

Cir.) *cert denied*, 454 U.S. 1083 (1981); see also *Microsoft*, 56 F.3d at 1460-62. Precedent requires that

the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

*United States v. Bechtel*, 648 F.2d at 666 (citations omitted) (emphasis added).<sup>15</sup>

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetition effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of the public interest.'" *United States v. American Tel. & Tel. Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982) (citations omitted) (quoting *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland v. United States*, 460 U.S. 10Q1 (1983), *United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

#### VIII. Determinative Documents

There are no determinative materials of documents within the meaning of the APPA that were considered by the United States in formatting the proposed Final Judgment.

Dated: June 8, 1998.

Respectfully submitted,

Jade Alice Eaton\*

Andrew K. Rosa  
Trial Attorneys.

U.S. Department of Justice, Antitrust Division,  
Transportation, Energy & Agriculture Section,  
325 Seventh Street, N.W., Suite 500,  
Washington, DC 20004, (202) 307-6316.

\*Counsel of Record.

<sup>15</sup> See *United States v. BNS, Inc.* 858 F.2d at 463; *United States v. National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States v. Gillette Co.*, 406 F. Supp. at 716. See also *United States v. American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983).

#### Certificate of Service

I hereby certify that I have caused a copy of the foregoing Competitive Impact Statement to be served on counsel for defendant in this manner in the manner set forth below:

By first class mail, postage prepaid:

Steven C. Sunshine,

*Shearman & Sterling*, 801 Pennsylvania Avenue, N.W., Washington, DC 20004.

Jade Alice Eaton,

*Antitrust Division, U.S. Department of Justice*, 325 Seventh Street, N.W., Suite 500, Washington, DC 20530, (202) 307-6456, (202) 616-2441 (Fax).

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#### DEPARTMENT OF JUSTICE

##### Antitrust Division

[Civil No. 96-2031]

##### Proposed Modified Final Judgment and Memorandum In Support of Modification

Notice is hereby given that a Modified Final Judgment, Motion to Modify Final Judgment, Memorandum in Support of the Modification of the Final Judgment, Stipulation and Order, and Hold Separate Stipulation and Order have been filed with the United States District Court in the District of Columbia, in *United States et al v. USA Waste Services, Inc., et al.*, Civil No. 96-2031.

The existing Final Judgment stems from a 1996 acquisition of Sanifill, Inc., by USA Waste. The Final Judgment was entered to resolve competitive concerns that the Antitrust Division had about the impact of the acquisition in Houston, Texas. Pursuant to the Final Judgment, USA Waste divested Sanifill's small container commercial hauling assets and a USA Waste disposal site in Houston and sold 2,000,000 tons of air space rights for ten years at two USA Waste landfills in the Houston area. The assets were purchased by TransAmerican Waste Industries, Inc. On January 26, 1998, TransAmerican and USA Waste entered into an agreement whereby TransAmerican would be merged into USA Waste, and the Houston assets TransAmerican purchased from USA Waste would be owned by USA Waste.

On May 5, 1998, the United States filed a proposed Modified Final Judgment to modify the Final Judgment in this case. The United States maintained that the proposed acquisition of TransAmerican's commercial hauling and disposal assets

in the Houston area would violate the original Final Judgment. The proposed Modified Final Judgment requires USA Waste to divest the TransAmerican commercial small container and disposal assets in the Houston area and provide 2,000,000 tons of air space rights for ten years at two USA Waste landfills in the Houston area.

The Hold Separate Stipulation and Order and the Stipulation and Order ensure that the provisions of the proposed Modified Final Judgment will be observed and that the assets to be divested will be held separate and maintained as a viable competitive entity until the divestiture takes place.

Public comments on the proposed Modified Final Judgment should be directed to J. Robert Kramer, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530 (telephone: 202/307-0924). Such comments and responses thereto will be filed with the Court.

Constance K. Robinson,

Director of Operations & Merger Enforcement.

##### Stipulation and Order

To further the objectives of the Modified Final Judgment filed with the Court in this matter, it is stipulated by and between the United States of America ("United States"), the State of Texas ("Texas"), USA Waste Services, Inc. ("USA Waste"), and TransAmerican Waste Industries, Inc. ("TransAmerican"), by their respective attorneys, as follows:

1. The Court has jurisdiction over the subject matter of this action and over the United States, Texas, USA Waste, and TransAmerican, and venue of this action is proper in the United States District Court for the District of Columbia.

2. The parties stipulate that a Modified Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after completion of the procedures specified in the United States' Explanation of Procedures filed herewith without further notice to any party or other proceedings, provided that the United States and Texas have not withdrawn their consent, which they may do at any time before the entry of the proposed Modified Final Judgment by serving notice thereof on USA Waste and TransAmerican and by filing that notice with the Court.

3. USA Waste and TransAmerican shall abide by and comply with the provisions of the proposed Modified Final Judgment pending entry of the

proposed Modified Final Judgment, or until expiration of time for all appeals of any court ruling declining entry of the proposed Modified Final Judgment, and shall, from the date of the signing of this Stipulation, comply with all the terms and provisions of the proposed Modified Final Judgment as though they were in full force and effect as an order of the Court.

4. This Stipulation shall apply with equal force and effect to any amended proposed Modified Final Judgment agreed upon in writing by the parties and submitted to the Court.

5. In the event (a) the United States and Texas have withdrawn their consent, as provided in paragraph 2 above, or (b) the proposed Modified Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Modified Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Modified Final Judgment, then the United States, Texas, USA Waste, and TransAmerican are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

6. USA Waste and TransAmerican represent that the divestiture ordered in the proposed Modified Final Judgment can and will be made, and that USA Waste and TransAmerican will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

Dated: May 5, 1998.

*For the United States:*

*Frederick H. Parmenter*

*Virginia Bar No.: 18184, U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530, (202) 307-0620.*

*For the State of Texas*

*Dan Morales*

*Texas Attorney General.*

*Mark Tobey*

*Assistant Attorney General, Chief, Antitrust Section, Texas Bar No.: 20082960.*

*Kim Van Winkle*

*Assistant Attorney General, Texas Bar No.: 24003104.*

*Office of the Attorney General of Texas, P.O. Box 12548, Austin, Texas 78711-2546, (512) 463-2185.*

*For USA Waste Services, Inc.*

*James R. Weiss*

*District of Columbia Bar No.: 379798, Preston, Gates, Ellis & Rouvelas Meeds, 1735 New York Avenue, N.W., Suite 500, Washington, D.C. 20006-5209, (202) 662-8425.*

*For TransAmerican Waste Industries, Inc.*

*J. David Green*

*Sr. Vice President & General Counsel, TransAmerican Waste Industries, Inc., 10554 Tanner Road, Houston, Texas 77041, (713) 956-1212.*

## Order

*It is So Ordered*, this 6th day of May, 1998.

**Gladys Kessler,**

*United States District Judge.*

## Modified Final Judgment

*Whereas*, the United States of America ("United States"), the State of Texas ("Texas"), and the Commonwealth of Pennsylvania ("Pennsylvania") filed a Complaint in this action on August 30, 1996 and a Final Judgment was entered on December 17, 1996.

