UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. ALLIED WASTE INDUSTRIES, INC., and SUPERIOR SERVICES, INC., Defendants.	)

FILED
DEC 12 2000
Clerk, U.S. District Court
District of Columbia

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FINAL JUDGMENT

WHEREAS, plaintiff, the United States of America, having filed its Complaint in this action on May 12, 2000, and plaintiff and defendants, Allied Waste Services, Inc. ("Allied") and Superior Services, Inc. ("Superior"), by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, 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, the essence of this Final Judgment is the prompt and certain divestiture of certain relevant assets to assure that competition is not substantially lessened;

6

AND WHEREAS, defendants Allied and Superior shall make certain divestitures for the purpose of establishing one or more viable competitors in the commercial waste hauling business, in the specified areas of Milwaukee, Wisconsin and Mansfield, Ohio; and

AND WHEREAS, defendant Superior shall be enjoined from acquiring the County Environmental Landfill in Leeper, Pennsylvania except as provided in this Final Judgment;

AND WHEREAS, defendants have represented to the United States that the divestitures ordered herein 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 injunctive 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:

I.

JURISDICTION

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants, as hereinafter defined, under Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

II.

DEFINITIONS

As used in this Final Judgment:

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

B. "Superior" means defendant Superior Services, Inc., a Wisconsin corporation with its headquarters in Milwaukee, Wisconsin, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. "Relevant Milwaukee Assets" means:

(1) Allied's two front-end loader and three rear-end loader small container commercial routes 6, 14, 21, 89, and 95 and recycling routes 73, 75, 705 and 708 that serve Milwaukee and the eastern half of Waukesha (east of route 83) Counties, WI; and

(2) Allied's BFI Town & Country Transfer Station, located at W143 S. 6400 College Court, Muskego, WI 53150.

Relevant Milwaukee Assets includes, with respect to each of Allied's small container routes listed above, all tangible assets (including capital equipment, trucks and other vehicles, containers, interests, permits, and supplies); and all intangible assets (including hauling-related customer lists, contracts, leasehold interests, and accounts related to each such route). Relevant Milwaukee Assets also includes, with respect to the BFI Town & Country Transfer Station described above, all of Allied's rights, titles and interests in any tangible assets (including

all fee and leasehold and renewal rights in the transfer station); all related assets including capital equipment, trucks and other vehicles, scales, power supply equipment, interests, permits, and supplies; and all rights, titles and interests in any intangible assets, including all customer lists, contracts, and accounts, or options to purchase any adjoining property.

D. "Relevant Mansfield Assets" means:

(1) Superior's small container commercial routes 1, 2, 3 and 4 that serve Richland and Ashland counties, OH; and

(2) Superior's Transfer Station, located at 621 Newman Street, Mansfield, OH 44905.

Relevant Mansfield Assets includes, with respect to each of Superior's small container routes listed above, all tangible assets (including capital equipment, trucks and other vehicles, containers, interests, permits, and supplies); all intangible assets (including hauling-related customer lists, contracts, leasehold interests, and accounts related to each such route); and, if requested by the purchaser, real property and improvements to real property (*i.e.*, buildings and garages). Relevant Mansfield Assets also includes, with respect to the Superior Transfer Station described above, all of Superior's rights, titles and interests in any tangible assets (including all fee and leasehold and renewal rights in the transfer station); the garage and related facilities; offices; all related assets including capital equipment, trucks and other vehicles, scales, power supply equipment, interests, permits, and supplies; and all rights, titles and interests in any intangible assets, including all customer lists, contracts, and accounts, or options to purchase any adjoining property.

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. "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.

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

H. "Landfill" means a waste management facility where waste is placed into the land.

I. "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 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 commercial waste collection customers include office and apartment buildings and retail establishments (*e.g.,* stores and restaurants).

J. "Milwaukee area" means the City of Milwaukee, Milwaukee County, and the eastern half of Waukesha (east of route 83) County, Wisconsin.

K. "Mansfield area" means the City of Mansfield and Richland and Ashland Counties, Ohio.

L. "Leeper area" means the City of Leeper and Clarion, Elk, Forest, and Jefferson Counties, Pennsylvania.

III.

APPLICABILITY

A. The provisions of this Final Judgment apply to Allied and Superior, as defined above, 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. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets, or of a lesser business unit that includes defendants' Relevant Milwaukee Assets or Relevant Mansfield Assets, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

IV.

