

***Case No COMP/M.4318 -
VEOLIA / CLEANAWAY***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERCER PROCEDURE**

Article 6(2) NON-OPPOSITION
Date: 21/09/2006

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.09.2006

SG-Greffe(2006) D/205307

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M.4318-Veolia/Cleanaway
Notification of 02.08.2006 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 02.08.2006, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Veolia ES Holdings plc (“VES”, UK), controlled by Veolia Environnement (“VE”) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Cleanaway Holdings Limited (“Cleanaway”, UK) by way of purchase of shares.
2. In the course of the proceedings, the notifying party submitted commitments designed to eliminate competition concerns identified by the Commission, in accordance with Article 6(2) of the Merger Regulation. The Commission has concluded that the notified operation falls within the scope of the Merger Regulation and in the light of the commitments does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.
3. The Office of Fair Trading (“OFT”) submitted on 25 August 2006 a request for referral of the case to the United Kingdom on the basis of Article 9(2)(a) as the merger threatens to significantly affect competition in the market for disposal of I&C hazardous waste by HTIs in the UK, which represents all characteristics of a distinct market. However, in their comments on the proposed commitments submitted on 12 September 2006 the OFT confirmed that they also regard the proposed divestiture as sufficiently clear-cut remedy which would remove the competition concerns identified in the HTI market in the UK.

¹ OJ L 24, 29.1.2004 p. 1.

Therefore, the OFT by its letter of 20 September 2006 withdrew their request for referral of the case to the UK.

I. THE PARTIES

4. VES is an indirect subsidiary of VE providing waste management services in the UK, in particular the collection and disposal of municipal, industrial and commercial waste. VE group is a global provider of environmental management services including in particular waste management services, water and waste water services, energy services and transportation services.
5. Cleanaway is a provider of waste management services in the UK, including the collection and disposal/treatment of municipal, commercial and industrial waste, as well as a range of related services such as street cleansing.

II. THE OPERATION

6. The proposed transaction involves the acquisition of 100% of the issued shares in Cleanaway by VES, ultimately a wholly owned subsidiary of VE.

III. CONCENTRATION

7. VES will acquire sole control over Cleanaway and the proposed transaction thus constitutes a concentration within the meaning of Article 3 of the Merger Regulation.

IV. COMMUNITY DIMENSION

8. VE and Cleanaway had a combined aggregate worldwide turnover of more than EUR 5,000 million in 2005 (EUR 25,244 million for VE and EUR 731 million for Cleanaway). The aggregate Community wide turnover of the parties exceeded EUR 250 million in 2005 (EUR [...] million for VE and EUR 731 million for Cleanaway). VE does not achieve more than two-thirds of its turnover in one and the same Member State. Therefore the concentration has a community dimension.

V. COMPETITIVE ASSESSMENT

V.1. General overview

9. VES and Cleanaway both operate in a number of markets for the collection and disposal of waste in the UK.
10. The Commission has examined the waste management sector in a number of previous cases² and it was considered appropriate to distinguish between the collection and disposal of waste and it was also suggested that different methods of disposal may constitute separate product markets. The Commission also considered that there are separate markets for the management of hazardous waste and non-hazardous waste.
11. In these cases, the Commission considered that in general the geographic market definition was at most national, although the actual level (local, regional, whole country) was left open, since it varied according to the type of waste / operation concerned.

² See for example the Commission decisions in cases M.2897 - SITA Sverige AB / Sydskraft Ecoplus, M.1059 - Suez Lyonnaise des Eaux / BFI, M.916 - Lyonnaise des Eaux / Suez

12. The parties generally agree with the Commission's view on the product and geographic market definition, except for the specific segment of the incineration of hazardous waste, discussed in more detail below.
13. According to the parties the UK waste management sector is highly fragmented, diversified and competitive. Waste management revolves around the collection and subsequent treatment (disposal, recycling and/or re-use) of waste, but comprises a wide and diverse number of activities. These activities range from the collection of waste to the operation of facilities such as landfill sites, inorganic treatment plants, thermal treatment plants, recycling facilities and composting sites.
14. As far as the categorisation of waste management is concerned, one can distinguish as follows according to the parties:
 - (a) municipal waste management, consisting of:
 - (i) the collection of municipal waste;
 - (ii) municipal street cleansing; and
 - (iii) the disposal of municipal waste (by various methods);
 - (b) industrial and commercial ("I&C") waste management consisting of:
 - (i) the collection of non-hazardous I&C waste;
 - (ii) the disposal of non-hazardous I&C waste (by various methods);
 - (iii) the collection of hazardous I&C waste; and
 - (iv) the disposal of hazardous I&C waste (by various methods).
15. In general, the parties claim that when their activities overlap, their combined market shares are generally below 15% and therefore do not give rise to any competition concerns. This fact was largely confirmed by the market investigation with the only exception of the incineration of hazardous waste.
16. It should be also noted that the Commission received (very late in the procedure) a complaint raising possible competition concerns in the area of municipal waste collection services and related services (mainly street cleansing) in the London area (32 London boroughs and the City of London). The complaint claimed that the parties would have approximately 50% share of the municipal waste collection contracts in London and would have a significant advantage vis-à-vis their competitors in particular due to the fact that the merged business would own "many" of the waste collection vehicle depots required for the London area.
17. The Commission verified the claims raised by the complaint and came to the conclusion that the transaction does not give rise to any possible competition concerns in the municipal waste collection and street cleansing services for the following reasons:
 - The Commission has in the past indicated that the geographic market for municipal waste collection and related services is at least national in scope due to countrywide public tender procedures³. In case of the UK, the geographic market is according to the information provided by the parties likely to be national as well due to the fact that (i) the tendering rules applied for the award of contracts are the same throughout the UK; (ii) the major companies bidding for contracts and winning these contracts are the same throughout the UK and (iii) the contracts are let by individual local waste collection authorities ("WCAs") throughout the country (and not on a

³ See Commission decisions in cases M.916 – Lyonnaise des Eaux / Suez and M.2897 - SITA Sverige AB / Sydkraft Ecoplus.

collective or regional basis). As the combined market share of the parties on the national market for both municipal waste collection and street cleansing is below 15%, the transaction would not lead to any competition concerns on the national market.