*And whereas*, the United States, Texas, USA Waste Services, Inc. ("USA Waste") and TransAmerican Waste Industries, Inc. ("TransAmerican"), by their respective attorneys have consented to the entry of this Modified Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Modified Final Judgment constituting any evidence against or an admission by the United States, Texas, USA Waste, or TransAmerican with respect to any issue of law or fact herein;

*And whereas*, USA Waste and TransAmerican have agreed to be bound by the provisions of this Modified Final Judgment pending its approval by the Court.

*And whereas*, prompt and certain divestiture of the Houston Divestiture Assets to assure that competition is not substantially lessened in the Houston Area is the essence of this agreement;

*And whereas*, USA Waste and TransAmerican have represented to the United States and Texas that the divestiture required below can and will be made and that they will later raise no claims of hardship or difficulty as

grounds for asking the Court to modify any of the divestiture provisions contained below;

*And whereas*, the United States and Texas believe that entry of this Modified Final Judgment is in the Public Interest;

*Now, therefore*, it is hereby *Ordered, Adjudged, and Decreed* that this Modified Final Judgment, shall modify the provisions in the Final Judgment relating to the Houston Divestiture Assets and the Houston area in the following ways:

## I. Definitions

As used in this Modified Final Judgment:

*A. Solid waste hauling* means the collection and transportation to a disposal site of municipal solid waste (but not construction and demolition waste; medical waste; organic waste; special waste, such as contaminated soil; sludge; or recycled materials) from residential, commercial and industrial customers.

*B. Solid waste disposal* means the disposal of Type 1 or 4 solid waste into disposal sites approved by the Texas Natural Resources Conservation Commission for Type 1 or Type 4 waste. Type 1 waste is municipal solid waste and Type 4 waste is dry waste such as construction and demolition waste.

*C. USA Waste* means USA Waste Services, Inc., a Delaware corporation with its headquarters in Houston, Texas, and its successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents and employees.

*D. TransAmerican* means TransAmerican Waste Industries, Inc., A Delaware corporation with its headquarters in Houston, Texas and its successors, and assigns, their subsidiaries, affiliates, directors, officers, managers, agents and employees.

*E. Houston Area* means Harris County, Texas; Chambers County, Texas; Brazoria County, Texas; Fort Bend County, Texas; Montgomery County, Texas; Walker County, Texas; and Galveston County, Texas.

*F. Houston Hauling Assets* means the front load commercial business of TransAmerican that provides solid waste hauling services in the Houston Area. These assets include all customer lists, contracts and accounts, including

all contracts for disposal of solid waste at disposal facilities, all trucks, containers, equipment, material, and supplies associated with these assets, and the garages, including all associated equipment, located at 10554 Tanner Road, Houston, Texas, 77041 and 999 Ashland, Channelview, Texas 77530.

G. *Sunray Assets* means the operating, permitted Type 4 landfill (also known as the North County Landfill) and other related assets of TransAmerican with an office at 2015 Wyoming in League City, Texas. These assets include the current permit Number 1849 and permit application Number 1849A filed with the Texas Natural Resources Conservation Commission, all customers lists, contracts and accounts, including all equipment, material, and supplies associated with these assets.

H. *Airspace Assets* means the right to dispose, over a ten-year period of up to a total of 2,000,000 tons of municipal solid waste in amounts of up to a total of 270,000 tons per year at the Hazelwood Landfill located at 4971 Tri-City Beach Road in Baytown, Texas and the Brazoria County Landfill located at 10310 FM 523 in Angleton, Texas.

I. *Houston Divestiture Assets* refers to the Houston Hauling assets, Sunray Assets, and Airspace Assets.

J. *Small Container* means a 1 to 10 cubic yard container.

## II. Jurisdiction

This Court has jurisdiction over the subject matter of this action and over the United States, Texas, USA Waste, and TransAmerican and venue of this action is proper in the United States District Court for the District of Columbia.

## III. Applicability

A. The provisions of this Modified Final Judgment apply to USA Waste and TransAmerican, their successors and assignees, their subsidiaries, affiliates, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Modified Final Judgment by personal service or otherwise.

B. USA Waste and TransAmerican shall require, as a condition of the sale or other disposition of all or substantially all of the Houston Divestiture Assets, that the acquiring party or parties agree to be bound by the provisions of this Modified Final Judgment.

## IV. Divestiture of Assets

A. USA Waste and TransAmerican agree within 90 days from the filing of this Modified Final Judgment to divest

the Houston Divestiture Assets, unless the United States, after consultation with Texas, consents that only some portion of the Houston Divestiture Assets need be divested. USA Waste and TransAmerican further agree to notify the United States and Texas in writing immediately when they have completed the divestitures.

B. Unless the United States, after consultation with Texas, otherwise consents, divestiture under Section IV.A, or by the trustee appointed pursuant to Section V, shall be accomplished in such a way as to satisfy the United States, in its sole determination after consultation with Texas, that the Houston Hauling Assets can and will be operated by the purchaser as a viable, ongoing business engaged in solid waste hauling, and that the Sunray Assets can and will be operated by the purchases as a viable, ongoing business engaged in solid waste disposal in the Houston Area. Divestiture under Section IV.A or by the trustee, shall be made to a purchaser or purchasers for whom it is demonstrated to the satisfaction of the United States, after consultation with Texas, that (1) the purchase or purchases is or are for the purpose of competing effectively in solid waste hauling, dry waste disposal, or both, and (2) the purchaser or purchasers has or have the managerial, operational, and financial capability to compete effectively in solid waste hauling and/or disposal.

C. In accomplishing the divestitures ordered by this Modified Final Judgment, USA Waste and TransAmerican promptly shall make known, by usual and customary means, the availability of the Houston Divestiture Assets described in this Modified Final Judgment. USA Waste and TransAmerican shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Modified Final Judgment and provide such person with a copy of this Modified Final Judgment. USA Waste and TransAmerican shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all information regarding the Houston Divestiture Assets customarily provided in a due diligence process except such information subject to attorney-client or work-product privileges. USA Waste and TransAmerican shall make available such information to the United States and Texas at the same time such information is made available to any other person. In giving notice of the availability of the Houston Hauling Assets, defendants shall not exclude any persons bound by any non-compete

obligations to Sanifill, Inc., or TransAmerican.

D. USA Waste and TransAmerican shall not require of the purchaser or purchasers, as a condition of sale, that any current employee of the Houston Divestiture Assets be offered or guaranteed continued employment after the divestiture.

E. USA Waste and TransAmerican shall take all reasonable steps to accomplish quickly the divestiture contemplated by this Modified Final Judgment.

F. As part of the sale of the Airspace Assets, USA Waste and TransAmerican will include an agreement to accept waste from the purchaser or anyone designated by the purchaser to dispose of waste at the landfills. As agents of the purchaser, USA Waste and TransAmerican will operate the gate, scale house, and disposal area under terms and conditions no less favorable than those provided to USA Waste's and TransAmerican's vehicles or the vehicles of any municipality in the Houston Area, except as to price and credit terms.

