

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

UNITED STATES OF AMERICA

and

STATE OF ALABAMA,

Plaintiffs,

v.

REPUBLIC SERVICES, INC.

and

SANTEK WASTE SERVICES, LLC,

Defendants.

ASSET PRESERVATION 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 Asset Preservation Stipulation and Order (“Stipulation and Order”):

A. “Republic” means Defendant Republic Services, Inc., a Delaware corporation with its headquarters in Phoenix, Arizona, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. “Santek” means Defendant Santek Waste Services, LLC, a Tennessee limited

liability company with its headquarters in Cleveland, Tennessee, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. “CWS” means Capital Waste Services, LLC, a portfolio company of Kinderhook and a Delaware limited liability company with its headquarters in Columbia, South Carolina, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. “EcoSouth” means EcoSouth Services of Birmingham and EcoSouth Services of Mobile.

E. “EcoSouth of Birmingham” means EcoSouth Services of Birmingham, LLC, a portfolio company of Kinderhook and a Delaware limited liability company with its headquarters in Birmingham, Alabama, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

F. “EcoSouth of Mobile” means EcoSouth Services of Mobile, LLC, a portfolio company of Kinderhook and an Alabama limited liability company with its headquarters in Axis, Alabama, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

G. “Kinderhook” means Kinderhook Industries LLC, a Delaware limited liability company with its headquarters in New York, New York, its successors and assigns, and its subsidiaries, portfolio companies (including but not limited to CWS and EcoSouth), divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents,

and employees.

H. “Waste Connections” means Waste Connections, Inc., a Canadian corporation with its headquarters in Ontario, Canada, its successors and assigns, and its subsidiaries (including but not limited to Waste Connections of Texas), divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

I. “Waste Connections of Texas” means Waste Connections of Texas, LLC, a subsidiary of Waste Connections and a Delaware limited liability company with its headquarters in The Woodlands, Texas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

J. “Divestiture Assets” means the Southeast Divestiture Assets and the Texas Divestiture Assets.

K. “Southeast Divestiture Assets” means all of Defendants’ rights, titles, and interests in and to:

1. the transfer stations and landfills listed in Appendix A;
2. all property and assets, tangible and intangible, wherever located, related to or used in connection with the transfer stations and landfills listed in Appendix A, including but not limited to:
 - a. all real property, including but not limited to fee simple interests, real property leasehold interests and renewal rights thereto, improvements to real property, and options to purchase any adjoining or other property, together with all offices, garages, material recovery facilities, and other related facilities;

b. all tangible personal property, including but not limited to capital equipment, trucks and other vehicles, scales, power supply equipment, and office furniture, materials, and supplies;

c. all contracts, contractual rights, and customer relationships; and all other agreements, commitments, and understandings;

d. all licenses, permits, certifications, approvals, consents, authorizations, and registrations and all pending applications or renewals; and

e. all records and data, including but not limited to customer lists, accounts, credits records, and repair and performance records;

3. the collection facilities and Routes listed in Appendix A; and

4. all property and assets, tangible and intangible, wherever located, related to or used in connection with the Routes listed in Appendix A, including but not limited to:

a. all real property, including but not limited to fee simple interests, real property leasehold interests and renewal rights thereto, improvements to real property, and options to purchase any adjoining or other property, together with all offices, garages, and related facilities;

b. all tangible personal property, including but not limited to capital equipment, vehicles, and containers assigned to Routes listed in Appendix A, and, at the option of the Acquirer of the Southeast Divestiture Assets, spare vehicles and containers, scales, power supply equipment, and office furniture, materials, and supplies;

c. all contracts (except Hybrid Contracts), contractual rights, and customer relationships; and all other agreements, commitments, and understandings;

d. all licenses, permits, certifications, approvals, consents, and authorizations, and all pending applications or renewals; and

e. all records and data, including but not limited to customer lists, accounts, and credits records, and repair and performance records;

provided, however, that the assets specified in Paragraphs II(K)(4)(a)–(e) above do not include the collection facility located at 101 Barber Boulevard, Gardendale, Alabama 35071 or the Excluded Disposal Agreements.

