

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA;)	
STATE OF OHIO;)	
STATE OF ARIZONA;)	
STATE OF CALIFORNIA;)	
STATE OF COLORADO;)	
STATE OF FLORIDA;)	
COMMONWEALTH OF KENTUCKY;)	
STATE OF MARYLAND;)	
STATE OF MICHIGAN;)	
STATE OF NEW YORK;)	Civil Action No. 1:98 CV 1616
COMMONWEALTH OF PENNSYLVANIA;)	JUDGE ALDRICH
STATE OF TEXAS;)	
STATE OF WASHINGTON; and)	
STATE OF WISCONSIN,)	
)	
Plaintiffs,)	Filed: July 23, 1998
)	
v.)	
)	
USA WASTE SERVICES, INC.;)	
DOMER MERGER SUBSIDIARY; and)	
WASTE MANAGEMENT, INC.,)	
)	
Defendants.)	

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. "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 (including Dome Merger Subsidiary), divisions, groups, affiliates, directors, officers, managers, agents, and employees.

B. "WMI" means defendant Waste Management, Inc., a Delaware corporation with its headquarters in Oak Brook, Illinois, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

C. "Relevant Disposal Assets" means, unless otherwise noted, with respect to each landfill or transfer station listed and described herein, all tangible assets, including all fee and leasehold and renewal rights in the listed landfill or transfer station; the garage and related facilities; offices; landfill- or transfer station-related assets including capital equipment, trucks and other vehicles, scales, power supply equipment, interests, permits, and supplies; and all intangible assets of the listed landfill or transfer station, including landfill- or transfer station-related customer lists, contracts, and accounts, or options to purchase any adjoining property.

Relevant Disposal Assets, as used herein, includes each of the following properties:

1. Landfills

a. Akron/Canton, OH

WMI's Countywide R&D Landfill, located at 3619 Gracemont Street, SW, East Sparta, OH 44626, and known as the Countywide Landfill;

b. Columbus, OH

USA Waste's Pine Grove Landfill, located at 5131 Drinkle Road, SW, Amanda, OH 43102;

c. Denver, CO

USA Waste's Front Range Landfill, located at 1830 County Road 5, Erie, CO 80516-8005;

d. Detroit, MI

USA Waste's Carleton Farms Landfill, located at 28800 Clark Road, New Boston, MI;

e. Flint, MI

USA Waste's Brent Run Landfill, located at Vienna Road, Montrose Township, Genesee County, MI;

f. Houston, TX

USA Waste's Brazoria County Landfill, located at 10310 FM-523, Angleton, TX 77515; and

g. Los Angeles, CA

USA Waste's Chiquita Canyon Landfill, located at 29201 Henry Mayo Drive, Valencia, CA 91355;

h. Louisville, KY

USA Waste's Valley View Landfill, located at 9120 Sulphur Road, Sulphur, KY 40070;

j. Milwaukee, WI

USA Waste's Kestrel Hawk Landfill, located at 1989 Oakes Road, Racine, WI 53406; and WMI's Mallard Ridge Landfill, located at W. 8470 State Road 11, Delavan, WI 53115;

k. New York, NY/Philadelphia, PA

WMI's Modern Landfill & Recycling, located at 4400 Mt. Piscah Road, York, PA 17402, and known as the Modern Landfill;

l. Northeast Michigan

USA Waste's Whitefeather Landfill, located at 2401 Whitefeather Road, Pinconning, MI; and Elk Run Sanitary Landfill, located at 20676 Five Mile Highway, Onaway, MI;

m. Pittsburgh, PA

WMI's Green Ridge Landfill, located at 717 East Huntingdon Landfill Road, Scottdale, PA 15683, and variously known as the Green Ridge Landfill, the Y&S Landfill, or the Greenridge Reclamation Landfill;

n. Portland, OR

USA Waste's North WASCO Landfill, located at 2550 Steele Road, The Dalles, OR 97058; and