## V. Appointment of Trustee

A. In the event that USA Waste and TransAmerican have not divested all of their assets required by Section IV.A by the time set forth in Section IV.A, the Court shall, on application of the United States, after consultation with Texas, appoint a trustee selected by the United States to effect the divestiture required by Section IV.A. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the assets required to be divested pursuant to Section IV.A. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Section VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. USA Waste and TransAmerican shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance, or on the grounds that the sale is contrary to the express terms of this Modified Final Judgment. Any such objections by USA Waste or TransAmerican must be conveyed in writing to the United States, Texas, and the trustee within ten (10) days after the trustee has provided the notice required under Section VI.

B. The trustee shall serve the cost and expense of USA Waste and TransAmerican, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the

trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services, all remaining money shall be paid to USA Waste and TransAmerican and the trust shall then be terminated. The compensation of such trustee shall be reasonable and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

C. USA Waste and TransAmerican shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the Houston Divestiture Assets, and USA Waste and TransAmerican shall develop financial or other information relevant to such assets as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. USA Waste and TransAmerican shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

D. After its appointment, the trustee shall file monthly reports with the United States, Texas, USA Waste, TransAmerican, and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Modified Final Judgment. If the trustee has not accomplished such divestiture within six months after its appointment, the trustee shall thereupon promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. The trustee shall at the same time furnish such report to the United States, Texas, USA Waste, and TransAmerican, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States, after consultation with Texas.

E. USA Waste and TransAmerican shall give 30 days notice to the United States and Texas prior to acquiring any interest that is not otherwise reportable under the Hart-Scott-Rodino Act in any

assets, capital stock, or voting securities, other than in the ordinary course of business, of any person that, at any time during the twelve months immediately preceding the acquisition, was engaged in the solid waste hauling industry in the Houston Area where the person had small container revenues in excess of \$500,000 per year or total revenues in excess of \$1 million per year. However, nothing herein shall preclude USA Waste or TransAmerican from acquiring less than five (5) percent of the stock of a publicly traded company.

F. USA Waste and TransAmerican shall give 30 days notice to the United States and Texas prior to acquiring any interest that is not otherwise reportable under the Hart-Scott-Rodino Act in any assets, capital stock, or voting securities, other than in the ordinary course of business, of any person that, at any time during the twelve months immediately preceding the acquisition, was engaged in the municipal solid waste or dry waste disposal industry in the Houston Area, where the revenues of that person, when aggregated with the revenues of any person or persons acquired in the previous six months, exceed the revenue limits of paragraph E above. However, nothing herein shall preclude USA Waste or TransAmerican from acquiring less than five (5) percent of the stock of a publicly traded company.

G. The purchaser or purchasers of the Houston Divestiture Assets, or any of them, shall not, without the prior written consent of the United States, after consultation with Texas, sell any of those assets to, or combine any of those assets with, those of USA Waste or TransAmerican during the life of this Modified Final Judgment. Furthermore, the purchaser or purchasers of the Houston Divestiture Assets, or any of them, shall notify the United States and Texas 45 days in advance of any proposed sale of all or substantially all of the assets, or change in control over those assets, acquired pursuant to this Modified Final Judgment.

## VI. Notification

A. USA Waste, TransAmerican, or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States and Texas of any proposed divestiture required by Section IV or V of this Modified Final Judgment. If the trustee is responsible, it shall similarly notify USA Waste and TransAmerican. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest or desire to acquire any ownership interest in the

Houston Divestiture Assets or any of them, together with full details of the same. Within fifteen (15) days after receipt of the notice, the United States and TransAmerican may request additional information concerning the proposed divestiture, the proposed purchaser and any other potential purchaser. USA Waste and TransAmerican or the trustee shall furnish the additional information within fifteen (15) days of the receipt of the request. Within thirty (30) days after receipt of the notice or within fifteen (15) days after receipt of the additional information, whichever is later, the United States, after consultation with Texas, shall notify in writing USA Waste and TransAmerican and the trustee, if there is one, if it objects to the proposed divestiture. If the United States fails to object within the period specified, or if the United States notifies in writing USA Waste and TransAmerican and the trustee, if there is one, that it does not object, then the divestiture may be consummated, subject only to USA Waste's and TransAmerican's limited right to object to the sale under Section V.A. Upon objection by the United States, after consultation with Texas, or by USA Waste and TransAmerican under Section V.A, the proposed divestiture shall not be accomplished unless approved by the Court.

B. Thirty (30) days from the date when USA Waste and TransAmerican consummate the acquisition, but in no event later than May 30, 1998, and every thirty (30) days thereafter until the divestiture has been completed, USA Waste and TransAmerican shall deliver to the United States and Texas a written report as to the fact and manner of compliance with Section IV of this Modified Final Judgment. Each such report shall include, for each person who during the preceding thirty (30) days made an offer, expressed an interest or desire to acquire, entered into negotiations to acquire, or made an inquiry about acquiring any ownership interest in the Houston Divestiture Assets or any of them, the name, address, and telephone number of that person and a detailed description of each contact with that person during that period. USA Waste and TransAmerican shall maintain full records of all efforts made to divest the Divestiture Assets or any of them.

## VII. Financing

USA Waste and TransAmerican shall not finance all or any part of any purchase made pursuant to Section IV or V of this Modified Final Judgment without the prior written consent of the

United States, after consultation with Texas.

### VIII. Preservation of Assets

Until the divestitures required by the Modified Final Judgment have been accomplished:

A. USA Waste and TransAmerican shall take all steps necessary to ensure that the Houston Hauling Assets will be maintained and operated in the ordinary course of business and consistent with past practices, and shall (1) maintain all insurance policies and all permits that are required for the operation of the assets, and (2) maintain books of account and records in the usual, regular, and ordinary manner and consistent with past practices.

B. USA Waste and TransAmerican shall take all steps necessary to ensure that the Sunray Assets will be maintained and operated as an independent, ongoing, economically viable and active competitor in the provision of dry waste disposal services in the Houston Area, with management operations, books, records and competitively-sensitive sales, marketing and pricing information and decision-making kept separate and apart from, and not influenced by, that of TransAmerican's solid waste hauling and disposal business.

C. USA Waste and TransAmerican shall use all reasonable efforts to maintain and increase sales of solid waste hauling and disposal services provided by the Houston Divestiture Assets, and they shall maintain at 1997 or previously approved levels, whichever is higher, promotional, advertising, sales, marketing and merchandising support for such services.

D. USA Waste and TransAmerican shall take all steps necessary to ensure that the Houston Divestiture Assets are fully maintained in operable condition, and shall maintain and adhere to normal or previously approved repair, improvement and maintenance schedules for the Houston Divestiture Assets.

E. USA Waste and TransAmerican shall not, except as part of a divestiture approved by the United States and Texas, remove, sell or transfer any Houston Divestiture Assets, other than solid waste hauling and disposal services provided in the ordinary course of business.

F. USA Waste and TransAmerican shall take no action that would jeopardize the sale of the Houston Divestiture Assets.

G. USA Waste and TransAmerican shall appoint a person with oversight responsibility for the Houston

Divestiture Assets to insure compliance with this section of the Modified Final Judgment.

### IX. Compliance Inspection

For the purpose of determining or securing compliance with this Modified Final Judgment, and subject to any legally recognized privilege, from time to time.