L. “Texas Divestiture Assets” means all of Defendants’ rights, titles, and interests in and to:

1. Santek SCCW Collection Routes 902 and 903 (“Routes 902 and 903”);

and

2. all property and assets, tangible and intangible, wherever located, related to or used in connection with the Routes 902 and 903, including but not limited to:

a. all tangible personal property, including but not limited to capital equipment, vehicles, and containers assigned to Routes 902 or 903, and, at the option of the Acquirer of the Texas Divestiture Assets, spare vehicles and containers;

b. all contracts, contractual rights, and customer relationships; and all other agreements, commitments, and understandings;

c. all licenses, permits, certifications, approvals, consents, and authorizations, and all pending applications or renewals; and

d. all records and data, including but not limited to customer lists, accounts, and credits records, and repair and performance records;

provided, however, that the assets specified in Paragraphs II(L)(2)(a)–(d) above do not include the collection facility located at 701 US Hwy 59 South, Cleveland Texas, 77327.

M. “Acquirer” or “Acquirers” means the Acquirer of the Southeast Divestiture Assets and the Acquirer of the Texas Divestiture Assets.

N. “Acquirer of the Southeast Divestiture Assets” means Kinderhook, including CWS and EcoSouth, or another entity to whom Defendants divest the Southeast Divestiture Assets.

O. “Acquirer of the Texas Divestiture Assets” means Waste Connections, including Waste Connections of Texas, or another entity to whom Defendants divest the Texas Divestiture Assets.

P. “Commercial Recycling Collection” means the business of collecting recyclables, which are discarded materials that will be processed and reused, from commercial and industrial accounts and transporting those recyclables to a recycling site (typically called a “materials recovery facility,” or “MRF”).

Q. “Disposal” means the business of disposing of waste into disposal sites, including the use of transfer stations to facilitate shipment of waste to other disposal sites.

R. “Excluded Disposal Agreements” means (1) the Landfill Disposal Services Agreement, dated December 1, 2012, between Putnam County, Tennessee and Santek Environmental, Inc., as amended by First Amendment to Landfill Disposal Services Agreement, dated October 16, 2020, and (2) the Waste Disposal Agreement, dated November 16, 2018, between Santek Environmental, LLC and Clean Harbors Environmental Services, Inc., as amended by First Amendment to Waste Disposal Agreement, dated January 26, 2021.

S. “Hybrid Contracts” means customer waste or recycling collection contacts that include a combination of services and/or collection stops included in the Southeast Divestiture Assets and services and/or collection stops not included in the Southeast Divestiture Assets.

T. “MSW” means municipal solid waste. Municipal solid waste is 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.

U. “Relevant Personnel” means the Southeast Personnel and the Texas Personnel.

V. “Route” means a group of customers receiving regularly scheduled waste collection service as of February 23, 2021, including customers from that group for whom service has been suspended due to issues related to COVID-19 and any customers added to that group between February 23, 2021, and the date that the Route is divested to an Acquirer.

W. “Small Container Commercial Waste Collection” (or “SCCW Collection”) means the business of collecting MSW from commercial and industrial accounts, usually in “dumpsters” (i.e., small containers with one-to-ten cubic yards of storage capacity), and transporting—or “hauling”—that waste to a disposal site, typically by use of a front-end, side-load, or rear-end truck. Typical SCCW Collection customers include office and apartment buildings and retail establishments (e.g., stores and restaurants).

X. “Southeast Divestiture Date” means the date on which the Southeast Divestiture Assets are divested to the Acquirer of the Southeast Divestiture Assets.

Y. “Southeast Personnel” means all full-time, part-time, or contract employees wherever located, involved in the MSW Disposal, SCCW Collection, and Commercial Recycling Collection services provided for a Route or facility included in the Southeast Divestiture Assets at any time between February 18, 2020 and the Southeast Divestiture Date. The United States, in its sole discretion, will resolve any disagreement regarding which employees are Southeast Personnel.

