

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

WASTE MANAGEMENT, INC.,
INDUSTRIAL DISPOSAL
SERVICE COMPANY, INC.,
RICHARD R. CLARK and
ANDREW A. CLARK,

Defendants.

Civil Action No. SA-88-CA-911

FILED
NOV 22 1988
CHARLES W. VAGNER, Clerk
By *[Signature]* Deputy

FINAL JUDGMENT

Whereas, plaintiff, United States of America, having filed its Complaint herein on September 1, 1988, and plaintiff and defendants, 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, prompt and certain divestiture is the essence of this agreement and defendants have represented to plaintiff that the divestiture required below 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 the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against the defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II

DEFINITIONS

As used in this Final Judgment:

A. "Solid waste hauling" means the collection and transportation to a disposal site of trash and garbage from residential, commercial and industrial customers. Solid waste hauling includes hand pick-up, containerized pick-up and

roll-off service; it does not include service at government installations pursuant to contracts awarded under small business set aside programs.

B. "Solid waste disposal" means the disposal of trash and garbage in a landfill.

C. "WMI" means defendant Waste Management, Inc., a Delaware Corporation with its headquarters in Oak Brook, Illinois.

D. "IDS" means defendant Industrial Disposal Service Company, Inc., a Texas corporation with its headquarters in San Antonio, Texas.

E. "The Clarks" means defendants Richard R. and Andrew A. Clark, the owners of IDS prior to the acquisition of IDS by WMI.

F. "WMSA" means Waste Management of San Antonio, a division of an indirect wholly-owned subsidiary of WMI that provides solid waste hauling services in the San Antonio, Texas area. WMSA includes all customer lists, contracts and accounts, all contracts for disposal of solid waste at landfills, all trucks, containers, equipment, materials, supplies, computer software, and all other tangible and intangible assets, rights and other benefits presently owned, licensed, possessed or used by WMSA.

G. "Buffalo Valley Assets" means any and all interest that defendants have or shall acquire in the proposed Buffalo Valley Type 1 sanitary landfill on the approximately 197-acre site

located on Shaffer Road in Bexar and Guadalupe Counties, which must include reasonable access to the site, all landfill permits and pending landfill permit applications for the site, particularly Permit Application Number 1880 before the Texas Department of Health in the name of Suntech Investment and Development, Inc., and all interests therein held by defendants.

III

APPLICABILITY

A. The provisions of this Final Judgment apply to the defendants, their successors and assigns, their subsidiaries, affiliates, 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. WMI and IDS shall require, as a condition of the sale or other disposition of all or substantially all of WMSA or of the Buffalo Valley Assets, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

C. Nothing contained in this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

IV

DIVESTITURE OF ASSETS

A. WMI and IDS are hereby ordered and directed to divest WMSA to an eligible purchaser or purchasers.

B. WMI and IDS are hereby ordered and directed to divest the Buffalo Valley Assets to an eligible purchaser or purchasers.

C. WMI and IDS shall assure that, for three and one-half years following the date of divestiture of WMSA, WMSA has the right to dispose of unlimited volumes of solid waste in a landfill located in Bexar County at a disposal rate not to exceed \$2.00 per cubic yard. The rate may be based upon a requirement that WMSA dispose of at least 500 cubic yards per day in such landfill. The foregoing disposal rate of \$2.00 per cubic yard shall be increased on January 1, 1990 and on each January 1 thereafter by the greater of (i) the simple average of the amounts of any percentage changes in the Consumer Price Indexes for Houston and Dallas, Texas, occurring during the preceding calendar year, or (ii) the amount necessary to create a disposal rate equal to the lower of (a) 20 percent less than the lowest rate for the disposal of compacted solid waste available to the public in any privately owned landfill located in Bexar County (generally referred to in the industry as the "gate rate"), or (b) 33 percent less than the gate rate for

the disposal of compacted solid waste available to the public at the landfill owned and operated in Bexar County by the City of San Antonio. WMI and IDS shall reimburse to WMSA within 30 days the difference between \$2.00 per cubic yard (or the rate as adjusted pursuant to the procedure described above) and the lowest disposal rate available to WMSA in Bexar County. For purposes of this paragraph, one ton is equal to three cubic yards. This Section IV.C shall terminate in the event WMSA (or any person directly or indirectly controlling, controlled by or under direct or indirect common control with WMSA) acquires, develops or otherwise obtains ownership or operating control of an operating landfill located in Bexar or Guadalupe Counties.

