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MONITOR

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AMY ROTHSTEIN  
OF COUNSEL

SUBURBAN CARTING CORP.\*  
TROT TOWN TRANSFER, INC.\*  
J&T RECYCLING CORP.  
DMF EXCAVATING CORP.  
AL TURI LANDFILL, INC.  
MAMARONECK TRUCK REPAIR, INC.\*  
CHESTNUT EQUIPMENT LEASING CORP.\*  
RECYCLING INDUSTRIES CORP.\*

\*Allied Waste, Inc. Owned

ACORN EQUIPMENT LEASING CORP.  
ENVIRO EXPRESS, INC.  
ROUTE 55 CORPORATION  
MAHWAH HOMES, INC.  
MT. KISCO WASTE TRANSFER STATION\*  
METRO ENVIRO TRANSFER, LLC\*  
VALLEY CARTING\*  
HUDSON WASTE HAULAGE\*  
MT. PLEASANT SANITATION\*

January 13, 2004

BY HAND

Hon. Jed S. Rakoff  
United States District Judge  
United States Courthouse  
500 Pearl Street  
New York, New York 10007

Re: United States of America v. Suburban Carting Corp., et al. (Allied  
Waste Inc.) 96 Cr. 466 (JSR)

Dear Judge Rakoff:

Enclosed is my Report on Allied Waste Inc.'s Valley Carting Division, consisting of my findings and conclusions with respect to issues that arose at Valley Carting during my monitorship of Allied Waste Inc. ("Allied").

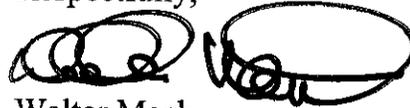
I made every effort to comply with Your Honor's order that the report be completed and filed promptly and expeditiously. My counsel and I wrote the report, and as they requested, provided a draft to Allied's counsel on August 26, 2003. We met with counsel, again at their request, to discuss the draft on September 22, at which time Allied asked for time to submit written comments on the draft. We did not receive those comments until last month, at which point we made further revisions and provided another opportunity for Allied to comment. I do not believe that Allied's counsel will dispute that at several junctures throughout this period of review and comment, Allied asked for additional time to comment. I acquiesced to all of these requests as a courtesy, particularly in view of the fact that they were based primarily on personal or family issues concerning the Allied legal team. I apologize for any inconvenience to the Court caused

by the report's belated filing.

I respectfully draw the Court's attention to two portions of the report that I believe warrant sealing. One of these items is discussed in footnote 4 (page 3) of my report: personal and irrelevant material in the deposition transcript of John Lombardo (Exhibit 3 to the report, pp. 14-28). The second item appears in the second paragraph of footnote 20 (page 19); this information is the type of personnel file information that is normally kept confidential and on balance is not significant enough, I submit, to merit public disclosure.

As always, I am available to answer any questions or to provide any additional information the Court may wish.

Respectfully,

A handwritten signature in black ink, appearing to read 'Walter Mack', written in a cursive style.

Walter Mack

Enclosures

cc: See attached service list (by e-mail and regular mail)

Monitor's Valley Report Service List (By Overnight Mail)

For AlliedWaste, Inc. Owned Westchester Companies

Stanley Okula, Esq.  
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UNITED STATES ATTORNEY'S OFFICE  
300 Quarropas Street  
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Mr. Bruce Stanas  
Regional Vice President  
ALLIED WASTE, INC.  
Northeast Region Office  
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Tyngsboro, MA 01879

Mr. Mark Saleski  
SUBURBAN CARTING CORP.  
524 Waverly Avenue  
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Mr. Jay Rooney  
SUBURBAN CARTING CORP.  
524 Waverly Avenue  
Mamaroneck, NY 10543

Mr. Raymond Dookhie  
KPMG FORENSIC SERVICES  
1345 6th Avenue  
New York, NY 10105

February 9, 2004

**VIA HAND DELIVERY**

BOSTON

Honorable Jed S. Rakoff  
United States District Judge  
Southern District of New York  
United States Courthouse  
500 Pearl Street  
New York, NY 10007

BRUSSELS

FRANKFURT

HARRISBURG

HARTFORD

Re: U.S. v. Suburban Carting Corp., et al.  
Criminal Docket No.: 96 Cr. 466 (JSR)

LONDON

Dear Judge Rakoff:

LUXEMBOURG

We submit this letter on behalf of Allied Waste Industries, Inc. ("Allied"), and related companies located in Westchester County, New York (the "Westchester Companies"), including Valley Carting, and request, pursuant to a February 2, 2004, conversation with your law clerk, Michael Bosworth, that the Monitor's Report on Valley Carting ("the Report"), filed with the Court on January 13, 2004, be sealed, and that this letter be sealed with it.

NEW YORK

NEWPORT BEACH

PALO ALTO

The Report should be sealed because it creates an inaccurate, unfavorable impression of the Westchester Companies and it is potentially harmful to Allied's business interests in Westchester County and elsewhere. While the Monitor goes to great lengths to criticize the way Allied operated the Westchester Companies in the past, the Report fails to describe the dramatic improvements that Allied has instituted in the Companies' operations and practices during the last 18 months. Indeed, the Report fails adequately to acknowledge that Allied's overhaul of the Westchester Companies has resulted in the termination of numerous employees, their replacement by respected industry veterans and the implementation of extensive internal controls and monitoring. The release for public consumption of such a one-sided report could cause substantial harm to the reputation of both Allied and the Westchester Companies in the communities they serve.

PARIS

PHILADELPHIA

PRINCETON

SAN FRANCISCO

WASHINGTON

We express the following concerns about the Report.

(1) The Report's harsh and repeated criticism of certain individuals who were employed at Valley Carting in the past creates a misleading impression about how the company has been run for the past year and a half. Indeed, every one of the employees singled out in the Report was terminated or reassigned some time ago

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-- a fact that is inexplicably omitted from the Report. Those individuals (and their last dates of employment) include the following:

Matthew Hickey (7/21/02)  
Erina Hickey (3/16/02)  
Lisa Nichols (10/25/02)  
Eileen Baselice (4/3/01)  
John Lombardo (8/24/02)  
Aaron Deems (3/30/01)  
Anthony Cardillo (8/24/02)  
Anthony Prestamo (8/1/02)

We note that Mr. Hickey, who receives the lion's share of the criticism, was also on sick leave for 10 months before leaving the company and played little or no role in the Company's operations since September 10, 2001.

The report similarly fails to acknowledge the important personnel changes implemented in Westchester County. For example, Mark Saleski, hired in October 2002 to supervise all Westchester operations, enjoys an outstanding reputation in the industry, has almost twenty years of experience in the waste industry and has already made many significant changes in Westchester. In addition to personnel changes, Allied assigned eight employees with vast waste industry experience to conduct extensive route audits. With the changes made as a result of these audits, the past practices described in the Report -- that were inherited from the prior operators of Valley Carting and the other Westchester Companies -- have been eliminated.

(2) The Report describes at great length the theft of Company diesel fuel and unauthorized use of Company equipment by Aaron Deems, the theft of Company money by Eileen Baselice, and the shredding of tickets by Mr. Hickey's daughter, Erina Hickey, apparently to demonstrate deficiencies in the management of Valley Carting. The descriptions have the potential for creating a misleading impression. First of all, all of the described instances of misconduct occurred during the stewardship of Matt Hickey, who, of course, is long gone from the Company. Even more important, in all of these cases, it was Allied itself, not some unaffiliated party, that was the victim of the wrongdoing. Moreover, far from disputing that Mr. Hickey was a poor manager who failed to train his employees in ethics and compliance, Allied acknowledged that fact and replaced him, along with many of his underlings. Allied has also instituted important changes in its operations and management oversight to ensure that the problems described in the Report do not recur.

(3) The Report unfairly ignores the numerous mitigating factors concerning the acceptance of industrial waste at its transfer stations. This issue was

first raised by the Monitor at a routine meeting in June 2002. At that time, the Monitor informed Allied that he had received information from the Westchester Solid Waste Commission that the Company's transfer stations may have improperly accepted industrial waste. Allied immediately commenced an internal investigation concerning the acceptance of waste from the Engelhard Corporation and determined that it was a practice that had originated with the prior operators of Valley Carting, most of whom are no longer employed by Allied. In fact, *none* of the supervisory personnel responsible for authorizing the acceptance of this waste remains employed at Allied.

Allied's investigation was led by John DiNapoli, Allied's Northeast Region Engineer, who has over twenty years of experience in the waste management industry. Once Mr. DiNapoli confirmed that the improper waste had been accepted at Allied's facilities, he took the necessary measures to end the practice immediately. The efforts of Mr. DiNapoli and others have led to the creation of a rigorous compliance program that ensures that industrial waste is no longer accepted at any of Allied's Westchester transfer stations. Allied now requires its manufacturing customers to inform the Company about the contents of the waste provided to Allied for transportation and disposal. In addition, Allied conducts frequent audits of its waste streams to make sure that none of its customers dumps unauthorized waste. As a result of these audits, Allied has had to turn away several customers whose waste would be classified as "industrial." Indeed, sales people are specifically trained in identifying potential customers who may be generating industrial waste. Compliance and safety training sessions, conducted in both English and Spanish, are routine and are attended by all employees.

Significantly, the acceptance of this unauthorized waste caused no adverse impact to the public health, safety or welfare of the residents of the communities in which the transfer stations are located. It is undisputed that the waste brought into the facilities was not "hazardous waste" and has not caused harm to the residents or the environment. (See affidavits of Scott W. Clearwater and Robert D. Barber attached).

It is also worth noting that Supreme Court Judge Francis A. Nicolai, of the New York State Supreme Court in Westchester County, in a decision dated February 19, 2003, overturned the Village of Croton's determination to close Allied's transfer station in the Village because of, among other things, its receipt of industrial waste. Judge Nicolai stated that "violations have been cured, penalties have been assessed and paid" and Allied "has implemented measures to assure ongoing compliance." (See attached opinion at page 3.)

(4) The Report's section on "Waste Mixing" is also misleading. Allied objects to the Monitor's general conclusion that Allied's own investigation was "incomplete and "unreliable." The improper mixing of waste was a practice, like

the acceptance of industrial waste, that originated with the prior operators of Valley Carting. Allied acknowledged to the Monitor, as well as to the affected parties, that this practice had occurred, that it is no longer occurring and that Allied will provide compensation to the municipalities affected. The calculations involved in determining how much waste was actually mixed involved a lengthy and labor-intensive investigation conducted jointly, and cooperatively, by the Monitor, his investigator, and Allied employees with expertise in this complicated procedure. While not an exact science, Allied was able to determine in good faith approximately how much compensation is due and intends to pay the parties involved.

In light of the foregoing, Allied respectfully requests that the Court seal the Monitor's Report on Valley Carting. The Report presents a one-sided view of these important issues, and could very likely cause substantial harm to Allied if it is released to the public.

In the alternative, if the Court determines that it is appropriate to release the Report, we request that this letter not be sealed. We also believe that the Court should order redactions, and we agree with the Monitor's position, set forth in his January 13, 2004, letter to the Court, that pages 14-28 of Exhibit 3 to the Report, and footnote 20 of the Report itself, contain information that is of a personal nature to the witnesses and irrelevant to this case.

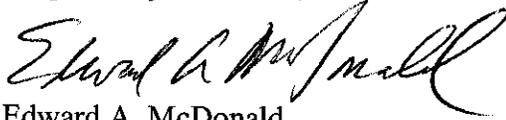
Allied also requests that the exhibits annexed to the depositions of Anthony Cardillo (a Customer Invoice and Operator Activity Sheet), Lisa Nichols (Operator Activity Sheets, Valley Carting Roll-Off Logs, Customer Invoices and Weight Tickets), and John Lombardo (Customer Proposals and Service Contracts), which are Monitor's Exhibits 1-3, be sealed. In addition, Allied requests that a chart listing customer and disposal information, appearing in Exhibit 18, be sealed. These exhibits contain proprietary information that could be used by Allied's competitors to compete unfairly with Allied.

In closing, Allied requests leave to file a response to the Monitor's Investigative Report Concerning Metro Enviro Transfer LLC, an Allied Waste Industries Company, which was previously filed and unsealed. Allied's concerns about this report are similar to its concerns about the report regarding Valley Carting, insofar as the report regarding Metro Enviro Transfer LLC is one-sided and creates a misleading impression that could cause substantial harm to the reputation

Hon. Jed S. Rakoff  
February 9, 2004  
Page 5

of Allied and the Westchester Companies if the report is not placed in its proper perspective.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Edward A. McDonald". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Edward A. McDonald

cc: AUSA Stanley Okula, Jr., Esq.  
Walter Mack, Esq.  
Steven Helm, Esq.  
Mr. Mark Saleski





5. The waste Allied handled for Engelhard was non-hazardous industrial waste and other non-hazardous solid waste. These wastes may have included film and equipment used in the manufacturing process. All of that material was non-hazardous, solid and stable.

I hereby state under the penalty of perjury that the foregoing is true and correct.

