

Competition Tribunal



Tribunal de la Concurrence

CT-98/01

IN THE MATTER OF an application by the Director of Investigation and Research  
under sections 92 and 105 of the *Competition Act*, R.S.C. 1985, c. C-34;

AND IN THE MATTER OF an acquisition by Canadian Waste Services Inc.  
of certain non-hazardous solid waste management assets  
of WMI Waste Management of Canada, Inc. in Edmonton, Alberta.

BETWEEN:

The Director of Investigation and Research

Applicant



- and -

Canadian Waste Services Inc.  
Capital Environmental Resource Inc.

Respondents

**CONSENT ORDER**

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**Date of Hearing by Conference Call:**

April 23, 1998

**Members:**

Rothstein J. (presiding)  
McKeown J.  
Mr. Lorne R. Bolton

**Counsel for the Applicant:**

**The Director of Investigation and Research**

William J. Miller

**Counsel for the Respondents:**

**Canadian Waste Services Inc.**

Warren Grover, Q.C.

**Capital Environmental Resource Inc.**

Herman Turkstra  
Jim Oliver

**COMPETITION TRIBUNAL**

**CONSENT ORDER**

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*The Director of Investigation and Research*

v.

*Canadian Waste Services Inc. et al.*

FURTHER TO the application of the Director of Investigation and Research ("Director"), pursuant to sections 92 and 105 of the *Competition Act*, R.S.C. 1985, c. C-34 ("Act"), for a consent order directing the divestiture of certain non-hazardous solid waste management assets and certain other remedies specified in the draft consent order;

AND ON READING the notice of application dated March 6, 1998, the statement of grounds and agreed material facts, the consent order impact statement, the affidavit of Lourdes DaCosta, the draft consent order and the consent of the parties, filed;

AND ON CONSIDERING THAT the Director and the respondents Canadian Waste Services Inc. ("CWS") and Capital Environmental Resource Inc. ("CER") (collectively referred to as "respondents") have reached an agreement which is reflected in the draft consent order;

AND ON CONSIDERING THAT the Director declares himself satisfied that, on the basis of the considerations outlined in the consent order impact statement, the remedies provided herein, if ordered, will be sufficient to remove the substantial lessening or prevention of

competition in the non-hazardous solid waste management and related businesses in the Edmonton, Alberta market, as described in the statement of grounds filed with the notice of application;

AND IT BEING UNDERSTOOD by the parties that nothing in these proceedings shall be taken as an admission of any facts, submissions or legal arguments for any other purposes;

AND ON HEARING counsel for the parties in respect of this application;

THE TRIBUNAL ORDERS THAT:

**Application**

1. The provisions of this order shall apply to the respondents and:
  - (a) each division, subsidiary or other person controlled by the respondents and each officer, director, employee, agent or other person acting for or on behalf of the respondents with respect to any matter referred to in this order;
  - (b) the respondents' successors and assigns and all other persons acting in concert or participating with any of them with respect to the matters referred to in this order who shall have received actual notice of this order.

## **Divestiture**

2.(1) The respondent CWS shall complete its acquisition of the non-hazardous solid waste management business of WMI Waste Management of Canada Inc. ("WMI") carried on in the Edmonton, Alberta market ("the acquired business") and shall operate the acquired business subject to the divestiture of assets and the assignment of service contracts as described in paragraphs 2(1)(a) and (b) (subsequently referred to as "the divested business"):

(a) the divestiture of certain front end commercial lift on board routes and appurtenant equipment by the assignment of service contracts respecting customers, whether those of CWS or acquired from WMI, to the respondent CER as listed in Schedule A hereto;

(b) the divestiture of the Strathcona transfer station to CER.

2.(2) The respondent CWS shall also execute the landfill tipping agreement in Schedule B hereto.

