

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA
PITTSBURGH DIVISION

UNITED STATES OF AMERICA, and
COMMONWEALTH OF PENNSYLVANIA

Plaintiffs,

v.

USA WASTE SERVICES, INC.,
RIVIERA ACQUISITION CORPORATION, and
UNITED WASTE SYSTEMS, INC.

Defendants.

Civil No.:

97 1524

Filed:

Entered: November 18, 1997

FINAL JUDGMENT

WHEREAS, plaintiffs, the United States of America and the Commonwealth of Pennsylvania, and defendants USA Waste Services, Inc. ("USA Waste"), Riviera Acquisition Corporation ("Riviera"), and United Waste Systems, Inc. ("United"), by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

AND WHEREAS, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the prompt and certain divestiture of Kelly Run Sanitation, Inc. to assure that competition is not substantially lessened;

AND WHEREAS, plaintiffs require defendants to make certain divestitures for the

purpose of establishing a viable competitor in the disposal business in the Allegheny County, Pennsylvania area;

AND WHEREAS, defendants have represented to the plaintiffs that the divestitures ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW, THEREFORE, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I.

JURISDICTION

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants, as hereinafter defined, under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II.

DEFINITIONS

As used in this Final Judgment:

A. "USA Waste" means defendant USA Waste Services, Inc., a Delaware corporation with its headquarters in Houston, Texas, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

B. "Riviera" means defendant Riviera Acquisition Corporation, a Delaware corporation which is a wholly owned subsidiary of USA Waste, and includes its successors and

assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

C. "United" means defendant United Waste Systems, Inc., a Delaware corporation with its headquarters in Greenwich, Connecticut, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

D. "Allegheny County" refers to Allegheny County, Pennsylvania.

E. "Kelly Run Sanitation" means Kelly Run Sanitation, Inc., which is a wholly owned subsidiary of United, and all assets excluding the Hauling Business, including:

1. all tangible assets, including all fee and all leasehold and renewal rights in a landfill located at Road #3, Route 51, Elizabeth, Pennsylvania 15037 (known as Kelly Run Landfill); the garage and related facilities; offices; and landfill-related assets including capital equipment, trucks and other vehicles, scales, power supply equipment, interests, permits, and supplies; and

2. all intangible assets, including landfill-related customer lists, contracts, and accounts.

F. "Hauling Business" means the Kelly Run Sanitation hauling-related assets, including:

1. all tangible assets, including capital equipment, trucks and other vehicles, containers, interests, permits, supplies, and related facilities, except the garage and related facilities, located at Road #3, Route 51, Elizabeth, Pa. 15037; and

2. all intangible assets, including hauling-related customer lists, contracts, and accounts.

G. "Hauling" means the collection of nonhazardous solid waste from customers and the transporting of the collected waste to disposal sites.

H. "Waste" means nonhazardous solid waste.

I. "Disposal" means the business of disposing of nonhazardous solid waste into Pennsylvania Department of Environmental Protection approved disposal sites.

III.

APPLICABILITY

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

B. USA Waste shall require, as a condition of the sale or other disposition of all or substantially all of the assets that comprise Kelly Run Sanitation, that the transferee agrees to be bound by the provisions of this Final Judgment.

IV.

DIVESTITURE

A. USA Waste is hereby ordered and directed in accordance with the terms of this Final Judgment, within one hundred and twenty (120) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest Kelly Run Sanitation as an ongoing business to a purchaser acceptable to the United States in its sole discretion, after consultation with the Commonwealth of Pennsylvania.

B. USA Waste shall use its best efforts to accomplish the divestiture as expeditiously and timely as possible. The United States, in its sole determination after consultation with the Commonwealth of Pennsylvania, may extend the time period for any divestiture an additional period of time not to exceed sixty (60) calendar days.

C. In accomplishing the divestiture ordered by this Final Judgment, USA Waste promptly shall make known, by usual and customary means, the availability of Kelly Run Sanitation. USA Waste shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. USA Waste shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all information regarding Kelly Run Sanitation customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. USA Waste shall make available such information to the plaintiffs at the same time that such information is made available to any other person.