D. Unless plaintiff otherwise consents, divestiture under Sections IV.A and IV.B, or by the trustee appointed pursuant to Section V, shall be accomplished in such a way as to satisfy plaintiff, in its sole determination, that WMSA can and will be operated by the purchaser or purchasers as a viable, ongoing business engaged in solid waste hauling in the San Antonio, Texas area, and that the Buffalo Valley Assets similarly will be pursued by the purchaser or purchasers to achieve a viable, ongoing business engaged in solid waste disposal in the San Antonio, Texas area. Divestiture under Sections IV.A and IV.B, or by the trustee, shall be made to a purchaser or purchasers

for whom it is demonstrated to plaintiff's satisfaction that (1) the purchase or purchases is or are for the purpose of competing effectively in solid waste hauling and disposal and (2) the purchaser or purchasers has or have the managerial, operational, and financial capability to compete effectively in solid waste hauling and disposal. Plaintiff considers the ongoing viability of the solid waste hauling business to be enhanced if the same purchaser buys both WMSA and the Buffalo Valley Assets. The purchaser of WMSA shall have a right of first refusal on the divestiture of the Buffalo Valley Assets.

E. Without the prior consent of plaintiff, WMI and IDS shall not sell WMSA or the Buffalo Valley Assets to Browning-Ferris Industries and shall not sell a landfill or a pending application for a landfill permit to any entity that at the time of the divestiture owns or operates a landfill in Bexar County.

F. Defendants shall take no action to protest, lobby against or otherwise impede, directly or indirectly, any application(s) for a landfill permit(s), or any other permits, divested pursuant to this Final Judgment, nor shall defendants provide financing or other assistance to any person who does so. The purchaser or purchasers of the Buffalo Valley Assets shall take no action to protest, lobby against or otherwise impede, directly or indirectly, any currently pending

application for a landfill permit in Bexar or Guadalupe Counties in which WMI has any interest, nor shall that purchaser or purchasers provide financing or other assistance to any person who does so.

G. WMI and IDS shall not require of the purchaser or purchasers, as a condition of sale, that any current employee of WMSA be offered or guaranteed continued employment after the divestiture.

H. WMI and IDS shall take all reasonable steps to accomplish quickly the divestiture contemplated by this Final Judgment.

V

APPOINTMENT OF TRUSTEE

A. In the event that WMI and IDS have not divested all of their interest required by Sections IV.A and IV.B by March 1, 1989, the Court shall, on application of the plaintiff, appoint a trustee to effect the remainder of the divestiture required by Sections IV.A and IV.B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the assets required to be divested pursuant to Sections IV.A and IV.B. 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 Section VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate.

Defendants shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance, or on the grounds that the sale is contrary to the express terms of this Final Judgment. Any such objections by defendants must be conveyed in writing to plaintiff and the trustee within fifteen (15) days after the trustee has provided the notice required under Section VI.

B. If WMI and IDS have not divested all of their interest required by Section IV.A and IV.B by February 1, 1989, plaintiff and WMI shall immediately notify each other and the Clarks in writing of the names and qualifications of not more than two (2) nominees for the position of the trustee who shall effect the required divestiture. The parties shall attempt to agree upon one of the nominees to serve as the trustee. If the parties are able to agree on a trustee within thirty (30) days of the exchange of names, plaintiff shall notify the Court of the person upon whom the parties agreed, and the Court shall appoint such person as the trustee. If the parties are unable to agree within that time period, plaintiff shall furnish the Court the names of each party's nominees. The Court may hear the parties as to the qualifications of the nominees and shall appoint one of the nominees as the trustee.