2. Transfer Stations

a. Akron/Canton, OH

WMI's Akron Central Transfer Station, located at 389 Fountain Street, Akron, OH;

b. Baltimore, MD

WMI's Southwest Resource Recovery Facility (known as Baltimore RESCO or BRESCO), located at 1801 Annapolis Road, Baltimore, MD 21230; Baltimore County Resource Recovery Facility, located at 10320 York Road, Cockeysville, MD; and Western Acceptance Facility, located at 3310 Transway Road, Baltimore, MD;

c. Cleveland, OH

USA Waste's Newburgh Heights Transfer Station, located at 3227 Harvard Road, Newburgh Heights, OH 44105 (and known as the Harvard Road Transfer Station); and WMI's Strongsville Transfer Station, located at 16099 Foltz Industrial Parkway, Strongsville, OH;

d. Columbus, OH

WMI's Reynolds Road Transfer Station, located at 805 Reynolds Avenue, Columbus, OH 43201;

e. Houston, TX

USA Waste's Hardy Road Transfer Station, located at 18784 East Hardy, Houston, TX;

f. Louisville, KY

USA Waste's Poplar Level Road Transfer Station, located at 4446 Poplar Level Road, Louisville, KY;

g. Miami, FL

All USA Waste's operations related to its right, title, and interest in, or operation of, the Reuters Transfer Station Rights, as conveyed to Chambers Waste Systems of Florida, a subsidiary of USA Waste, pursuant to the Final Judgment in *United States v. Reuter Recycling of Florida, Inc.*, 1996-1 Trade Cas. (CCH) ¶ 71,353 (D.D.C. 1996), a copy of which is attached to the proposed Final Judgment as Exhibit A;

h. New York, NY

WMI's SPM Transfer Station, located at 912 East 132nd Street, Bronx, NY 10452, and all rights and interests, legal or otherwise, that WMI now enjoys, has had or made use of out of the SPM Transfer Station, to deliver waste by truck to rail siding at the Oak Point Rail Yard in the Bronx, NY, and at the Harlem River Yards facility, located at St. Ann's and Lincoln Avenues at 132nd Street, Bronx, NY 10454; and

i. Philadelphia, PA

USA Waste's Girard Point Transfer Station, located at 3600 South 26th Street, Philadelphia, PA 19145; and USA Waste's Quick Way Inc. Municipal Waste Transfer Station, located at SE Corner, Bath and Orthodox Streets, Philadelphia, PA 19137.

D. "Relevant Hauling Assets," unless otherwise noted, means with respect to each commercial waste collection route or other hauling asset described herein, all tangible assets, including capital equipment, trucks and other vehicles, containers, interests, permits, supplies

[except real property and improvements to real property (*i.e.*, buildings)]; and it includes all intangible assets, including hauling-related customer lists, contracts, and accounts.

Relevant Hauling Assets, as used herein, includes the assets in the following locations:

1. Akron, OH

USA Waste's and American Waste Corporation's front-end loader truck ("FEL") commercial routes that serve Summit County, Ohio;

2. Allentown, PA

WMI's FEL commercial routes that serve the cities of Allentown and Northampton and Lehigh County, PA;

3. Cleveland, OH

WMI's FEL commercial routes that serve the City of Cleveland and Cuyahoga County, Ohio (not including the northwestern quadrant);

4. Columbus, OH

WMI's FEL commercial routes that serve Franklin County, Ohio;

5. Denver, CO

USA Waste's FEL commercial routes that serve the City of Denver, and Denver and Arapahoe County, CO;

6. Detroit, MI

WMI's FEL commercial routes that serve the City of Detroit and Wayne County, MI;

7. Houston, TX

WMI's FEL commercial routes that serve the City of Houston, the Dickinson area, and Harris County, TX;

8. Louisville, KY

USA Waste's FEL commercial routes that serve the City of Louisville and Jefferson County, KY;

9. Pittsburgh, PA

WMI's FEL commercial routes that serve Allegheny County and Westmoreland County, PA, and the garage facility (real estate and improvements) located at the Y&S Landfill;

10. Portland, OR

WMI's FEL commercial routes that serve the City of Portland, OR;

11. Tucson, AZ

USA Waste's FEL commercial routes that serve the City of Tucson and Pima County, AZ; and

12. Gainesville, FL

WMI's FEL commercial routes that serve Alachua County, FL.

E. "Hauling" means the collection of nonhazardous waste from customers and the shipment of the collected waste to disposal sites.

F. "Waste" means nonhazardous municipal solid waste.

G. "Disposal" means the business of disposing of waste into approved disposal sites.

H. "Relevant Area" means the county in which the Relevant Hauling Assets or Relevant Disposal Assets are located and any adjacent city or county, except with respect to the Modern Landfill [*see* Section I(C)(1)(k)], for which the Relevant Area means Philadelphia, PA, and New York, NY.

I. “Relevant State” means the state in which the Relevant Disposal Assets or Relevant Hauling Assets are located, provided however, that state is a party to this Final Judgment. With respect to the Modern Landfill [*see* Section I(C)(1)(k)], the Relevant State means the Commonwealth of Pennsylvania and the State of New York.

II.