- However, the exact geographic market definition can be left open as even if the market was to be regarded as narrower, the transaction would not raise competition issues either. In case of a market covering only England, the market shares of VES and Cleanaway, based on the information provided by the parties, are not substantially different from the national market. On the other hand, should the geographical market be defined as individual boroughs, the transaction would not change the situation as the contracts for each borough are exclusive and there is always only one provider of municipal waste services. The remaining possibility of a geographical market covering the London area is discussed in more detail below.
- In the London area, the parties have each 4 contracts for municipal waste collection services out of in total 33 contracts, giving them not more than [30-35]% market share in terms of value both in municipal waste collection and street cleansing services markets in London. Of the remaining 25 contracts, further 10 are carried out by other private sector contractors and the remaining 15 are ensured by the relevant WCAs in-house by so called direct service organisations (“DSOs”). It should be noted, however, that DSOs are in direct competition with the private service providers as according to the UK best value regime, the WCA must demonstrate that the DSO offers as good as or better value than a private sector supplier. This is demonstrated by the fact that DSOs normally participate in tenders for municipal waste collection contracts together with private providers and are also able to gain back a contract which was in the previous period carried out by a private supplier⁴. The competitive pressure exercised by DSOs is also acknowledged by the recent OFT study into the municipal waste management sector⁵.
- The municipal waste collection and related services market is clearly a market where a bidding process is involved and exclusive contracts are awarded under the public procurement rules by the local WCA for a given period, in average seven years. The bidding data for the London area for the last five years submitted by the parties clearly show that there remains a sufficient number of credible competitors able to participate successfully in tenders such as Biffa, SITA, ECT Recycling, Enterprise MRS and others. The fact that tenders do in practice lead to changes in the provider is demonstrated by the fact that [...] % of contracts for which VES bid in the last 5 years changed hands following the tender. Further, it can be noted that VES has not won the last [...] contracts in London area for which it bid, including one contract where it was the service provider in the previous period.
- According to the parties, VES owns one vehicle depot in the London area while Cleanaway does not own any depots and uses depots provided by the relevant WCA. Therefore, the transaction does not change the situation as regards the number of depots owned by the parties. The parties further claim that to the best of their knowledge, in all London boroughs with exception of only two (Brent and Camden),

⁴ In the London area this was the case in the recent years for example in Hackney where the DSO won a contract previously carried out by Cleanaway.

⁵ Source: *More competition, less waste – Public procurement and competition in the municipal waste management sector*, OFT, May 2006, available at <http://www.of.gov.uk/NR/rdonlyres/DC0DC271-05BA-456C-B93D-392FC086A4FB/0/oft841.pdf>.

the depots needed to perform the contract are owned by the relevant WCA and their use is transferred with the contract to the new winner. Therefore, as the total majority of depots are owned by the relevant WCAs and provided to the winner of the tender, the access to depots does not seem to represent a significant barrier to entry or expansion in the London area.

- None of the replies in the Commission market test (including competitors of the parties in the municipal waste collection in the London area) raised any concerns in relation to municipal waste collection or street cleansing services. Further, the OFT in its referral request also did not identify any possible competition concerns in the municipal waste collection or street cleansing markets.

18. Therefore, the only activity in relation to which an important overlap is identified by the parties is the incineration of hazardous (industrial and commercial) waste in the UK, which constitutes an affected market and is therefore analysed in more detail below.

V.2 Affected market: incineration of hazardous waste in the UK

V.2.1 Relevant product market

19. In the UK, hazardous waste is generally disposed of by way of landfill, detoxification/inorganic treatment and thermal treatment/incineration. The choice of disposal method and facility for any given batch of hazardous waste will be determined by: regulatory restrictions, suitability of the chosen disposal, cost effectiveness of the disposal method and environmental considerations.
20. When thermal treatment is the most appropriate form of disposal, a range of thermal treatment facilities are available:
- (a) High temperature incinerators ("HTIs"), which are incinerators designed principally to incinerate hazardous waste at high temperatures (typically greater than 1000° Celsius);
 - (b) Cement and lime kilns which may incinerate hazardous waste as a substitute fuel;
 - (c) Clinical waste incinerators, which are typically used to dispose of clinical waste from hospitals, dentists, veterinary surgeries, nursing homes and other similar establishments, but which can also be used to dispose some types of other hazardous wastes such as certain pharmaceutical wastes;
 - (d) Hazardous waste boilers, which burn liquid wastes to generate steam for on site processes;
 - (e) Blast furnaces which may burn waste as a substitute fuel; and
 - (f) Solvent recovery, which comprises refining and recovering volatile organic solvents through a thermal process.
21. The Parties' activities in this sector are as follows: both VES and Cleanaway operate HTIs, neither of them operates cement or lime kilns, VES operates a clinical waste incinerator, Cleanaway operates a solvent recovery business, and neither VES nor Cleanaway operates boilers or blast furnaces.
22. In its previous decisions in this sector⁶, the Commission has identified a possible distinct product market for the incineration of hazardous waste. However, the exact market

⁶ M.395 - SITA-RPC / Scori, M.1059 - Suez Lyonnaise de Eaux / BFI, M.2897 - SITA Sverige AB / Sydskraft Ecoplus.

definition including a possibility of further subdivision of the market was left open. The geographic scope of this market was considered to be probably national, even though the exact geographic market definition has also been left open. Further, taking into account that the national regulatory rules and practices for incineration of hazardous waste still seem to vary to some extent within the EU, it should be noted that none of these decisions concerned the UK hazardous waste incineration market.