3. The respondent CER shall execute the said landfill tipping agreement.

## **Divestiture Procedure**

4.(1) CWS shall divest itself of all its right, title and interest of whatever character in the divested business by acknowledging by quit claim or other such declaration, a copy to be provided to the Director, that upon issuance of this order all conditions, restrictions, interim or

other arrangements under which that portion of the acquired business that the divested business represents has heretofore been operated are terminated and full ownership of the divested business is vested in CER subject to and in accordance with this order.

4.(2) CWS shall provide a copy of the executed tipping agreement to the Director.

5. Notices, reports or other communications required or permitted pursuant to this order shall be in writing and shall be considered given if dispatched by personal delivery, by registered mail or facsimile transmission to the parties listed in Schedule C.

6. If the Director's approval is sought pursuant to this order and such approval is not granted, or if a decision of the Director is unreasonably delayed or withheld, the respondents may apply to the Tribunal for approval.

DATED at Ottawa, this 23<sup>rd</sup> day of April, 1998.

SIGNED on behalf of the Tribunal by the presiding judicial member.

(s) Marshall Rothstein  
Marshall Rothstein

## SCHEDULE A

### Schedule of Assets

Number of Customer Contracts:	2477
Annual Revenue:	\$3, 853, 524
Number of Containers:	3253
List of Trucks (9 in total):	1997 Volvo 1996 Volvo 1995 GMC 1994 GMC 1993 GMC 1991 GMC 1991 GMC 1991 Volvo 1993 IMC Picker

Transfer Station, Strathcona County

<u>Transfer Station Equipment</u>	<u>Original Cost</u>
Grizzly Crane	\$ 324, 273
Radio Base and Mobiles	5, 808
Shop Equipment	1, 991
Office Equipment/Computers	26, 826
Transfer Station Trailers	646, 882
Case Bobcat	30, 078
Komatsu Forklift	26, 583
MRF Equipment/Scale	<u>801, 002</u>
<b>Total</b>	<b><u>\$ 1, 863, 443</u></b>

## **SCHEDULE B**

### **LANDFILL TIPPING AGREEMENT**

This Landfill Tipping Agreement ("LTA") is made this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_\_\_, by and between Canadian Waste Services Inc. ("CWS"), and Capital Environmental Resource Inc. ("CER").

#### **WITNESSETH:**

WHEREAS CWS has acquired from WMI a major landfill site in Edmonton Alberta ("WMIS");

AND WHEREAS CWS as a result of its acquisition of the shares of Laidlaw Waste Systems (Canada) Ltd. is the current Operator, operating under the terms of an Agreement dated January 5, 1995 ("Operator Agreement"), of the Ryley Regional Landfill Site ("RLS") owned or leased by Beaver Regional Waste Management Services Commission ("Beaver");

AND WHEREAS the Competition Bureau has alleged that the control of the WMIS and RLS is contrary to the provisions of the *Competition Act* section 92;

AND WHEREAS the only other landfill site available to tip ASW collected in Edmonton, except the landfill owned by the City of Edmonton, is the RLS;

AND WHEREAS CWS has sold to CER 8 front end routes in the City of Edmonton and the STS;



AND WHEREAS, in conjunction with the acquisition of the Strathcona Transfer Station ("STS") and in accordance with the consent order issued by the Competition Tribunal on April 23, 1998, CWS has agreed to permit CER to tip acceptable solid waste ("ASW") at the landfill site operated by CWS and located at Ryley in the Province of Alberta at cost;

AND WHEREAS the purpose of this Agreement is to allow CER to bid for ASW contracts in the Edmonton market as a competitor to CWS and other landfill site owners or operators;

NOW, THEREFORE, in consideration of the premises and the mutual covenants as set forth herein, it is agreed as follows:

