

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA and
STATE OF NEW YORK,

Plaintiffs,

v.

STERICYCLE, INC.,
SAMW ACQUISITION CORP., and
HEALTHCARE WASTE SOLUTIONS, INC.,

Defendants.

CASE NO.:

11 0689

JUDGE:

DECK TYPE: Antitrust

DATE STAMP:

PROPOSED FINAL JUDGMENT

WHEREAS, plaintiffs, the United States of America and the State of New York, filed their Complaint on April 8, 2011; plaintiffs and defendants, Stericycle, Inc. and SAMW Acquisition Corp., and Healthcare Waste Solutions, Inc., by their respective attorneys, have 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 admission by any party regarding any issue of law or fact;

AND WHEREAS, defendants agree 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 the Divestiture Asset to assure that competition is not substantially lessened;

AND WHEREAS, plaintiffs require defendants to make a divestiture for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, defendants have represented to plaintiffs that the divestiture required below 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 below;

NOW, THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

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

II. DEFINITIONS

As used in this Final Judgment:

- A. "Acquirer" means the entity to which defendants shall divest the Divestiture Asset.
- B. "Stericycle" means defendant Stericycle, Inc., a Delaware corporation with its principal place of business in Lake Forest, Illinois, and SAMW Acquisition Corp. (a corporation formed to facilitate the acquisition), and their successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and all of their directors, officers, managers, agents, and employees.
- C. "HWS" means defendant Healthcare Waste Solutions, Inc., a Delaware corporation with its principal place of business in Cincinnati, Ohio, and its successors, assigns,

subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and all of their directors, officers, managers, agents, and employees.

D. "Infectious Waste" means regulated medical waste that is generated in the diagnosis, treatment, or immunization of human beings or animals and that has come into contact with bodily fluids, and "sharps" waste, such as syringes and scalpels.

E. "Treatment" means the sterilization of infectious waste at a state-approved treatment facility, including the use of transfer stations to facilitate the shipment of infectious waste to other treatment sites.

F. "Divestiture Asset" means HWS's Bronx, New York transfer station, located at 1281 Viele Avenue, Bronx, New York, 10474, including:

1. Tangible assets at the HWS facility identified in this Paragraph II(F), including all research and development activities, equipment, and fixed assets, real property (leased or owned), equipment, personal property, inventory, office furniture, materials, supplies, on- or off-site warehouses or storage facilities; all licenses, permits, and authorizations issued by any governmental organization relating to the facilities; and all facility records, but excluding assets used exclusively in the HWS collection business; and
2. All intangible assets associated with the HWS facility identified in this Paragraph II(F), including, but not limited to, all contractual rights, patents, licenses and sublicenses, intellectual property, technical information, computer software (including waste monitoring software and management information systems) and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols,

specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, all manuals and technical information provided to employees, customers, suppliers, agents or licensees, but excluding assets used exclusively in the HWS collection business.

G. "New York City Metropolitan Area" means the area encompassing the City of New York, and the counties of Westchester, Rockland, Nassau, and Suffolk in New York, the counties of Hudson, Bergen, Passaic, Essex, Union, and Middlesex in New Jersey, and the county of Fairfield in Connecticut.

III. APPLICABILITY

A. This Final Judgment applies to Stericycle and HWS, as defined above, and all other persons in active concert or participation with either of them, who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Sections IV and V of this Final Judgment, defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Asset, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirer of the assets divested pursuant to this Final Judgment.

IV. DIVESTITURE

A. Defendants are ordered and directed, within forty-five (45) calendar days after the filing of the Complaint in this matter, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Asset in a manner

consistent with this Final Judgment to an Acquirer acceptable to the United States in its sole discretion, after consultation with the State of New York. The United States, in its sole discretion, after consultation with the State of New York, may agree to one or more extensions of this time period not to exceed thirty (30) calendar days in total, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Divestiture Asset as expeditiously as possible.

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

C. Defendants shall provide the Acquirer and the United States information relating to the personnel involved in the operation and management of the Divestiture Asset to enable the Acquirer to make offers of employment. Defendants shall not interfere with any negotiations by the Acquirer to employ or contract with any defendant employee whose primary responsibility is the operation or management of the Divestiture Asset.

D. Defendants shall permit prospective Acquirers of the Divestiture Asset to have reasonable access to personnel and to make inspections of the physical facility of the Divestiture

Asset; 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.

E. Defendants shall warrant to the Acquirer that the Divestiture Asset will be operational on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, operation or divestiture of the Divestiture Asset.

G. Defendants shall warrant to the Acquirer that there are no material defects in the environmental, zoning or other permits pertaining to the operation of the Divestiture Asset, and that following the sale of the Divestiture Asset, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Asset.