D. USA Waste shall not interfere with any negotiations by any purchaser to employ any USA Waste (or former United) employee who works at, or whose principal responsibility is the waste disposal business concerning Kelly Run Sanitation.

E. USA Waste shall permit prospective purchasers of Kelly Run Sanitation to have access to personnel and to make such inspection of Kelly Run Sanitation; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

F. USA Waste shall warrant to the purchaser of Kelly Run Sanitation that Kelly Run Sanitation will be operational on the date of sale.

G. USA Waste shall not take any action, direct or indirect, that will impede in any way the operation of Kelly Run Sanitation.

H. USA Waste shall warrant to the purchaser of Kelly Run Sanitation that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of Kelly Run Sanitation and that USA Waste will not undertake, directly or indirectly, following the divestiture of Kelly Run Sanitation, any challenges to the environmental, zoning, or other permits pertaining to the operation of Kelly Run Sanitation.

I. At the option of the purchaser, USA Waste will enter into an agreement with the purchaser, at commercially available reasonable terms and conditions, guaranteeing a flow of waste into the Kelly Run Landfill for the purpose of maintaining Kelly Run Sanitation as a viable, ongoing waste disposal business and preserving competition in the disposal and hauling businesses in Allegheny County.

J. USA Waste shall not be permitted to locate any of its operations at Kelly Run Sanitation.

K. Unless the United States, after consultation with the Commonwealth of Pennsylvania, otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V of this Final Judgment, shall include Kelly Run Sanitation and be accomplished by selling or otherwise conveying the Kelly Run Sanitation to a purchaser in such a way as to satisfy the United States, in its sole discretion, after consultation with the Commonwealth of Pennsylvania, that Kelly Run Sanitation can and will be used by the purchaser

as part of a viable, ongoing business or businesses engaged in the waste disposal business in Allegheny County. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser for whom it is demonstrated to the United States' sole satisfaction, after consultation with the Commonwealth of Pennsylvania: (1) has the capability and intent of competing effectively in the waste disposal business in Allegheny County; (2) has or soon will have the managerial, operational, and financial capability to compete effectively in the waste disposal business in Allegheny County; and (3) none of the terms of any agreement between the purchaser and USA Waste gives USA Waste the ability unreasonably to raise the purchaser's costs, to lower the purchaser's efficiency, or otherwise to interfere in the ability of the purchaser to compete effectively in Allegheny County.

V.

APPOINTMENT OF TRUSTEE

A. In the event that USA Waste has not divested Kelly Run Sanitation within the time specified in Section IV of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by the United States, to effect the divestiture of Kelly Run Sanitation.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell Kelly Run Sanitation described in Section II(E) of this Final Judgment. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV and VIII of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. The trustee shall have the right, in its sole discretion, to include in the package of

assets to be divested the Hauling Business; in such event, all of the obligations of USA Waste under Section IV of this Final Judgment shall apply to the Hauling Business as well. Subject to Section V(C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of USA Waste any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to the United States, upon consultation with the Commonwealth of Pennsylvania, and shall have such other powers as this Court shall deem appropriate. USA Waste shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by USA Waste must be conveyed in writing to the plaintiffs and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. The trustee shall serve at the cost and expense of USA Waste, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of Kelly Run Sanitation sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to USA Waste and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divested business and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. USA Waste shall use its best efforts to assist the trustee in accomplishing the

required divestiture, including best efforts to effect all necessary regulatory approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and USA Waste shall develop financial or other information relevant to the business to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. USA Waste shall permit bona fide prospective acquirers of Kelly Run Sanitation to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and other information as may be relevant to the divestiture required by this Final Judgment.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the business to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the business to be divested.

F. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations;

provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI.

