

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA, and
STATE OF FLORIDA,

Plaintiffs,

v.

WASTE MANAGEMENT, INC., and
ALLIED WASTE INDUSTRIES, INC.,

Defendants.

Civil No: 1:03CV02076

DECK TYPE: Antitrust

JUDGE: James Robertson

FILED: October 14, 2003

HOLD SEPARATE STIPULATION AND ORDER

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I. DEFINITIONS

As used in this Hold Separate Stipulation and Order:

A. “Acquirer” means the entity or entities to whom Waste Management divests the Relevant Hauling Assets.

B. “Allied” means Defendant Allied Waste Industries, Inc., a Delaware corporation with its headquarters in Scottsdale, Arizona, and its successors and assigns, its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

C. “MSW” means municipal solid waste, a term of art used to describe solid

putrescible waste generated by households and commercial establishments such as retail stores, offices, restaurants, warehouses, and non-manufacturing activities in industrial facilities. MSW does not include special handling waste (e.g., waste from manufacturing processes, regulated medical waste, sewage, and sludge), hazardous waste, or waste generated by construction or demolition sites.

D. "Relevant Hauling Assets" means Allied's small container commercial hauling routes 501, 901, 902, 903, 904, 906, 907, 909, 912, 914, and 915 that operate out of Allied's Broward County, Florida division located at 2380 College Avenue, Davie, Florida 33317 including:

- (1) all tangible assets, including capital equipment, trucks and other vehicles, containers, interests, supplies, and if requested by the purchaser, real property and improvements to real property (*i.e.*, buildings and garages);
- (2) all intangible assets, including hauling-related customer lists, leasehold interests, permits, and contracts and accounts related to each small container commercial hauling route, and any contract or account serviced in whole or in part on any of the routes listed above; and
- (3) Relevant Hauling Assets does not include accounts and contracts serviced in unincorporated Broward County, accounts serviced through a franchise agreement, and accounts and contracts serviced in the City of Margate.

E. "Small container commercial hauling" means the business of collecting MSW from commercial and industrial accounts, usually in "dumpsters" (*i.e.*, a small container with one to ten cubic yards of storage capacity), and transporting or "hauling" such waste to a disposal site by use

of a front- or rear-end loader truck. Typical small container commercial hauling customers include office and apartment buildings and retail establishments (*e.g.*, stores and restaurants). Small container commercial hauling, as used herein, does not include collection of roll-off containers.

F. "Waste Management" means Defendant Waste Management, Inc., a Delaware corporation with its headquarters in Houston, Texas, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

II. OBJECTIVES

The Final Judgment filed in this case is meant to ensure Defendants' prompt divestiture of the Relevant Hauling Assets for the purpose of establishing a viable competitor in the small container commercial hauling business, to remedy the effects that the United States and Florida allege would otherwise result from the acquisition of Allied's assets by Waste Management. This Hold Separate Stipulation and Order ensures, prior to such divestiture, that the Relevant Hauling Assets remain an independent, economically viable, and ongoing business concern that is uninfluenced by Waste Management or Allied, and that competition is maintained during the pendency of the ordered divestiture.

III. JURISDICTION AND VENUE

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

IV. COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT

A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendants and by filing that notice with the Court.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Hold Separate Stipulation and Order.

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

E. In the event that: (1) the United States has withdrawn its consent, as provided in Section IV. A. above; or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to

any party in this or any other proceeding.

F. Defendants represent that the divestiture ordered in the proposed Final Judgment can and will be made, and that Defendants will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

V. HOLD SEPARATE PROVISIONS

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

A. Waste Management shall preserve, maintain, and continue to operate the Relevant Hauling Assets as an independent, ongoing, economically viable competitive business with management, sales and operations held entirely separate, distinct and apart from those of Waste Management's other operations. Waste Management shall not coordinate the marketing of, or sales by, any Relevant Hauling Asset with its other operations. Within twenty (20) days after the filing of the Hold Separate Stipulation and Order, Defendants will inform the United States and Florida of the steps Waste Management has taken to comply with this Hold Separate Stipulation and Order.

B. Waste Management shall take all steps necessary to ensure that: (1) the Relevant Hauling Assets will be maintained and operated as an independent, ongoing, economically viable and active competitor in the small container commercial hauling business; (2) the management of the Relevant Hauling Assets will not be influenced by Waste Management; and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning the Relevant Hauling Assets will be kept separate and apart from Waste Management's other operations. Waste Management's influence over the Relevant Hauling

Assets shall be limited to that necessary to carry out its obligations under this Hold Separate Stipulation and Order and the proposed Final Judgment.

C. Defendants shall use all reasonable efforts to maintain and increase the sales and revenues of the Relevant Hauling Assets, and shall maintain at 2002 levels, or at previously approved levels for 2003, whichever are higher, all promotional, advertising, sales, technical assistance, marketing and merchandising support for the Relevant Hauling Assets.

D. Defendants shall provide sufficient working capital and lines and sources of credit to continue to maintain the Relevant Hauling Assets as an economically viable and competitive ongoing business consistent with the requirements of Sections V. A. and B.

E. Defendants shall take all steps necessary to ensure that the Relevant Hauling Assets are fully maintained in operable condition at no less than their current capacity and sales, and shall maintain and adhere to normal repair and maintenance schedules for the Relevant Hauling Assets.

F. Defendants shall not, except as part of a divestiture approved by the United States and Florida in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any of the Relevant Hauling Assets.

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

H. Except in the ordinary course of business or as is otherwise consistent with this Hold Separate Stipulation and Order, Defendants shall not hire, transfer, terminate, or otherwise

alter the salary agreements for any Waste Management or Allied employee who, on the date of Defendants' signing of this Hold Separate Stipulation and Order, either: (1) works with a Relevant Hauling Asset; or (2) is a member of management referenced in Section V.J. of this Hold Separate Stipulation and Order.

I. Defendants shall take no action that would jeopardize, delay, or impede the sale of the Relevant Hauling Assets.

J. Until such time as the Relevant Hauling Assets are divested pursuant to the terms of the Final Judgment, the Relevant Hauling Assets owned by Waste Management shall be managed by a person or persons appointed by Waste Management, subject to the approval by the United States. This person or persons shall have complete managerial responsibility for the Relevant Hauling Assets owned by Waste Management, subject to the provisions of this Order and the proposed Final Judgment. In the event that this person or persons is unable to perform his/her duties, Waste Management shall appoint, subject to the approval of the United States, a replacement within ten working days. Should Waste Management fail to appoint a replacement acceptable to the United States within ten working days, the United States shall appoint a replacement. The United States shall give its approvals or take actions under the terms of this paragraph after consultation with Florida.

K. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestiture pursuant to the Final Judgment to an Acquirer acceptable to the United States after consultation with Florida.

L. This Hold Separate Stipulation and Order shall remain in effect until consummation of the divestiture contemplated by the proposed Final Judgment or until further

order of the Court.

FOR PLAINTIFF
UNITED STATES OF AMERICA

/s/

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_____/s/_____
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Date: October 14, 2003

ORDER

IT IS SO ORDERED ON THIS ___ DAY OF _____, 2003.

United States District Judge