H. Unless the United States, after consultation with the State of New York, otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V, of this Final Judgment, shall be accomplished in such a way as to satisfy the United States, in its sole discretion, after consultation with the State of New York, that the divestiture will achieve the purposes of this Final Judgment and that the Divestiture Asset can and will be used by the Acquirer as part of a viable, ongoing business providing infectious waste treatment services. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment:

1. shall be made to the Acquirer that, in the United States's sole judgment, after consultation with the State of New York, has the intent and capability (including the necessary managerial, operational, technical and financial

capability) of competing effectively in the business of providing infectious waste treatment services; and

2. shall be accomplished so as to satisfy the United States, in its sole discretion, after consultation with the State of New York, that none of the terms of any agreement between the Acquirer and defendants gives defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. APPOINTMENT OF TRUSTEE

A. If defendants have not divested the Divestiture Asset within the time period specified in Section IV, 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 sale of the Divestiture Asset.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Asset. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States, after consultation with the State of New York, at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V, Paragraph D, of this Final Judgment, the trustee may hire at the defendants' cost and expense any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

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 VI.

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 Divestiture Asset 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 the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Asset 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, but timeliness is paramount.

E. Defendants 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 facility of the Divestiture Asset, and defendants shall develop financial and other information relevant to the Divestiture Asset 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.

F. After its appointment, the trustee shall file monthly reports with the United States and the State of New York, and the Court setting forth the trustee's efforts to accomplish the

divestiture 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 Divestiture Asset, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Asset.

G. If the trustee has not accomplished the divestiture ordered under this Final Judgment within six (6) months after its appointment, the trustee shall 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. 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 United States, which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. NOTICE OF PROPOSED DIVESTITURE

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the plaintiffs 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 divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Asset, together with full details of the same.

B. Within ten (10) calendar days of receipt of such notice by the plaintiffs, the United States may request from defendants, the proposed Acquirer, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within ten (10) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within fifteen (15) calendar days after receipt of the notice or within fifteen (15) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer, any third party, and the trustee, 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, after consultation with the State of New York, provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under paragraph V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by defendants under paragraph V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. NOTICE TO CUSTOMERS

No later than five (5) calendar days following the sale of the Divestiture Asset, Defendants shall send a Notice, in a form approved by the United States, in its sole discretion, after consultation with the State of New York, to all customers located in the New York City Metropolitan Area that are under contract with HWS and served by the Divestiture Asset, informing such customers that they have the right to terminate such contracts for a period of ninety (90) days from the date of the Notice. Defendants shall certify to the United States that the Notice was timely sent.

VIII. NOTICE OF FUTURE ACQUISITIONS

A. Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a (the "HSR Act"), Stericycle, without providing advance notification to the plaintiffs, shall not directly or indirectly acquire, any (1) interest in any business engaged in the treatment of infectious waste that serves the New York City Metropolitan Area; (2) other than in the ordinary course of business assets of a person engaged in the treatment of infectious waste generated in the New York City Metropolitan Area; or (3) capital stock or voting securities of any person that, at any time during the twelve (12) months immediately preceding such acquisition, was engaged in the treatment of infectious waste generated in the New York City Metropolitan Area, where that person's annual revenues in this area from the treatment of infectious waste were in excess of \$500,000.

B. Such notification shall be provided to the plaintiffs in the same format as, and per 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 treatment of infectious waste. Notification shall be provided at least thirty (30) calendar days prior to acquiring 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 United States make a written request for additional information, Stericycle shall not consummate the proposed transaction or agreement until thirty (30) calendar 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 rules promulgated thereunder. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

IX. FINANCING

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

X. HOLD SEPARATE

Until the divestiture required by this Final Judgment has 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 divestiture ordered by this Court.

XI. AFFIDAVITS

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, defendants shall deliver to plaintiffs an affidavit as to the fact and manner of their compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, 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 Divestiture Asset, 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 defendants have taken to solicit buyers for the Divestiture Asset, and to provide required information to prospective Acquirers, 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, after consultation with the State of New York, to information provided by defendants, including limitation on information, shall be made within fourteen (14) calendar 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 plaintiffs an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section IX of this Final Judgment. Defendants shall deliver to the plaintiffs an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Asset until one year after such divestiture has been completed.

XII. COMPLIANCE INSPECTION

A. For the purposes of determining or securing compliance with this 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 authorized representatives of the United States Department of Justice Antitrust Division, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

1. access during defendants' office hours to inspect and copy, or at the option of the United States, to require defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and
2. to interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States or the New York Attorney General, 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)(1)(G) 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)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XIII. NO REACQUISITION

During the term of this Final Judgment, defendants may not reacquire any part of the Divestiture Asset, nor may any defendant participate in any other transaction that would result in a combination, merger, or other joining together of any part of the Divestiture Asset with assets of the divesting company.

XIV. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XV. EXPIRATION OF FINAL JUDGMENT

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XVI. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

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

United States District Judge