Z. “Texas Divestiture Date” means the date on which the Texas Divestiture Assets are divested to the Acquirer of the Texas Divestiture Assets.

AA. “Texas Personnel” means all full-time, part-time, or contract employees of Santek, wherever located, involved in the SCCW Collection services provided for a Route included in the Texas Divestiture Assets at any time between February 18, 2020 and the Texas Divestiture Date. The United States, in its sole discretion, will resolve any disagreement regarding which employees are Texas Personnel.

AB. The “Transaction” means Republic’s proposed acquisition of Santek.

II. OBJECTIVES

The proposed Final Judgment filed in this case is meant to ensure Defendants’ prompt divestiture of the Divestiture Assets to an Acquirer acceptable to the United States in its sole discretion, after consultation with the State of Alabama, for the purpose of maintaining competition in the SCCW Collection business and the MSW Disposal business in order to remedy the anticompetitive effects that Plaintiffs allege would otherwise result from Republic’s acquisition of Santek. This Stipulation and Order ensures that, prior to divestiture, the Divestiture

Assets remain economically viable, competitive, and saleable, and that Defendants will preserve and maintain the Divestiture Assets.

III. JURISDICTION AND VENUE

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

IV. CONSUMMATION OF THE TRANSACTION

Defendants will not consummate the Transaction before the Court has signed this Stipulation and Order.

V. COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT

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

B. From the date of the signing of this Stipulation and Order by Plaintiffs and Defendants until the proposed Final Judgment is entered by the Court, or until expiration of time for all appeals of any ruling declining entry of the proposed Final Judgment, Defendants will comply with all of the terms and provisions of the proposed Final Judgment.

C. From the date on which the Court enters the Stipulation and Order, Plaintiffs will have the full rights and enforcement powers set forth in the proposed Final Judgment, including for the United States, Section XI, just as if the proposed Final Judgment were in full force and effect as the final order of the Court.

D. Defendants agree to arrange, at their expense, publication as quickly as possible of the newspaper notice required by the APPA, which will be drafted by the United States in its sole discretion. The publication must be arranged no later than three business days after Defendants' receipt from the United States of the text of the notice and the identity of the newspaper or newspapers within which the publication must be made. Defendants must promptly send to the United States (1) confirmation that publication of the newspaper notice has been arranged, and (2) the certification of the publication prepared by the newspaper or newspapers within which the notice was published.

E. This Stipulation and Order applies with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the United States and Defendants and submitted to the Court.

F. Defendants represent that the divestitures ordered by the proposed Final Judgment can and will be made and that Defendants will not later raise a claim of mistake, hardship, or difficulty of compliance as grounds for asking the Court to modify any of its provisions.

VI. ASSET PRESERVATION PROVISIONS

From the date of the signing of this Stipulation and Order by Plaintiffs and Defendants:

A. Defendants must operate the Divestiture Assets in the ordinary course of business and consistent with past practices as ongoing, economically viable, competitive assets for the

provision of SCCW Collection and MSW Disposal, and must take all other actions necessary to preserve and maintain the full economic viability, marketability, and competitiveness of the Divestiture Assets.

B. Defendants must provide sufficient working capital and lines and sources of credit to continue to maintain the Divestiture Assets as ongoing, economically viable, competitive assets.

C. Defendants must use all reasonable efforts to maintain and increase the sales and revenues of the services provided by the Divestiture Assets, and must maintain at 2021 or previously approved levels for 2022, whichever are higher, all promotional, advertising, sales, technical assistance, customer support and service, marketing, and merchandising support for the Divestiture Assets.

D. Defendants must use all reasonable efforts to maintain and preserve existing relationships with customers, suppliers, governmental authorities, vendors, landlords, creditors, agents, and all others having business relationships relating to the Divestiture Assets.

E. Defendants must maintain, in accordance with sound accounting principles, accurate and complete financial ledgers and 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 Divestiture Assets.

