UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, STATE OF NEW YORK, COMMONWEALTH OF PENNSYLVANIA, and STATE OF FLORIDA, Plaintiffs,	)	Civil No.: 98 CV 1768 (FB)(MDG)
v.	)	Filed:
WASTE MANAGEMENT, INC., OCHO ACQUISITION CORP., and EASTERN ENVIRONMENTAL SERVICES, INC., Defendants.	)	

PROPOSED FINAL JUDGMENT

WHEREAS, plaintiffs, the United States of America, the State of New York, the Commonwealth of Pennsylvania, and the State of Florida, and defendants Eastern Environmental Services, Inc. ("Eastern"), Waste Management, Inc. ("Waste Management"), and Ocho Acquisition Corporation ("Ocho"), by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein; and that this Final Judgment shall settle all claims made by plaintiffs in their Amended Complaint filed on December 2, 1998;

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, in the event of the acquisition of Eastern by Waste Management, the prompt and certain divestiture of the identified assets to assure that competition is not substantially lessened;

AND WHEREAS, plaintiffs require defendants to make certain divestitures for the purpose of establishing a viable competitor in the disposal business, the commercial waste hauling business, or both in the specified areas;

AND WHEREAS, defendants have represented to plaintiffs 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 divestiture provisions contained below;

AND WHEREAS, the United States, the states of New York and Florida, and the Commonwealth of Pennsylvania currently believe that entry of this Final Judgment is in the public interest;

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

I.

JURISDICTION

This Court has jurisdiction over 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. "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, directors, officers, managers, agents, and employees.

B. "Eastern" means defendant Eastern Environmental Services, Inc., a Delaware corporation with its headquarters in Mt. Laurel, New Jersey, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

C. "Rights to Eastern's RFP Proposal" means (1) all right, title and interest in the proposal submitted by Eastern to the New York City Department of Sanitation in response to the New York City Request for Proposals to Receive Solid Waste at a Marine Transfer Station, Procurement Identification No. 82797RR0014, dated June 16, 1997, and any amendments, revisions, or modifications thereto (hereinafter, the "New York City RFP"); (2) any intangible assets relating to that proposal, including any engineering, technical, or construction designs, plans or specifications, permit or land use applications, and any options, commitments or agreements of any type for the design, construction, permitting, lease or sale of any land, building or equipment, or to receive, transport store or dispose of waste; (3) at purchaser's option, such technical assistance on that proposal as the purchaser reasonably may require from Eastern for a period of one hundred fifty days (150) after the purchase of the Rights to Eastern's RFP Proposal; and (4) at purchaser's option, airspace disposal rights for up to a twenty-year time period at Eastern's Waverly, VA landfill, pursuant to which defendants will sell rights to dispose of up to 4,000 tons of average daily waste pursuant to any contract award under the New York City RFP, on the terms and conditions specified in the Waste Disposal Agreement, dated December 29, 1998, between Atlantic Waste Disposal, Inc. and Republic Services, Inc.

D. "Relevant Disposal Assets" means, with respect to each landfill or transfer station listed and described herein: (1) all tangible assets, including all fee and leasehold and renewal rights in the listed landfill or transfer station; the garage and related facilities; offices; and

landfill- or transfer station-related assets including capital equipment, trucks and other vehicles, scales, power supply equipment, interests, permits, and supplies; and (2) all intangible assets of the listed landfill or transfer station, including customer lists, contracts, and accounts, or options to purchase any adjoining property.

Relevant Disposal Assets, as used herein, includes each of the following properties:

1. Landfills

a. Allegheny County, Pennsylvania

Eastern's Kelly Run Sanitation Landfill, located at State Route 51 South, Elizabeth, Pennsylvania 15037, and known as the Kelly Run Landfill (and includes the waste disposal agreement between Chambers Development Company, Inc. and William H. Martin, Inc. and Eastern Environmental Services, Inc. and Kelly Run Sanitation, Inc., dated 1997);

b. Bethlehem/Allentown, Pennsylvania

Eastern's Eastern Waste of Bethlehem Landfill, located at 2335 Applebutter Road, Bethlehem, Pennsylvania 18015, and known as the Bethlehem Landfill; and

c. Chambersburg-Carlisle, Pennsylvania

Eastern's R&A Bender Landfill located at 3747 White Church Road, Chambersburg, Pennsylvania 17201(also known as the Bender Landfill).