**1. Tip Rights**

- (a) CWS shall make available to CER the right, subject with respect to tonnage in excess of 150,000 tonnes per year, the availability of authorized space, to tip ASW originating from the STS at RLS;
- (b) CWS will make available to CER at STS 85,000 tonnes of ASW per year to permit CER to meet its minimum tip requirement;
- (c) CER will tip at least 120,000 tonnes per year from STS to RLS or pay the tipping fee for 120,000 tonnes, thus ensuring CWS of that volume on a tip or pay basis;
- (d) For the purposes of this agreement "acceptable solid waste" shall mean mixed household and commercial solid waste (including trash, refuse and garbage) that has the characteristics of non-hazardous solid waste normally produced by residences, stores, other commercial buildings, schools and offices provided that under no circumstances shall acceptable solid waste material include waste which is: (a) liquid, radioactive, reactive, ignitable, corrosive, pathological, acidic or otherwise defined as hazardous by federal,

provincial or local laws, regulations or orders; or (b) waste material which requires special handling, such as discarded or wrecked automobiles or trucks.

## **2. Prices**

2.1 The initial prices will not exceed:

(a) In the first 15 months of this LTA (i.e. until January 1, 1999) the price to be paid by CWS for ASW delivered by it to CER at the STS shall be \$32.50 per tonne;

(b) In the first 15 months of this LTA, the price to be paid by CER to tip ASW at RLS will be \$12.99 per tonne for the first 150,000 tonnes, which is equal to the cost incurred by CWS or its predecessors in 1996, including royalties, based on a tip volume of 188,000 tonnes total in 1996, such costs being those set out in more detail in section 2.2.

(c) In the first 15 months of this LTA, for volumes in excess of 150,000 tonnes, the tipping fee payable by CER to CWS will decrease by \$0.75 per tonne for each 10,000 tonnes over 150,000 tonnes down to a maximum decrease of \$2.00 per tonne.

2.2 Beginning of January 1, 1999 the annual base price per tonne for tipping at RLS to be paid by CER to CWS shall be the aggregate of:

(a) The actual royalty payable to Beaver which is currently set at \$5.85 per tonne until December 31, 1999 but may be reduced or increased as a result of negotiations between Beaver and CWS, including those negotiations envisioned in section 1.4 of the Operator Agreement;

(b) The average operating cost per tonne incurred by CWS in the operation of the landfill site for the 12 month period ended September 30 of the preceding year, including equipment maintenance and depreciation, amortized closing costs, all labour costs, operating costs and administrative costs;

- (c) The average cost per tonne for the same 12 month period of any permit fees, taxes or other like expense arising at RLS as a result of governmental requirements, whether federal, provincial or local but not including any expense arising as a result of the failure of CWS to operate RLS in accordance with applicable laws or regulations; and
- (d) \$1.50 per tonne to cover head office expenses;

provided that the increase over the previous year for the aggregate of all items other than (a) and (c) shall not exceed the increase in the CPI as published by Statistics Canada for the same period.

The base price shall apply to the tonnage tipped in the previous year. Any tonnage tipped in excess of the tonnage tipped in the previous year shall receive a decrease of \$0.75 per tonne for each 10,000 tonnes of excess down to a maximum decrease of \$2.00 per tonne.

2.3 Beginning on January 1, 1999, the price to be paid by CWS in any calendar year for ASW required to be delivered to STS of 85,000 tonnes shall not exceed the price set out in 2.1(a) adjusted to reflect,

- (a) Any increase or decrease in the base price per tonne payable under 2.2;
- (b) Any change in permit fees, taxes or other expense at STS arising as a result of governmental action, whether federal, provincial or local; and
- (c) Any increase or decrease in the CPI.

### **3. Payment**

- (a) CWS shall invoice CER monthly for ASW tipped at RLS during the immediately preceding month. CER shall make full payment of each invoice to CWS without set-off, within 30 days following the date of each invoice. Interest shall accrue on past due accounts at an annual rate of 2% over the

prime rate charged by the Canadian Imperial Bank of Commerce from time to time to its commercial customers for domestic loans.