F. Defendants must maintain the working conditions, staffing levels, and work force training and expertise of all Relevant Personnel. Relevant Personnel may not be transferred or reassigned except to an Acquirer. Defendants must use all reasonable efforts, including by providing financial incentives, to encourage Relevant Personnel to continue in the positions held

as of the date of the signing of this Stipulation and Order by Plaintiffs and Defendants; however, to the extent that the proposed Final Judgment requires Defendants to cooperate with and assist an Acquirer in identifying and hiring Relevant Personnel, these financial incentives may not be structured so as to disincentivize employees from accepting employment with an Acquirer.

G. Defendants must maintain all licenses, permits, approvals, authorizations, and certifications related to or necessary for the operation of the Divestiture Assets and must operate and maintain the Divestiture Assets in compliance with all regulatory obligations and requirements.

H. Defendants must ensure that the Divestiture Assets are fully maintained in operable condition, including by maintaining and adhering to normal repair and maintenance schedules for the Divestiture Assets.

I. Except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, Defendants may not remove, sell, lease, assign, transfer, pledge, encumber, or otherwise dispose of any Divestiture Assets.

J. Defendants must appoint, subject to approval of the United States in its sole discretion, a person or persons to oversee the preservation of the Divestiture Assets. Such person(s) will be responsible for Defendants' compliance with this Section VI and will have complete responsibility for ensuring the preservation the Divestiture Assets for the duration of this Stipulation and Order, subject to the provisions of the Final Judgment. In the event any such person is unable to perform his or her duties, Defendants must appoint, subject to the approval of the United States in its sole discretion, a replacement within ten working days. Should

Defendants fail to appoint a replacement acceptable to the United States within this time period, the United States will appoint a replacement.

K. Defendants shall take no action that would jeopardize, delay, or impede the sale of the Divestiture Assets.

L. Within twenty (20) days after the entry of the Stipulation and Order, Defendants will inform Plaintiffs of the steps Defendants have taken to comply with this Stipulation and Order.

VII. DURATION OF ASSET PRESERVATION OBLIGATIONS

Defendants' obligations under Section VI of this Stipulation and Order will expire upon the completion of the divestitures required by the proposed Final Judgment or until further order of the Court. In the event that (1) the United States has withdrawn its consent, as provided in Paragraph V(A); (2) the United States voluntarily dismisses the Complaint in this matter; or (3) the Court declines to enter the proposed Final Judgment, the time has expired for all appeals of any 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, Defendants are released from all further obligations under this Stipulation and Order and the making of this Stipulation and Order will be without prejudice to any party in this or any other proceeding.

Dated: March 31, 2021

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA

FOR DEFENDANT REPUBLIC SERVICES,
INC.

/s/ Gabriella R. Moskowitz

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ORDER

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

United States District Judge

Appendix A: Southeast Divestiture Assets

I. Landfills and Transfer Stations (Paragraph II(K)(1))

- a. Rhea County Landfill, located at 207 Sanitary Drive, Dayton, Tennessee 37321;
- b. Murray County Landfill and Transfer Station, located at 6585 US-411, Chatsworth, Georgia 30734; and
- c. Chattanooga Transfer Station, located at 1387 Wisdom Street, Chattanooga, Tennessee 37406.

II. Collection Facilities and Routes (Paragraph II(K)(3))

- a. Collection facilities located at:
 - i. 140 Goodrich Drive, Birmingham, Alabama 35217;
 - ii. 1387 Wisdom Street, Chattanooga, Tennessee 37406;
 - iii. 2207 Industrial South Road, Dalton, Georgia 30721;
 - iv. 108 Nehi Road, Ellisville, Mississippi 39437;
- b. Routes:
 - i. Santek Birmingham SCCW Collection Routes 901, 902, 903 and 904;
 - ii. Santek Chattanooga SCCW Collection Routes 901, 902, 903, 904, 906, and 907;
 - iii. Santek Chattanooga Commercial Recycling Collection Route 201;
 - iv. Santek North Georgia SCCW Collection Routes 902, 904, 905, 909, 919, 920, 922, and 923; and
 - v. Santek Hattiesburg SCCW Collection Routes 901, 902, 903, 904 and 905.