C. The trustee shall serve at the cost and expense of WMI and IDS, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets 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, all remaining money shall be paid to WMI and the trust shall then be terminated. The compensation of such trustee shall be reasonable 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. WMI and IDS shall use their best efforts to assist the trustee in accomplishing the required divestiture. 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 WMSA, and defendants shall develop financial or other information relevant to such assets as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

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. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee shall thereupon promptly file 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. 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 thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if necessary, include either (1) extending the trust and the term of the trustee's appointment, or (2) terminating the trust, ordering rescission of the sale of IDS to WMI, returning IDS to the Clarks, and returning WMSA and the Buffalo Valley Assets to WMI; provided, that if the rescission of the sale of IDS to WMI, and/or the return of IDS to the Clarks, is ordered, said rescission and/or order shall not prevent IDS and WMI from agreeing that the Clarks may repurchase or reacquire IDS at a price or on terms more favorable to the Clarks than the price or terms under which the Clarks sold IDS to WMI.

VI

NOTIFICATION

A. WMI or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify plaintiff and the Clarks of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify defendants. 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 or expressed an interest or desire to acquire any ownership interest in WMSA or the Buffalo Valley Assets, together with full details of the same. Within fifteen (15) days after receipt of the notice, plaintiff may request additional information concerning the proposed divestiture, the proposed purchaser, and any other potential purchaser. WMI or the trustee shall furnish the additional information within fifteen (15) days of the receipt of the request. Within thirty (30) days after receipt of the notice or within fifteen (15) days after receipt of the additional information, whichever is later, plaintiff shall notify in writing defendants and the trustee, if there is one, if it objects to the proposed divestiture. If plaintiff fails to object within the period specified, or if plaintiff notifies in writing defendants and the trustee, if there is one, that it

does not object, then the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V.A. Upon objection by plaintiff, or by defendants under Section V.A, the proposed divestiture shall not be accomplished unless approved by the Court.

B. Thirty (30) days from the date of entry of this Final Judgment and every thirty (30) days thereafter until the divestiture has been completed, defendants shall deliver to plaintiff a written report as to the fact and manner of compliance with Section IV of this Final Judgment. Each such report shall include, for each person who during the preceding thirty (30) days made an offer, expressed an interest or desire to acquire, entered into negotiations to acquire, or made an inquiry about acquiring any ownership interest in WMSA or the Buffalo Valley Assets, the name, address, and telephone number of that person and a detailed description of each contact with that person during that period. Defendants shall maintain full records of all efforts made to divest WMSA and the Buffalo Valley Assets.

VII

FINANCING

Defendants shall not finance all or any part of any purchase made pursuant to Sections IV or V of this Final Judgment without the prior consent of the plaintiff.

VIII

COMPLIANCE INSPECTION

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

A. Duly authorized representatives of the Department of Justice, including consultants and other persons retained by the Department, shall, upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their principal offices, be permitted:

1. access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, which may have counsel present,

relating to any matters contained in this Final Judgment;
and

2. subject to the reasonable convenience of defendants and without restraint or interference from them, to interview defendants, their 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 made to defendants at their principal offices, defendants shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information nor any documents obtained by the means provided in this Section IX shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States 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 defendants to plaintiff, defendants represent and identify in writing the material in any such information or documents

for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then plaintiff shall give ten (10) days notice to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendants are not a party.

IX

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, implementation, or modification of any of the provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

X

TERMINATION

This Final Judgment will expire on the fifth anniversary of the completion of the divestiture required herein.

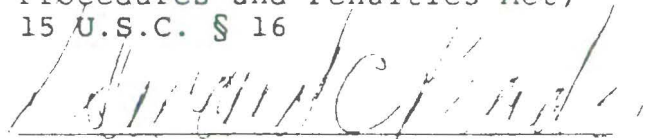
XI

PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

Dated: Nov. 22, 1984

Court approval subject
to procedures of Antitrust
Procedures and Penalties Act,
15 U.S.C. § 16



United States District Judge