2. Transfer Stations

New York, New York

a.. Eastern's PJ's Transfer Station located at 222 Morgan Avenue, Brooklyn, New York 11237 (also known as the Morgan Avenue Transfer Station);

b. Eastern's Atlantic Waste Transfer Station located at 110-120 50th Street, Brooklyn, New York 11232 (also known as the Atlantic Transfer Station); and

c. Waste Management's Vacarro Transfer Station, located at 577 Court Street, Brooklyn, NY 11231 (also known as the Court Street Transfer Station); and Waste Management's Gesuale Transfer Station, located at 38-50 Review Avenue, Queens, NY 11101 (also known as the Review Avenue Transfer Station), only one of which must be sold pursuant to the terms of Sections IV or V of this Final Judgment.

E. "Relevant Hauling Assets" means with respect to each commercial route or other hauling asset described herein: (1) all tangible assets, including capital equipment, trucks and other vehicles, containers, interests, permits, and supplies [except real property and improvements to real property (*i.e.*, buildings)]; and (2) all intangible assets, including hauling-related customer lists, contracts, and accounts.

Relevant Hauling Assets, as used herein, includes each of the following assets:

1. Scranton, Pennsylvania

Waste Management's front-end loader truck ("FEL") commercial routes servicing Luzerne and Lackawanna County, Pennsylvania;

2. Franklin/Adams/Cumberland Counties, Pennsylvania

Eastern's FEL commercial routes servicing Franklin, Adams and Cumberland Counties, Pennsylvania;

3. Broward County, Florida

Eastern's FEL commercial routes servicing Broward County, Florida;

4. Dade County, Florida

Eastern's FEL commercial routes servicing portions of Dade County, Florida;

5. Hillsborough County, Florida

Eastern's Kimmins Recycling Corporation FEL commercial routes servicing the unincorporated (and grandfathered incorporated) areas of Hillsborough County, Florida

solid waste service area, more specifically defined in RFP#C-277-96, Hillsborough County Board of County Commissioners documents 96-2393, as modified by 97-1913.

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

G. "Waste" means municipal solid waste.

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

I. “Relevant Area” means the county in which the Relevant Hauling Assets or Relevant Disposal Assets are located, or with respect to the Rights to Eastern’s RFP Proposal, New York, New York.

J. “Relevant State” means the state in which the Relevant Disposal Assets or Relevant Hauling Assets are located.

III.

APPLICABILITY

A. The provisions of this Final Judgment apply to defendants, their successors and assigns, subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Waste Management shall require, as a condition of the sale or other disposition of all or substantially all of its assets, or of a lesser business unit that includes defendants’ hauling or disposal business in any Relevant Area, that the acquiring party agree to be bound by the provisions of this Final Judgment.

IV.

DIVESTITURES

A. In the event that Waste Management acquires Eastern, defendants are hereby ordered and directed in accordance with the terms of this Final Judgment, within one hundred and

twenty (120) calendar days after the filing of the Hold Separate Stipulation and Order in this case, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to:

(1) Sell the Relevant Disposal Assets (excluding the Gesuale and Vaccaro transfer stations defined in Section II(D)(2)(c) hereof) and the Relevant Hauling Assets as viable, ongoing businesses to a purchaser or purchasers acceptable to the United States in its sole discretion, after consultation with the Relevant State; and

(2) Offer to sell both the Gesuale Transfer Station and the Vacarro Transfer Station, defined in Section II(D)(2)(c) hereof, and at Waste Management's sole election, sell either one of these two transfer stations to a purchaser or purchasers acceptable to the both United States and the State of New York, in their sole discretion, but subject to the standard set forth in Section IV(J) of the Final Judgment.

B. In the event that Waste Management acquires Eastern, defendants are hereby ordered and directed in accordance with the terms of this Final Judgment, to sell by January 18, 1999, the Rights to Eastern's RFP Proposal to Republic Services, Inc. or any other purchaser acceptable to both the United States and the State of New York, in their sole discretion.

C. Defendants shall use their best efforts to accomplish the divestitures as expeditiously and timely as possible. The United States, in its sole discretion, after consultation with the Relevant State -- or with respect to the Rights to Eastern's RFP Proposal, both the

United States and the State of New York jointly, in their sole discretion -- may extend the time period for any divestiture an additional period of time not to exceed sixty (60) calendar days.

D. In accomplishing the divestitures ordered by this Final Judgment, Waste Management promptly shall make known, by usual and customary means, the availability of the Relevant Disposal Assets and the Relevant Hauling Assets. Waste Management 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. Waste Management shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all information regarding the Relevant Disposal Assets, the Relevant Hauling Assets, and the Rights to Eastern's RFP Proposal customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Waste Management shall make available such information to the plaintiffs at the same time that such information is made available to any other person.