Scott W. Charvat

Sworn to before me this  
10th day of January 2003

Patricia K. Gonter

Notary Public

**PATRICIA K. GONTER**  
**NOTARY PUBLIC OF NEW JERSEY**  
**My Commission Expires Jan. 9, 2007.**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X

METRO ENVIRO TRANSFER, LLC, :

Petitioner, : *Index No.03/*

- against - :

THE VILLAGE OF CROTON-ON-HUDSON and :  
THE BOARD OF TRUSTEES OF THE VILLAGE :  
OF CROTON-ON-HUDSON, :

**AFFIDAVIT OF  
ROBERT D. BARBER**

Respondents. :

-----X

COUNTY OF BEXAR )  
STATE OF TEXAS ) ss.:

1. I, Robert D. Barber, am Vice-President, Secretary and Principal Engineer of Barber & Barber Associates, Inc., an environmental consulting firm.

2. I was retained by Metro Enviro Transfer, LLC ("Metro Enviro"), to serve as an expert witness in connection with Metro Enviro's application for renewal of its Special Use Permit from the Village of Croton-on-Hudson (the "Village"). I am submitting this affidavit in support of Metro Enviro's Article 78 Petition (referred to herein as "Petition") challenging the denial of a Special Use Permit Renewal Application by the Village Board of Trustees (the "Board") and in support of Metro Enviro's motion for a stay of the Board's decision requiring Metro Enviro to cease accepting waste at its transfer station and commence closing the facility (referred to herein as "Motion"). I have personal knowledge of the facts set forth below.

### Qualifications as an Expert

3. I have a Bachelors of Science and Engineering degree, with a major in Civil Engineering, from the University of Michigan, where I graduated *magna cum laude*. I am a registered Professional Engineer in three states. I have more than 30 years experience in the engineering field. I have nine years of work experience in municipal engineering, including six years as a Public Health Engineer and a Civil Engineer for Wayne County, Michigan, and three years as an Assistant City Engineer and Project Engineer for the City of Farmington, New Mexico. In my work for Wayne County, I gained substantial experience in reviewing and inspecting solid waste facilities. I have approximately 14 years of work experience in the waste management industry, including work as the Vice President -- Environmental, Health & Safety of the West Group of Waste Management, Inc. ("Waste Management"). During the course of my work for Waste Management, I had responsibilities for overseeing the design of transfer stations and was responsible for an area covering 17 states and including a dozen solid waste transfer stations. Also during my time at Waste Management, I was responsible for facilities in New York and became familiar with the regulations of the New York State Department of Environmental Conservation (the "DEC"). For the past five years, I have worked as a consultant in the solid waste management industry. In that capacity, I have gained significant additional experience in connection with applications for solid waste permits. Although I have consulted and continue to consult for Allied Waste Industries, Inc. ("Allied"), the ultimate parent of Metro Enviro, my consultation for Allied has not had any impact whatsoever on the substance of my work for Metro Enviro. (A copy of my resume is provided in the accompanying set of exhibits in support of Metro Enviro's Petition and Motion)

## Scope of Work

4. I have focused my analysis primarily on the issues that appear to be of greatest concern to the Village -- Metro Enviro's acceptance of a type of waste that the transfer station was not allowed under its permits to accept and Metro Enviro's acceptance of a volume of waste in excess of the amount the transfer station was allowed under its permits to accept. I have also examined other issues of apparent concern to the Village, including Metro Enviro's handling of leachate and Metro Enviro's training and related documentation.

5. I reviewed the Special Use Permit issued by the Village, the Permit for Solid Waste Management issued by the DEC (the "DEC Permit"), the Operations and Maintenance Manual ("O&M Manual"), which was approved by the Village and is incorporated by reference into the Special Use Permit, and the applicable DEC regulations pursuant to which Metro Enviro operates its transfer station. (Copies of the Special Use Permit, the DEC Permit and relevant portions of the O&M Manual are provided in the accompanying set of exhibits.) I also reviewed the Draft Statement of Findings dated December 23, 2002, the Response of Metro Enviro to the December 23 Draft Statement dated January 15, 2003, two versions of the Statement of Findings dated January 27, 2003, the Affidavit of Richard P. Brownell sworn to on January 27, 2003, submitted by the Village in connection with this matter, and documentation and information relating to certain of the actions of Metro Enviro that the Village claims justify its decision not to grant Metro Enviro's application for renewal of its permit.

6. In addition to reviewing the foregoing documentation, I visited the Metro Enviro transfer station on two occasions. While at Metro Enviro, I toured the entire facility and observed the operations of the transfer station. I note that the transfer station has many significant features that serve to protect the health, safety and welfare of the community and the environment. The most significant physical characteristics of the facility include: paved

roadways to and from the processing area; a highly-engineered concrete processing pad; a concrete push wall; a leachate collection system in the processing area; an enclosed building with sealed doors; a separate area where unauthorized waste is stored in appropriate containers; a stormwater drainage system that routes stormwater to one collection point that is routinely monitored; and screening berms to isolate the facility from part of the surrounding area. It is especially significant that the facility has better physical characteristics than most construction and demolition debris ("C&D") transfer stations insofar as it has paved roadways, an enclosed building and a leachate collection system. The most significant operational characteristics of the facility that serve to protect the health, safety and welfare of the community and the environment include: the segregation and prompt removal of unacceptable or unauthorized waste; the removal of most waste from the tipping floor on the day that it is received; the emptying and cleaning of the tipping floor every 30 days; the regular monitoring and pumping out of the leachate collection tank when full; routine reporting of tonnage and storm water analyses; regular and comprehensive training with regard to the proper handling of waste, including unacceptable or unauthorized waste; and regular inspections by Metro Enviro, the Village and the DEC.

7. In addition to touring the facility, I met with representatives of Metro Enviro and Allied who have direct and oversight responsibility for the operation of the transfer station. I also met with representatives of Engelhard Corporation ("Engelhard") about certain aspects of the nature of the waste that Metro Enviro received from Engelhard and about certain issues concerning Engelhard's handling of its waste. Further, I reviewed a copy of an affidavit of Scott W. Clearwater, Engelhard's Director of Environment, Health and Safety, which was sworn to on January 10, 2003. (A copy of Mr. Clearwater's affidavit is provided in the accompanying set of exhibits.)

### Overview of Opinion

8. Based on my review of documents, visits to the facility and conversations with representatives of Metro Enviro and Allied, it is my opinion that Metro Enviro compares favorably to other transfer stations that I have observed throughout the nation that are well situated, well designed and well run. Regarding the location of the transfer station, I note that Metro Enviro is ideally situated as a transfer station, insofar as the facility is well off the access road, and is located between a busy railway and a busy highway. Regarding the design of the facility, as I mentioned above, the transfer station has environmental safeguards that many C&D facilities do not normally have, including paved roadways to and from the tipping area, an enclosed building and a leachate collection system. Those features serve to protect against the inadvertent contamination of the environment by waste coming into and out of the facility and being processed at the facility. Finally, regarding the operation of the facility, I note that it is well-maintained and that there are no test results or other objective criteria suggesting that the operation of the facility has had a negative impact on the health, welfare or safety of the Village residents or on the environment.

### Receipt of Unacceptable Waste

9. Pursuant to the terms of the Special Use Permit, the DEC Permit and the O&M Manual, Metro Enviro is allowed to accept construction and demolition debris ("C&D") and certain solid waste recyclables. Metro Enviro is not allowed to accept industrial waste, municipal solid waste, tires or appliances.

### Industrial Waste

10. I understand that Metro Enviro accepted waste from Engelhard that contained industrial waste or waste generated as a result of a manufacturing process during the period June 12, 2000, through March 19, 2002.

11. I understand from Engelhard that the industrial waste constituted primarily film scraps and extruded plastic, some of which is used in Easter baskets, from one location, and dried pigment residue, some of which is used in shampoo, from other locations. I am informed that, in addition to industrial waste, the loads at issue contained other solid waste, including municipal solid waste ("MSW") and recyclables. Most important, I understand that the loads at issue did not contain any hazardous waste but only contained non-hazardous waste that was solid and stable.

12. The permits, O&M Manual and applicable DEC regulations all anticipate that unacceptable waste will be delivered to Metro Enviro's transfer station. During the course of operating any transfer station, unacceptable waste will be received incidental to loads of acceptable waste. This is not, in and of itself, a matter that should cause concern to the Village. That is particularly so in this case, given that some of the unacceptable waste anticipated (including hazardous and medical waste) could pose a substantially greater threat to the health, safety and welfare of the Village residents or to the environment than the waste that was actually received from Engelhard. It is important to note that some of the unacceptable waste received by Metro Enviro was MSW and recyclables, which generally present a substantially lower risk to human health and the environment than industrial or other forms of anticipated unacceptable waste. Recyclables are generally viewed as presenting less of a risk to human health and the environment than MSW; MSW is generally viewed as presenting less of a risk than industrial waste; and industrial waste is generally viewed as presenting less of a risk than hazardous or medical waste.

13. I am informed and have observed that when waste is received by Metro Enviro at the transfer station, it is placed on the concrete tipping floor in an enclosed building.

The waste is then generally removed from the building and loaded into railroad cars the same day it is received. The waste is then shipped off site by railroad cars within days of having been received.

14. In light of the foregoing, it is my opinion that Metro Enviro's acceptance of waste from Engelhard that contained industrial waste and MSW did not result in any adverse impact on the health, safety and welfare of the Village residents or on the environment. My review of the results of stormwater testing that Metro Enviro has conducted since it acquired the facility in March 2000 support my conclusion that the acceptance of unacceptable waste has not had any adverse effect on the community because the results do not indicate any adverse effects on the storm water as a result of any of Metro Enviro's activities on the premises. (Copies of the results from testing of Metro Enviro's storm water are provided in the accompanying set of exhibits.)

#### Tires

15. I understand that the Village contends that Metro Enviro accepted vehicle tires and failed to remove those tires from the facility within 12 hours. In support of its position that Metro Enviro's handling of vehicle tires constituted a violation of applicable legal requirements, the Village refers to a provision in the O&M Manual that describes vehicle tires as hazardous and industrial unauthorized waste and then states that such waste may remain on site for a maximum of 12 hours. However, I note that the O&M Manual also describes vehicle tires as non-hazardous unauthorized waste, which may remain on site for up to 24 hours. It is my opinion that the description in the O&M Manual of vehicle tires as "hazardous and industrial" waste is a mistake, because vehicle tires are generally not hazardous or industrial.

16. I understand that vehicle tires were delivered to Metro Enviro incidental to loads of acceptable waste. I further understand that such tires were separated from the acceptable waste. The tires were then stored in an enclosed container until the container was full, and then the tires were removed from the facility and sent to a tire recycler.

17. Storing tires in enclosed containers is a best management practice, and would be no different from procedures generally followed by the most environmentally conscientious automotive service stations. Such a practice ensures that the tires are not exposed to the environment.

18. In light of the foregoing, it is my opinion that Metro Enviro's acceptance of vehicle tires and failure to remove those tires from the premises within 12 hours did not result in any adverse impact on the health, safety and welfare of the Village residents or on the environment. That is particularly so in light of the fact that a neighboring tire wholesaler likely stores a substantially greater number of tires for a longer period of time on its property.

#### Refrigerators

19. I understand that the Village contends Metro Enviro accepted and mishandled two refrigerators. However, I further understand that the refrigerators at issue were delivered to Metro Enviro incidental to loads of acceptable waste; they were detected when the load in which they were located was tipped on the floor of the transfer station; the transfer station operators determined that the refrigerators were crushed and that one of them did not have a compressor or freon inside of it; they were placed to the side of the tipping floor; and they were removed by the hauler that had brought them to the facility within 24 hours of their having been brought to the facility.

20. The O&M Manual anticipates that appliances such as refrigerators will be delivered incidental to loads of acceptable waste. Accordingly, the O&M Manual sets forth procedures for removing such waste from the facility. Given that appliances are described as non-hazardous unauthorized waste, Metro Enviro is required to remove appliances within 24 hours of their arrival at the facility. That procedure was followed with regard to the two refrigerators at issue. In light of the foregoing, it is my opinion that Metro Enviro's acceptance and handling of the two refrigerators does not constitute a violation of any legal requirements and did not result in any adverse impact on the health, safety and welfare of the Village residents or on the environment.

21. As mentioned above, the results of stormwater testing that Metro Enviro has conducted since it acquired the facility in March 2000 do not indicate any adverse effect on the storm water as a result of Metro Enviro's activities, including its having accepted industrial waste, MSW, tires or refrigerators. (Copies of the results from testing of Metro Enviro's storm water are provided in the accompanying set of exhibits.)

#### Exceedance of Maximum Permitted Tonnage

22. Metro Enviro's Special Use Permit from the Village allows the transfer station to accept up to a maximum of 850 tons of waste per day (except on Saturdays, when the tonnage limit is 300 tons per day). I further understand that Metro Enviro's permit from the DEC allows the transfer station to accept an average of 700 tons per day, and a maximum of 4,200 tons per week. The Village Special Use Permit, the DEC permit and the O&M Manual all anticipate that Metro Enviro would be allowed to accept up to 1,000 tons per day. The DEC permit provides that Metro Enviro would be allowed to accept up to a maximum of 6,000 tons per week. The O&M Manual specifically provides (at page 2) that "[t]he Facility is designed to process up to 6,000 tons weekly. . . ."

