

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

UNITED STATES OF AMERICA, and STATE OF NEW JERSEY)	
)	
Plaintiffs,)	Case No: 1:03CV01409
)	
v.)	Judge: Gladys Kessler
WASTE MANAGEMENT, INC., and)	
ALLIED WASTE INDUSTRIES, INC.,)	DECK TYPE: ANTITRUST
)	
Defendants.)	DATE STAMP: June 27, 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 Disposal Assets, Relevant Hauling Assets, or the Alternative Disposal Asset.

- 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. "Alternative Disposal Asset" means, unless otherwise noted, with respect to each transfer station listed and described herein, all of Defendants' rights, titles, and interests in any tangible asset, related to the operation of each transfer station listed, including all fee simple or

ownership rights to offices, garages, related facilities, capital equipment, trucks and other vehicles, scales, power supply equipment, and supplies; and all Defendants' rights, titles, and interests in any related intangible assets, including all leasehold interests and renewal rights thereto, permits, customer lists, contracts, and accounts, or options to purchase any adjoining property.

Alternative Disposal Asset, as used herein, means one of the following three properties, as selected by Defendant Waste Management in accordance with the terms provided in Sections IV.I., V.B., and V.C. of the Final Judgment:

1. **Park Ridge, New Jersey**

Waste Management's Park Ridge Transfer Station, located at 94 Perry Street, Park Ridge, New Jersey 07656; or

2. **Fairview, New Jersey**

Allied's Fairview Transfer Station (formerly permitted to BFI Transfer Systems of New Jersey, Inc.), located at 61 Broad Avenue, Fairview, New Jersey 07022; or

3. **Hillsdale, New Jersey**

Waste Management's Hillsdale Transfer Station, located at 131 Patterson Street, Hillsdale, New Jersey 07642.

D. "Disposal" means the business of disposing of waste into approved disposal sites (*i.e.*, landfills, incinerators, and transfer stations).

E. "Hauling" means the collection of waste from customers and the shipment of the collected waste to disposal sites. Hauling, as used herein, does not include collection of roll-off containers.

F. “Fully Permitted” means a renewal of the operating permit, currently held by Waste Management’s Chestnut Ridge Solid Waste Transfer Station of Chestnut Ridge, New York and scheduled to expire on November 30, 2003, by the New York State Department of Environmental Conservation (“NYDEC”) for an additional five (5) years under terms and conditions comparable to those in the currently held permit; and further means that all additional zoning, environmental, and other permits required to operate the facility are valid and lawful. The renewed permit must be granted by NYDEC prior to expiration of the time period set forth in Section IV.A. of the Final Judgment, which time period shall include the sixty (60) day extension.

G. “Landfill” means a facility where waste is placed into the land.

H. “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.

I. “New Jersey Assets” means the Relevant Disposal Assets and the Relevant Hauling Assets located in New Jersey.

J. “Relevant Disposal Assets” means, unless otherwise noted, with respect to each transfer station listed and described herein, all of Defendants’ rights, titles, and interests in any tangible asset related to each transfer station listed, including all fee simple or ownership rights to offices, garages, related facilities, capital equipment, trucks and other vehicles, scales, power supply equipment, and supplies; and all Defendants’ rights, titles, and interests in any related

intangible assets, including all leasehold interests and renewal rights thereto, permits, customer lists, contracts, and accounts, or options to purchase any adjoining property.

Relevant Disposal Assets, as used herein, includes the following transfer stations, or throughput or tolling disposal rights:

1. **Garfield, New Jersey**

Allied's Garofalo Recycling and Transfer Station (formerly permitted to Garofalo Brothers, Inc., and Garofalo Recycling and Transfer Station Co., Inc.), located at 19-35 Atlantic Street, Garfield, New Jersey 07026.

2. **Chestnut Ridge, New York**

Waste Management's Fully Permitted Chestnut Ridge Solid Waste Transfer Station (owned by and permitted to Waste Management's subsidiary Marangi Bros., Inc.), located at 560 Chestnut Ridge Road, Chestnut Ridge, New York 10977.

3. **North Arlington, New Jersey**

Throughput or tolling disposal rights of a maximum of 1,925 tons per week, for the remainder of Waste Management's current lease and if the lease is renewed, for the duration of the period in which Waste Management has contractual rights to operate the facility, not to exceed the termination date of the Final Judgment. These disposal rights are exercisable by the Acquirer (or its designee), at the New Jersey Meadowlands Commission's HMDC Solid Waste Baler Facility ("HMDC Facility"), located at 100 Baler Boulevard, North Arlington, New Jersey 07031, under the following terms and conditions:

- a. At the Acquirer's option, Waste Management shall set aside and operate or, allow the Acquirer (or its designee) to operate one (1) disposal bay and a

- scale and scale house for the sole use of the Acquirer (or its designee);
- b. Waste Management shall permit the Acquirer (or its designee) to deliver waste to the HMDC Facility during operating hours from Monday through Saturday up to the weekly maximum of 1,925 tons. Waste Management shall have the right to stop accepting waste from any additional truck owned or operated by the Acquirer (or its designee) and entering the premises after Waste Management has accepted 350 tons of waste from the Acquirer (or its designee) on any day the HMDC Facility is operating;
 - c. Under the throughput or tolling arrangement, Waste Management shall permit the Acquirer (or its designee) to deliver waste to the HMDC Facility for processing and, at the option of the Acquirer (or its designee), load the processed waste into vehicles designated by the Acquirer (or its designee) for ultimate disposal; and
 - d. Waste Management shall operate all HMDC Facility gates, scales, scale houses, and disposal areas described in the Acquirer's contract under terms and conditions no less favorable to the Acquirer (or its designee) than those provided to Waste Management or its customers, including any municipality.