23. In the view of the parties, for all but a very small category of waste, there are likely to be a number of available alternative thermal treatment methods indicated above. They argue that for the thermal treatment of any given batch of hazardous waste, the operator of a thermal treatment facility may face competition both from operators of the same type of facility and from operators of different types of facility.
24. Therefore, the parties argue that the relevant product market should comprise all forms of thermal treatment of hazardous waste, namely HTIs, cement and lime kilns, solvent recovery, clinical waste incinerators, blast furnaces and hazardous waste boilers. The parties claim that in particular cement and lime kilns are able to incinerate a wide range of hazardous waste and thus represent an important competitive constraint on the operators of HTIs.
25. However, the market investigation has indicated that incineration of the I&C hazardous waste in the HTIs is very likely to represent a separate product market as there is a number of hazardous waste streams (in particular hazardous waste streams produced by pharmaceutical and chemical companies) for which cement and lime kilns or other thermal treatment methods are not viable substitutes.
26. As regards the thermal methods other than HTIs and cement/lime kilns, the market investigation clearly showed that there is always only a rather limited number of specific hazardous waste types which can be disposed of in these facilities. There seems to be some more scope for substitution between HTIs and cement and lime kilns. However, also in this case there are a number of waste streams for which HTIs are still the only viable alternative. According to the market investigation these types of waste streams include for example certain waste containing pharmaceutical actives or pesticides, chlorinated waste, halogenated waste, waste with elevated levels of PCBs, most solid hazardous waste, waste incinerated directly in steel drums or waste with small or even negative calorific value.
27. The replies in the market test also indicated that cement and lime kilns in the UK are not equipped with some necessary handling facilities (e.g. facilities for feeding or injection of different types of waste into the kiln or for removal of metal parts such as incinerated steel drums from the kiln) and environmental technology (e.g. facilities ensuring compliance with strict emission limits for all types of incinerated hazardous waste) to be able to handle as wide range of hazardous wastes as HTIs do. Even though cement and lime kilns are able to handle some hazardous waste, they are in general less flexible to accept as wide range of hazardous waste as HTIs. Further, the range of waste which can be used in a given cement and lime kiln as a substitute fuel is strictly defined by the relevant permit issued by the UK Environment Agency and cannot be expanded without further testing and approval process.
28. The regulatory framework for the use of waste as fuel in the cement and lime kilns is set by the UK Environment Agency in the Substitute Fuels Protocol for Use of Cement and Lime Kilns ("Substitute Fuels Protocol"). The Substitute Fuels Protocol explicitly

excludes certain types of hazardous waste to be included into the substitute fuel. Article 4.1.4 of the Substitute Fuels Protocol contains a list of substances (such as pharmaceuticals, pesticides, biocides, PCBs above certain level and some others) which are generally not allowed to be contained in the waste used as a substitute fuel. Even though this prohibition is not absolute and there are instances where even waste streams containing these substances may be allowed, it is clear that there are a number of waste streams for which cement and lime kilns are not a substitute due to regulatory barriers. Further, the Substitute Fuels Protocol does not allow the blending of waste streams into substitute fuel which do not contribute to its performance as a fuel. Therefore, waste streams with low or even negative calorific value (such as contaminated clays, metals or waste with a high water content) are also not allowed to be incinerated in the cement and lime kilns and need in most cases be disposed of by HTIs.

29. Further, there seems to be a fundamental difference between economic incentives of HTIs on the one hand and cement and lime kilns on the other hand. Whereas HTIs primary business is to dispose of hazardous fuel for a fee, cement and lime kilns use waste as an additional fuel and their primary objective is to produce cement and lime with as low costs as possible. Therefore, disposal of waste streams with favorable characteristics (in particular relatively pure, liquid wastes with high calorific value) in the cement and lime kilns is significantly cheaper than its disposal in HTIs. On the other hand, the market investigation indicated that the HTI operators are able to price discriminate between different types of waste and to charge substantially higher prices for disposal of impure and more difficult waste or waste with low or even negative calorific value which is not suitable or allowed for incineration in the cement and lime kilns.
30. Therefore, the market investigation indicated that even though there are some waste streams for which HTIs and in particular cement and lime kilns may be substitutable, there are other waste streams for which HTIs are the only viable alternative. This was confirmed practically by all customer replies in the market investigation as well as by the UK Environment Agency. Taking into account the possibility of HTIs to price discriminate between different types of waste, it seems that operators of HTIs do not face competition constraints from other thermal treatment methods including cement and lime kilns at least for certain part of the hazardous waste to be disposed of in the UK.
31. On the basis of the Phase I investigation, the Commission concludes that it is likely that the incineration of hazardous waste in the HTIs in the UK constitutes a separate relevant product market.

V.2.2. Relevant geographic market.