(b) CER shall invoice CWS monthly for ASW delivered to STS during the immediately preceding month. CWS shall make full payment to CER of each invoice to CWS without set-off, within 30 days following the date of each invoice. Interest shall accrue on past due accounts at an annual rate of 2% over the prime rate charged by the Canadian Imperial Bank of Commerce from time to time to its commercial customers for domestic loans.

(c) In the event CER's or CWS's account becomes in arrears, CWS or CER, as the case may be, shall give notice thereof to the defaulter. If full payment of the amount in arrears is not made within five days of receipt of such notice, and if no notification has been sent pursuant to section 4 of this agreement with respect to the invoice(s) in arrears, the party not in default may, without prejudice to any other remedies at law or in equity, cancel this agreement.

#### **4. Audit**

(a) If there is a question or dispute regarding section 2 or 3 of this agreement, the following procedure shall apply. Either party may, within 10 days of a question or dispute regarding section 2 or 3, notify the other party of such question or dispute. Within 15 days of receipt of such notification, the party receiving the notification shall provide the other party with a written explanation, including supporting documents where appropriate, of the matters questioned or in dispute. If the party receiving the written explanation is not satisfied and the question(s) or dispute is not otherwise resolved, such party, within 15 days following receipt of the written explanation, may submit the matter to KPMG (an "independent auditor") for resolution. The decision of the independent auditor shall be issued within 30 days and be binding upon the

parties. The cost of the audit shall be borne by the party that loses the audit, unless otherwise determined by the independent auditor.

(b) If the question or dispute submitted to the independent auditor relates to pricing, no cost information submitted to the independent auditor shall be made available to the other party hereto.

**5. Term**

(a) This agreement shall continue in full force and effect until January 1, 2006.

(b) This agreement may be cancelled by CWS if RLS has no more authorized capacity to accept any ASW.

(c) CWS will advise the Competition Bureau of any cancellation.

**6. Indemnity: Insurance**

(a) CER shall defend, indemnify and hold CWS, its affiliated companies, and their respective directors, officers, employees and agents harmless from and against any and all third party claims, actions, causes of actions, arbitrations, lawsuits, judgments and awards, including costs and fees (including legal fees), as a result of any hazardous waste being included in any ASW delivered at RLS, other than ASW shown to have originated with CWS.

(b) CWS shall defend, indemnify and hold CER, its affiliated companies, and their respective directors, officers, employees and agents harmless from and against any and all third party claims, actions, causes of actions, arbitrations, lawsuits, judgments and awards, including costs and fees (including legal fees), as a result of any hazardous waste being included in any ASW delivered at STS by CWS.

(c) Both CWS and CER shall maintain throughout the term of this agreement general liability insurance in commercially reasonable amounts.

**7. Relationship Between The Parties**

(a) This agreement shall not create any agency, joint venture or partnership relationship between CSW and CER. CER is not authorized or empowered under this agreement to act as agent for CWS for any purpose and will not on behalf of CWS enter into any contract, undertaking or agreement of any kind whatever.

(b) CWS will not raise capacity constraints as a reason for not accepting ASW from CER at RLS.

(c) CWS will treat CER equally with other haulers, including itself, so far as access to RLS and other non-price factors are concerned.

(d) CWS will not exercise its rights to negotiate to continue as operator of RLS beyond the initial term ending December 31, 2005, as contemplated in section 1.3 of the Operator Agreement, but may continue as Operator beyond that date if other potential operators acceptable to Beaver are given an opportunity by Beaver to negotiate to become the operator and the Director of Investigation and Research approves of such continuation. CWS will, at the request of Beaver, terminate the Operator Agreement before December 31, 2005 if another potential operator acceptable to Beaver is identified, provided such potential Operator will take over the obligations of CWS under this Agreement and under the Operator Agreement.