23. I understand that, from March 22 through August 21, 2000, Metro Enviro accepted waste in excess of 850 tons per day on 23 occasions. I am informed that two of those occasions occurred during a brief period in May 2000 during which the tonnage limit under the Special Use Permit was increased from 850 to 1,000 tons per day, and that there were 21 occasions on which Metro Enviro exceeded its maximum permitted tonnage. On one occasion, Metro Enviro accepted in excess of 1,000 tons of waste (1039.81 tons, to be exact); however, during that week, Metro Enviro did not exceed the anticipated maximum tonnage of 6,000 tons per week. On that occasion, I do not believe the extra trucks necessary to transport the 39.81 tons would have caused any significant impact on the Village residents or the environment, though I defer to the expertise of the traffic engineer Metro Enviro retained, Bernard Adler, PE, on this point.

24. Because the permits for the facility and the design of the facility anticipate the increase of allowed tonnage to 1,000 tons per day, and because on the one occasion on which the tonnage exceeded 1,000 tons per day the maximum weekly tonnage was below the anticipated maximum of 6,000 tons per week, it is my opinion that Metro Enviro's acceptance of waste in excess of the tonnage allowed under its permits did not result in any adverse impact on the health, safety and welfare of the Village residents or on the environment.

#### Other Issues

25. I understand that the Village contends that, on one occasion, waste outside of Metro Enviro's tipping area came into contact with rainwater, causing leachate (waste mixed with water) not to be collected in the leachate collection tank, which is inside the tipping area. I further understand that the leachate flowed off of the paved area outside the tipping area and into a ditch between the pavement and the nearby rail spur.

26. According to the plan set forth in the O&M Manual, water that runs into the ditch into which the leachate flowed runs into a retention basin at the rear of the facility. The surface water testing results referred to above do not indicate any adverse effect on the storm water as a result of any leachate flowing into the ditch outside the tipping area of Metro Enviro's facility. (Copies of the results from testing of Metro Enviro's storm water are provided in the accompanying set of exhibits.) Accordingly, it is my opinion that this incident did not result in any adverse impact on the health, safety and welfare of the Village residents or on the environment.

27. I understand that the Village contends that Metro Enviro failed to provide training and to keep related records as required by the O&M Manual. I am informed that Metro Enviro has now provided all of the required training, albeit not on the required schedule, and that Metro Enviro has now remedied its record-keeping issues. (A copy of a letter from Metro Enviro to the Village dated December 18, 2002, is provided in the accompanying set of exhibits.) Moreover, I understand that the training provided to employees of Metro Enviro pursuant to the requirements of the Allied safety and compliance training program is more comprehensive in many respects than the training required by the O&M Manual. Given the nature of the training and documentation discrepancies, and further given the extensive training provided by Metro Enviro, it is my opinion that any failures in the areas of training and record-keeping did not have any adverse impact on the health, safety and welfare of the Village residents or on the environment.

#### Conclusion

28. In light of the foregoing, it is my opinion that Metro Enviro has not operated its transfer station in such a manner as to have had any adverse impact on the health,

safety and welfare of the Village residents or on the environment. I note that Mr. Brownell, who submitted an affidavit in support of the Village in this matter, does not contend that any of Metro Enviro's actions had any adverse impact on the health, safety and welfare of the Village residents or on the environment and seems to agree with me on this point.

29. However, contrary to Mr. Brownell, I do not believe that the manner in which Metro Enviro operates its transfer station poses any threat to the well-being of the Village residents or the environment.

I hereby state under the penalty of perjury that the foregoing is true and correct.



---

Sworn to before me this  
31 th day of January 2003

  
Notary Public



To commence the statutory time period for appeals as of right (CPLR 5513(a)), you are advised to serve a copy of this order, with notice of entry upon all parties.

FILED  
AND  
ENTERED  
ON 2/20 2003  
WESTCHESTER  
COUNTY CLERK

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER - ENVIRONMENTAL CLAIMS PART

-----X  
METRO ENVIRO TRANSFER, LLC,

Petitioner,

SHORT FORM ORDER

-against-

Index No.1788/03

Motion Date: Feb.14, 2003

THE VILLAGE OF CROTON-ON HUDSON and  
THE VILLAGE BOARD OF TRUSTEES OF THE  
VILLAGE OF CROTON-ON-HUDSON,

Respondents.

-----X  
NICOLAI, J.

The following papers numbered 1 to 83 were read on this application by Petitioner for an Order annulling the determination of the Respondents Village Board of Trustees which denied Metro Enviro Transfer's application for renewal of its special use permit and staying the Board's decision requiring Metro Enviro Transfer to cease accepting waste at its transfer station and closing the facility on February 17, 2003; and cross motion by Respondents for an Order pursuant to CPLR 7804(g) transferring this proceeding to the Appellate Division Second Department.

Order to Show Cause - Petition - Affidavits	1-6
Notice of Cross Motion	80
Answering Affirmations	59
Replying Affidavits	81-82
Memorandum of Law	58, 79, 83
Exhibits	7-57, 60-78

Upon the foregoing papers, it is ordered that this motion and cross motion are decided as follows:

This matter came before the undersigned in the Central Calendar Part on February 13, 2003 at which time the Petitioner's application for a stay of the Board's decision requiring Metro Enviro Transfer to cease accepting waste at its transfer station and closing the facility on February 17, 2003, was granted. Decision was reserved on the balance of the relief requested by

the Petitioner as well as the cross motion for an Order pursuant to CPLR 7804(g) transferring this proceeding to the Appellate Division Second Department.

In 1988, the Village of Croton-on-Hudson issued a special use permit to Industrial Recycling Systems (hereinafter "IRS"), authorizing it to operate a wood processing and recycling transfer station on the property. The ten acre parcel located immediately adjacent to a large rail facility was allegedly ideally suited and situated for the operation of a solid waste management transfer station. In 1997, Greentree Realty LLC purchased the property and leased it to Metro Enviro L.L.C. (an entity distinct from Petitioner) who requested and received a renewal and transfer of the pre-existing special use permit held by "IRS." The Department of Environmental Conservation (hereinafter DEC) issued a Part 360 Solid Waste Management Permit to Metro Enviro L.L.C. to operate a transfer station on the property and imposed a number of conditions on the issuance of the permit. The permit set capacity limitations for the transfer station and required the comprehensive monitoring of the transfer station by DEC personnel at the operator's expense. Thereafter, Metro Enviro L.L.C. spent approximately \$1.5 million dollars on the extensive clean-up of the property and approximately \$2.0 million dollars on site improvements. In 1998, the special use permit which included numerous conditions, was issued for a three-year duration. In March 2000, Petitioner acquired the assets of Metro Enviro L.L.C. (whose ultimate parent company is Allied Waste Industries) for \$10 million dollars with the expectation that it would operate on the leased premises for many years. Notwithstanding Petitioner's substantial investment and timely request for renewal, on January 27, 2003, the Board issued a Statement of Findings denying the renewal application based upon certain violations of the special use permit. Specifically, the Board cited mishandling of unauthorized waste, exceeding the maximum permitted tonnage, failure to collect leachate on one occasion and failure of certain training, reporting and record-keeping requirements.

Petitioner now seeks to annul the determination of the Respondents Village of Board of Trustees which denied the application for renewal of its special use permit. In support of the present application, Petitioner asserts that a review of the transcript of the 1998 Hearing establishes that Respondents engaged in a detailed and exhaustive analysis of the land use and environmental implications when the 1998 permit was issued. Petitioner maintains that a review of the documents supporting the renewal application establishes that the Board had no test results or other data of adverse traffic impacts, air emissions, odor or aesthetics and no other documentation evidencing harm or adverse impact to the public welfare or the environment. According to Petitioner's expert, who considered each of the admitted violations of the special use permit, Petitioner has not operated its transfer station in such a manner as to have had any adverse impact on the health, safety and welfare of the Village residents or the environment. More importantly, Petitioner contends that the Respondents' expert - whose uncorroborated affidavit was obtained on the same day that the Board issued its findings - did not dispute the statements by Petitioner's expert. Finally, it is argued that the Board had no empirical evidence that Metro Enviro Transfer has "caused any adverse impact to the health, safety or welfare of the Village residents or to the environment." In view of the barren record, the Petitioner asserts that the Board should not be permitted to invoke the drastic remedy of non-renewal of the special use permit.

In opposition to the instant application, the Village Board asserts that Metro Enviro Transfer has demonstrated its inability to comply with the permit and that the repeated violations of the permit conditions created a threat to public health, safety and the environment. Based upon a full review of the available documentary evidence including the information and presentations provided by Metro Enviro Transfer, the proceedings at the public hearings and Village Board meetings, information gathered by the Village Board and the affidavit of an expert retained by the Board, the Village asserts that its decision not to renew the special use permit falls into four general categories. These categories include tonnage exceedances (falsified daily tonnage reports), receipt of industrial and municipal waste, stockpiling of tires and failure to carry out required training. Most importantly, the Village maintains that during its course of operation, Metro Enviro Transfer admitted to 42 instances of intentional acceptance and processing of unacceptable industrial waste and 26 instances of intentional exceedances of tonnage limitations as well as the falsification of facility records. Furthermore, the Village contends that the Village Code provides for non-renewal upon a determination that the special permit conditions have not been complied with in whole or in part and therefore, these numerous violations are grounds for denial.

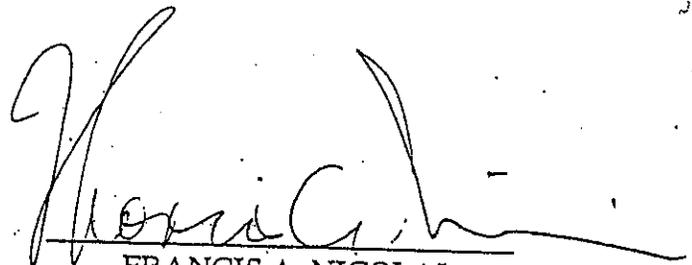
Generally, a special permit is the authority to use property in a manner expressly permitted (see Matter of North Shore Steak House v Board of Appeals, 30 NY2d 238; Matter of Texaco Ref. & Mktg. v Valente, 174 AD2d 674). The classification of a particular use as permitted in a zoning district is "tantamount to a legislative finding that the permitted use is in harmony with the general zoning plan and will not adversely affect the neighborhood" (see Matter of Twin County Recycling Corp. v Yevoli, 90 NY2d 1000; Matter of Lee Realty Co. v Village of Spring Val., 61 NY2d 892). While the Village Board still retains some discretion to evaluate each application for a special use permit, to determine whether applicable criteria have been met and to make commonsense judgments in deciding whether a particular application should be granted, such determination must be supported by substantial evidence (Twin County Recycling Corp. v Yevoli, 90 NY2d 1000; Matter of Market Sq. Props. v Town of Guildertland Zoning Bd. of Appeals, 66 NY2d 893, 895; Matter of Pleasant Val. Home Constr. v Van Wagner, 41 NY2d 1028, 1029). Although there is no entitlement to such a special permit, once the Petitioner shows that the contemplated use is in conformance with the conditions imposed, the special permit must be granted unless there are reasonable grounds for denying it that are supported by substantial evidence (Matter of C.B.H. Props. v Rose, 205 AD 2d 686). While the Respondents maintain that the violations of the special use permit constitute sufficient and substantial evidence supporting the denial of the permit renewal, they failed to recognize that the violations have been cured, penalties have been assessed and paid and Petitioner has implemented measures to assure ongoing permit compliance. Moreover, Respondents and its expert have failed to point to any evidence that an adverse environmental condition has resulted from the almost five years of operation of the Metro Enviro Transfer's facility. Despite the cited violations, the DEC has taken into account Metro Enviro Transfer's history of cooperation with and responsiveness to the Village. In fact, on February 7, 2003, the DEC - the state agency with regulatory control and jurisdiction over this solid waste management facility - renewed Petitioner's permit for five years and increased the maximum capacity of waste that the transfer station may accept to an average of 1,000 tons per day. While the Village is not bound by the

DEC renewal, the issuance of the DEC permit indicates to this Court that corrective action has been taken and that Metro Enviro Transfer's violations did not pose a threat to the health, safety and general welfare of the public or the environment.

Under the totality of circumstances present herein, the Court finds that the Board's denial of the permit is not supported by substantial evidence. The determination by the Village Board has been impermissibly based, in part, upon generalized opposition, which remains uncorroborated by any empirical data. Accordingly, the petition to annul the determination of the Respondents Village of Board of Trustees is granted. The matter is remitted to the Village of Croton-on-Hudson for the purpose of issuing a permit in accordance herewith, upon such reasonable conditions as it may deem appropriate.

When a planning board's ruling regarding a special use permit is challenged, the general requirement of CPLR 7804(g) gives way to specific statutory language authorizing Supreme Court to determine all questions which includes substantial evidence issues (see PDH Properties, LLC v Planning Bd. Of Town Of Milton, 298 AD2d 684; Matter of Iza Land Mgt. v Town of Clifton Park Zoning Bd. of Appeals, 262 AD2d 760). Because this proceeding was commenced to appeal a Village Zoning Board determination, it remains with Supreme Court, even where there is an issue of substantial evidence (see Matter of Barjeca v DeSantis, 226 AD2d 1085; Matter of Bovadjian v Board of Appeals, 136 AD2d 548). Contrary to the Respondents' position, the Court finds that the denial of the petitioner's application for renewal of its permit was not supported by substantial evidence. Respondents' cross motion for an Order transferring this Article 78 proceeding to the Appellate Division pursuant to CPLR 7804(g) is therefore, denied.

