

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
-NORFOLK DIVISION-**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil No.: 2:05CV468
)	
v.)	
)	Filed: August 8, 2005
WASTE INDUSTRIES USA, INC.,)	
)	
Defendant.)	Judge: Friedman
)	

FINAL JUDGMENT

WHEREAS, the plaintiff United States of America, having filed its Complaint in this action on August 8, 2005 and the plaintiff and the defendant Waste Industries USA, 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 an admission by any party with respect to any issue of law or fact;

AND WHEREAS, the defendant agrees 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 Relevant Hauling Assets by the defendant to ensure that competition is substantially restored;

AND WHEREAS, the United States requires the defendant to amend certain provisions of its waste hauling contracts and to make certain divestitures in order to remedy the loss of competition alleged in the Complaint;

AND WHEREAS, the defendant has represented to the United States that the divestiture required below can and will be made and that the defendant will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture or other injunctive provisions contained below;

NOW, THEREFORE, before the taking of any testimony, and 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 each of the parties and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against the defendant under Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

II. Definitions

As used in this Final Judgment:

- A. “Acquirer” means the entity to whom the defendant divests the Relevant Hauling Assets.
- B. “Hauling” means the collection of waste from customers and the shipment of the collected waste to disposal sites. Hauling does not include collection of roll-off containers.
- C. “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 nonmanufacturing 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.

D. “Relevant Hauling Assets” means \$780,000 in annual Southside small container commercial waste collection revenue comprised of customers from Waste Industries’ waste collection routes 22 and 914 that operate in Norfolk and Virginia Beach, respectively, and all intangible assets and records related to such customers, including contracts, hauling-related customer lists, account files, and credit records. (The divested customers from Routes 22 and 914 are identified in Exhibit A to this Final Judgment.) If the defendant and Acquirer mutually agree, Acquirer may: (1) purchase any other hauling-related assets used in connection with providing service to the customers identified in Exhibit A, including trucks and other vehicles, containers, materials, and supplies; and (2) negotiate with, and make offers of employment to, personnel involved in the operation and management of the Relevant Hauling Assets.

E. “Small container commercial waste collection services” 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).

F. “Southside” means the independent cities of Norfolk, Chesapeake, Virginia Beach, Portsmouth, Suffolk and Franklin, Virginia, and the county of Southampton, Virginia.

G. “Waste Industries” means the defendant Waste Industries USA, Inc., a North Carolina corporation with its headquarters in Raleigh, North Carolina, and includes its

successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

III. Applicability

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

B. The defendant shall require, as a condition of the sale or other disposition of all or substantially all of its assets, that the purchaser agree to be bound by the provisions of this Final Judgment.

IV. Divestiture

A. The defendant is hereby ordered and directed, 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 divest the Relevant Hauling Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to an extension of this time period of up to thirty (30) calendar days, and shall notify the Court in such circumstances. The defendant agrees to use its best efforts to divest the Relevant Hauling Assets as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Final Judgment, the defendant promptly shall make known, by usual and customary means, the availability of the Relevant Hauling Assets. The defendant shall inform any person making inquiry regarding a possible purchase of the Relevant Hauling Assets that they are being divested pursuant to this Final

Judgment and provide that person a copy of this Final Judgment. The defendant shall offer to furnish to each prospective Acquirer, subject to customary confidentiality assurances, all information and documents relating to the Relevant Hauling Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client or work-product privileges. The defendant shall make available such information to the United States at the same time that such information is made available to any other person.

C. The defendant shall permit each prospective Acquirer of the Relevant Hauling Assets to have reasonable access to personnel and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process. If agreed to by the defendant and the prospective Acquirer, the defendant shall provide information relating to the personnel involved in the operation and management of the Relevant Hauling Assets to enable the Acquirer to make offers of employment. The defendant will not interfere with any negotiations by the Acquirer to employ any defendant employee.

D. The defendant shall warrant to the Acquirer of the Relevant Hauling Assets that each asset will be operational on the date of sale.

E. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V of this Final Judgment, shall include the entire Relevant Hauling Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Relevant Hauling Assets can and will be used by the Acquirer as part of a viable, ongoing MSW hauling business. Divestiture of the Relevant Hauling Assets may be made to an Acquirer, provided that it is demonstrated to the sole satisfaction of the United States that the Relevant Hauling Assets will remain viable and the

divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment:

1. shall be made to an Acquirer that, in the United States' sole judgment, has the intent and capability, including managerial, operational, and financial capability, to compete effectively in the waste hauling business; 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 an Acquirer and Waste Industries gives Waste Industries 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 the defendant has not divested the Relevant Hauling Assets within the time period specified in Section IV.A, the defendant shall notify the United States of that fact in writing. Upon application of the United States, in its sole discretion, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Relevant Hauling Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Relevant Hauling Assets. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States, in its sole discretion, 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.D of this Final Judgment, the

trustee may hire at the cost and expense of the defendant 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. The defendant shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by the defendant 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 the defendant, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the Relevant Hauling 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 the defendant 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 Relevant Hauling Assets 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. The defendant shall use its 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 the business to be divested, and the defendant shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to customary

confidentiality protection for trade secret or other confidential research, development, or commercial information. The defendant 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 Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent that 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 Hauling Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Relevant Hauling Assets.