E. Defendants shall not interfere with any negotiations by any purchaser to employ any Waste Management (or former Eastern) employee (with the exception of Louis D. Paolino, Jr. or Robert M. Kramer) who works at, or whose principal responsibility concerns, any disposal or hauling business that is part of the Relevant Disposal Assets, the Relevant Hauling Assets, or the Rights to Eastern's RFP Proposal.

F. Waste Management shall permit prospective purchasers of the Relevant Disposal Assets, Relevant Hauling Assets, or Rights to Eastern's RFP Proposal to have access to personnel and to make such inspection of such 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.

G. With the exception of the assets listed in Sections II(D)(2)(a) and (c), Waste Management shall warrant to any and all purchasers of the Relevant Disposal Assets or Relevant Hauling Assets that each asset will be operational on the date of sale.

H. Waste Management shall not take any action, direct or indirect, that will impede in any way the permitting or operation of the Relevant Disposal Assets or Relevant Hauling Assets, or take any action, direct or indirect, that will impede in any way the permitting of any facility to be built or used pursuant to an award by New York City relating to the Rights to Eastern's RFP Proposal.

I. Waste Management shall warrant to the purchaser of the Relevant Disposal Assets or Relevant Hauling Assets that with the exception of the assets listed in Sections II(D)(2)(a) and (c), there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that with respect to all Relevant Disposal Assets or Relevant Hauling assets, Waste Management will not undertake, directly or indirectly, following the divestiture of each asset, any challenges to the environmental, zoning, or other permits pertaining to the operation of the asset.

J. Unless the United States, after consultation with the Relevant State, otherwise consents in writing, the divestitures pursuant to Section IV, whether by defendants or by trustee appointed pursuant to Section V of this Final Judgment, shall include all Relevant Disposal Assets, Relevant Hauling Assets, and Rights to Eastern's RFP Proposal and be accomplished by selling or otherwise conveying each asset to a purchaser in such a way as to satisfy the United States, in its sole discretion, after consultation with the Relevant State -- or with respect to the Rights to Eastern's RFP Proposal or Vacarro or Gesuale transfer stations [Section II(D)(2)(c)], in such a way as to satisfy both the United States *and* the State of New York -- that the Relevant Disposal Assets or the Relevant Hauling Assets can and will be used by the purchaser as part of a viable, ongoing business or businesses engaged in waste disposal or hauling, or with respect to the Rights to Eastern's RFP Proposal, in such a way as to satisfy both the United States *and* the

State of New York, in their sole discretion, that the purchaser will use its best efforts to compete for a contract award under the New York City RFP. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser or purchasers for whom it is demonstrated to the United States's sole satisfaction, after consultation with the Relevant State -- or with respect to the Rights to Eastern's RFP Proposal or Vacarro or Gesuale transfer stations [Section II(D)(2)(c)], for whom it is demonstrated to both the United States's *and* the State of New York's sole satisfaction -- that the purchaser: (1) has the capability and intent of competing effectively in the waste disposal or hauling business in the Relevant Area; (2) has or soon will have the managerial, operational, and financial capability to compete effectively in the waste disposal or hauling business in the Relevant Area; and (3) is not hindered by the terms of any agreement between the purchaser and Waste Management which gives Waste Management the ability unreasonably to raise the purchaser's costs, lower the purchaser's efficiency, or otherwise interfere in the ability of the purchaser to compete effectively in the Relevant Area.

K. Defendants shall not institute any action to challenge the sale or assignment of the Rights to Eastern's RFP Proposal pursuant to the terms of this Final Judgment, and defendants shall not challenge, on the basis of such sale or assignment, the New York City Department of Sanitation's consideration of such proposal, as sold or assigned, or the New York City Department of Sanitation's award to a purchaser or assignee of such proposal under the New York City RFP. If any legal action is commenced against such sale or assignment, defendants shall support in that action the sale or assignment of the Rights to Eastern's RFP Proposal.

L. The United States and the State of New York shall file a joint motion with Waste Management to modify the pending Final Judgment in *United States v. USA Waste Services, Inc.*, Civ. No. 98 CV 1616 (N.D. Ohio, filed June 16, 1998), to remove from that Judgment the

contingent divestiture of Waste Management's Brooklyn Transfer Station, located at 485 Scott Avenue, Brooklyn, NY 12222 (also known as the Scott Avenue Transfer Station).

V.