A. Duly authorized representatives of the United States and Texas including consultants and other persons retained by the plaintiffs, shall, upon the written request of the Assistant Attorney General in charge of the Antitrust Division or the Attorney General of the State of Texas, respectively, and on reasonable notice to USA Waste and TransAmerican made to its principal offices, be permitted:

1. Access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of USA Waste and TransAmerican, which have counsel present, relating to any matters contained in this Modified Final Judgment; and

2. Subject to the reasonable convenience of USA Waste and TransAmerican and without restraint or interference from them, to interview their directors, officers, employees, and agents who may have counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division or the Attorney General of the State of Texas, respectively, made to USA Waste and TransAmerican at their principal offices, USA Waste and TransAmerican shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Modified Final Judgment as may be requested.

C. No information nor any documents obtained by the means provided in this Section IX shall be divulged by any representative of the United States or the Office of the Attorney General of Texas to any person other than a duly authorized representative of the Executive Branch of the United States or of the Office of the Attorney General of Texas, except in the course of legal proceedings to which the United States or Texas is a party (including grand jury proceedings), or for the purpose of securing compliance with this Modified Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by USA Waste and TransAmerican to the United States and Texas, USA Waste and TransAmerican represent and identify

in writing the material in any such information or documents for which a claim of protection may be asserted under rule 26(c)(7) of the Federal Rules of Civil Procedure, and USA Waste and TransAmerican mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the United States and Texas shall give ten (10) days notice to USA Waste and TransAmerican prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which USA Waste or TransAmerican is not a party.

### X. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Modified Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Modified Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

### XI. Termination

This Modification Final Judgment will expire on the tenth anniversary of the date of its entry.

### XII. Public Interest

Entry of this Modified Final Judgment is in the public interest.

Dated: \_\_\_\_\_

United States District Judge

### Certificate of Service

I hereby certify that copies of the Modified Final Judgment, Motion of the United States and Texas for Modification of the Final Judgment, United States' Explanation of Procedures, Hold Separate Stipulation and Order, Stipulation and Order, and Memorandum of the United States in Support of Modification of the Final Judgment have been served upon USA Waste Services, Inc., TransAmerican Waste Industries, Inc., and the Office of the Attorney General of Texas, by placing copies of the foregoing documents in the U.S. Mail, directed to each of the foregoing parties at the addresses given below, this 6th day of May, 1998.

USA Waste Services, Inc., c/o James R. Weiss, Esq., Preston, Gates, Ellis & Rouvelas Meeds, Suite 500, 1735 New York Avenue, NW., Washington, DC 20006-5209.  
TransAmerican Waste Industries, Inc., J. David Green, Esq., Sr. Vice President

and General Counsel, 10554 Tanner Road, Houston, Texas 77041.

Mark Tobey, Assistant Attorney General, Chief, Antitrust Section, Office of the Attorney General of Texas, P.O. Box 12548, Austin, Texas 78711-2546.

Frederick H. Parmenter,

U.S. Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 3000, Washington, DC 20530.

### **Memorandum of the United States and Texas in Support of Modification of the Final Judgment**

The United States of America ("United States") and the State of Texas ("Texas") submit this memorandum in support of their motion to modify the Final Judgment entered in the above-captioned matter. Filed with the memorandum is a Stipulation and Order, a Hold Separate Stipulation and Order, a Motion for Modification of the Final Judgment, an Explanation of Procedures, and a proposed Modified Final Judgment. In accordance with the provisions of the Stipulation and Order, USA Waste Services, Inc. ("USA Waste") and TransAmerican Waste Industries, Inc. ("TransAmerican") have agreed to be bound by the Modified Final Judgment following consummation of the merge and pending entry of the Modified Final Judgment. Similarly, in accordance with the Hold Separate Stipulation and Order, USA Waste and TransAmerican have agreed to hold the Houston Divestiture Assets separate and maintain them as competitively viable entities after the consummation of the merger and entry of the Modified Final Judgment. The proposed Modified Final Judgment only modifies the provisions of the Final Judgment relating to the Houston, Texas area. It does not have any impact, and is not meant to have any impact, on the provisions relating to Johnstown, Pennsylvania. The modifications are necessary to ensure that the original intent of the Final Judgment, to prevent competition from being lessened in the Houston refuse hauling and disposal markets, is preserved. Consequently, the modifications are in the public interest.

#### **I. Background**

On August 30, 1996, the United States filed a civil antitrust Complaint in the above-styled action alleging that the proposed acquisition of the voting stock of Sanifill, Inc. ("Sanifill") by USA Waste would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleged that the combination of these competitors would lessen competition substantially in the

provision of small containerized waste hauling services and landfill disposal services in the Houston, area, among other geographic locations. The Houston area encompasses Harris County, Texas; Chambers County, Texas; Brazoria County, Texas; Fort Bend County, Texas; Montgomery County, Texas; Walker County, Texas; and Galveston County, Texas, including the municipalities located, in whole or in part, in those counties ("Houston market").

When the Complaint was filed, the United States also filed a proposed settlement that was set forth in a proposed Final Judgment that permitted USA Waste to complete its acquisition of Sanifill, but required certain divestitures that would preserve competition in the Houston area. On December 17, 1996 after the comment period required by the Antitrust Penalties & Procedures Act ("APPA"), 15 U.S.C. 16, had passed, the Court entered the Final Judgment finding that it was in the public interest. On January 31, 1997, various waste hauling and disposal assets located in the Houston area where purchased by TransAmerican from USA Waste. Section V.G. of the Final Judgment required: (1) the purchaser of the divested hauling and disposal assets (e.g., Trans-American) to give the United States and Texas 45 days notice in advance of any sale of the assets, and (2) the purchaser would not sell the divested assets to be defendants (e.g., USA Waste) during the life of the decree.

On February 26, 1998, TransAmerican notified the United States and Texas, as required by the Final Judgment, that TransAmerican had undertake to merge itself with USA Waste. The proposed merger of TransAmerican with USA Waste would permit USA Waste to acquire the TransAmerican Houston assets that TransAmerican was prohibited from selling to USA Waste by the Final Judgment. On April 9, 1998, the United States sent a letter to USA Waste and TransAmerican notifying them that based on its investigation and consultation with Texas, it could not give its consent to USA Waste's proposed purchase of the Houston assets. The United States and Texas were concerned that the acquisition would substantially lessen competition in the provision of small containerized waste hauling services and landfill disposal services in the Houston area. USA Waste and TransAmerican were substantially informed that the United States would undertake to enforce the Final Judgment if concerns about small containerized hauling and landfills in the Houston market were not resolved.

The assets in the Houston area which were of concern to the United States that USA Waste would require through the merger were: (1) the TransAmerican frontload commercial assets ("Houston Hauling Assets"). (2) a TransAmerican Type 4 landfill and related assets ("the Sunray Assets"), and (3) the rights TransAmerican had acquire to dispose of 2,000,000 tons of municipal solid waster ("MSW") for ten years at a maximum rate of 270,000 tons a year at the USA Waste Hazlewood Landfill located at 4791 Tri-City Beach Road, Baytown, Texas 77520 and the USA Waste Brazoria County Landfill located at 10310 FM 523, Angleton, Texas. ("Airspace Assets"). Together the Houston Hauling Assets, Sunray Assets, and Airspace Assets are known as the Houston Divestiture Assets.

