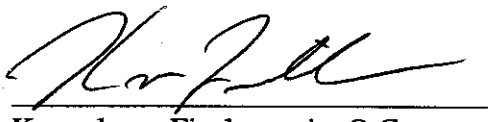
Counsel for the Commissioner of Competition

DATED at Hull, Quebec this 26th day of April, 2000.



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