Dated: White Plains, New York  
February 19, 2003

  
FRANCIS A. NICOLAI  
J.S.C.

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**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

---

*United States District Courthouse  
300 Quarropas Street  
White Plains, New York 10601*

February 11, 2004

**BY TELECOPIER**

The Honorable Jed. S. Rakoff  
United States District Judge  
500 Pearl Street  
New York, New York 10007

Re: **United States v. Suburban Carting Corp.**  
96 CR 466 (JSR)

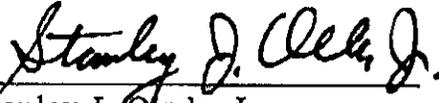
Dear Judge Rakoff:

I write in response to the request of Allied Waste Industries, Inc. seeking the judicial sealing of the entirety of the report of Walter Mack, the court-appointed Monitor.

We are in complete agreement with the thorough arguments advanced by the Monitor in his letter of earlier today. We thus join those arguments in opposing the application for across-the-board sealing. We have no opposition to the sealing of the two portions of the report that the Monitor does not oppose. Finally, we see no need to revisit the issues relating to the sealing of the May 2003 Report, given the passage of time (and, more to the point, the time to object).

Respectfully submitted,

DAVID N. KELLEY  
United States Attorney

By:   
Stanley J. Okula, Jr.  
Assistant U.S. Attorneys  
(914) 993-1961

cc: Walter Mack, Esq.  
Edward A. McDonald, Esq.

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~~PENDING COURT REVIEW~~

BY HAND

Hon. Jed S. Rakoff  
United States District Judge  
Southern District of New York  
United States Courthouse  
500 Pearl Street Suite 1340  
New York, New York 10007

Re: United States v. Suburban Carting Corp. et al.  
96 Cr. 466 (JSR)

Dear Judge Rakoff:

I respectfully submit this letter in response to Edward McDonald's February 9 letter ("McDonald Letter") requesting that my Report on Valley Carting ("the Report") be sealed. I do not agree that the Report should be sealed. Rather, with the exception of the two items I described in my January 13 letter accompanying the Report, I urge that it be filed and made available to the public.

The argument that Allied advances in support of its request for sealing is that the Report is, assertedly, unfavorable and one-sided. As an initial matter, I note that this is not a ground for sealing a monitorship report from public scrutiny. The grounds for redaction were articulated initially by Your Honor in an order dated June 8, 1998 ("the June 1998 Order"). In that order, issued in response to a motion by Gannett Suburban Newspapers, the Court stated (at 2) that monitorship reports will "henceforth be made public except as to those portions of the reports that the Court, after receiving

submissions of counsel, determines contain (i) trade secrets or highly sensitive competitive business information [citation omitted], or (ii) information obtained from law enforcement personnel relating to ongoing criminal investigations [citation omitted].” A report’s unfairness or inaccuracy does not fall within either of the two criteria articulated in the June 1998 Order.<sup>1</sup> Thus, even assuming arguendo that the Report is inaccurate and unfair, that would be no basis upon which to seal it.<sup>2</sup> In any event, not surprisingly, I adamantly dispute this characterization of the Report.

As I have attempted to convey to Allied’s counsel over the course of several conversations about the Report, it is not intended as an up-to-date discussion of Valley Carting’s operations. Rather, it is an historical report providing detail about issues that existed during my monitorship of Valley, which ended in December of 2002. Thus, it was not in my mandate to “describe the dramatic improvements that Allied has instituted in the Companies’ operations and practices during the last 18 months.” (McDonald Letter 1.) Indeed, I am in no position to do so since my monitorship ended more than a year ago. Nevertheless, I incorporated in the Report numerous points made by Allied about improvements and changes made at Valley.<sup>3</sup>

For instance, the departures of many of the individuals cited in Mr. McDonald’s letter (at 2) were, in fact, mentioned in my Report. (Aaron Deems’ resignation at 16; Matt Hickey’s extended medical leave and ultimate termination at 7; Eileen Basalice’s departure at 18; Lisa Nichols’s termination at 20, n. 21; Erina Hickey’s departure at 6-7.)<sup>4</sup> Additionally, back in December of 2002, when the Court was determining whether or not the monitorship should be concluded, I advised Your Honor, in open court, that many

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<sup>1</sup> Although the June 1998 Order was entered prior to Allied’s acquisition of Suburban and other Westchester carting companies, the January 31, 2000 “Supplemental Stipulated Monitor Agreement and Order” contemplated that Allied would be bound by “prior relevant orders of this Court ...” Supplemental Stipulated Monitor Agreement and Order at 4-5.

<sup>2</sup> I note that the June 1998 Order (at 3) requires that any application for redaction be made within one week of receipt. In the case of this Report, it was mailed to Allied’s counsel by Federal Express on January 14, 2004. They did not seek intervention by the Court until February 2, when they telephoned chambers to seek “clarification” on the criteria for sealing.

<sup>3</sup> The Court may recall that I delayed filing the Report for several months so that Allied’s counsel could review and comment on the draft Report.

<sup>4</sup> Additionally, Anthony Prestamo’s termination was noted in my Fifteenth Report (at 4-5), as was Matt Hickey’s prolonged medical leave, leading to his termination (at 14).

problematic employees were no longer in Allied's employ and that management had begun to focus on integrity and environmental compliance issues. (Transcript of December 5, 2002 hearing at 13-14.) I also mentioned in the Report that there had been an improvement at Valley with respect to the procedures for accepting cash and the policies discouraging cash business (at 15-16). And I noted that Allied management had advised me that it continued, after the monitorship, to upgrade its revenue collection procedures (at 16, n.17).

I do not know what Mr. McDonald can be referring to when he says that the Report "unfairly ignores the numerous mitigating factors concerning the industrial waste at its transfer stations." (McDonald letter at 2-3.) As for the Engelhard situation, I noted in the report that Allied undertook its own investigation (at 25) and, at counsel's request, I also noted that a Westchester County Supreme Court Justice had overturned the Village of Croton-on-Hudson's decision not to renew the Metro Enviro permit. And I noted that the judge had said that he had seen no evidence of any adverse environmental impact from Metro Enviro's receipt of unauthorized industrial waste (at 25-26, n.25). I also noted that I was unaware of any evidence that the Engelhard waste had been hazardous as opposed to industrial (*id.*). And it was back in my Fifteenth Report that I informed the Court that Allied had begun to train its employees not to receive industrial waste (Monitor's Fifteenth Report at 27).

As for the waste mixing that Valley Carting engaged in, I am at a loss to understand how this section of the Report is "misleading." (McDonald Letter at 3.) I simply described what had occurred and explained the difficulties encountered in quantifying the extent to which it had occurred. I even noted that Allied employee Erica West had exercised "commendable diligence" in attempting to make an assessment that could not be made satisfactorily due to inadequate data.

While I have no objection to the Court releasing the McDonald Letter along with the Report, I see no reason to seal the deposition exhibits cited in the McDonald Letter. Upon reviewing them, I find that some disclose a business relationship with Engelhard, which is by now a matter of public record.<sup>5</sup> Other exhibits seem to convey only employees' names. To the extent that some contain pricing information or names of customers other than Engelhard, I note that they bear dates in 2000 and 2001 and cannot, I submit, be considered trade secrets or "highly sensitive competitive business

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<sup>5</sup> Exhibit 13 to the Lombardo deposition figures significantly in the Report, evidencing Erina Hickey's provision of false information to Engelhard with respect to the sites at which its waste was being disposed (see Report at 22-23).

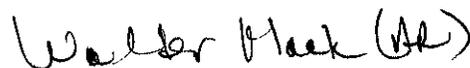
information” (June 1998 Order at 2) at this point in time. The list of residential customers, apparently created in September of 2002 contained in Exhibit 18 may, however, be “highly sensitive.” I am not sure that Mr. McDonald’s conclusory characterization as to this (and the other exhibits) provides sufficient information for the Court to make a determination as to its sensitivity.

As for Allied’s request that it now be able to file a response to my Investigative Report Concerning Metro Enviro Transfer LLC, filed on May 15, 2003, I take no position but note, as mentioned above, that the June 1998 Order requires a request for redaction within one week of the company’s receipt of the report.

While I understand that both this Report and the Metro Enviro Report may be cause for embarrassment to Allied, I do not believe that either report was unfair and I submit that communities in which Allied now owns or may own and operate facilities, along with Allied’s shareholders, have a right to the information contained in these reports.

Thank you for your consideration.

Respectfully,

A handwritten signature in black ink that reads "Walter Mack" followed by a circled "AM" in the right margin.

Walter Mack

cc: via facsimile

Edward McDonald, Esq.

AUSA Stan Okula

Redacted

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~~PENDING COURT REVIEW~~

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA, :

Plaintiff, :

96 Cr. 466 (JSR)

v. :

SUBURBAN CARTING CORP., :

C.C. BOYCE AND SONS, INC., :

MAMARONECK TRUCK REPAIR, :

TROTTOWN TRANSFER, INC., :

CHESTNUT EQUIPMENT LEASING, and :

RECYCLING INDUSTRIES CORP, ET :

AL., :

Defendants.

-----x

MONITOR'S REPORT ON  
ALLIED WASTE INC.'  
VALLEY CARTING DIVISION

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## Monitor's Report on Allied Waste Inc.'s Valley Carting Division

### Introduction

The purpose of this report is to inform the Court of the results of completed investigations regarding troubling issues mentioned or alluded to in several of the reports I submitted during the course of my monitorship of Allied Waste Systems, Inc. ("Allied" or "the Company") during the period April 2000 through March 2003. As the Court may recall, Allied had purchased Valley Carting ("Valley") prior to its purchase of Suburban Carting Corp. ("Suburban") and related companies. After its acquisition of Suburban, Allied agreed to submit Valley Carting to monitorship so that all of Allied's assets in Westchester County would be subject to my oversight.

During the monitorship, Valley Carting consisted of four entities operating out of the same location – 566 North State Road, Briarcliff Manor – servicing much of northern Westchester County. Those entities were: *Valley Carting*, which engaged in carting for commercial customers; *Mt. Pleasant Sanitation*, which handled residential hauling pursuant to a contract with the Town of Mt. Pleasant; *Hudson Waste Haulage*, which handled residential hauling pursuant to a contract with Yorktown, two commercial routes, and "roll-off" work (*i.e.*, picking up trash, usually generated by demolition, on an as-needed basis .....); and *Mid-Hudson Equipment*, which serviced the equipment of the companies described above.<sup>1</sup> Allied purchased these companies from James Hickey, his

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<sup>1</sup> Throughout this report I refer to all four companies as "Valley" and to their employees as "Valley" employees.

wife and an individual named Toby DeMicco in May of 1999. I have discussed in previous reports Mr. Hickey's background and relationship with James Ida, a convicted mobster (e.g., Monitor's Twelfth Report at 19, Monitor's Thirteenth Report at 29.) And I have already apprised the Court of Allied's failure timely to disclose to me the information in its possession about James Hickey's background. (Monitor's Investigative Report Concerning Metro Enviro Transfer LLC, An Allied Waste Industries Company ["Metro Enviro Report"] at 24.)<sup>2</sup> Similarly, Allied did not share with me the fact that the Hickeys' partner, Toby DeMicco, was the son of the reputed Genovese family soldier who founded the Valley companies.<sup>3</sup>

#### **I. Allied's Elevation of Matt Hickey to the Position of Valley's General Manager**

Just prior to Allied's acquisition of Valley, Mathias ("Matt") Hickey, James Hickey's brother, who had been employed as a Valley sales representative prior to the acquisition, informed the other Valley employees that Allied would be purchasing Valley.

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Hudson Waste Haulage's two commercial routes were sold in June of 2002 pursuant to the divestiture order entered into pursuant to Allied and the New York State Attorney General.

<sup>2</sup> Allied's position has been that it had no obligation to apprise me of events that predated the monitorship and that there were privilege and other confidentiality issues implicated in the release to me of the investigative reports it had obtained about Valley's sellers. (See Metro Enviro Report at 22.)

<sup>3</sup> While I do not endorse the notion of guilt by association, I believe that given the background of Valley's previous owners, of which Allied was fully aware, management should have been alert to the possibility that Matt Hickey's management of the facility could require careful oversight. Had I been armed with this information, my own oversight would have been far more vigorous and I would have taken steps to see that Allied management supervised this Division with far greater care and competence than it did.

He told the employees that, apart from his becoming the facility's General Manager, nothing would change. Shortly after the sale to Allied, Allied regional executives held a meeting with all of the Valley employees at a neighborhood restaurant and reiterated that nothing in the way that Valley operated would change under Allied's ownership.

(Deposition of Anthony Cardillo, taken June 3, 2002 ["Cardillo Deposition"], submitted herewith as Exhibit 1, at 47-48; Deposition of Lisa Nichols, taken July 9, 2002 ["Nichols Deposition"], submitted herewith as Exhibit 2, at 77-81; Deposition of John Lombardo, taken September 26, 2002 ["Lombardo Deposition"]<sup>4</sup>, submitted herewith as Exhibit 3, at 57-59.)<sup>5</sup> Unfortunately, this was all too true. These statements did not merely assuage the fears that employees typically experience when an takeover occurs – they accurately predicted that Valley Carting under Allied's ownership would operate much as it had when it was owned by James Hickey, his wife and Toby DeMicco.