(e) CWS and Beaver Regional Waste Management Services Commission shall be entitled at any time, upon reasonable prior notice and without disruption or interference to business operations, to examine or cause to be examined the operation of STS to ensure that the ASW accepted there complies with all environmental requirements for disposition at RLS.

**8. Applicable Laws and Changes**

CER acknowledges that CWS must comply and CWS acknowledges that CER must comply with all local, provincial and federal laws, regulations and orders

relating to ASW which may be handled at RLS or STS, and each party agrees to abide by and comply with any such laws, regulations or orders in delivering and presenting ASW for disposal. This agreement creates no obligations on CWS or CER to receive or accept any ASW which is illegal or unsuitable for handling or disposal pursuant to applicable laws, regulations or orders, or pursuant to reasonable internal standards, established by CWS or CER as the case may be, which may be in general force and effect. In the event that there is any assessment, imposition or increase of any taxes relating to the handling or disposal of ASW under this agreement, or any change, revision or amendment in the laws, regulations, orders or permits pertaining to the operation of RLS or STS or the handling or disposal of ASW which increases the costs of conducting such operations, CWS with respect to STS or CER with respect to RLS, as the case may be, shall pay such increased tax or the proportionate amount of such increased costs with respect to ASW delivered hereunder.

**9. Force Majeure**

Neither party will be liable for its failure to perform hereunder caused by occurrences reasonably beyond its control, including but not limited to acts of God, fire, flood, wars, sabotage, accidents, labour disputes (whether or not such disputes are within the power of such party to settle), government actions or inability to obtain power, materials, equipment, transportation or any other similar occurrence.

**10. Assignment**

(a) Any assignment of this agreement without the prior written consent of the other party shall be void, except that either party may assign its rights and obligations hereunder to an affiliate. For purposes of the foregoing sentence, the term "affiliate" shall mean any corporation or business entity which

directly or indirectly controls, is controlled by, or is under common control with a party.

(b) This agreement shall be binding upon and enure to the benefit of and be enforceable by the parties, their respective successors and permitted assigns, and any person who subsequently acquires substantially all of the assets of either party hereto.

## **11. Notices**

(a) All notices or other communications required hereunder shall be in writing and shall be deemed given on the date of receipt thereof, if delivered by hand or by facsimile transmission, or by e-mail to the CEO at:

i) Canadian Waste Services Inc.,  
1275 North Service Road West,  
Suite 700,  
Oakville, Ontario. L6M 3G4  
  
Facsimile: 905-825-5603

ii) Capital Environmental Resource Inc.,  
500 Rennie Street,  
Hamilton, Ontario. L8H 3P6.

and such other persons and addresses as either party shall have specified in writing to the other.

(b) When required hereunder CWS shall also provide notice to the Director of Investigation and Research at the:

Competition Bureau,  
Industry Canada,  
50 Victoria Street  
Hull, Quebec. K1A 0C9.

Attn.: Senior Deputy Director, Mergers Branch,  
Facsimile: (819) 953-6169

(c) It is recognized by the Parties hereto that the continued operation of RLS may require long term commitments by both Beaver and the operator



prior to December 31, 2005. CWS will not enter into negotiations with Beaver at any time relating to such long term commitments until CWS has notified both CER and the Director of Investigation and Research of such proposed negotiations. If any such commitment has the effect of extending CWS's position as Operator beyond December 31, 2005 then CWS will not enter into such commitment unless CWS has obtained the consent of the Director of Investigation and Research, failing which consent, Beaver may terminate the Operator Agreement.

(d) CWS will provide notice to CER and the Director of Investigation and Research of any material change in the provision of the Operator Agreement.

(e) Until December 31, 2006 CWS will notify the Director of Investigation and Research, at least 60 days before completion, of any proposed transaction whereby CWS directly or indirectly will increase its rights with respect to RLS. CWS will also notify the Director of any material change in this agreement.

**12. Headings**

The headings contained in this agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this agreement.