G. If the trustee has not accomplished such divestiture 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 that 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 who 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, the defendant or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify the defendant. 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 Relevant Hauling Assets, together with full details of the 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 the defendant, 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. The defendant and the trustee shall furnish any additional information requested 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 the defendant, the proposed Acquirer, any third party, or the trustee, whichever is later, the United States, in its sole discretion, shall provide written notice to the defendant and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only

to the defendant's limited right to object to the sale under Section 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 the defendant under Section V.C, a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

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

VIII. Preservation of Relevant Hauling Assets

A. Until the divestiture required by this Final Judgment has been accomplished, the defendant shall: (1) preserve and maintain the value and goodwill of the Relevant Hauling Assets; (2) operate the Relevant Hauling Assets in the ordinary course of business, including reasonable efforts to maintain and increase sales and revenues; and (3) take no action that would jeopardize, delay, or impede the sale of the Relevant Hauling Assets.

B. The divested customers on Routes 22 and 914 identified in Exhibit A collectively generate approximately \$65,000 in monthly small container commercial waste collection revenue (\$780,000 annual revenue), as of May 2005. If, prior to divestiture, any customers identified in Exhibit A let their contracts expire, terminate their contracts, or reduce small container commercial waste collection services such that small container commercial waste collection revenue to be divested declines by five (5) percent or more, the defendant shall divest additional small container commercial waste collection customers to replace these revenues up to \$780,000. The defendant shall provide monthly customer reports that update Exhibit A and

identify any lost customers, customer price increases or service changes, and overall revenue changes. Any change in the Relevant Hauling Assets must be reviewed by and approved by the United States. All revenue calculations under Section VIII.B of this Final Judgment shall be based on monthly revenues for May 2005.

IX. 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, the defendant shall deliver to the United States an affidavit as to the fact and manner of its 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) 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 Relevant Hauling Assets, 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 the defendant has taken to solicit buyers for the Relevant Hauling Assets, and to provide required information to each prospective Acquirer, 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 the defendant, 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, the defendant shall deliver to the United States an affidavit that describes in reasonable detail all actions the defendant has taken and all steps the defendant has implemented on an ongoing basis

to comply with Section VIII of this Final Judgment. The defendant shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in the defendant's earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. The defendant shall keep all records of all efforts made to preserve the Relevant Hauling Assets and to divest the Relevant Hauling Assets until one year after such divestiture has been completed.

X. 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 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 a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant and counsel of record, be permitted:

1. access during the defendant's office hours to inspect and copy, or at the United States' option, to require the defendant to provide copies of all books, ledgers, accounts, records, and documents in the possession or control of the defendant, relating to any matters contained in this Final Judgment; and
2. to interview, either informally or on the record, the defendant's 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 the defendant.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, the defendant shall submit such 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, 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 the defendant to the United States, the defendant represents and identifies 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 the defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the United States shall give the defendant ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

The defendant may not reacquire all or substantially all of the Relevant Hauling Assets listed in Exhibit A during the term of this Final Judgment. Nothing herein shall preclude the defendant from competing for the hauling business of any individual customer listed in Exhibit A, so long as the defendant's conduct is consistent with a commercially reasonable sales

agreement negotiated with the Acquirer of the Relevant Hauling Assets.

XII. Southside Contract Relief

A. The defendant shall alter the standard contract form (“the Standard Contract”) it uses with small container commercial waste collection customers in the Southside and the Standard Contract shall contain the following terms:

1. an initial term no longer than two (2) years;
2. a renewal term no longer than one (1) year;
3. a notice of termination no more than thirty (30) days prior to the end of any initial term or renewal term;
4. liquidated damages of no more than three (3) times the contract’s average monthly charge during the first year the customer has had service with the defendant; and
5. liquidated damages of no more than two (2) times the contract’s average monthly charge after the first year the customer has had service with the defendant.

B. Within thirty (30) calendar days of the filing of the Complaint in this matter, the defendant, by means of a letter approved by the United States, shall inform its existing Southside small container commercial waste collection customers about the terms, conditions and rights set forth in Sections XII.A and XII.B of this Final Judgment and shall offer in writing to the customers the option to enter into the Standard Contract. Should an existing customer request the Standard Contract, the defendant shall execute the Standard Contract with that customer. The defendant shall not initiate negotiations with existing customers to modify the Standard

Contract; however, upon the request of the customer, the defendant may modify the Standard Contract subject to the procedures set forth in Section XII.C of this Final Judgment. Should an existing customer continue with its current contract, the defendant shall not enforce any term or condition that is inconsistent with Section XII.A of this Final Judgment. For example, if an existing customer contract has a five-year initial term, the defendant may only enforce this provision for a two-year period from the date the contract was executed.

C. From the date of filing the Complaint in this action, the defendant shall use the Standard Contract with all new customers and any existing customer that may request the Standard Contract. The defendant may negotiate terms and conditions different from those set forth in Section XII.A of this Final Judgment, provided that the Standard Contract form is utilized, the customer is notified in writing that it can accept the Standard Contract without modification, the modification(s) are made in the physical presence of the customer, the modification(s) are made in writing on the Standard Contract, and the customer initials each modification. If the defendant complies with the requirements set forth in this subsection C, this Final Judgment shall not prevent the enforcement by either the defendant or customer of any such negotiated modifications that are different from those set forth in Section XII.A.

D. The provisions of Section XII of this Final Judgment will expire on August 8, 2010.

XIII. 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.

XIV. Expiration of Final Judgment

Unless this Court grants an extension or as otherwise noted in Section XII.D, this Final Judgment shall expire ten (10) years from the date of its entry.

XV. Public Interest Determination

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