OBJECTIVES

The Final Judgment filed in this case is meant to ensure defendants’ prompt divestitures of the Relevant Disposal Assets and the Relevant Hauling Assets for the purpose of establishing viable competitors in the waste disposal business or the commercial waste hauling business, or both, in the Relevant Areas to remedy the effects that plaintiffs allege would otherwise result from USA Waste’s acquisition of WMI. This Hold Separate Stipulation and Order ensures, prior to such divestitures, that the Relevant Disposal Assets and the Relevant Hauling Assets are independent, economically viable, ongoing business concerns, and that competition is maintained during the pendency of the ordered divestitures.

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 Northern District of Ohio, Eastern Division.

IV.

COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT

A. The parties stipulate that a Final Judgment in the form hereto 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 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 (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 divestitures ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

V.

HOLD SEPARATE PROVISIONS

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

A. Defendants shall preserve, maintain, and operate the Relevant Disposal Assets and the Relevant Hauling Assets as independent competitors with management, sales and operations held entirely separate, distinct and apart from those of defendants' other operations. Defendants shall not coordinate the marketing of, or sales by, any Relevant Disposal Asset or Relevant Hauling Asset with defendants' other operations. Within twenty (20) days after the filing of the Complaint, or thirty (30) days after the entry of this Order, whichever is later, defendants will inform plaintiffs of the steps defendants have taken to comply with this Hold Separate Stipulation and Order.

B. Defendants shall take all steps necessary to ensure that (1) the Relevant Disposal Assets and Relevant Hauling Assets will be maintained and operated as independent, ongoing, economically viable and active competitors in the waste disposal business or waste hauling

business, or both, in each Relevant Area; (2) management of the Relevant Disposal Assets and Relevant Hauling Assets will not be influenced by USA Waste; and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning the Relevant Disposal Assets and Relevant Hauling Assets will be kept separate and apart from defendants' other operations. USA Waste's influence over the Relevant Disposal Assets and Relevant Hauling Assets shall be limited to that necessary to carry out USA Waste's obligations under this Order and the Final Judgment.

C. Defendants shall use all reasonable efforts to maintain and increase the sales and revenues of the Relevant Disposal Assets and Relevant Hauling Assets, and shall maintain at 1997 or at previously approved levels, whichever are higher, all promotional, advertising, sales, technical assistance, marketing and merchandising support for the Relevant Disposal Assets and Relevant Hauling Assets.

D. Defendants shall provide sufficient working capital to maintain the Relevant Disposal Assets and Relevant Hauling Assets as economically viable, and competitive ongoing businesses.

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

F. Defendants shall not, except as part of a divestiture approved by plaintiffs, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any of the Relevant Disposal Assets and 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 Disposal Assets and 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 USA Waste or WMI employee who, on the date of defendants' signing of this Hold Separate Stipulation and Order, either: (1) works at a Relevant Disposal Asset or Relevant Hauling Asset, or (2) is a member of management referenced in Section V(I) of this Hold Separate Stipulation and Order.

I. Until such time as the Relevant Disposal Assets and Relevant Hauling Assets are divested pursuant to the terms of the Final Judgment, the Relevant Disposal Assets and Relevant Hauling Assets of WMI and USA Waste shall be managed by Donald Chappel. Mr Chappel shall have complete managerial responsibility for the Relevant Disposal Assets and Relevant Hauling Assets of WMI and USA Waste, subject to the provisions of this Order and the Final Judgment. In the event that Mr. Chappel is unable to perform his duties, defendants shall appoint, subject to the approval of the United States, after consultation with the Relevant States, a replacement within ten (10) working days. Should defendants fail to appoint a replacement acceptable to the United States, after consultation with the Relevant State, within ten (10) working days, the United States shall appoint a replacement.

J. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestitures pursuant to the Final Judgment to purchasers acceptable to the United States, after consultation with the Relevant State.

K. This Hold Separate Stipulation and Order shall remain in effect until consummation of the divestitures contemplated by the Final Judgment or until further order of the Court.

VI.

DEFENDANTS' EXPECTATIONS

In consenting to the entry of this Final Judgment, each defendant has relied upon, as a material factor, its understanding of the hauling routes that it will be required to divest, as set forth in a letter from James R. Weiss and Neal R. Stoll, counsel for defendants, dated July 14,

1998, and acknowledged by Anthony E. Harris, Antitrust Division, U.S. Department of Justice, counsel for the United States.

Dated: July 16, 1998.

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O R D E R

IT IS SO ORDERED by the Court, this ____ day of July, 1998.

United States District Judge