32. The Commission in the past cases left the exact market definition of the geographic market for incineration of hazardous waste open. The parties argue that a tendency towards an EU-wide market has been noted, since hazardous waste can be exported from the UK for incineration in cement and lime kilns abroad.
33. However, the market investigation clearly confirmed that the market for incineration of I&C hazardous waste in HTIs is national in scope. The volume of exports of hazardous waste for thermal treatment outside the UK seems to be very limited. Further, while it is possible to export hazardous waste for incineration in cement and lime kilns outside the UK, it is prohibited by national legislation to export the hazardous waste for disposal in HTIs abroad. Therefore, in case the product market is defined as incineration of

hazardous waste in HTIs only, there are clear regulatory barriers limiting the market to the territory of the UK.

34. Therefore it can be concluded that the geographic scope of the market for incineration of the hazardous waste in HTIs is the UK.

V.2.3. Competitive analysis

35. Veolia and Cleanway will have a 100% market share in the UK regarding commercial HTIs, since each of the only two HTIs operating on a merchant basis, belongs to them. One of these is operated by VES at Fawley (whose HTI has a capacity of [...] tonnes and which disposed of [...] tonnes in 2005), the second is operated by Cleanaway at Ellesmere Port (whose HTI has a capacity of [...] tonnes and which disposed of [...] tonnes in 2005). Therefore, the proposed concentration would lead to a monopoly on the merchant market for incineration of I&C hazardous waste in HTIs in the UK.
36. The market investigation confirmed that even though there are other in-house HTIs operated captively by some large producers of hazardous wastes, these HTIs are unlikely to enter the merchant (non-captive) market. The market investigation indicated that these in-house HTIs are constructed and approved for handling the captive hazardous waste only. In order to enter the merchant market, significant additional investments and new and more demanding environmental permits from the regulatory bodies would be required. Further, the principal activity of the relevant companies do not relate to the waste collection and disposal market and the market investigation did not identify any such captive HTI operator which would be interested in entering the merchant HTI market.
37. The parties further argued that a new merchant HTI is to be launched by Grundon on the site of a previous clinical waste incinerator. However, the market investigation indicated that a major part of the capacity of the new Grundon incinerator is already earmarked for clinical and pharmaceutical waste disposal and cannot be regarded as bulk hazardous waste incinerator. This was also confirmed by the UK Environment Agency. Further, the total capacity of the Grundon facility of 10-15 thousand tons per year is significantly smaller than the capacity of HTIs operated by the parties amounting to [...] (Veolia) and [...] (Cleanaway) thousand tons per year. Therefore, assuming that the whole capacity of the Grundon facility would be included in the market, the combined market share of the parties would still amount to around [85-95]%. Further, taking into account a different focus of the Grundon facility (mainly clinical waste) and much smaller flexibility as to possibility to accept other types of hazardous waste, it would not represent a significant competitive constraint on the parties in the market for incineration of hazardous waste in HTIs.
38. Further, a number of customers both in replies to the Commission's questionnaires as well as in several own-initiative submissions expressed concerns that the concentration would remove any competition existing now in the merchant HTI market in the UK and would lead to increase in prices for incineration of hazardous waste in HTIs. Finally, the OFT referral request was based on the fact that the merger may have significant adverse impact on competition in the market for disposal of I&C hazardous waste in HTIs in the UK.

⁷ Although the Fawley site has a permitted capacity of 45,000 tonnes, the design of the current buildings means that its capacity is in fact limited to [...] tonnes.

39. On the basis of the above, it can be concluded that after the Phase I investigation the notified concentration raises serious doubts as to its compatibility with the common market in the likely separate market for incineration of hazardous waste in HTIs in the UK.

VI. COMMITMENTS SUBMITTED BY THE PARTIES

40. In response to the serious doubts identified in the UK market for incineration of hazardous waste in HTIs, the parties submitted on 31 August 2006 commitments pursuant to Article 6(2) of the Merger Regulation, which were subsequently refined on 20 September 2006. The detailed text of these commitments is annexed to this decision. The full text of the annexed commitments forms an integral part of this decision.
41. These commitments consist in disposal of the Veolia's current HTI facility and business at its Fawley site and would thus completely remove the horizontal overlap between the parties in the UK market for incineration of hazardous waste in HTIs created by the concentration.

VII. ASSESSMENT OF THE COMMITMENTS

42. The market test of the remedies focussed primarily on the viability of the proposed business to be divested and existence of potential suitable buyers. The replies of the customers and competitors were to a large extent positive and confirmed that the divestiture of the current Veolia HTI plant would remove competition concerns raised by the transaction.
43. It should be noted that some of the replies questioned the viability of the HTI business to be divested pointing to the fact that significant investment may be needed to ensure reliability and efficiency of the plant in the future. It has been also raised that to operate the HTI business efficiently, the potential purchaser would have to be an already established waste management company with experience with the hazardous waste treatment.
44. However, these concerns raised by the market test relate rather to the identity of the purchaser than to the divestment business as such. It seems to be crucial for the viability and competitiveness of the plant that it is acquired by an established waste management company committed to further investments. Nevertheless, the Commission received already during its market test confirmation by companies that they would be interested in purchasing the HTI business to be divested by the parties. All these three interested purchasers seem to be companies which would be likely to ensure that the divested HTI business would continue to be a competitive constraint on the HTI plant retained by the parties.
45. On the basis of the market test and taking into account the modifications of the proposed commitments and existence of suitable potential purchasers, it can be concluded that the commitments proposed by the parties sufficiently clearly remove the identified serious doubts.