To prevent competition from being substantially lessened for small containerized hauling and landfill disposal in the Houston area, and to permit USA Waste to complete TransAmerican's merger with USA Waste, the United States has filed with the Court a proposed settlement that supplements the Final Judgment entered by the Court on December 17, 1996. It requires USA Waste to divest the Houston Divestiture Assets.

The proposed Modified Final Judgment orders USA Waste to divest the Houston Divestiture Assets. In addition, USA Waste must complete the divestiture of the Houston Divestiture Assets within ninety (90) days after the date on which the proposed Modified Final Judgment was filed (i.e., May 6, 1998), in accordance with the procedures specified therein.

The Stipulation and Order, Hold Separate Stipulation and Order, and proposed Modified Final Judgment require USA Waste to ensure that, until the divestitures mandated by the proposed Modified Final Judgment have been accomplished, the Houston Hauling Assets and the Sunray Assets will be maintained and operated as an independent, ongoing, economically viable and active competitor. USA Waste must preserve and maintain the assets to be divested as salable, ongoing concerns, with competitively sensitive business information and decision-making divorced from that of USA Waste. USA Waste will appoint a person or persons to monitor and ensure its compliance with these requirements of the proposed Modified Final Judgment.

The United States, Texas, USA Waste, and TransAmerican have stipulated that the proposed Modified Final Judgment may be entered after compliance with the 60-day comment period provided for in the United States' Explanation of

Procedures. Entry of the proposed Modified Final Judgment would terminate any need for action regarding the proposed merger of TransAmerican with USA Waste, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Modified Final Judgment and to punish violations thereof.

## **II. Description of the Events Giving Rise to the Proposed Modified Final Judgment**

USA Waste is a Delaware corporation with its principal office in Houston, Texas. USA Waste is engaged in providing nonhazardous solid waste hauling and/or disposal in 49 states and the District of Columbia. In 1997, USA Waste had total revenues of over \$1.6 billion.

TransAmerican is a Delaware corporation with its principal office in Houston, Texas. TransAmerican is engaged in providing nonhazardous solid waste hauling and/or disposal in five states. In 1996 TransAmerican had total revenues of over \$16 million.

On January 26, 1998, USA Waste entered into an agreement and plan of merger whereby TransAmerican's stock would be acquired for approximately \$125,470,000. This transaction is of concern to the United States and Texas because it would take place in the highly concentrated Houston small container hauling and landfill disposal industries and violate the December 17, 1996 Final Judgment entered in this action.

### *The Transaction's Effects in the Houston Market*

#### **A. The Solid Waste Hauling Industry**

The United States asserts that small containerized hauling services and landfill disposal services constitute lines of commerce, or relevant product markets, for antitrust purposes, and that the Houston area constitutes an appropriate section of the country, or relevant geographic market. The United States maintains that the effect of USA Waste's acquisition may be to lessen competition substantially in the provision of small containerized hauling services and landfill disposal services in the Houston market. As a result, when USA Waste undertook to acquire TransAmerican, the United States took the position that USA Waste could not obtain the small containerized hauling and landfill assets it divested to TransAmerican 18 months ago to resolve anticompetitive concerns that arose in August 1996, when USA Waste purchased Sanifill.

Solid waste hauling involves the collection of paper, food, construction material and other solid waste from homes, businesses and industries, and the transporting of that waste to a landfill or other disposal site. These services may be provided by private haulers directly to residential, commercial and industrial customers, or indirectly through municipal contracts and franchises.

Service to commercial customers accounts for a large percentage of total hauling revenues. Commercial customers include restaurants, large apartment complexes, retail and wholesale stores, office buildings, and industrial parks. These customers typically generate a substantially larger volume of waste than that generated by residential customers. Waste generated by commercial customers is generally placed in metal containers of one to ten cubic yards provided by their hauling company. One to ten cubic yard containers are called "small containers." Small containers are collected primarily by front-end load vehicles that lift the containers over the front of the truck by means of a hydraulic hoist and empty them into the storage section of the vehicle, where the waste is compacted. Specially-rigged rear-end load vehicles can also be used to service some small container customers, but these trucks generally are not as efficient as front-end load vehicles and are limited in the size of containers they can safely handle. Front-end load vehicles can drive directly up to a container and hoist the container in a manner similar to a forklift hoisting a pallet; the containers do not need to be manually rolled into position by a truck crew as with a rear-end load vehicle. Service to commercial customers that use small containers is called "small containerized hauling service."

Solid waste hauling firms also provide service to residential and industrial (or "roll-off") customers. Residential customers, typically households and small apartment complexes that generate small amounts of waste, use noncontainerized solid waste hauling service, normally placing their waste in plastic bags or trash cans at curbside. Rear-end load vehicles are generally used to collect waste from residential customers and from those commercial customers that generate relatively small quantities of solid waste, similar in amount and kind to those generated by residential customers. Generally, rear-end loaders use a two or three person crew to manually load the waste into the rear of the vehicle.

Industrial or roll-off customers include factories and construction sites. These customers either generate non-compactible waste, such as concrete or building debris, or very large quantities of compactible waste. They deposit their waste into very large containers (usually 20 to 40 cubic yards) that are loaded onto a roll-off truck and transported individually to the disposal site where they are emptied before being returned to the customer's premises. Customers, like shopping malls, use large, roll-off containers with compactors. This type of customer generally generates compactible trash, like cardboard, in very great quantities, it is more economical for this type of customer to use roll-off service with a compactor than to use a number of small containers picked up multiple times a week.

There are no practical substitutes for small containerized hauling service. Small containerized hauling service customers will not generally switch to noncontainerized service because it is too impractical and costly for those customers to bag and carry their trash to the curb for hand pick-up. Small containerized hauling service customers also value the cleanliness and relative freedom from scavengers afforded by that service. Similarly, roll-off service is much too costly and takes up too much space for most small containerized hauling service customers. Only customers that generate the largest volumes of solid waste can economically consider roll-off service, and for customers that do generate large volumes of waste, roll-off service is usually the only viable option.

Solid waste hauling services are generally provided in very localized areas. Route density (a large number of customers that are close together) is necessary for small containerized solid waste hauling firms to be profitable. In addition, it is not economically efficient for trash hauling equipment to travel long distances without collecting significant amounts of waste. Thus, it is not efficient for a hauler to serve major metropolitan areas from a distant base. Haulers, therefore, generally establish garages and related facilities within each major local area served.

The United States asserts that USA Waste's acquisition of TransAmerican would substantially lessen competition for the provisions of small containerized hauling service in the Houston market. Actual and potential competition between USA Waste and TransAmerican for the provision of small containerized hauling service in the Houston market will be eliminated.

USA Waste and TransAmerican are two of the largest providers of small



containerized hauling service in the Houston market. In the Houston market, USA Waste has 28 percent share and TransAmerican has a 7 percent share. The acquisition would give USA Waste a 35 percent share of the market.

Solid waste hauling is an industry highly susceptible to tacit or overt collusion among competing firms. Overt collusion has been documented in more than a dozen criminal and civil antitrust cases brought in the last decade and a half. Such collusion typically involves customer allocation and price fixing, and where it has occurred, has been shown to persist for many years.