APPOINTMENT OF TRUSTEE

A. In the event that Waste Management has not sold the Relevant Disposal Assets, the Relevant Hauling Assets, or the Rights to Eastern's RFP Proposal within the time period specified in Section IV of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by the United States (or with respect to the Rights to Eastern's RFP Proposal and Gesuale or Vacarro transfer station, a trustee selected by both the United States *and* the State of New York jointly), to effect the divestiture of each such asset not sold; *provided, however*, that if Waste Management has a definitive agreement to sell either Vacarro or Gesuale transfer station to a purchaser approved by both the United States and the State of New York under the Final Judgment, but the sale of the transfer station cannot be consummated because of Waste Management's or the purchaser's inability to obtain regulatory approval for a change of control of or approval to operate the transfer station, then, as long as such inability persists, a trustee shall not be appointed with respect to the sale of either Vacarro or Gesuale transfer station; and *provided further* that if the inability to obtain such regulatory approval persists for one year or more after the signing of a definitive agreement to sell the transfer station and approval of the proposed purchaser by both the United States and the State of New York, Waste Management may request that the United States and the State of New York select -- or both the United States and the State of New York may on their own jointly select -- a trustee to effect the sale of Gesuale Transfer Station, and at the time such request or joint selection is made any obligation to sell Vacarro Transfer Station shall terminate.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Relevant Disposal Assets, Relevant Hauling Assets, or Rights to Eastern's

RFP Proposal described in Sections II(C), (D) and (E) of this Final Judgment. The trustee shall have the power and authority to accomplish any and all divestitures at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV and VIII of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. With respect to the Rights to Eastern's RFP Proposal, the trustee shall have the power to offer to sell the airspace disposal rights option on the terms specified in the Waste Disposal Agreement, dated December 29, 1998, between Atlantic Waste Disposal, Inc. and Republic Services, Inc. Subject to Section V(C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Waste Management any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestitures, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestitures at the earliest possible time to a purchaser or purchasers acceptable to the United States, upon consultation with the Relevant State [except that the sale of the Rights to Eastern's RFP Proposal or the sale of Vaccaro or Gesuale transfer station shall be made to a purchaser or purchasers acceptable to both the United States *and* the State of New York], and shall have such other powers as this Court shall deem appropriate. Waste Management shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by Waste Management must be conveyed in writing to the relevant plaintiffs and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. The trustee shall serve at the cost and expense of Waste Management, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of each asset 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 Waste Management 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 business and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Waste Management shall use its best efforts to assist the trustee in accomplishing the required divestitures, including best efforts to effect all necessary regulatory approvals. 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 businesses to be divested, and Waste Management shall develop financial or other information relevant to the businesses to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. Waste Management shall permit bona fide prospective acquirers of each Relevant Disposal Asset, Relevant Hauling Asset, or the Rights to Eastern's RFP Proposal to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and other information as may be relevant to the divestitures required by this Final Judgment.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestitures ordered under this Final Judgment; provided, however, that 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 business to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the businesses to be divested.

F. If the trustee has not accomplished such divestitures within six (6) 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; provided, however, that 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 enter thereafter 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, or with respect to the Rights to Eastern's RFP Proposal and Vacarro or transfer station Gesuale, requested by both the United States and the State of New York.

VI.

NOTIFICATION

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Sections IV or V of this Final Judgment, Waste Management or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiffs of the proposed divestiture. If the trustee is responsible, it shall similarly notify Waste Management. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the business to be divested that is the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiffs of such notice, the United States, in its sole discretion, after consultation with the Relevant State -- or with respect to the Rights to Eastern's RFP Proposal or the sale of Vacarro or Gesuale transfer station [Section II(D)(2)(c)], both the

United States *and* the State of New York jointly, in their sole discretion -- may request from Waste Management, the proposed purchaser, or any other third party additional information concerning the proposed divestiture and the proposed purchaser. Waste Management 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. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after plaintiffs have been provided the additional information requested from Waste Management, the proposed purchaser, and any third party, whichever is later, the United States, after consultation with the Relevant State -- or with respect to the Rights to Eastern's RFP Proposal or the sale of Vaccaro or Gesuale transfer station, both the United States *and* the State of New York jointly -- shall provide written notice to Waste Management and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States (or with respect to the Rights to Eastern's RFP Proposal and Vacarro or Gesuale transfer station, both the United States *and* the State of New York jointly) provide written notice to Waste Management and the trustee that it does not object, then the divestiture may be consummated, subject only to Waste Management's limited right to object to the sale under Section V(B) of this Final Judgment. Upon objection by the United States (or with respect to the Rights to Eastern's RFP Proposal and Vacarro or Gesuale transfer station, both the United States *and* the State of New York), a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Waste Management under the provision in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII.