VIII. CONDITIONS AND OBLIGATIONS

46. In order to ensure that VES complies with these commitments, the Commission attaches conditions and obligations to this decision. The commitments set out in Section B of the text of the commitments and Schedule 1 of the commitments annexed to the present

decision constitute conditions, since only by fulfilling them may the structural change on the relevant markets be achieved so as to eliminate the serious doubts identified by the Commission. The other parts of the commitments constitute obligations, since they concern the implementing steps necessary to achieve the structural change intended to eliminate the serious doubts identified by the Commission.

IX. CONCLUSION

47. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement, subject to full compliance with commitments submitted by the notifying party. This decision is adopted in application of Articles 6(1)(b) and 6(2) of Council Regulation (EC) No 139/2004.

For the Commission
signed
Neelie KROES
Member of the Commission

20 September 2006

Case No. Comp M. 4318 - Veolia ES Holdings plc/Cleanaway Holdings Ltd

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No. 139/2004 (the "**Merger Regulation**"), Veolia ES Onyx Limited ("VES") hereby provides the following Commitments (the "**Commitments**") in order to enable the European Commission (the "**Commission**") to declare the acquisition by Veolia ES Holdings plc of Cleanaway Holdings Ltd compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation (the "**Decision**"). VES is a subsidiary company of Veolia ES Holdings plc.

The Commitments shall take effect upon the date of adoption of the Decision.

This text shall be interpreted in the light of the Decision to the extent that the Commitments are attached as conditions and obligations, in the general framework of Community law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98.

Section A. Definitions

For the purpose of the Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: undertakings controlled by VES and/or by its ultimate parent whereby the notion of control shall be interpreted pursuant to Article 3 Merger Regulation and in the light of the Commission Notice on the concept of concentration under Council Regulation (EEC) No 4064/89.

Closing: the transfer of the legal title of the Divestment Business to the Purchaser.

Divestment Business: the business or businesses as defined in Section B and the Schedule that VES commits to divest.

Divestiture Trustee: one or more natural or legal person(s), independent from VES, who is approved by the Commission and appointed by VES and who has received from VES the exclusive Trustee Mandate to sell the Divestment Business to a Purchaser at no minimum price.

Effective Date: the date of adoption of the Decision.

First Divestiture Period: the period of [...] from the Effective Date.

Hold Separate Manager: the person appointed by VES for the Divestment Business to manage the day-to-day business under the supervision of the Monitoring Trustee.

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in the Schedule.

Monitoring Trustee: one or more natural or legal person(s), independent from VES, who is approved by the Commission and appointed by VES, and who has the duty to monitor VES's compliance with the conditions and obligations attached to the Decision.

Personnel: all personnel currently employed by the Divestment Business, including Key Personnel, staff seconded to the Divestment Business, shared personnel and the additional personnel listed in the Schedule.

Purchaser: the entity approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in Section D.

Trustee(s): the Monitoring Trustee and the Divestiture Trustee.

Trustee Divestiture Period: the period of [...] from the end of the First Divestiture Period.

VES: Veolia ES Onyx Limited, incorporated under the laws of the United Kingdom, with its registered office at Veolia House, 154A Pentonville Road, London, N1 9PE and registered with Companies House under number 02481991. VES is a subsidiary company of Veolia ES Holdings plc.

Section B. The Divestment Business

Commitment to divest

1. In order to restore effective competition, VES commits to divest, or procure the divestiture of the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 15. To carry out the divestiture, VES commits to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestiture Period. If VES has not entered into such an agreement at the end of the First Divestiture Period, VES shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 24 in the Trustee Divestiture Period.
2. VES shall be deemed to have complied with this commitment if, by the end of the Trustee Divestiture Period, VES has entered into a final binding sale and purchase agreement, if the Commission approves the Purchaser and the terms in accordance with the procedure described in paragraph 15 and if the closing of the sale of the Divestment Business takes place within a period not exceeding 3 months after the approval of the purchaser and the terms of sale by the Commission.
3. In order to maintain the structural effect of the Commitments, VES shall, for a period of 10 years after the Effective Date, not acquire direct or indirect influence over the whole or part of the Divestment Business, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the common market.

Structure and definition of the Divestment Business

4. The Divestment Business consists of the activity of disposal of hazardous waste by high temperature incineration carried on by VES at the high temperature incinerator situated at Charleston Road, Hardley, Hythe, Hampshire, SO45 3ZA, England ("the Fawley Property"). The present legal and functional structure of the Divestment Business as operated to date is described in the Schedule. The Divestment Business, described in more detail in the Schedule, includes

- (a) all tangible and intangible assets (including intellectual property rights), which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business;
- (b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business (insofar as legally permissible to transfer such licences, permits and authorisations, and subject to grant of required consents or approvals by relevant governmental organisations);
- (c) all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business (items referred to under (a)-(c) hereinafter collectively referred to as “**Assets**”); and
- (d) the Personnel.

Section C. Related commitments

Preservation of Viability, Marketability and Competitiveness

5. From the Effective Date until Closing, VES shall preserve the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular VES undertakes:
 - (a) not to carry out any act upon its own authority that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business, and specifically not to transfer or re-direct inputs of materials for disposal away from the Divestment Business prior to closing in any such way as might jeopardise or disadvantage the running of the Divestment Business;
 - (b) to make available sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans;
 - (c) to take all reasonable steps, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business.