The elimination of one of a small number of significant competitors, such as would occur as a result of the proposed transaction in the alleged market, significantly increases the likelihood that consumers in these markets are likely to face higher prices or poorer quality service. A new entrant cannot constrain the prices of larger incumbents until it achieves minimum efficient scale and operating efficiencies comparable to the incumbent firms. In small containerized hauling service, achieving comparable operating efficiencies requires achieving route density comparable to existing firms, which typically takes a substantial period of time. A substantial barrier to entry is created by the use of long-term contracts coupled with selective pricing reductions to specific customers to deter new entrants into small containerized hauling service and to hinder them in winning enough customers to build efficient routes. Further, even if a new entrant endures and grows to a point near minimum efficient scale, the entrant will often be purchased by an incumbent firm and will be removed as a competitive threat.

#### B. Landfill Disposal Services

Most commercial solid waste is taken by haulers to landfills for disposal. Access to a suitable municipal solid waste ("MSW") landfill at a competitive price is essential to a hauling company performing commercial containerized hauling service because disposal costs account for approximately 30–50 percent of the revenues received for this service. Suitable MSW landfills are difficult and time consuming to obtain because of the scarcity of appropriate land, high capital cost, local resident opposition, and government regulation. Several years are required to process an application, with no guarantee of success.

In Texas, dry waste can be taken to what is referred to as a dry waste (Type 4) landfill. Access to a suitable landfill at a competitive price is essential to a

hauling company collecting dry waste because disposal costs can account for over 60% of the revenues for this service. Dry waste landfills are difficult and time consuming to obtain because to permit and build a Type 4 landfill in Texas, one must go through a process similar to that for permitting a Type 1 landfill. Several years are required to process an application, with no guarantee of success.

TransAmerican's merger with USA Waste will substantially lessen competition for landfill service in the Houston market. Actual and potential competition between USA Waste and TransAmerican for the provision of MSW and dry waste landfill service in the Houston market will be eliminated. USA Waste is the largest owner of dry waste landfill services in the Houston market. In the Houston area, there are 18 Type 4 landfills in the Houston area. USA Waste has eleven dry waste landfills (four operating) and TransAmerican has one. Concerning Type 1 MSW landfills, there are nine in the Houston area that are owned by three firms. Through the Final Judgment, TransAmerican obtained access to the USA Waste Type 1 landfills for a period of ten years thereby assuring it disposal access for the MSW it hauls.

As a result of the acquisition, the concentration of dry waste landfill services in the Houston market will be substantially increased, which is likely to result in price increases. Furthermore, a small containerized hauling competitor with guaranteed access to Type 1 landfills will be removed from the Houston area. In the Houston market, there are no alternative types of facilities available for the disposal of either MSW waste or dry waste. Although dry waste can be taken to either a MSW or a dry waste landfill, prices at the MSW landfill are significantly higher than at the dry waste landfill, so that MSW landfills are not normally used for dry waste. Accordingly, haulers are not likely to switch to another disposal service despite an increased concentration in the ownership of MSW or dry landfills and a likely price increase resulting from the merger.

#### C. Harm to Competition as a Consequence of the Acquisition

The United States asserts that the transaction would have the following effects, among others: competition for the provision of small containerized hauling service and landfill disposal service in the Houston market will be substantially lessened; actual and potential competition between USA

Waste and TransAmerican in the provision of small containerized hauling service and landfill disposal service in the Houston market will be eliminated; and prices for small containerized hauling service and landfill disposal service in the Houston market are likely to increase above competitive levels.

#### III. Explanation of the Proposed Modified Final Judgment

The provisions of the proposed Modified Final Judgment are designed to eliminate the anticompetitive effects of the acquisition in small containerized hauling services in the Houston market by ensuring that the intent of the provisions of the Final Judgment relating to the Houston market and the Houston Divestiture Assets entered by the Court on December 17, 1996 are enforced and a new, independent and economically viable competitor is established in the Houston market. The proposed Modified Final Judgment requires USA Waste and TransAmerican, within 90 days of May 6, 1998, to divest, as viable ongoing business, the Houston Hauling Assets, Sunray Assets and the Airspace Assets. The divestitures would include the small containerized hauling service assets, landfill disposal assets, and such other assets as may be necessary to ensure the viability of the small container and landfill businesses. If USA Waste and TransAmerican cannot accomplish these divestitures within the above-described period, the proposed Modified Final Judgment provides that, upon application (after consultation with Texas) by the United States, the Court will appoint a trustee to effect divestiture.

The proposed Modified Final Judgment provides that these assets must be divested in such a way as to satisfy the United States (after consultation with Texas) that the operations can and will be operated by the purchaser or purchasers as viable, ongoing businesses that can compete effectively in the relevant market. USA Waste and TransAmerican must take all reasonable steps necessary to accomplish the divestitures, shall cooperate with bona fide prospective purchasers and, if one is appointed, with the trustee.

If a trustee is appointed, the proposed Modified Final Judgment provides that USA Waste and TransAmerican will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which divestiture is accomplished. After his or her appointment becomes effective, the



trustee will file monthly reports with the United States, Texas, USA Waste, TransAmerican and the Court, setting forth the trustee's efforts to accomplish divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the United States, Texas, USA Waste, and TransAmerican will make recommendations to the Court which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

In addition, the proposed Modified Final Judgment intends to eliminate the anticompetitive effects of the acquisition in the Houston Area market for MSW disposal services by requiring USA Waste and TransAmerican to sell the rights to dispose of 2 million tons of MSW waste over ten years at USA Waste's only two MSW landfills in the area. The proposed Modified Final Judgment limits the amount disposed of in any one year to 270,000 tons and requires that USA Waste will provide the necessary services to dispose of the waste to the purchaser or any agents designated by the purchaser in a nondiscriminatory manner. The availability of this landfill capacity helps to ensure the success of any entity purchasing the Houston Hauling Assets in competing with other haulers in the Houston market.

Pursuant to its terms, the proposed Modified Final Judgment mandates that USA Waste and TransAmerican divest TransAmerican's sole dry waste (Type 4) landfill (the North County Landfill) in the Houston area market. The divestiture of the North County Landfill will help moderate any possible anticompetitive effect related to the merger and its impact on dry waste landfills in the Houston area market.

Finally, the requirement of the proposed Modified Final Judgment that USA Waste and TransAmerican provide 30 days written notice of any proposed purchase of significant waste hauling or disposal companies in the Houston market ensures that the U.S. Department of Justice and the State of Texas General's Office will be able to review, consider and oppose if necessary any future consolidation in the market for a period of ten years.

#### IV. Modification is in the Public Interest

Uncontested motions to modify the Final Judgment are granted if the proposed modification is within the reaches of the public interest. *See, e.g., United States v. Western Electric Co.*, 993 F.2d 1572, 1576 (D.D.C. 1993) (*Citing United States v. Western Electric*

*Co.*, 900 F.2d 283, 307 (D.D.C. 1990) (hereinafter *Triennial Review*)). In the context of an uncontested motion to modify an existing consent decree, the "public interest" standard "directs the district court to approve an uncontested modification so long as the resulting array of rights and obligations is within the zone of settlements consonant with the public interest today." *United States v. Western Electric* 1993 F.2d at 1576 (*quoting Triennial Review*, 900 F.2d at 307) (emphasis in original). Thus, "it is not up to the court to reject an agreed-on change simply because the proposal diverged from *its* view of the public interest. Rather, the court [is] bound to accept any modification that the Department (with the consent of third parties, we repeat) reasonably regarded as advancing the public interest."