K. "Relevant Hauling Assets" 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, supplies, and if requested by the purchaser, real property and improvements to real property (*i.e.*, buildings and garages). It also

includes all intangible assets, including hauling-related customer lists, contracts, leasehold interests, permits and accounts.

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

1. Augusta, Georgia

Allied's commercial waste collection routes 903, 904, 916, and 922 that operate out of Allied's Augusta division located at 683 Commerce Court, Evans, Georgia 30809.

2. Myrtle Beach, South Carolina

Allied's commercial waste collection routes 711, 714, and 715 that operate out of Allied's Rural Sanitation Services Hauling facility located at 3512 Highway 501, Myrtle Beach, South Carolina, 29579.

3. Pitkin and Garfield Counties, Colorado

Waste Management's waste collection routes 730, 824, 825, 831, 850, 851, and 853 that operate out of Waste Management's facility located at 226 North 12th Street, Carbondale, Colorado 81623.

4. Bergen and Passaic Counties, New Jersey

Allied's commercial waste collection routes 700, 705, 706, 401, and 405 that operate out of Allied's VMI Waste Services Hauling facility located at 75 Broad Avenue, Fairview, New Jersey 07022, except that Waste Management is not required to divest real property or improvements to real property (i.e., buildings, garages, or leasehold rights related thereto).

5. Morris County, New Jersey

Allied's commercial waste collection route 702 that operates out of Allied's VMI Waste Services Hauling facility located at 75 Broad Avenue, Fairview, New Jersey 07022, except that

Waste Management is not required to divest real property or improvements to real property (i.e., buildings, garages, or leasehold rights related thereto).

L. "Small container commercial waste collection service" means the business of collecting MSW from commercial and industrial accounts, usually in "dumpsters" (*i.e.*, a small container with one (1) to ten (10) 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 commercial waste collection customers include office and apartment buildings and retail establishments (*e.g.*, stores and restaurants).

M. "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 Disposal Assets and Relevant Hauling Assets for the purpose of establishing viable competitors in the municipal solid waste ("MSW") disposal business and the small container commercial waste collection business, to remedy the effects that the United States alleges would otherwise result from the acquisition of Allied's assets by Waste Management. This Hold Separate Stipulation and Order ensures, prior to such divestitures, that the Relevant Disposal Assets and Relevant Hauling Assets remain independent, economically viable, and ongoing business concerns that will remain independent and uninfluenced by Waste Management or Allied, 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 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 transactions 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 divestitures 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 divestitures required by the Final Judgment have been accomplished:

A. Waste Management shall preserve, maintain, and continue to operate the Relevant Hauling Assets and Relevant Disposal Assets as independent, ongoing, economically viable competitive businesses 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 Disposal Asset or 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 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 Disposal Assets and Relevant Hauling Assets will be maintained and operated as independent, ongoing, economically viable and active competitors in the MSW disposal business and the small container commercial waste collection business; (2) the management of the Relevant Disposal Assets and 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 Disposal Assets and the Relevant Hauling Assets will be kept separate and apart from Waste Management's other operations. Waste Management's influence over the Relevant Disposal Assets and 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 Disposal Assets and 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 Disposal Assets and Relevant Hauling Assets.

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

E. Defendants shall take all steps necessary to ensure that the Relevant Hauling Assets and Relevant Disposal 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 and Relevant Disposal Assets.

F. Defendants shall not, except as part of a divestiture approved by the United States 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 or Relevant Disposal 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 and Relevant Disposal 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 a Relevant Disposal 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 Disposal Assets or Relevant Hauling Assets.

J. Until such time as the Relevant Hauling Assets and Relevant Disposal Assets are divested pursuant to the terms of the Final Judgment, the Relevant Hauling Assets and Relevant Disposal Assets owned by Waste Management shall be managed by Chuck Wilcox, its Senior Vice President. Mr. Wilcox shall have complete managerial responsibility for the Relevant

Hauling Assets and Relevant Disposal Assets owned by Waste Management, subject to the provisions of this Order and the proposed Final Judgment. In the event that Mr. Wilcox is unable to perform his duties, Waste Management shall appoint, subject to the approval of the United States, a replacement within ten (10) working days. Should Waste Management fail to appoint a replacement acceptable to the United States within ten (10) working days, the United States shall appoint a replacement.

K. 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 an Acquirer acceptable to the United States.

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

FOR PLAINTIFF
UNITED STATES OF AMERICA

_____/s/
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Date: June 26, 2003

ORDER

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

United States District Judge