Hold-separate obligations of VES

6. VES commits, from the Effective Date until Closing, to keep the Divestment Business separate from the businesses it is retaining and to ensure that Key Personnel of the Divestment Business – including the Hold Separate Manager – have no involvement in any business retained and vice versa. VES shall also ensure that the Personnel does not report to any individual outside the Divestment Business.
7. Until Closing, VES shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the businesses retained by VES. VES shall appoint a Hold Separate Manager who shall be responsible for the management of the Divestment Business, under the supervision of the Monitoring Trustee. The Hold Separate Manager shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by VES.

8. [Not used.]

Ring-fencing

9. VES shall implement all necessary measures to ensure that it does not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business. In particular, the participation of the Divestment Business in a central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. VES may obtain information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or whose disclosure to VES is required by law.

Non-solicitation clause

10. VES undertakes, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of two years after Closing.

Due Diligence

11. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, VES shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:

- (a) provide to potential purchasers sufficient information as regards the Divestment Business;
- (b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

12. VES shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request).

13. VES shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of an information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section D. The Purchaser

14. In order to ensure the immediate restoration of effective competition, the Purchaser, in order to be approved by the Commission, must:

- (a) be independent of and unconnected to VES;
- (b) have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with VES and other competitors;

- (c) neither be likely to create, in the light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business (the before-mentioned criteria for the purchaser hereafter the “**Purchaser Requirements**”).
15. The final binding sale and purchase agreement shall be conditional on the Commission's approval. When VES has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), to the Commission and the Monitoring Trustee. VES must be able to demonstrate to the Commission that the purchaser meets the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

Section E. Trustee

I. Appointment Procedure

16. VES shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. If VES has not entered into a binding sale and purchase agreement one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by VES at that time or thereafter, VES shall appoint a Divestiture Trustee to carry out the functions specified in the Commitments for a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.
17. The Trustee shall be independent of VES, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Trustee shall be remunerated by VES in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

Proposal by VES

18. Prior to the Effective Date, VES shall submit a list of one or more persons whom VES proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period, VES shall submit a list of one or more persons whom VES proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 17 and shall include:
- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
 - (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;

- (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

- 19. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, VES shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, VES shall be free to choose the Trustee to be appointed from among the names approved. Where the Commission has approved one or more Trustees on or before the Effective Date VES shall appoint the Trustee with effect from the Effective Date. In all other circumstances the Trustee shall be appointed with a minimum of delay and in any event within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by VES

- 20. If all the proposed Trustees are rejected, VES shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 18 and 19.

Trustee nominated by the Commission

- 21. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom VES shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

- 22. The Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or VES, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

- 23. The Monitoring Trustee shall:
 - (i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.
 - (ii) oversee the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by VES with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
 - (a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by VES, in accordance with paragraphs 5 and 6 of the Commitments;
 - (b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 7 of the Commitments;

- (c) (i) in consultation with VES, determine all necessary measures to ensure that VES does not after the effective date obtain any business secrets, knowhow, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business, in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business, and (ii) decide whether such information may be disclosed to VES as the disclosure is reasonably necessary to allow VES to carry out the divestiture or as the disclosure is required by law;
 - (d) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and VES or Affiliated Undertakings;
- (iii) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;
- (iv) propose to VES such measures as the Monitoring Trustee considers necessary to ensure VES's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;
- (v) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process, (a) potential purchasers receive sufficient information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and (b) potential purchasers are granted reasonable access to the Personnel;
- (vi) provide to the Commission, sending VES a non-confidential copy at the same time, a written report within 15 days after the end of every month. The report shall cover the operation and management of the Divestment Business so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending VES a non-confidential copy at the same time, if it concludes on reasonable grounds that VES is failing to comply with these Commitments;
- (vii) within one week after receipt of the documented proposal referred to in paragraph 15, submit to the Commission a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser.

Duties and obligations of the Divestiture Trustee

24. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement in accordance with the procedure laid down in paragraph 15. The Divestiture Trustee shall include in the sale and

purchase agreement such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of VES, subject to VES's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

25. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to VES.

III. Duties and obligations of VES

26. VES shall provide and shall cause its advisors to provide the Trustee with all such cooperation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of VES's or the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and VES and the Divestment Business shall provide the Trustee upon request with copies of any document. VES and the Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.
27. VES shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. VES shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. VES shall inform the Monitoring Trustee on possible purchasers, submit a list of potential purchasers, and keep the Monitoring Trustee informed of all developments in the divestiture process.
28. VES shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale, the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, VES shall cause the documents required for effecting the sale and the Closing to be duly executed.
29. VES shall indemnify the Trustee and its employees and agents (each an "**Indemnified Party**") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to VES for any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
30. At the expense of VES, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to VES's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should VES

refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard VES. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 29 shall apply mutatis mutandis. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served VES during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

IV. Replacement, discharge and reappointment of the Trustee

31. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:
- (a) the Commission may, after hearing the Trustee, require VES to replace the Trustee; or
 - (b) VES, with the prior approval of the Commission, may replace the Trustee.
32. If the Trustee is removed according to paragraph 31, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 16-21.
33. Beside the removal according to paragraph 31, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The Review Clause

34. The Commission may, where appropriate, in response to a request from VES showing good cause and accompanied by a report from the Monitoring Trustee:
- (i) Grant an extension of the time periods foreseen in the Commitments, or
 - (ii) Waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.

Where VES seeks an extension of a time period, it shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall VES be entitled to request an extension within the last month of any period.

.....