DIVESTITURES

Milwaukee and Mansfield Areas

A. Defendants are hereby ordered and directed, in accordance with the terms of this Final Judgment, within ninety (90) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to sell the Relevant Milwaukee Assets as a viable, ongoing business to a single purchaser acceptable to the United States, in its sole discretion, and to sell the Relevant Mansfield Assets, as a viable, ongoing business, to a single purchaser acceptable to the United States, in its sole discretion.

B. Defendants shall use their best efforts to accomplish the divestitures ordered by this Final Judgment as expeditiously and timely as possible. The United States, in its sole discretion, may extend the time period for any divestiture an additional period of time, not to

exceed sixty (60) calendar days.

C. In accomplishing the divestitures ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Relevant Milwaukee Assets and Relevant Mansfield Assets. Defendants shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Defendants shall also offer to furnish to all prospective purchasers, subject to customary confidentiality assurances, all information regarding the Relevant Milwaukee Assets and Relevant Mansfield Assets customarily provided in a due diligence process except such information or documents subject to attorney-client privilege or attorney work-product privilege. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

D. Defendants shall not interfere with any negotiations by any purchaser to employ any Allied or Superior employee who, prior to the entry of the Hold Separate Stipulation and Order, works at, or whose primary responsibility concerns, any disposal or hauling business that is part of the Relevant Milwaukee Assets and Relevant Mansfield Assets.

E. Defendants shall permit prospective purchasers of the Relevant Milwaukee Assets and Relevant Mansfield Assets to have reasonable access to personnel and to make inspections of the physical facilities of the Relevant Milwaukee Assets and Relevant Mansfield Assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

F. Defendants shall warrant to each purchaser of the Relevant Milwaukee Assets and Relevant Mansfield Assets that each asset will be operational on the date of sale.

G. Defendants shall not take any action, direct or indirect, that will impede in any way the permitting, operation, or divestiture of the Relevant Milwaukee Assets and Relevant Mansfield Assets.

H. Defendants shall warrant to each purchaser of the Relevant Milwaukee Assets and Relevant Mansfield Assets that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that following the divestiture of each asset, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits or applications for permits or licenses pertaining to the operation of the asset.

I. Unless the United States otherwise consents in writing, the divestitures pursuant to Section IV, or by trustee appointed pursuant to Section VI of this Final Judgment, shall include all Relevant Milwaukee Assets and Relevant Mansfield Assets, and shall be accomplished by selling or otherwise conveying the assets to a purchaser in such a way as to satisfy the United States, in its sole discretion, that the Relevant Milwaukee Assets and Relevant Mansfield Assets can and will be used by the purchaser as part of a viable, ongoing business or businesses engaged in waste disposal or hauling. The divestitures, whether pursuant to Section IV or Section VI of this Final Judgment, (1) shall be made to a purchaser that, in the United States's sole judgment, has the capability and intent (including the necessary managerial, operation and financial capability) of competing effectively in the waste disposal or hauling business in the Milwaukee and Mansfield areas; and (2) shall be accomplished so as to satisfy

the United States, in its sole discretion, that none of the terms of any agreement between the purchaser and defendants gives any defendant the ability unreasonably to raise the purchaser's costs, to lower the purchaser's efficiency, or otherwise to interfere in the ability of the purchaser to compete effectively.

V.

BAN ON ACQUISITION

Leeper Area

A. Superior shall abandon the purchase agreement between Superior and Allied, dated August 4, 1999, to acquire the County Environmental Landfill located at 344 Walley Run Drive, Leeper, PA 16233 ("County Landfill"). Superior shall not directly or indirectly acquire or propose to acquire any assets of or any interest, including any financial, security, loan equity or management interest, in the County Landfill except as provided in Paragraph V(B).

B. If a new landfill opens in the Leeper area which accepts MSW, Superior may propose to acquire assets or an interest in the County Landfill but shall provide advance notification to the Antitrust Division of any such plan. The obligation to provide notice under this Paragraph is met when Superior files a premerger notification pursuant to the Hart Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a (the "HSR Act"). In the event that such a transaction is not subject to the reporting and waiting period requirements of the HSR Act, notification under this Paragraph shall be provided to the Antitrust Division in the same format as, and in accordance with, the instructions relating to the Notification and Report Form set forth in the appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5 through 9 of the instructions must be provided only about the

Leeper area. Notification shall be provided at least thirty (30) days prior to the acquisition of any such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If, within the 30-day period after notification, representatives of the Antitrust Division make a written request for additional information, Superior shall not consummate the proposed transaction or agreement until twenty (20) days after submitting all such additional information. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and the rules promulgated thereunder. This Paragraph shall be broadly construed, and any ambiguity or uncertainty regarding the filing of notice under this Paragraph shall be resolved in favor of filing notice.

VI.