The major change that occurred, as Matt Hickey had indicated, was his elevation to General Manager, the role previously occupied by his brother. And, consistent with his statement to the staff that the Allied people would not have a presence at the facility

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<sup>4</sup> Pursuant to commitments I made to Mr. Lombardo and his counsel with respect to personal and irrelevant material, I respectfully request that the Court seal pages 14-28 of Mr. Lombardo's deposition. Additionally, pursuant to an understanding with Mr. Lombardo's attorney, I request that pages 89 -91 and 93-98, containing sensitive material, be sealed.

<sup>5</sup> Anthony Cardillo was a dispatcher at Valley, Lisa Nichols was an office worker, and John Lombardo was a sales representative. While the conduct of Mr. Cardillo and Ms. Nichols and, in one instance, of Mr. Lombardo, was not without cause for reproach, as discussed below, I believe that much of the information they gave me was reliable.

(Nichols Deposition at 77), Matt Hickey was able to run Valley as his own fiefdom.<sup>6</sup> Within a few months of the acquisition, Matt Hickey made Aaron Deems, a twenty-something former driver and sales representative who had gone to school with his children (Memorandum of Don Sobocienski's Interview of Della Penna conducted on September 27, 2001 ["Della Penna Interview"], submitted herewith as Exhibit 4; Memorandum of Don Sobocienski's Interview of Matt Hickey, dated February 20, 2002 ["Hickey Interview"], submitted herewith as Exhibit 5, at 4)<sup>7</sup>, "site manager" and moved another driver, Iain Wilson, into an office job, easing Anthony Cardillo, who had been a dispatcher at Valley for many years, out of the office. For the next several months, until Iain Wilson decided to return to his work as a driver, Mr. Cardillo was assigned to "audit" the Valley companies' routes by following Valley's trucks as they made their stops. (Cardillo Deposition at 56-57, 120.)

**A. Matt Hickey's Hiring of His Daughter**

Mr. Hickey also hired his daughter, Erina Hickey, as an office worker. This, too, was a questionable personnel decision. Ms. Hickey's co-workers reported that she was

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<sup>6</sup> The presence at Valley's premises of Allied supervisors Linda Jefferson or Peter Cadorette at least once or twice per week had no discernible impact on Matt Hickey's conduct.

<sup>7</sup> Unlike Matt Hickey, neither Joanne Della Penna nor other Valley employees I or investigator Don Sobocienski interviewed refused to submit to sworn depositions. I simply chose not to expend the additional resources to depose witnesses whom I did not suspect of wrongdoing or otherwise found to be credible. I did attempt to depose Aaron Deems because he was no longer an Allied employee when I began my inquiry into his activities. I did, however, attempt to interview him. Despite his initial agreement to submit to an interview, I failed to appear at the appointed time.

incompetent and shirked her responsibilities. She often came in late and took long lunches. (Nichols Deposition at 102-08, 132-40; Della Penna Interview at 4-5.) This behavior generated the expected resentment among the other office workers. The single most dramatic result of Erina Hickey's lack of competence and laziness was her failure to process for payment a large stack of excess weight tickets, which she left in a pile in her desk drawer. (Nichols Deposition at 104-08, 110; Della Penna Interview at 5.)

Matt Hickey's response to the discovery of these tickets was even more disturbing. It was particularly inappropriate and unethical, vividly demonstrating the dangers of nepotism. When the unprocessed tickets were discovered by other office workers (Lisa Nichols and Aaron Deems) and brought to Matt Hickey's attention, he accused these employees of "setting up" his daughter and ordered Joanne Della Penna, the office worker in charge of billing, to shred the neglected tickets. (Nichols Deposition at 107; Della Penna Interview at 4.) Ms. Della Penna, having reluctantly obeyed this instruction (Mr. Hickey directed his daughter to watch Ms. Della Penna perform the shredding), was so upset that upon leaving work she telephoned Linda Jefferson, Allied's District Controller based in the northeast. (Della Penna Interview at 4; *see* Nichols Deposition at 108.)<sup>8</sup>

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<sup>8</sup> When I questioned Mr. Hickey about this incident, he told me that there were only about fifteen tickets involved and that they had been incompletely filled out and therefore inadequate for billing customers. It was on this basis, Mr. Hickey said, that he directed Ms. Della Penna to shred them. He denied having directed his daughter to oversee the shredding. (Hickey Interview at 6.) Even assuming that Mr. Hickey's version of the events – distinctly at odds with Joanne Della Penna's and Lisa Nichols's – is accurate, he violated the Compliance Plan and the Stipulated Monitor Agreement ("Monitorship Order") by destroying records outside the parameters of a standard policy for record destruction and without my approval. (Compliance

There is some dispute as to what Ms. Della Penna disclosed to Ms. Jefferson. Ms. Jefferson, who was closely questioned by Allied's attorneys on this subject, maintains that Ms. Della Penna never told her about the existence of unprocessed tickets or Matt Hickey's direction that she shred them. I am told that Ms. Jefferson had a general recollection of a conversation with Ms. Della Penna in which Ms. Della Penna told her about a meeting called by Matt Hickey, attended by Erina Hickey and Ms. Della Penna, at which Mr. Hickey announced that certain tickets were "not an issue" and that he did not want to hear anything further about them. Although I found Ms. Della Penna highly credible on this subject and I believe that her credibility was underscored by the fact that she contemporaneously informed Ms. Nichols that she had told Ms. Jefferson about the shredding of the unprocessed tickets (Nichols Deposition at 108), I did not question Ms. Jefferson directly and must accord some weight to Allied's counsel's view of her credibility.<sup>9</sup> In any event, I did not learn of the incident until it came up in the course of interviews and depositions of Valley employees after Erina Hickey had left Allied's

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Plan at 21; Monitorship Order at ¶ 11.) In any event, in light of: (a) the testimony and statements I received from other Valley employees concerning Mr. Hickey's conduct as Valley's General Manager, and (b) Mr. Hickey's refusal to submit to a sworn deposition, citing his Fifth Amendment privilege against self-incrimination, I do not credit his version of this incident involving his daughter. (I note that pursuant to Paragraph 19 of the Monitorship Order I am permitted to draw an adverse inference from a witness's invocation of the privilege.)

<sup>9</sup> Although I initially intended to take sworn testimony from Ms. Jefferson, ultimately, as a courtesy and as a matter of discretion, I chose not to do so.

employ and after Matt Hickey had gone on an extended medical leave from which he was not permitted to return.

## **II. Aaron Deems's Dishonest and Corrupt Conduct**

Aaron Deems's role as site manager – and indeed his employment by Allied – was seriously problematic in several respects. First, although his position, which included “troubleshooting,” required him to be off-site some percentage of the time, he was away from the facility so often that Anthony Cardillo was often forced to remain at work after his shift was over. (Cardillo Deposition at 71, 76, 79, 98; *see* Della Penna Interview at 4.) Even Mr. Hickey told me that Mr. Deems was often not reachable by telephone during working hours. (Hickey Interview at 4-5.)

I discovered that the reason for Mr. Deems' prolonged absence from the Valley site was that, simultaneous with his employment at Valley, he was working for one or more companies in which James Hickey or a friend of James Hickey had an ownership interest. Several Valley drivers observed Mr. Deems performing duties for James Hickey-related companies, (Don Sobocienski's Memorandum of Interview of Ivan Ward [“Ward Interview”], submitted herewith as Exhibit 6, at 1; Memorandum of Interview of Robert Clarke, submitted herewith as Exhibit 7, at 3;<sup>10</sup> *see* Della Penna Interview at 4.). And if I needed any additional proof of Mr. Deems's working elsewhere on Allied time, he submitted an affidavit in an unrelated civil matter attesting to the fact that he had been

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<sup>10</sup> Ivan Ward is a Valley mechanic and Robert Clarke is the president of IPPI Lubricants, Inc., a company then-owned or partly owned by the late James Hickey.

employed, beginning in August of 2000, by a company partly-owned by James Hickey. He did not leave Allied's employ until March 30, 2001. (A copy of Mr. Deems's affidavit submitted in *Lionetti Associates, d/b/a Lorco Petroleum Services v. Tantalos et al.*, 01 Civ. 7182 [CLB], is attached as Exhibit 8.)

Mr. Hickey told me that even after he observed Mr. Deems driving another company's truck, he accepted Mr. Deems' explanation that he had borrowed the truck because the Allied truck he was using needed repair. Matt Hickey told me that in response to questions he put to his brother, James Hickey denied that Aaron Deems was working for him. Nevertheless, Matt Hickey, apparently still suspicious, finally directed Mr. Deems to keep a daily journal of his activities; shortly thereafter, Mr. Deems resigned. (Hickey Interview at 5.)

I submit that, based on the drivers' common knowledge of Mr. Deems' extracurricular activities and on Matt Hickey's own inability to contact Mr. Deems during working hours, Matt Hickey knew or should have known of this conduct much earlier than when he finally requested a daily journal of Mr. Deems, prompting Mr. Deems' resignation. I submit further that Matt Hickey knew or should have known of other unacceptable and unlawful conduct by Mr. Deems, described below. When Mr. Deem's departure from Allied finally occurred, it was long overdue.

Another seriously unethical practice in which Aaron Deems engaged was the provision of Valley Carting's services free of charge to friends or people with whom he

transacted personal business. I am persuaded that he engaged in this practice based on statements and testimony by Valley office employees that Mr. Deems, himself, delivered or had delivered, roll-off containers to people he knew for which payment was never collected. (Nichols Deposition at 182-85; Cardillo Deposition at 81, 84, 111, 114.) In fact, he would write “credit; no charge” on the roll-off tickets for certain customers. (Nichols Deposition at 188-89; *see* Della Penna Interview at 3.) Ms. Della Penna reported that the receipts for roll-off work were routinely less than the amount that should have been collected. (Della Penna Interview at 2-3.) Despite the fact that Allied’s bookkeeping software made it difficult to track individual roll-off accounts, Ms. Della Penna was able to ascertain from drivers’ route sheets that many of the customers listed did not pay for their roll-off service. Often she would find a driver’s notation that Aaron Deems had given instructions that the “customer” was not to be billed. (*Id.* at 3.)

Despite the fact that Ms. Della Penna took her concerns about uncollected payables to Matt Hickey, he apparently never reported the problem to any of his superiors at Allied and certainly never reported the problem to me, despite the Compliance Plan’s requirements that I be apprised promptly of any wrongful practice. (Compliance Plan, a copy of which is attached as Exhibit 9, at 4.)<sup>11</sup>

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<sup>11</sup> The Compliance Plan requires that: unethical conduct will not be tolerated (at 2); any violation of law or other wrongful practice must be reported to the Corporate Compliance Officer or to the Monitor (at 3, 4); and that the Corporate Compliance Officer report such conduct to the Monitor immediately (at 18, 20). (Suburban’s Compliance Plan, which was applicable to Valley from April of 2000 until Allied issued its own Compliance Plan in January of 2001, had identical provisions.)

Although Matt Hickey did, at some point, confront Mr. Deems about the need to collect payments from certain customers who were his friends, I am not aware of any disciplinary action taken against Mr. Deems. (See Della Penna Interview at 3; Nichols Deposition at 192; Cardillo Deposition at 82.) And despite Mr. Hickey's representation to me that Mr. Deems began to collect payments "slowly but surely" (Hickey Interview at 5), the information provided by other Valley employees was to the contrary. Ms. Della Penna told me that after overhearing Mr. Hickey direct Mr. Deems to collect the monies owed for the roll-off containers that had not been paid for, she attempted to follow-up with Mr. Deems only to be met with Mr. Deems' response that it was not her money at stake so he did not see why she was concerned about it. (Della Penna Interview at 3.) Similarly, when on occasion Lisa Nichols asked Mr. Deems whether he had collected payment for roll-off container service, he would respond that she should not worry about it. (Nichols Deposition at 190-91.)

Consistent with his provision of free carting service to his friends, Mr. Deems was seen by Valley drivers using Valley's diesel pump to fuel his personal vehicle and to allow friends of his to do the same. (Ward Interview at 2; Don Sobocienski Interview of Chris Ridenhour ["Ridenhour Interview"], submitted herewith as Exhibit 10, at 5; Cardillo Deposition at 105-06, 109; see Deposition of Robert Thomas ["Thomas Deposition"]<sup>12</sup>, submitted herewith as Exhibit 11, at 109.) These thefts occurred on at

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<sup>12</sup> Robert Thomas is a Valley driver.

least a weekly basis, starting approximately in the Spring of 2000 and lasting until at least October of 2000. (Ward Interview at 2.) One employee, Ivan Ward, was so incensed by this conduct that he brought a camera to work and photographed it on one occasion. Although the photographs were circulated among the drivers and shown to Anthony Cardillo, Mr. Cardillo did not report this conduct to Mr. Hickey or to any Allied manager.<sup>13</sup> In his view, there was so much talk about the photographs and the conduct they portrayed, that Mr. Hickey had to know about it. (Cardillo Deposition at 109.)