NOTIFICATION

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Sections IV or V of this Final Judgment, USA Waste or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiffs of the proposed divestiture. If the trustee is responsible, it shall similarly notify USA Waste. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the business to be divested that is the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiffs of such notice, the United States, in its sole discretion, after consultation with the Commonwealth of Pennsylvania, may request from USA Waste, the proposed purchaser, or any other third party additional information concerning the proposed divestiture and the proposed purchaser. USA Waste and the trustee shall furnish any additional information requested from

them within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the plaintiffs have been provided the additional information requested from USA Waste, the proposed purchaser, and any third party, whichever is later, the United States, after consultation with the Commonwealth of Pennsylvania, shall provide written notice to USA Waste and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice to USA Waste and the trustee that it does not object, then the divestiture may be consummated, subject only to USA Waste's limited right to object to the sale under Section V(B) of this Final Judgment. Upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by USA Waste under the provision in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII.

AFFIDAVITS

A. Within twenty (20) calendar days of the filing of the Final Judgment in this matter and every thirty (30) calendar days thereafter until the divestiture has been completed whether pursuant to Section IV or Section V of this Final Judgment, USA Waste shall deliver to plaintiffs an affidavit as to the fact and manner of compliance with Sections IV or V of this Final Judgment. Each such affidavit shall include, *inter alia*, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the business to be divested, and shall describe in detail

each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that USA Waste has taken to solicit a buyer for Kelly Run Sanitation and to provide required information to prospective purchasers including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States, after consultation with the Commonwealth of Pennsylvania, to information provided by USA Waste, including limitations on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, USA Waste shall deliver to plaintiffs an affidavit which describes in detail all actions USA Waste has taken and all steps USA Waste has implemented on an on-going basis to preserve Kelly Run Sanitation and the Hauling Business pursuant to Section VIII of this Final Judgment and the Hold Separate Stipulation and Order entered by the Court. The affidavit also shall describe, but not be limited to, USA Waste's efforts to maintain and operate Kelly Run Sanitation and the Hauling Business as an active competitor, maintain the management, staffing, sales, marketing and pricing of Kelly Run Sanitation and the Hauling Business, and maintain the Kelly Run Landfill in operable condition at current capacity configurations. USA Waste shall deliver to plaintiffs an affidavit describing any changes to the efforts and actions outlined in USA Waste's earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Until one year after such divestiture has been completed, USA Waste shall preserve all records of all efforts made to preserve the business to be divested and effect the divestiture.

VIII.

HOLD SEPARATE ORDER

Until the divestitures required by the Final Judgment have been accomplished, USA Waste shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture of Kelly Run Sanitation.

IX.

FINANCING

USA Waste is ordered and directed not to finance all or any part of any purchase by an acquirer made pursuant to Sections IV or V of this Final Judgment without prior written consent of the United States, in its sole discretion, after consultation with the Commonwealth of Pennsylvania.

X.

COMPLIANCE INSPECTION

For purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, or upon written request of duly authorized representatives of the Attorney General's Office of the Commonwealth of Pennsylvania, and on reasonable notice to USA Waste made to its principal offices, shall be permitted:

1. Access during office hours of USA Waste to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and

documents in the possession or under the control of USA Waste, who may have counsel present, relating to the matters contained in this Final Judgment and the Hold Separate Stipulation and Order; and

2. Subject to the reasonable convenience of USA Waste and without restraint or interference from it, to interview, either informally or on the record, its officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, or upon the written request of the Attorney General's Office of the Commonwealth of Pennsylvania, USA Waste shall submit such written reports, under oath if requested, with respect to any matter contained in the Final Judgment and the Hold Separate Stipulation and Order.

C. No information or documents obtained by the means provided in Sections VII or X of this Final Judgment shall be divulged by a representative of the plaintiffs to any person other than a duly authorized representative of the Executive Branch of the United States, or the Attorney General's Office of the Commonwealth of Pennsylvania, except in the course of legal proceedings to which the United States or the Commonwealth of Pennsylvania is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by USA Waste to plaintiffs, USA Waste represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil

Procedure, and USA Waste marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days notice shall be given by plaintiffs to USA Waste prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which USA Waste is not a party.

XI.

RETENTION OF JURISDICTION

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

XII.

TERMINATION

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

XIII.

PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

Dated Nov. 18, 1997.

Anetta F. Ambrose
United States District Judge