APPOINTMENT OF TRUSTEE

A. If defendants have not divested the Relevant Milwaukee Assets and Relevant Mansfield Assets within the time period specified in Section IV(A), defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestitures.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Relevant Milwaukee Assets and Relevant Mansfield Assets. The trustee shall have the power and authority to accomplish the divestiture to a purchaser acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, VI, and VII of this Final Judgment, and shall have such other powers

as the Court deems appropriate. Subject to Section VI(D) of this Final Judgment, the trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, reasonably necessary in the trustee's judgment to assist in the divestiture and such professionals and agents shall be accountable solely to the trustee.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VII.

D. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the United States approves, 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 and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divested assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestitures and the speed with which the divestitures are accomplished.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestitures. 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 the Relevant Milwaukee Assets and Relevant Mansfield Assets. Defendants shall develop financial and other information relevant to the Relevant Milwaukee Assets and Relevant Mansfield Assets

customarily provided in a due diligence process as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development or commercial information.

F. After the trustee's appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestitures ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Relevant Milwaukee Assets and the Relevant Mansfield Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to sell the Relevant Milwaukee Assets and the Relevant Mansfield Assets.

G. If the trustee has not accomplished such divestitures within six months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished, and (3) the trustee's recommendations for completing the required divestitures. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. 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 extending the trust and the term of the trustee's appointment by a period requested by the United States.

VII.

NOTICE OF PROPOSED DIVESTITURES

A. Within two (2) business days following execution of a definitive agreement to effect, in whole or in part, any proposed divestiture pursuant to Section IV or VI of this Final Judgment, defendants or the trustee, whichever is then responsible for effecting the divestiture, shall notify the United States of the proposed divestiture. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the assets to be divested that are the subject of the binding contract, together with full details of same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States, in its sole discretion, may request from defendants, the proposed purchaser, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture and the proposed purchaser. Defendants and the trustee shall furnish any additional information requested from them within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed purchaser, and any third party, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects

to the proposed divestiture. If the United States provides written notice to defendants and the trustee, if applicable that it does not object, then the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section VI (C) of this Final Judgment. Upon objection by the United States, a divestiture proposed under Section IV or VI of this Final Judgment shall not be consummated. Upon objection by defendants under the provision in Section VI (C), a divestiture proposed under Section IV shall not be consummated unless approved by the Court.

VIII.

AFFIDAVITS

A. Within twenty (20) calendar days of the filing of the Complaint in this matter and every twenty (20) calendar days thereafter until the divestitures have been completed pursuant to Section IV or VI of this Final Judgment, defendants shall deliver to the United States an affidavit as to the fact and manner of compliance with Section IV or VI of this Final Judgment. Each such affidavit shall include, *inter alia,* the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the assets to be divested, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that defendants have taken to solicit a buyer for the Relevant Milwaukee Assets and Relevant Mansfield Assets and to provide required information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitations on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States an affidavit which describes in detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to preserve the Relevant Milwaukee Assets and Relevant Mansfield Assets pursuant to Section IX of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after any such change has been implemented.

C. For a one-year period following the completion of each divestiture, defendants shall preserve all records of any and all efforts made to preserve the Relevant Milwaukee Assets and Relevant Mansfield Assets that were divested and to effect the ordered divestitures.

IX.

HOLD SEPARATE ORDER

Until the divestitures required by the Final Judgment have been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the sale of the Relevant Milwaukee Assets or the Relevant Mansfield Assets.

X.

FINANCING

Defendants shall not finance all or any part of any purchase by any person made pursuant to Section IV or VI of this Final Judgment.

XI.

COMPLIANCE INSPECTION

A. For purposes of determining or securing compliance with the Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time, duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

1. Access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to the matters contained in this Final Judgment and the Hold Separate Stipulation and Order; and

2. To interview, either informally or on the record, their officers, employees, and agents, who may have counsel present, regarding any such matters. The interview shall be subject to reasonable convenience and without restraint or interference by defendants.

B. Upon the written request of the Attorney General in charge of the Antitrust Division, defendants shall submit such written reports, under oath if requested, relating to any matter contained in the Final Judgment and the Hold Separate Stipulation and Order as may be requested.

C. No information or documents obtained by the means provided in Section XI of this Final Judgment shall be divulged by a representative of the United States 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 the United States, defendants represent and identify in writing the material in any such information or documents to 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 ten (10) calendar days notice shall be given by the United States to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendants are not a party.

XII.

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

XIII.

TERMINATION

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

XIV.

PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

Dated 12-11, 2000.

United States District Judge

Parties Entitled to Notice of Entry of Final Judgment:

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