**A. Allied's Delay in Apprising Me of the Fuel Thefts**

Mr. Hickey indisputably learned about the fuel theft after the photographs were sent anonymously to Denny Marchetti, Allied's Vice President, who passed the information down to Anthony Prestamo, Allied's Westchester Division Manager. Mr. Prestamo, in turn, discussed the situation with Mr. Hickey, who told him that Mr. Deems had explained the photograph as representing a one-time occurrence in which a friend needed fuel on an emergency basis and contributed \$20 to Valley's petty cash to cover the cost. The unlikeliness of this explanation is supported by what one of the drivers told me about his conversation with Mr. Hickey on the subject. Mr. Ridenhour told me that when he asked Mr. Hickey how Deems got away with taking Company fuel, Mr. Hickey responded that "I just told them that he paid me for the gas," commenting that "I've got

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<sup>13</sup> Again, as demonstrated in note 11 above, the Compliance Plan imposes on every employee the obligation to report unlawful conduct to the Corporate Compliance Officer or to me.

him out of a lot of trouble already.” (Ridenhour Interview at 5.) Mr. Hickey’s acceptance of Mr. Deems’s dishonesty was also demonstrated in the comment he made to Ivan Ward, upon discovering that Mr. Ward had taken the photographs. He told Mr. Ward that he had better watch his back because if Aaron Deems discovered that he had been the photographer he might “kick [Mr. Ward’s] ass.” (Ward Interview at 3.)

Mr. Marchetti, then the most highly-placed Allied regional manager overseeing the Company’s Westchester assets, also demonstrated little or no knowledge of or concern with the Compliance Plan’s requirements. He waited approximately six months to bring the photographs and the events they represented to my attention. By this time, Aaron Deems had voluntarily left Valley’s employ.

Mr. Marchetti’s explanation for his failure to treat the matter seriously was that he accepted the explanation that Mr. Hickey had conveyed to Anthony Prestamo – that Mr. Deems had allowed his friend on just one occasion to use the fuel pump because his truck was low on fuel and could not get to a service station, and that he took \$20 from his friend and deposited it in the “cash box.” (Hickey Interview at 4.) I submit that Mr. Deems’ explanation should have raised questions for even the most casual listener. It is highly unlikely that Mr. Ward fortuitously had a camera at work on the one occasion that Mr. Deems happened to allow his friend to fuel his truck from Valley’s diesel pump. I believe that, consistent with what Mr. Ward and other employees told me, Mr. Ward had witnessed this conduct on numerous occasions and had decided to try to do something

about it. I submit further that this should have been evident to Mr. Marchetti.

I believe that Mr. Marchetti's six-month delay in providing this information to me, despite the Compliance Plan's requirements, demonstrated, on management's part, a lack of concern with and attention to the Monitorship Order and Compliance Plan.<sup>14</sup> And I believe that Mr. Marchetti, given his position at Allied, set a tone and example for other Allied employees. I believe that this indifferent attitude toward compliance fully explains why Matt Hickey was permitted to run Valley just as he pleased. And that meant engaging in nepotism and tolerating theft and other corrupt practices.

### **III. Allied's Failures to Provide Compliance Plan Training and to Educate Employees About the Existence of the Monitorship and the Monitorship Order**

Consistent with Allied management's lackadaisical attitude toward the Compliance Plan, and in contravention of the Compliance Plan's requirements, no compliance training was given to Valley employees until I directed that a training session be conducted (*see* Cardillo Deposition at 90-91; Lombardo Deposition at 64-44; Nichols Deposition at 88-89.) This occurred, with my participation, in December of 2001.<sup>15</sup>

Although Mr. Hickey told me that he instructed employees to read the Compliance Plan before signing the required acknowledgement, and to ask questions about it if they had any (Hickey Interview at 3), Mr. Cardillo testified that Mr. Hickey had told him to

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<sup>14</sup> After finally bringing the fuel theft to my attention, at my suggestion Allied retained a private investigator who, although well-credentialed, took an inordinate amount of time with his investigation and generated an incomplete report.

<sup>15</sup> Allied counsel advises me that such training has continued, post-monitorship.

sign the acknowledgement before he had an opportunity to read it, explaining that it simply contained common sense admonitions such as prohibitions against stealing and drinking on the job. (Cardillo Deposition.) (As indicated elsewhere in this report even these two basic rules were violated at Valley.) Both Ms. Nichols and Mr. Lombardo testified that no one explained or discussed the Compliance Plan with them until I did at the training session in December of 2001. (Nichols Deposition at 88-89; Lombardo Deposition at 64-66.) Mr. Hickey told me that he himself had skimmed, not read, the Compliance Plan. (Hickey Interview at 3.)

Similarly, Valley employees were not made aware of the monitorship until anywhere from eight to fifteen months after it began. (Cardillo Deposition at 92; Nichols Deposition at 82-83; Lomabardo Deposition at 63.) This despite the fact that the Supplemental Stipulated Monitor Agreement and Order, signed by the Court on January 27, 2000 (“Supplemental Order”), provides that Allied shall inform all “affected employees” of the requirements of the Stipulated Monitorship Agreement and the Supplemental Order. Had they been aware of the monitorship and well-versed in the requirements of the Compliance Plan, employees would have at least been cognizant of their ability to report instances of unlawful and unethical behavior to me, even if they did not feel comfortable reporting the behavior to Matt Hickey or others at Allied.

As noted above, the Compliance Plan contains several provisions requiring that unlawful or unethical conduct be reported to the Corporate Compliance Officer and to

me. I believe that timely ethics training and a climate of management respect for the Compliance Plan would have led to my learning, earlier than I did, about the unlawful conduct of Mr. Deems and others. I fault myself for not being more aggressive in looking at Valley even while I was heavily focussed on Metro Enviro.

**A. Valley's Failure to Record Properly Receipts and Other Payables Information**

Similarly, if Allied had instituted proper procedures for recording the receipt of cash at Valley, as required by the Compliance Plan (at 8), the Company would probably have avoided losing cash to employee theft. The documentation created when Valley received a telephone call from a customer requiring a bulk pick-up (such as appliances or construction and demolition debris, which routinely generated cash payments), consisted of an index card filled out by the office worker taking the telephone order and given to the dispatcher, Mr. Cardillo, who in turn gave it to the driver on the day that the collection was to be made. (Nichols Deposition at 216.) Until about eighteen months ago, no other record was made of this service order (*id.* at 222-23) and Ms. Della Penna would not know to expect receipts (usually cash in amounts of \$20 to \$40 per pick-up) for this work unless she received the index card or unless she reviewed the drivers' route sheets. (*Id.* at 220; Lombardo Deposition at 102-03; *see* Della Penna Interview at 3.)

There were instances in which cash collected from either roll-off customers or from a salvage yard to which Valley sold discarded appliances it picked up was not tendered to Ms. Della Penna, who was in charge of receipts. (Della Penna Interview at 2-

3; Cardillo Deposition at 120-23, 127; Nichols Deposition at 173-75.) Although Allied gradually tightened its requirements for accepting cash and discouraged cash business, and eventually installed a “lock box” for drivers’ deposits of all cash and checks, this did not occur until some time after Aaron Deems left Allied’s employ, which was at the end of March 2001.<sup>16</sup> (Cardillo Deposition at 125, 126; Nichols Deposition at 193-94; Thomas Deposition at 122.) Keys to the lockbox were kept by Ms. Della Penna and Mr. Hickey. (Della Penna Interview at 2; Nichols Deposition at 105; Cardillo Deposition at 134; Lombardo Deposition at 105.)<sup>17</sup>

**B. Eileen Baselice’s Thefts and Matt Hickey’s Response**

The absence of controls over or reviews of Valley’s recording of receivables, combined with the lack of focus on ethical principles demonstrated by Allied at Valley, contributed to an environment in which an office worker, Eileen Baselice, was able on at least four or five occasions to convert customers’ checks to her own use. (See Baselice Deposition at 16, 28, 30.)

Ms. Baselice’s responsibility for missing money was definitively discovered when an employee of a local bank alerted John Lombardo, a Valley sales representative and former branch manager of the bank branch involved, that Ms. Baselice had attempted to cash a check made out to one of the Valley entities by crossing out the payee’s name and

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<sup>16</sup> Mr. Deems voluntarily terminated his employment with Valley on March 30, 2001.

<sup>17</sup> Allied management advises me that it has continued, post-monitorship, to upgrade many of the collection procedures at Valley.

substituted her own. The teller had refused to accept the check. Mr. Lombardo received this information shortly after Joanne Della Penna confided in him her suspicion that Ms. Baselice had been stealing checks and cash; Ms. Della Penna told Mr. Lombardo that there were roll-off tickets that had not been presented to her and were missing.

(Lombardo Deposition at 87-89.)

Ms. Della Penna also had informed Matt Hickey of the missing roll-off tickets and corresponding funds. So when Mr. Lombardo brought his information to Mr. Hickey, Mr. Hickey said that he had suspected that Ms. Baselice had been taken money and that a significant amount of money was missing. (Lombardo Deposition at 92.) Mr. Hickey's response, however, was to ask Mr. Lombardo to use his connections at the bank to obtain Ms. Baselice's bank records. (Mr. Lombardo, of course, could not do this.) (*Id.* at 93-95.) It is significant to me, and emblematic of Matt Hickey's total ignorance of or disregard for the Compliance Plan, and indeed for routine corporate ethics, that he did not provide the information he had to his superiors at Allied or to me.<sup>18</sup> I learned of the Eileen Baselice situation only when Joanne Della Penna mentioned it while giving an interview to Investigator Sobocienski.

It is also significant that even after receiving Mr. Lombardo's information, confirming his own suspicions about Ms. Baselice, Mr. Hickey took no steps to terminate her employment or to discipline her other than to chastise her, as described

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<sup>18</sup> Mr. Hickey told me that he may have advised Anthony Prestamo, Allied's Division Manager, of Ms. Baselice's defalcations.

below. (I note that Mr. Hickey told me that he had wanted to fire Ms. Baselice but had been advised not to by his personal attorney. [Hickey Interview at 6].)<sup>19</sup> Mr. Hickey's own behavior in reaction to Ms. Baselice's conduct was reflective of his total insensitivity to the requirements of the Compliance Plan or basic ethical dictates. In confronting Ms. Baselice about her thefts, Mr. Hickey admonished her not to say anything, but to just listen to him. He did not ask her for any information about her conduct or how much money she had taken. (Baselice Deposition at 42-43.) Nor did he ask her to make restitution. He simply told her "[s]top what you're doing. If you don't like what I'm paying you, you can get the hell out of here." (*Id.* at 43.) According to Lisa Nichols' recollection of what Ms. Baselice told her about her confrontation with Mr. Hickey, he told her that "If you were a guy, I would punch you in the head." (Nichols Deposition at 213.) When I interviewed Mr. Hickey, he confirmed that he had said to Ms. Baselice, "If you were a man, I'd kick your butt." (Hickey Interview at 6.)

Beyond making this speech, Mr. Hickey's method of addressing Ms. Baselice's thefts was to be nasty to her. Not too long after their confrontation about the checks, when Ms. Baselice arrived late for work one day, Mr. Hickey threatened to fire her and she resigned. (Nichols Deposition at 251-52; Cardillo Deposition at 132.)

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<sup>19</sup> Assuming this to be true, Mr. Hickey's consultation with his own attorney rather than with Allied's management or counsel, underscores the fact that he operated Valley as his personal fiefdom.

Ms. Nichols, who worked five feet from where Ms. Baselice sat, was never questioned about the thefts. (Nichols Deposition at 251, 253.)<sup>20</sup>

I submit that Mr. Hickey's crude response to learning of Ms. Baselice's defalcations and his failure to notify me, law enforcement authorities, or even Allied management, is but a dramatic example of the unethical behavior that he routinely tolerated and, to some extent, engaged in himself (as with the shredding of unprocessed roll-off tickets found in his daughter's desk and, as discussed below, the customer deceptions and environmental violations).

Ms. Baselice also admitted that she competed with Valley by handling certain collection business herself. I submit that this could not have occurred in an environment of proper supervision.

With respect to Ms. Baselice's abuse of alcohol, I note that she admitted to drinking during her lunch hour on occasion. (Baselice Deposition at 23) (The Compliance Manual prohibits working while intoxicated ([Exhibit 9 at 9].) John Lombardo testified that while he had not seen Eileen Baselice drunk at work, he had

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<sup>20</sup> Ms. Baselice, who admitted her defalcations when I took her testimony, expressing contrition and explaining her conduct as the result of an alcohol problem (and the negative feelings about the Company inspired by Matt Hickey's abusive treatment of employees), implicated her co-worker, Lisa Nichols, who denied any involvement when I took her deposition. (Baselice Deposition at 13, 15-18; Nichols Deposition at 254.)

observed Ms. Nichols to be intoxicated after lunch on occasion. (Lombardo Deposition at 54-55.)<sup>21</sup>

#### **IV. Valley's Deception of Customers and Environmental Violations**

Not surprisingly, dishonesty at Valley extended to its relations with its customers and with Westchester Wheelabrator RESCO ("RESCO"), which operated the burn plant to which Valley took most of the waste it collected.

##### **A. Engelhard Corporation**

Valley's dishonesty was vividly demonstrated in the case of Engelhard Corporation ("Engelhard"), a (now-former) Valley customer which manufactures various products generating film clippings and other industrial waste.