Duly authorised for and on behalf of VES
Name: Robert Hunt
Position: Director of Legal Services
Date: 20 September 2006

SCHEDULE

1. The Divestment Business as operated to date has the following legal and functional structure: the business of disposal of hazardous waste by high temperature incineration carried on at the Fawley Property by VES. See further details in Annex 1.
2. Following paragraph 4 of these Commitments, the Divestment Business includes, but is not limited to:
 - (a) the following main tangible assets: the leasehold property occupied by the Divestment Business at the Fawley Property as more fully described in Annex 2, together with the buildings constructed thereon and the equipment installed therein and notably the high temperature incinerator operating at temperatures greater than 1000° Celsius;
 - (b) the following main licences, permits and authorisations: see Annex 3;
 - (c) the following main contracts, agreements, leases, commitments and understandings: see Annex 4 for information about contracts with customers and suppliers;
 - (d) the customer, credit and other records relating to the business;
 - (e) the following Personnel: see Annex 5;
 - (f) the following Key Personnel: see Annex 6; and
 - (g) the arrangements for the supply with the following products or services by VES or Affiliated Undertakings for a transitional period of up to 3 months after Closing: accounting and payroll services to the extent reasonably required by a Purchaser. In relation to IT services, the technology for the operation of the plant is free-standing and is included in the Divestment Business. Other IT is part of the UK Veolia network and will be disconnected on Completion. Veolia's IT department will provide appropriate assistance in relation to this process.
3. For the avoidance of doubt, the Divestment Business shall not include the WTE (Waste to Energy) business also carried out by VES at the adjoining energy from waste plant at the Fawley Property.

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ANNEX 1 TO THE COMMITMENTS

There are two businesses carried on at the Fawley Property - the Divestment Business and a Waste to Energy ("WTE") business. The latter business is entirely separate and is not being divested. The two plants at Fawley each have their own specific PPC (Pollution Prevention and Control) Permit.

Hazardous Waste Incinerator

PPC Permit: ZP3632SR

This PPC Permit issued by the Environment Agency specifically relates to the Hazardous Waste Incinerator.

The Hazardous Waste Incinerator is often referred to as the High Temperature Incinerator (HTI) and is permitted to process up to 45,000 tonnes of hazardous waste per annum, however the actual throughput is currently around 25-30,000 tonnes per annum. The plant also processes small quantities of Clinical Waste and low level Radioactive Waste. To increase existing throughput up to the permitted capacity no further expansion of the existing plant will be required, however internal technical adjustments would be needed to the feed or injector systems to accommodate higher volumes. There are no physical constraints arising from the co-location of the HTI with the adjoining Waste to Energy plant.

The HTI operates on a 24 hours per day basis and is staffed by approximately 70 permanent staff comprising managers, engineers, chemists, operatives, sales executives, and administrative support. The existing plant was commissioned in 1990 and was staffed, and operated as a stand alone plant until the fluidised bed WTE plant was commissioned in 1992.

Waste for the HTI is delivered to site using road transport and is received in liquid, solid or sludge form, by tanker, in drums, cardboard kegs, plastic or heavy duty paper sacks, small glass bottles and in Industrial Bulk Containers. It is received on site, analysed as appropriate, labelled and stored in segregated areas by dedicated reception staff / chemists to await processing. Prior to processing a 'burn programme' is produced and the operations staff select the appropriate waste for processing. Solid wastes are loaded using forklift trucks while liquids are injected directly into the incinerator.

The incinerator is a rotary kiln design, capable of handling a wide variety of wastes. The incineration process produces two primary waste streams: slag which is a combustion process waste and a filter cake which is the solid waste extract from the water used to clean the combustion gases.

The process control is semi-automatic, ensuring that the optimum conditions are maintained in order to meet the conditions imposed by the Permit. Dedicated shift teams work 2 x 12 hour shifts to ensure that the plant can operate 24 hours per day 7 days per week.

The combustion gases are cleaned by passing through a complex gas cleaning plant consisting of a quench tower, a packed tower absorber and two electrostatic precipitators. A dedicated team of chemists work 2 x 12 hour shifts to monitor and control effluent quality.

The cleaned gases are then re-heated prior to release from the stack in order to minimise the plume visibility.

The liquor from the gas cleaning plant is treated in the Effluent Treatment Plant to neutralise the pH and to remove any soluble metals and suspended solids prior to discharge into Southampton Water.

The HTI is a top tier COMAH (Control of Major Accident Hazards) plant and is certified to ISO 9001 & 14001. The management team includes a QESH (Quality, Health and Safety, and Environment) Manager.

A small maintenance team work day shifts to cover routine and emergency breakdown maintenance. This team is supported by contract staff as appropriate for major works and specialist services.

A small Engineering team is retained on site to support long term maintenance projects and plant modifications.

The separate WTE plant has a permanent staff of seven persons (reflecting the much simpler nature of the process carried on) who are supported by other staff from Veolia's three other WTE facilities in Hampshire.

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ANNEX 2 TO THE COMMITMENTS

The Fawley Property is held by VES on a head lease from Esso for 99 years from 1974; as part of the sale process, a new sub-lease will be granted to the Purchaser for the property occupied by the Divestment Business for a term equal to the unexpired residue of the head lease less one day and at a rent pro rated to the rent payable from time to time under the head lease. Esso's consent to the grant of such sub-lease is not required.

The majority of the Fawley property is occupied by the Divestment Business (comprising principally the HTI itself, the necessary reception area, storage tanks and offices, weighbridge and internal estate road).