*United States v. Western Electric Co.*, 993 F.2d at 1576. *See also United States v. Microsoft Corp.*, 56 F.3d 1448, 1461-62 (D.C. Cir. 1995); *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981); *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988). Precedent requires that the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is one that will best serve society, but whether the settlement is 'within the reaches of the public interest.' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

*Bechtel*, 648 F.2d at 666 (*emphasis added*); *See BNS*, 858 F.2d at 463; *United States v. National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978) *See also Microsoft*, 56 F.3d at 1461.

#### V. Conclusion

For all of the foregoing reasons, the proposed modification is in the public interest, and the motion to enter the Modified Final Judgment should be granted. Respectfully submitted.

Dated: May 5, 1998.

For the United States

Frederick H. Parmenter  
Virginia Bar No.: 18184, Attorney, U.S.  
Department of Justice, Antitrust Division,  
1401 H Street, N.W., Washington, D.C. 20530,  
(202) 307-0620.

For the States of Texas

Dan Morales,  
Texas Attorney General.

Mark Tobey,

Assistant Attorney General, Chief, Antitrust  
Section, Texas Bar No.: 20082960.

Kim Van Winkle,

Assistant Attorney General, Texas Bar No.:  
24003104.

Office of the Attorney General of Texas, P.O.  
Box 12548, Austin, Texas 78711-2546, (512)  
463-2185.

#### Motion of the United States and Texas for Modification of The Final Judgment

The United States of America ("United States") and the State of Texas ("Texas") move this Court to modify the Final Judgment in the above-captioned matter as to the provisions relating to the Houston Divestiture Assets and the Houston area. This motion is based on the following grounds:

#### I. Definitions

1. *USA Waste* means USA Waste Services, Inc., a Delaware corporation with its headquarters in Houston, Texas, and its successors and assigns, their subsidiaries, affiliates directors, officers, managers, agents and employees.

2. *Houston Area* means Harris County, Texas; Chambers County, Texas; Brazoria County, Texas; Fort Bend County, Texas; Montgomery County, Texas; Walker County, Texas; and Galveston County, Texas.

3. *Houston Hauling Assets* means the frontload commercial business of TransAmerican that provides solid waste hauling services in the Houston Area. These assets include all customer lists, contracts and accounts, including all contracts for disposal of solid waste at disposal facilities, all trucks, containers, equipment, material, and supplies associated with these assets, and the garages, including all associated equipment, located at 10554 Tanner Road, Houston, Texas 77041 and 999 Ashland, Channelview, Texas 77530.

4. *Sunray Assets* means the operating, permitted Type 4 landfill (also known as the North County Landfill) and other related assets of TransAmerican with an office at 2015 Wyoming in League City, Texas. These assets include the current permit Number 1849 and permit application Number 1849A filed with the Texas Natural Resource Conservation Commission, all customer lists, contracts and accounts, including

all equipment, material, and supplies associated with these assets.

5. *Airspace Assets* means the right to dispose, over a ten-year period of up to a total of 2,000,000 tons of municipal solid waste in amounts of up to a total of 270,000 tons per year at the Hazlewood Landfill located at 4971 Tri-City Beach Road in Baytown, Texas and the Brazoria County Landfill located at 10310 FM 523 in Angleton, Texas.

6. *Houston Divestiture Assets* means the Houston Hauling Assets, Sunray Assets, and Airspace Assets.

## II. Background and Objectives

1. On August 30, 1996, the United States, and Pennsylvania filed a complaint in the above-captioned case alleging that USA Waste's acquisition of Sanifill, Inc. ("Sanifill") violated Section 7 of the Clayton Act, 15 U.S.C. 18. The complaint alleged that the combination of USA Waste and Sanifill would substantially lessen competition in providing hauling and disposal services in the Houston Area and Johnstown, Pennsylvania.

2. On December 17, 1996, the Court entered a Final Judgment which directed the defendants to divest the Houston Divestiture Assets and undertake certain measure in Johnstown to alleviate the competitive harm of the acquisition.

3. The Houston Divestiture Assets were purchased by TransAmerican on January 31, 1997.

4. On January 26, 1998, USA Waste entered into an agreement with TransAmerican pursuant to which USA Waste proposed to merge TransAmerican with USA Waste. The value of the proposed transaction is approximately \$125,470,000.

5. On February 26, 1998, TransAmerican notified the United States and Texas as required by the Final Judgment that TransAmerican has undertaken to merge itself with USA Waste. Section V.G. of the Final Judgment requires the purchaser of the Houston Divestiture Assets (e.g., TransAmerican) to give the United States and Texas 45 days notice in advance of any sale of the Houston Divestiture assets and that the purchaser shall not sell the Houston Divestiture Assets to the defendants (e.g., USA Waste) during the life of the decree.

6. On April 9, 1998, the United States sent a letter to USA Waste and TransAmerican notifying them that based on its investigation consultations with Texas, it could not give its consent to USA Waste's proposed purchase of the Houston assets.

7. USA Waste and TransAmerican have agreed to the prompt and certain

divestiture of the Houston Divestiture Assets as a viable business operation to a third party or parties to assure that competition is not substantially lessened in the Houston Area.

8. For the purpose of accomplishing the divestiture of the Houston Divestiture Assets, USA Waste and TransAmerican authorize the United States and Texas to state that they concur in this motion.

9. The United States does not believe that that proposed Modified Final Judgment is subject to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16. However, the United States intends to follow the comment procedures outlined in the attached Explanation of Procedures. After completion of the procedures, the United States will file another motion requesting that the Court enter the attached Modified Final Judgment.

Respectfully submitted.

Dated: May 5th, 1998

For the United States:

Frederick H. Parmenter,  
Virginia Bar No.: 18184, U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530, (202) 307-0620.

For The State of Texas

Dan Morales,  
Texas Attorney General.

Mark Tobey,  
Assistant Attorney General, Chief, Antitrust Section, Texas Bar No.: 20082960.

Kim Van Winkle,  
Assistant Attorney General, Texas Bar No.: 24003104.

Office of the Attorney General of Texas, P.O. Box 12548, Austin, Texas 78711-2546, (512) 463-2185.

## Hold Separate Stipulation and Order

It is hereby stipulated and agreed by and between the United States of America, the State of Texas, USA Waste Services, Inc., and TransAmerican Waste Industries, Inc., subject to approval and entry by the Court, that:

### I. Definitions

As used in this Hold Separate Stipulation and Order:

A. *Solid waste hauling* means the collection and transportation to a disposal site of municipal solid waste (but not construction and demolition waste; medical waste; organic waste; special waste, such as contaminated soil; sludge; or recycled materials) from residential, commercial and industrial customers.

B. *USA Waste* means USA Waste Services, Inc., a Delaware corporation with its headquarters in Houston, Texas, and its successors and assigns, their

subsidiaries, affiliates, directors, officers, managers, agents and employees.

C. *TransAmerican* means TransAmerican Waste Industries, Inc., a Delaware corporation with its headquarters in Houston, Texas and its successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents and employees.