Engelhard has five facilities in Westchester County, each generating industrial waste. One generates film clippings and the others generate chemical powder used in the production of pigments or other industrial waste. In February of 2001, Engelhard was using Valley Carting to haul waste from its film plant to RESCO; Engelhard serviced its other four facilities itself. However, when, in February 2001, Engelhard was told by Valley that RESCO would no longer accept the film clippings, Engelhard's Environmental Manager made her own inquiry of RESCO and learned that the burn facility was not permitted to accept industrial waste. Engelhard was aware that its five

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<sup>21</sup> Allied counsel has asked me to note that once management obtained evidence of Ms. Nichols's intoxication while at work, Allied terminated her employment. I note that this occurred after repeated entreaties by me to investigate the allegations about Ms. Nichols's drinking.

Westchester plants generated industrial waste and therefore arranged with Valley Carting to service all of its five plants in Westchester and to take the waste to destination facilities that were permitted to accept such waste.

Rather than do what it agreed to, however, Valley immediately began to take the film clippings to Metro Enviro, the Allied facility in Croton-on-Hudson which was permitted to receive only construction and demolition waste ("C & D) and then, when the film clippings began to damage Metro Enviro's equipment, to Mt. Kisco Transfer Station, an Allied facility that was permitted to receive only MSW. The instances of Valley's unlawful delivery of this industrial waste and these Allied facilities' unlawful receipt of such waste has already been brought to the Court's attention in both my Fifteenth Report on the Suburban/Allied Monitorship (at 30-31, 36 and 39) and in the Metro Enviro Report (at 29-30).<sup>22</sup>

Also contrary to its agreement with Engelhard, Valley continued to take Engelhard's other industrial waste (*i.e.*, non-film clippings waste) to RESCO. All the while, Valley personnel represented to Engelhard that Valley trucks were taking the

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<sup>22</sup> As noted in the Fifteenth Report, the acceptance of industrial waste at these facilities resulted in enforcement action by the New York State Department of Environmental Conservation, which required Allied to sign administrative consent orders and pay fines, and by the Village of Croton-on-Hudson, which also fined Allied.

At the request of Allied's counsel, I note that the Engelhard waste, while industrial, was not, to my knowledge, hazardous. (An Engelhard representative submitted an affidavit to the Village of Croton-on-Hudson, in the context of that Village's attempts to refuse a renewal permit to Metro Enviro, stating that Engelhard's waste is not industrial. While I do not dispute this assertion, I have not had it confirmed by an independent environmental expert.)

Engelhard waste to a facility permitted to accept industrial waste. The drivers were instructed by Anthony Cardillo and Matt Hickey that if anyone asked about the waste's destination they should state that it was being taken to an Allied facility. (Thomas Deposition at 72-74; Ridenhour Interview at 3.)

Consistent with this false Company line, when Engelhard environmental staff attempted to confirm that the waste was being disposed of appropriately, they were told by Valley personnel either that Valley was taking it to one of Allied's own facilities or that it was being taken to the Allied-owned BFI landfill in Conestoga, Pennsylvania.<sup>23</sup>

In June of 2001, approximately two months after Valley had begun to transport the waste for all five Engelhard plants in Westchester, purportedly to destination facilities permitted to receive industrial waste, Engelhard's Environmental Manager, Christine Anastos, telefaxed a note to Erina Hickey requesting a written identification of the destination facilit(ies) for waste generated by Engelhard's pigment plant. (A copy of Ms. Anastos' June 19, 2001 note, referring to the pigment plant's address, is attached as Exhibit 12.) On the same date, Erina Hickey responded to Ms. Anastos with her own facsimiled message saying that, with respect to the two containers at this facility, Valley dumps one at Metro Enviro and the other at Mt. Kisco. (A copy of Ms. Hickey's June 19, 2001 response is attached as Exhibit 13.)

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<sup>23</sup> The representation as to the BFI landfill in Pennsylvania was not without a grain of truth. I learned that the Engelhard waste that was unlawfully taken to and received at Allied's Mt. Kisco Transfer Station ultimately was shipped, from Mt. Kisco, to the Pennsylvania landfill.

Ms. Hickey's response as to Metro Enviro was a falsehood; since the early spring, Valley had taken Engelhard's waste to Metro Enviro on only a few occasions. (Of course, Metro Enviro was not permitted to accept any industrial waste at all at any time.) As reflected in the disposal tickets I reviewed, this waste was routinely still being taken to RESCO, contrary to Valley's agreement with Engelhard. To compound the compliance problem thus presented, when I made a written document request that would have unearthed this troubling correspondence (a copy of my document request, attached to a cover letter dated January 7, 2001, is submitted herewith as Exhibit 14), Allied was unable to produce it; I obtained these documents from Engelhard.

A similar falsehood was conveyed to Engelhard in August of 2001, when Engelhard's Thomas Taverna, after learning of an anonymous tip that Valley was taking the Engelhard waste to RESCO, called John Lombardo, the Valley sales representative in charge of the account. Pursuant to Mr. Taverna's request for written confirmation of where the waste was being taken, Mr. Lombardo, after consulting with Matt Hickey, sent Mr. Taverna a letter, dated August 2, saying that Engelhard's waste was being taken to the BFI landfill in Pennsylvania. (Lombardo Deposition at 156, 160, 164 and 168; August 2 letter from John Lombardo to Tom Taverna, submitted herewith as Exhibit 15.) During Mr. Hickey's initial interactions with Mr. Taverna at the Engelhard facility, he had misled Mr. Taverna by telling him that Allied had and would use its own (implicitly appropriate) disposal sites for the industrial waste. (Lombardo Deposition at

151.)

In September of 2001, alerted to the possibility that Valley's representatives were lying about the waste's destination by the speed with which the empty containers were returned to the Engelhard facilities,<sup>24</sup> Engelhard's Environmental Manager, Christine Anastos, and another Engelhard manager followed a Valley truck as it left one of the Engelhard facilities. Although circumstances intervened to prevent the Engelhard representatives from seeing the Valley truck enter and leave the RESCO plant, they did find the Valley driver -- Robert Thomas -- having lunch on at the side of the road near RESCO. Although Mr. Thomas initially dissembled, he ultimately admitted that he had taken the Englehard waste to RESCO. (Memorandum from Don Sobocienski to Walter Mack, dated November 2, 2001, submitted herewith as Exhibit 16, at 2; Thomas Deposition at 68-69; 194-196.) (Upon reporting this exchange to Mr. Cardillo, Mr. Thomas was chastised by Mr. Cardillo for telling the truth. [*Id.* at 206].)

When an Englehard supervisor telephoned John Lombardo, Valley's sales representative, to ask how and why Valley took Engelhard waste to RESCO, Mr. Lombardo told him that a mistake must have been made by the driver, who was new. (Memorandum from Don Sobocienski to Walter Mack, dated November 19, 2001, submitted herewith as Exhibit 17.) In fact, Mr. Thomas had worked for Valley since 1989 and had been servicing Engelhard since the 1990's (Thomas Deposition at 30-32).

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<sup>24</sup> RESCO is located only about one mile from the two Engelhard plants in Peekskill.

Valley's disposal tickets reflect that until Engelhard finally terminated its relationship with Valley in April of 2002, Valley persisted in taking Engelhard's waste to Allied's Mt. Kisco Transfer Station, despite that facility's lack of a permit to accept it.

Clearly, the Engelhard situation demonstrates Valley management's ethical bankruptcy. Although I think that the level of dishonesty demonstrated in this case gives rise to the inference that Valley's conduct would have been no different if Valley employees had been educated about environmental regulations, I note that the employees with whom I spoke had not been trained to be familiar with the various categories of waste, such as industrial waste, and therefore had little appreciation for what was and what was not permitted to be accepted at the various facilities to which Valley delivered the Engelhard waste. (Thomas Deposition at 93; Lombardo Deposition at 156; Cardillo Deposition at 248, 250.)

I note that Allied management, after I apprised them of the Engelhard situation (which I learned of from the Westchester Solid Waste Commission after Engelhard complained to that agency), undertook its own investigation and, after consulting with me, reported the events to DEC and local regulators. (*See* n. 22 regarding enforcement action taken by DEC and by the Village of Croton-on-Hudson.)<sup>25</sup>

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<sup>25</sup> In addition to imposing a fine on Allied for Metro Enviro's receipt of unauthorized industrial waste and various other violations, the Village of Croton-on-Hudson determined that it would not renew Metro Enviro's permit to receive C & D waste. Allied brought an Article 78 proceeding to challenge this determination and was successful in Westchester Supreme Court

## **B. Waste Mixing**

Another dishonest practice mentioned briefly in my Fifteenth Report (at 15), was Valley's practice of mixing customers' waste. Valley takes residential and commercial waste to RESCO, where each truck driver approaching the scalehouse identifies the truck's load as either Yorktown waste, Mt. Pleasant waste, or (commercial) waste that should be billed directly to Valley. Valley's contracts with the Towns of Mt. Pleasant and Yorktown allowed Valley to dispose of each of the towns' residential waste at RESCO at no charge to Valley. RESCO billed Westchester County for the costs of disposing of Mt. Pleasant's and Yorktown's residential waste and the county, in turn, billed each of the towns. Because Valley had a practice of improperly mixing the two towns' waste, as well as commercial waste, in the same load, Mt. Pleasant and Yorktown were charged for the disposal of waste that their residents had not generated. Valley overrode this identification system by mixing different customers' waste in the same load. This resulted, of course, in one customer being billed for the garbage generated by another. Valley's practice of mixing customers' waste is particularly disturbing because in April of 2000, as reported in the April 23, 2000 Westchester section of the New York Times, one Stephen DiSalvo, a Westchester carter, was

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(the matter is currently before the Appellate Division). Counsel for Allied has asked me to note that Justice Nicolai found that the violations at Metro Enviro have been cured and that the Village presented no expert evidence demonstrating any resulting adverse environmental impact. Counsel further requested that I advise the Court that Allied has since undertaken extensive training and other measures aimed at screening out non-permitted waste from Allied's Westchester facilities.

convicted of second degree larceny stemming from this type of practice. It is my belief that this conviction was common knowledge in the Westchester waste services community. (*See Cardillo Deposition at 168.*)<sup>26</sup>

The practice of mixing waste came to my attention in September of 2001, during interviews of Valley drivers about other subjects. My investigation into how, why and to what extent this occurred consisted of interviews of drivers and a review of drivers' route sheets and any tickets or other documentation attached to them. This investigation made it clear that Valley's intent in mixing customers' waste was to streamline its work, eliminating the inconvenience of having to send separate trucks to different customers' premises and the additional inconvenience of making separate trips to RESCO.

As indicated in my Fifteenth Report (at 15), Allied personnel assisted me in this investigation, providing documents and Allied's own analysis of the amount of waste that was attributed and billed to the wrong customer. (Attached as Exhibit 18 is the September 26, 2002 Memorandum of Erica West ["West Memorandum"], setting forth Allied's initial analysis and estimate of the amounts of the improperly mixed waste.) Based on the monitorship's own investigative work, it appeared to me that Allied's initial calculations as to the amount of mixed waste were significantly understated. I requested that Allied make a more vigorous effort to comply with my document request

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<sup>26</sup> A prior prosecution for mixing private customers' waste with a municipality's waste occurred in late 1987. This prosecution, of Carlucci Sanitation, was reported in the Westchester County Business Journal on October 10, 1989.

(attached, along with Allied response, as Exhibit 14) to obtain additional data that could be analyzed to assess more accurately the overcharge calculations. Despite what I believe to be Allied's best efforts and commendable diligence and industry by Ms. West, I have concluded that the data gathered is incomplete and unreliable, and that I am unable confidently to quantify the improper waste mixing without the unavailable data. I do believe that there exist techniques of extrapolation that would enable greater confidence in quantifying the tonnages involved, but these techniques would require full continuing cooperation by Allied and significant monitorship investigator time that I am no longer authorized to expend.

### **1. Commercial Waste Mixed with Residential Waste**

The mixing of commercial customers' waste with residential waste was done as a matter of course prior to Allied's acquisition of Valley and continued routinely for nearly a year following the acquisition. In or about April of 2000, Anthony Cardillo instructed drivers that Mt. Pleasant's and Yorktown's residential waste was no longer to be mixed with commercial waste. (I suspect that the DiSalvo prosecution, discussed above, may have been the impetus for this instruction.) However, Mr. Cardillo, not a stickler for principle or consistency, in several scenarios routinely directed residential drivers to pick up the waste of commercial customers and to dump the entire contents of their trucks as residential waste.