VES would remain the head lessor of the entirety of the property, the bulk of which would be sub-let to the purchaser with VES retaining the relatively small area required for the WTE plant.

The sub-lease will document appropriate arrangements to deal with mutual rights of passage of services (gas, electricity, sewerage etc), rights of access over the estate road, and appropriate rights to share the chimney used by the HTI and WTE operations.

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ANNEX 3 TO THE COMMITMENTS

VES operates the Divestment Business under permit no ZP3632SR issued to VES under the Pollution Prevention and Control (England and Wales) Regulations 2000. The Purchaser will need to obtain its own permit but VES will use reasonable endeavours to assist Purchaser to obtain such permit and if necessary will co-operate to the extent reasonably possible to enable Purchaser to operate the Divestment Business under the existing permit granted to VES pending grant of a new permit. As indicated above the total permitted capacity is 45,000 tonnes per annum. This permit is not time limited. As a corollary to the permit, the Environment Agency attends the site on a regular basis.

To obtain a new permit the purchaser must demonstrate that it is a "fit and proper person" and that the plant itself complies with the regulations. (This latter requirement will be relatively straightforward given that a permit already exists in respect of the facility.)

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ANNEX 4 TO THE COMMITMENTS

i) Customers

The HTI receives business from two principal sources:

- Direct arrangements with customers, which may be under long term contracts (generally one to three years) or ad hoc deliveries (sometimes known as the “spot market”), (the “direct business”);
- As part of contracts for integrated waste management services between VES and a customer providing an holistic service over that customer’s waste streams, and where only some of those streams are disposed of at the HTI (“the indirect business”).

The indirect business comprises less than 10% of the revenue of the Divestment Business.

There are some 500 customers of the Divestment Business. Major customers accounting for a majority of the business are [...]. Of these, [...] is “indirect business”.

In relation to “direct business”, VES will assign to the Purchaser at completion those contracts which are capable of being so assigned; where assignment of such contracts is possible only with the consent of the counterparty, VES will use reasonable endeavours to procure such consent.

In relation to “indirect business” VES will for the duration of such contract continue to consign hazardous waste from the customer for incineration by the Divestment Business in accordance with its practice for such waste under such contract as at the Effective Date and shall sub-contract performance of such incineration to the Divestment Business on terms to be reasonably agreed, but no less favourable than those from which the Divestment Business already benefits.

ii) Suppliers

For suppliers of principal services to the Divestment Business VES proposes a similar arrangement to that described above for “direct business”, ie to the extent possible VES will assign the supply contract to the purchaser and in other circumstances will cooperate to assist the purchaser in introducing relevant suppliers to it.

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ANNEX 5 TO THE COMMITMENTS

PERSONNEL

Job Title	Depot
Chemist	Fawley Southampton HTI
Manager	Fawley Southampton HTI
Chemist	Fawley Southampton HTI
Chemist	Fawley Southampton HTI
Chemist	Fawley Southampton HTI
Chemist	Fawley Southampton HTI
Chemist	Fawley Southampton HTI
Chemist	Fawley Southampton HTI
Chemist	Fawley Southampton HTI
Chemist	Fawley Southampton HTI
Manager	Fawley Southampton HTI
Manager	Fawley Southampton HTI
Manager	Fawley Southampton HTI
Manager	Fawley Southampton HTI
Manager	Fawley Southampton HTI
Manager	Fawley Southampton HTI
Development Man.	Fawley Southampton HTI
Chemist	Fawley Southampton Ohd
Chemist	Fawley Southampton Ohd
Area Sales Exec.	Fawley Southampton Ohd
Bus. Devpt. Man.	Fawley Southampton Ohd
Area Sales Exec.	Fawley Southampton Ohd
Bus. Devpt. Man.	Fawley Southampton Ohd
Area Sales Exec.	Fawley Southampton Ohd
Area Sales Exec.	Fawley Southampton Ohd
Systems Analyst	Fawley Southampton Ohd
Receptionist	Fawley, Southampton Ohd - Administration
Secretary	Fawley, Southampton Ohd - Administration
Secretary	Fawley, Southampton Ohd - Administration
Administrator	Fawley, Southampton Ohd - Administration
Secretary	Fawley, Southampton Ohd - Administration
Co-Ordinator	Fawley, Southampton Ohd - Administration
Cust. Serv. Man.	Fawley, Southampton Ohd - Administration
Cust. Serv. Man.	Fawley, Southampton Ohd - Administration
Cust. Serv. Man.	Fawley, Southampton Ohd - Administration
Project Manager	Fawley, Southampton Ohd - Administration
Cust. Serv. Man.	Fawley, Southampton Ohd - Administration
Development Mgr	Fawley, Southampton Ohd - Administration
Cust. Serv. Man.	Fawley, Southampton Ohd - Administration
Manager	Fawley, Southampton Ohd - Administration
General Manager Organics	Fawley, Southampton HTI
Welder	Fawley, Southampton Ohd - Engineering Team
Electrical Tech.	Fawley, Southampton Ohd - Engineering Team
Health & Safe Man.	Fawley, Southampton Ohd - Engineering Team
Administrator	Fawley, Southampton Ohd - Engineering Team
Gas Technician	Fawley, Southampton Ohd - Engineering Team
Gas Technician	Fawley, Southampton Ohd - Engineering Team

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ANNEX 6 TO THE COMMITMENTS

KEY PERSONNEL

The Divestment Business will include the following Key Personnel:

- General Manager Organics
- (Senior) Project Manager
- Project Engineer
- Systems Analyst
- (Senior) Chemist
- Area Sales Executives