**13. Choice of Law**

This agreement shall be governed by and construed and enforced in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein and shall be treated in all respects as an Alberta contract. The parties have agreed that this agreement be drawn up in the English language.

**14. Confidentiality**

During the term of this agreement and for a period of three years following the expiration or termination hereof, the parties shall maintain all information furnished by either party to the other confidential and shall not, except as required by law, disclose such information to any third parties.

**15. Arbitration**

(a) Any dispute arising under this agreement, other than questions or disputes contemplated by section 4 of this agreement, shall be definitively resolved and settled by arbitration, to the exclusion of the courts in accordance with the Arbitration statute then in force in the Province of Alberta. Any such arbitration shall be held in Edmonton and conducted in English. The decision of the arbitrator shall be final and without appeal.

(b) Any arbitration must be commenced within 60 days of the circumstances or events giving rise to the dispute.

**16. Entire Agreement**

This agreement contains all of the representations and agreements between the parties hereto with respect to the matters covered by this agreement and supersedes all previous communications, either oral or written, between the parties hereto. No modifications of this agreement or waiver of the terms and conditions thereof shall be binding upon either party unless approved in writing by an authorized representative of such party, or will be effected by the acknowledgement or acceptance of purchase order forms or releases containing other or different terms or conditions whether or not signed by an authorized representative of such party.

IN WITNESS THEREOF, the parties hereto have caused this agreement to be executed as of the day and year first above written.

**CANADIAN WASTE SERVICES INC.**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**CAPITAL ENVIRONMENTAL RESOURCE INC.**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**AGREEMENT**

**CANADIAN WASTE SERVICES INC. ("CWS")**

**and**

**CAPITAL ENVIRONMENTAL RESOURCE INC. ("CER")**

WHEREAS CER and CWS wish to enter into an agreement with respect to waste disposal in the City of Edmonton, substantially in the form of the agreement annexed hereto (the "Landfill Tipping Agreement");

AND WHEREAS the Landfill Tipping Agreement is subject to the approval of the Competition Bureau;

AND WHEREAS if the Competition Bureau does not approve the Landfill Tipping Agreement, CER's EBITDA (Earnings Before Interest, Taxes, Depreciation and Amortization) will be adversely affected in the approximate amount of \$930,000.00 per annum;

NOW THEREFORE the Parties hereto agree that for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged:

1. CWS agrees that in the event the Competition Bureau does not approve the Landfill Tipping Agreement, CWS shall indemnify and hold CER harmless from any loss of EBITDA occasioned thereby.
2. The parties agree that the value of the Landfill Tipping Agreement to CER is \$930,000.00 in EBITDA per annum.
3. If the Competition Bureau has not approved the Landfill Tipping Agreement by July 31, 1998, CWS agrees to replace CER's lost EBITDA through the transfer to CER of other assets acceptable to CER.

DATED at Oakville, Ontario, this 24<sup>th</sup> day of December, 1997.

**CANADIAN WASTE SERVICES INC.**

Per: (s) Dick Van Wyck

**CAPITAL ENVIRONMENTAL RESOURCE INC.**

Per: (s) Tony Busseri  
Tony Busseri, President

## **AGREEMENT**

**CANADIAN WASTE SERVICES INC. ("CWS")**

**and**

**CAPITAL ENVIRONMENTAL RESOURCE INC. ("CER")**

WHEREAS CER and CWS wish to enter into an agreement with respect to waste disposal in the City of Edmonton, substantially in the form of the agreement annexed hereto (the "Landfill Tipping Agreement");

AND WHEREAS the Landfill Tipping Agreement may be cancelled by CWS, pursuant to subclause 5(b), if RLS has no more authorized capacity to accept any ASW;

AND WHEREAS this agreement ("Agreement") is entered into for the purpose of giving CER the right to tip ASW at CWS's other landfill site in Edmonton, Alberta, known as WMIS, in the event that CWS cancels the Landfill Tipping Agreement;