There were three types of situations in which this typically occurred. One was

when a commercial customer's container was not accessible early in the day. Most of the residential drivers serviced a number of commercial customers on the second day of their weekly route. Prior to April 2000, the commercial waste was routinely mixed with the residential waste and disposed of as Mt. Pleasant or Yorktown residential waste. Beginning in April 2000, the commercial waste began being disposed of separately from the residential waste. However, because certain commercial customers' containers were inaccessible until late morning, those drivers who serviced their commercial stops prior to servicing their residential route were told to mix the inaccessible commercial customers' waste with the residential waste. The second situation in which Mr. Cardillo would direct a residential driver to pick up, mix and dump commercial with residential waste was when a commercial customer either had not been serviced for some reason or needed an extra, unscheduled, pick-up. And the third situation was during a week with a holiday in it. With resources stretched thin, Mr. Cardillo routinely asked residential drivers to pick up commercial garbage. (Don Sobocienski's Memorandum of Allied Employee Interviews ["August 9 Memorandum"], submitted herewith as Exhibit 19, at 5-8; Don Sobocienski's April 23, 2002 Interview of Albert Ridenhour Interview["Albert Ridenhour April Interview"], submitted herewith as Exhibit 20, at 1-2; Don Sobocienski's May 9, 2002 Memorandum of Albert Ridenhour Interview ["Albert Ridenhour May Interview"], submitted herewith as Exhibit 21, at 3; Don Sobocienski's July 24 and July 26 Memoranda of Discussions with Robert Ray,

submitted herewith as Exhibit 22; Don Sobocienski's April 25, 2002 Memorandum of Interview of Robert Ray ["Ray Interview"], submitted herewith as Exhibit 23, at 2-3.)

As set forth in the West Memorandum, Allied based its calculations on the drivers' route sheets and paperwork attached thereto (West Memorandum at 1). I believe this methodology to be faulty and the calculations derived from it to understate the amount of commercial waste that was actually mixed with residential and dumped as Yorktown or Mt. Pleasant residential waste. My belief is based on the following:

First, Allied's calculations rely on drivers' route sheets to contain notations that they had made extra stops every time they did so. Yet, based on what the drivers told me,<sup>27</sup> I found that they did not always note extra stops on their route sheets nor did they create "pick-up" tickets to reflect unscheduled stops. (August 9 Memorandum at 6; Don Sobocienski's Memorandum of Interview of William Hankins, submitted herewith as Exhibit 24, at 1 and 2.) Additional interviews also support this.

Secondly, although the West Memorandum notes that Allied kept computerized records of commercial customers serviced by residential drivers (*id.* at 2), those records do not necessarily reflect, unless so indicated at the time of the daily "close out," that a driver other than the assigned, commercial route driver serviced that commercial customer on a particular day. Hence, the computerized records do not reflect all the occasions on which commercial customers were serviced by residential drivers. This is

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<sup>27</sup> Ms. West was present for some of these interviews but, apparently, interpreted the information we received differently. (See West Memorandum, *passim.*)

particularly significant because, as noted above, Yorktown and Mt. Pleasant residential drivers serviced commercial customers on the second day of their residential routes and until April 2000, these customers' commercial waste was routinely mixed and dumped as residential waste. Allied is unable to produce comprehensive records for all of the commercial customers that were serviced by residential drivers on Thursdays and Fridays.

Thirdly, Allied's methodology fails to account for residential drivers' pick-ups of commercial waste during weeks with holidays in them (August 9 Memorandum at 7-8; Don Sobocienski Memorandum of Interview of James Niggl ["Niggl Interview"], submitted herewith as Exhibit 25, at 1.)

Lastly, Allied's methodology fails to reflect that fact that even when a residential driver picked up commercial waste with an empty truck, that waste remained in his truck when he returned to the yard at the end of the day. That commercial waste was sometimes mixed with the residential waste collected in that truck at the beginning of the following day. (August 9 Memorandum at 7, 8; Albert Ridenhour April Interview at 2; Robert Ray Interview at 1-2.)

Additionally, documents recently produced by Allied show that on occasion drivers appear to have dumped full commercial loads at RESCO under the Mt. Pleasant and Yorktown accounts. It is possible that such misdesignations were inadvertent.

## **2. Mixing of Yorktown and Mt. Pleasant Waste**

Mixing of the waste picked up from these two towns was a routine occurrence even after Allied's acquisition of Valley. Again, there were three contexts in which this occurred. At least two of the five residential drivers servicing Yorktown were regularly directed by Anthony Cardillo, Valley's dispatcher, to assist residential drivers servicing Mt. Pleasant. This occurred most often on Mondays, which were busy days; during weeks with holidays in them, when the work week was compressed. (August 9 Memorandum at 2; Albert Ridenhour April Interview at 1-2; *see also* West Memorandum at 3).

I found that while Yorktown drivers typically dumped their Yorktown garbage at RESCO before picking up Mt. Pleasant waste, they usually returned to the Valley yard with the Mt. Pleasant waste at the end of the day and, the next morning, collected the Yorktown waste before dumping the Mt. Pleasant waste they had picked up the day before. Most of the drivers we spoke with admitted as much, saying that if their trucks did not contain enough Mt. Pleasant garbage to merit a separate trip to RESCO, they simply picked up the Yorktown waste and dumped both towns' waste together, under Yorktown's account. Indeed, it appears that they would usually dump the Mt. Pleasant waste first only if it was so voluminous that the truck would not be able to accommodate Yorktown's waste as well. (August 9 Memorandum at 3; Albert Ridenhour April Interview at 2; Don Sobocienski's Memorandum of Interview of John Ripani, submitted herewith as Exhibit 26, at 1; Robert Ray Interview at 1-2.)

Evidence of consolidated trips to RESCO was found in the mileage recorded on the drivers' route sheets, which break down each leg of work. Routinely, in circumstances where we suspected that an additional stop in Mt. Pleasant was made but not accounted for, the route sheets showed mileage reflecting discrepant distances traveled. And, when a driver's route sheet for the following day did not reflect a trip to RESCO before his Yorktown route was begun, I think it fair to assume that Mt. Pleasant waste from the previous day's extra pick-up remained in the truck and was dumped at RESCO under Yorktown's account. (See West Memorandum at 3-4)

Additionally, waste was mixed in a forty-yard container kept on Valley's premises to accommodate "back door" residential pick-ups which were typically made in small trucks not designed for trips to RESCO. This container, which was kept at the Valley facility until September of 2001, was a temporary receptacle for residential waste – be it Yorktown's or Mt. Pleasant's – until it was convenient to have a truck take it to RESCO.<sup>28</sup> Mr. Cardillo testified that Valley used a two-to-one formula in order to allocate the cost of dumping this material. He said that Valley believed that Mt. Pleasant had twice as much waste, generally, as Yorktown and that the formula permitted equitable billing. (Cardillo Deposition at 236-37.) However, my review of the disposal records for this container showed that nearly identical amounts for each

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<sup>28</sup> This forty-yard container was kept at Valley, holding garbage, for as long as two days. This is in contravention of New York State Department of Environmental Conservation regulations, which require facilities used as transfer stations to be permitted or registered. 6 NYCRR 360-1.7 and 360-11.1.

town were dumped (and therefore billed) at RESCO.

I believe that after the monitorship terminated, Allied may have discussed with the towns resolution of customer issues concerning Valley's improper waste mixing, but I am not aware of the details of those discussions nor was I asked to participate in them.<sup>29</sup>

As with the Engelhard situation, Valley's mixing of commercial and residential waste, and Yorktown and Mt. Pleasant waste, signifies Valley's lack of regard for accuracy and transparency in its dealings with customers. And while the waste mixing did not have the same environmental significance as the industrial waste violations represented by Valley's treatment of the Engelhard waste, there may have been some environmental violations that occurred because some of the commercial waste that was picked up was recyclable material that was mixed in with regular garbage. (*See, e.g.,* Nigg1 Interview at 2.)

### **C. False Walls in Customers' Containers**

A third dishonest practice, albeit without any adverse environmental impact, and probably not intentionally engaged in by Allied, was Valley's use of false walls in several containers kept at commercial customers' premises. This topic, too, was touched upon in my Fifteenth Report (at 13-14) and appears to be the result of actions taken by Valley's former owners. I am reasonably confident that Allied's responsibility

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<sup>29</sup> Of course, since the monitorship's termination I have had no right to expect to be included in Allied's communications with the towns.

for the situation is limited only to its inattentiveness and then, once the problem surfaced, its failure to investigate rigorously despite assurances to me that it would do so.

As noted in the Fifteenth Report, I learned of the false walls in December of 2001 as a result of the compliance training session I prevailed upon management to conduct. (*Id.* at 13.) After the training session, one of the Valley drivers reported to Allied management the fact that inside several containers were false interior walls which reduced the containers' capacity in a manner that was difficult to detect. Management immediately shared this information with me and prevailed upon me to allow it to conduct its own investigation rather than incur additional monitorship fees by having me handle the investigation. I assented to this request on the condition that Allied keep me absolutely current on and involved in the investigation's progress.

Several weeks after the issue surfaced, on January 31, 2002, the monitorship investigator received an e-mail from one of Allied's lawyers telling us that she "believe[d]" that Valley had three false walled-containers and that "[a]ll other Valley containers have been checked and no false walls were found." Counsel noted that Allied was continuing to look in to the matter. Six weeks later, on April 16, Allied's then-District Manager sent me a list of a total of five Valley customers who had been identified by Allied as having false-walled containers. Several weeks after that, Allied notified me that it had identified a sixth customer with a false wall, and asserted that all

of the Valley containers had been “triple checked” and that there were no additional false walls.

On July 1, 2002, Allied’s counsel sent me a memorandum assuring me that Allied had conducted a “thorough investigation” of the Valley containers and that “Allied believes that it has taken all of the compactors with false walls from Allied’s customers’ premises and Allied has removed all of the false walls from those compactors.” In response to a series of follow-up questions from me, counsel e-mailed me that “Allied has made every reasonable effort and used every reasonable method necessary to eliminate false walls from the containers used in connection with the Valley business.”

Nevertheless in November of 2002, another false-walled container was identified after, I was informed, a Valley driver found it when he had to climb into the container in order to extract some material that had become stuck.<sup>30</sup> I submit that Allied’s “thorough investigation” of the Valley containers was not at all thorough if it did not involve people entering the containers – unpleasant as that might be – to check for false walls. Furthermore, the discovery of the seventh false-walled container demonstrated that I had been given incorrect information when Allied’s counsel and management had

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<sup>30</sup> With my supervision, Allied sent rebate checks to customers who had been overbilled, during Allied’s ownership of Valley, on account of the false walls. It was the discovery of this seventh false-walled container, shortly after the submission of my Fifteenth Report, that prompted me to write to the Court to apprise it of this new development after I had reported that Allied had already sent rebate checks to all of the customers who had been billed at inflated rates because of the false walls in their containers. (Fifteenth Report at 13.)

told me that all reasonable efforts to detect additional false walls had been undertaken and that the containers had been “triple checked.” After the existence of the seventh false-walled container was discovered and reported to me, I pressed Allied management to explain how and why it could have made the representation that the containers had all been “triple checked” when, in fact, an examination adequate to find the seventh false-walled container had not been made. Allied never provided an answer to this question.

What Allied did give me, four months later, was a certification for each Valley container, by a Valley driver and scale house operator or supervisor, that they had “personally inspected” the container and that no false walls exist.

While I certainly fault Allied for its failure to have the containers inspected at or about the time it purchased the Valley companies and for conducting a slipshod investigation once the matter came to our attention, I do not have any basis to believe that any of the false walls were installed after Allied’s acquisition of Valley.<sup>31</sup> Nevertheless, because I agreed to refrain from conducting my own investigation in order to reduce monitorship fees, my belief that the false walls’ installation pre-date the acquisition is premised solely on information provided by Allied. In response to my request for documents and information pertaining to the false walls’ installation, management has represented to me that: (1) no Allied manager above the level of Matt Hickey was aware of the false walls prior to December of 2001; (2) no Allied manager

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<sup>31</sup> Matt Hickey, who, as noted above refused to submit to the deposition I requested, was not questioned on this subject.

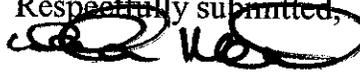
above the level of Matt Hickey has seen or heard of documents indicating that such installations had occurred, and that they were similarly unaware of documents or other information relating to the attendant overbilling of customers; (3) despite a document search, Allied did not find any records indicating that false walls had been installed at customers' requests, as I had been told initially by way of explanation for their installation; (4) although it found no records relating to the welding, Allied did locate an employee who said he had installed false walls in several containers at the request of James Hickey, prior to Allied's acquisition of Valley; and (5) Allied unsuccessfully sought an expert who would be able to verify the age of the welds; experts told Allied management that only the age of rust on a weld – not the age of the weld itself – could be determined. (Allied reported that none of the welds had rusted.)

In sum, I believe that, although Valley managers probably were aware of the false walls, the parent Company did not knowingly engage in the corrupt practice of intentionally using false walls in larger containers to overstate to its customers the amount of waste it was removing for them. The evidence I have been able to obtain indicates that the false walls were the work of Valley's former owners, who used the false walls for the purpose of deceiving customers.

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In conclusion, it pains me to report that although Allied's management of Valley Carting gradually improved to some degree over the course of my monitorship, on the

whole, the Company evidenced indifference to the need to operate this facility in conformity with the Compliance Plan, the Monitorship Order, regulatory requirements and basic ethical precepts until not long before the monitorship ended. Since the monitorship terminated, Allied has, I am told, thoroughly altered its management personnel at Valley and has undertaken audits and other supervisory procedures aimed at the types of abuses recounted in this report. I do believe that Allied has drawn some valuable lessons from this experience for the ongoing management of its Westchester operations and elsewhere and I am optimistic that current management is overseeing a high-integrity, compliant business enterprise.

Respectfully submitted,  
  
Walter Mack, Monitor

Dated: New York, New York  
January 13, 2004