F. *Houston Area* means Harris County, Texas; Chambers County, Texas; Brazoria County, Texas; Fort Bend County, Texas; Montgomery County, Texas; Walker County, Texas; and Galveston County, Texas.

G. *Houston Hauling Assets* means the frontload commercial business of TransAmerican that provides solid waste hauling services in the Houston Area. These assets include all customer lists, contracts and accounts, including all contracts for disposal of solid waste at disposal facilities, all trucks, and containers, equipment, material, and supplies associated with these assets, and the garages, including all associated equipment, located at 10554 Tanner Road, Houston, Texas 77041 and 999 Ashland, Channelview, Texas 77530.

H. *Sunray Assets* means the operating, permitted Type 4 landfill (also known as the North County Landfill) and other related assets of USA Waste with an office at 2015 Wyoming in League City, Texas. These assets include the current permit Number 1849 and permit application Number 1849A filed with the Texas Natural Resource Conservation Commission, all customer lists, contracts and accounts, including all equipment, material, and supplies associated with these assets.

I. *Airspace Assets* means the right to dispose, over a ten-year period of up to a total of 2,000,000 tons of municipal solid waste in amounts of up to a total of 270,000 tons per year at the Hazlewood Landfill located at 4971 Tri-City Beach Road in Baytown, Texas and the Brazoria County Landfill located at 10310 FM 523 in Angleton, Texas.

J. *Houston Divestiture Assets* means to the Houston Hauling Assets, Sunray Assets, and Airspace Assets.

## II. Objectives

The Modified Final Judgment filed in this case is meant to ensure USA Waste's prompt divestiture of the Houston Divestiture Assets for the purpose of maintaining a viable competitor in the waste disposal and hauling business in the Houston area to remedy the effects that the United States and Texas allege would otherwise result from USA Waste's proposed acquisition of TransAmerican. This Hold Separate

Stipulation and Order ensures, prior to such divestiture, that the Houston Hauling Assets and the Sunray Assets which are being divested be maintained as independent, economically viable, ongoing business concerns, and that competition is maintained during the pendency of the divestiture.

### III. Hold Separate Provisions

Until the divestiture required by the Modified Final Judgment has been accomplished:

A. USA Waste shall preserve, maintain, and operate the Houston Hauling Assets and the Sunray Assets as independent competitors with management, sales, and operations held entirely separate, distinct and apart from those of USA Waste. USA Waste shall not coordinate the marketing or sale of its waste disposal and hauling business with the waste disposal and hauling business at the Houston Hauling Assets and the Sunray Assets. Within thirty (30) days of the entering of this Order, USA Waste will inform the United States and Texas of the steps taken to comply with this provision.

B. USA Waste shall take all steps necessary to ensure that the Houston Hauling Assets and the Sunray Assets will be maintained and operated as independent, ongoing, economically viable and active competitors in the waste disposal and hauling business in the Houston area; and that the management of the Houston Hauling Assets and the Sunray Assets will not be influenced by USA Waste, and the books, records, competitively sensitive sales, marketing and pricing information, and decision-making associated with the Houston Hauling Assets and the Sunray Assets will be kept separate and apart from the operations of USA Waste. USA Waste's influence over the Houston Hauling Assets and the Sunray Assets shall be limited to that necessary to carry out USA Waste's obligations under this Order and the Modified Final Judgment.

C. USA Waste shall use all reasonable efforts to maintain and increase waste disposal and hauling sales at the Houston Hauling Assets and the Sunray Assets, and shall maintain at 1997 or previously approved levels, whichever are higher, promotional, advertising, sales, technical assistance, marketing and merchandising support for the disposal and hauling of waste associated with the Houston Hauling Assets and the Sunray Assets.

D. USA Waste shall provide sufficient working capital to maintain the Houston Hauling Assets and the Sunray Assets as economically viable, ongoing businesses.

E. USA Waste shall take all steps necessary to ensure that the Sunray Assets are fully maintained in operable condition at no lower than its current rated capacity, and shall maintain and adhere to normal repair and maintenance schedules for the Houston Hauling Assets and the Sunray Assets.

F. USA Waste shall not, except as part of a divestiture approved by the United States and Texas, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any assets of the Houston Hauling Assets and the Sunray Assets, including intangible assets that relate to the permits described in Section I of the Modified Final Judgment.

G. USA Waste shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of the Houston Hauling Assets and the Sunray Assets.

H. Except in the ordinary course of business or as is otherwise consistent with this Hold Separate Agreement, USA Waste and TransAmerican shall not hire and USA Waste and TransAmerican shall not transfer or terminate, or alter any current employment or salary agreements for any USA Waste or TransAmerican employees who (i) on the date of the signing of this Agreement, work at the Houston Hauling Assets or the Sunray Assets or (ii) are members of management referenced in Section III(I) of this Order.

I. Until such time as the Houston Hauling Assets and the Sunray Assets are divested, the Assets to be Divested shall be managed by Ted Meyer of TransAmerican. Ted Meyer shall have complete managerial responsibility for the Houston Hauling Assets and the Sunray Assets, subject to the provisions of this Order and the Modified Final Judgment. In the event that Ted Meyer is unable to perform his duties, USA Waste shall appoint, subject to the United States' and Texas' approval, a replacement within ten (10) working days. Should USA Waste fail to appoint a replacement acceptable to the United States and Texas within ten (10) working days, the United States and Texas shall appoint a replacement.

J. USA Waste shall take no action that would interfere with the ability of any trustee appointed pursuant to the Modified Final Judgment to complete the divestiture pursuant to the Modified Final Judgment to a suitable purchaser.

K. this Hold Separate Stipulation and Order shall remain in effect until

consummation of the divestiture contemplated by the Modified Final Judgment or until further Order of the Court.

Dated: May 5, 1998.

For the United States:

Frederick H. Parmenter,  
*Virginia Bar No.: 18184, U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530, (202) 307-0620.*

For the State of Texas

Dan Morales,  
*Texas Attorney General.*

Mark Tobey,  
*Assistant Attorney General, Chief, Antitrust Section, Texas Bar No.: 20082960.*

For USA Waste Services, Inc.

James R. Weiss,  
*District of Columbia Bar No.: 379798, Preston, Gates, Ellis & Rouvelas Meeds, 1735 New York Avenue, N.W., Suite 500, Washington, D.C. 20006-5209, (202) 662-8425.*

For TransAmerican Waste Industries, Inc.

J. David Green,  
*Sr. Vice President & General Counsel, TransAmerican Waste Industries, Inc., 10554 Tanner Road, Houston, Texas 77041, (713) 956-1212.*

Kim Van Winkle,  
*Assistant Attorney General, Texas Bar No.: 24003104, Office of the Attorney General of Texas, P.O. Box 12548, Austin, Texas 78711-2546, (512) 463-2185.*

### Order

It is so ordered, this 6th day of May, 1998.

Gladys Kessler,  
*United States District Judge.*

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BILLING CODE 4410-11-M

## DEPARTMENT OF JUSTICE

### Antitrust Division

#### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Enterprise Computer Telephony Forum

Notice is hereby given that, on June 25, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), the Enterprise Computer Telephony Forum ("ECTF") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.