NOW THEREFORE the Parties hereto agree that for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged:

1. CWS agrees that in the event it cancels the Landfill Tipping Agreement, pursuant to Subclause 5(b), on the grounds that RLS has no more authorized capacity to accept any ASW, CWS shall make available to CER the right to tip ASW originating from STS, or elsewhere, so long as the AWS would have gone to STS, at WMIS on the same terms and conditions and at the same prices as provided for in the Landfill Tipping Agreement, and only for the duration of the Landfill Tipping Agreement until January 1, 2006, after which any such disposal rights shall cease and terminate.
2. Notwithstanding the invocation of subclause 5(b) by CWS, all of the terms and provisions of the Landfill Tipping Agreement, including specifically the provision contained in sub-clause 1(b) that CWS will make available to CER at STS 85,000 tonnes of ASW per year to permit CER to meet its minimum tip requirement, shall remain in full force and effect, except as amended by this Agreement.
3. The capitalized terms used in this Agreement shall have the same meaning as set out or defined in the Landfill Tipping Agreement.

DATED at Oakville, Ontario, this 24<sup>th</sup> day of December, 1997.

**CANADIAN WASTE SERVICES INC.**

Per: (s) Dick Van Wyck  
Dick van Wyck, Vice-President & General Counsel

**CAPITAL ENVIRONMENTAL RESOURCE INC.**

Per: (s) Tony Busseri  
Tony Busseri, President

**AGREEMENT**

**CANADIAN WASTE SERVICES INC. ("CWS")**

**- and -**

**CAPITAL ENVIRONMENTAL RESOURCE INC. ("CER")**

WHEREAS CER and CWS wish to enter into an agreement with respect to waste disposal in the City of Edmonton, substantially in the form of the agreement annexed hereto (the "Landfill Tipping Agreement");

AND WHEREAS the Competition Bureau wishes the Landfill Tipping Agreement to be approved by the Competition Tribunal pursuant to a Consent Order under section 105 of the *Competition Act*, the Application for which Consent Order both CWS and CER are willing to support;

NOW THEREFORE the Parties hereto agree that for good and valuable consideration receipt of which is acknowledged:

1. CER and CWS will enter into an Agreement in the form annexed hereto with only such changes as may be required by the Competition Bureau or the Competition Tribunal, provided such changes are acceptable to CER and CWS;
2. In the period between October 8 and approval of the Landfill Tipping Agreement by the Competition Tribunal, the Parties will dispose of waste in accordance with the Landfill Tipping Agreement.

DATED at Oakville, Ontario, this 8<sup>th</sup> day of October, 1997.

**CANADIAN WASTE SERVICES INC.**

By:

(s) Dick Van Wyck

Dick van Wyck, Vice-President

**CAPITAL ENVIRONMENTAL RESOURCE INC.**

By:

(s) Tony Busseri

Tony Busseri, President

## SCHEDULE C

If to the Director of Investigation and Research:

Director of Investigation and Research  
Competition Bureau  
Industry Canada  
Place du Portage, Phase I  
50 Victoria Street  
Hull, Quebec  
K1A 0C9

Attention: William J. Miller  
Tel.: (819) 997-3325  
Fax: (819) 953-9267

If to Canadian Waste Services Inc.:

Blake, Cassels & Graydon  
Barristers & Solicitors  
Box 25  
191 Bay Street  
Commerce Court West  
Suite 2800  
Toronto, Ontario  
M5L 1A9

Attention: Warren Grover, Q.C.  
Tel.: (416) 863-2709  
Fax: (416) 863-2653

If to Capital Environmental Resource Inc.:

Turkstra, Mazza, Shinehoft, Mihailovich Associates  
15 Bold Street  
Hamilton, Ontario  
L8P 1T3

Attention: Herman Turkstra  
Tel.: (905) 529-3476  
Fax: (905) 529-3663