AFFIDAVITS

A. Within twenty (20) calendar days of the filing of the Hold Separate Stipulation and Order in this matter and every thirty (30) calendar days thereafter until the divestiture has been completed whether pursuant to Section IV or Section V of this Final Judgment, Waste Management shall deliver to plaintiffs an affidavit as to the fact and manner of compliance with Sections IV or V 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 businesses 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 Waste Management has taken to solicit a buyer for any and all Relevant Disposal Assets, Relevant Hauling Assets, or Rights to Eastern's RFP Proposal 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, after consultation with the Relevant State -- or with respect to the Rights to Eastern's RFP Proposal, and Vacarro or Gesuale transfer station, any objection by both the United States *and* the State of New York -- to information provided by Waste Management, 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 Hold Separate Stipulation and Order in this matter, Waste Management shall deliver to plaintiffs an affidavit which describes in detail all actions Waste Management has taken and all steps Waste Management has implemented on an on-going basis to preserve the Relevant Disposal Assets, Relevant Hauling Assets, and Rights to Eastern's RFP Proposal pursuant to Section VIII of this Final Judgment and the Hold Separate Stipulation and Order entered by the Court. The affidavit also shall

describe, but not be limited to, Waste Management's efforts to maintain and operate each Relevant Disposal Asset and Relevant Hauling Asset as an active competitor, maintain the management, staffing, sales, marketing and pricing of each asset, and maintain each asset in operable condition at current capacity configurations. Waste Management shall deliver to plaintiffs an affidavit describing any changes to the efforts and actions outlined in Waste Management's earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Until one year after such divestiture has been completed, Waste Management shall preserve all records of all efforts made to preserve the Relevant Disposal Assets, Relevant Hauling Assets, and Rights to Eastern's RFP Proposal and to effect the ordered divestitures.

VIII.

HOLD SEPARATE ORDER

Until the divestitures required by the Final Judgment have been accomplished, Waste Management 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 Disposal Assets, Relevant Hauling Assets, or the Rights to Eastern's RFP Proposal.

IX.

FINANCING

Waste Management is ordered and directed not to finance all or any part of any acquisition by any person made pursuant to Sections IV or V of this Final Judgment.

X.

COMPLIANCE INSPECTION

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

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, or upon written request of duly authorized representatives of the Attorney General's Office of any Relevant State, and on reasonable notice to Waste Management made to its principal offices, shall be permitted:

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

(2) Subject to the reasonable convenience of Waste Management and without restraint or interference from it, to interview, either informally or on the record, its officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, or upon the written request of the Attorney General's Office of any Relevant State, Waste Management shall submit such written reports, under oath if requested, with respect to any matter contained in the Final Judgment and the Hold Separate Stipulation and Order.

C. No information or documents obtained by the means provided in Sections VII or X of this Final Judgment shall be divulged by a representative of the plaintiffs to any person other than a duly authorized representative of the Executive Branch of the United States, or the Attorney General's Office of any Relevant State, except in the course of legal proceedings to which the United States or any Relevant State 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 Waste Management to plaintiffs, Waste Management 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 Waste Management 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 ten (10) calendar days notice shall be given by plaintiffs to Waste Management prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Waste Management is not a party.

XI.

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.

XII.

TERMINATION

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

XIII.

PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

Dated:

_____
United States District Judge

City Center Building
1401 H Street, NW
Washington, DC 20530

December 30, 1998

BY HAND

Jonathan L. Greenblatt, Esquire
Steven C. Sunshine, Esquire
Michael Strub, Jr., Esquire
Shearman & Sterling
801 Pennsylvania Avenue, NW
Washington, D.C. 20004-2604

Re: *United States v. Waste Management, Inc.* (E.D.N.Y., filed Nov. 17, 1998)

Dear Messrs. Greenblatt and Sunshine:

As we discussed this morning, you have requested that Donald Chappel be substituted for Robert Donno in Section V(J) of the proposed Final Judgment as the interim trustee for the Rights to Eastern's RFP Proposal. In consideration for our agreeing to that request, you have agreed that Waste Management will not disclose to Mr. Chappel, nor will Mr. Chappel otherwise undertake to view, any proposal submitted by Eastern in response to the New York City RFP, or any material related thereto, during the interim period covered in Section V(J), without receiving prior written approval from both the United States and the State of New York.

To the extent Mr. Chappel receives any RFP Confidential information as defined in Section I(G) of the Protective Order Governing Designation and Use of Confidential Materials (the "Protective Order") entered in this case -- whether or not that information specifically has been marked as RFP Confidential -- he will be bound by the terms of the Protective Order.

Sincerely yours,

Anthony E. Harris
Attorney
Litigation II Section

Reviewed and Agreed By:

_____
Steven C. Sunshine, Esquire

_____
Richard E. Grimm, Esquire

City Center Building
1401 H Street, NW
Washington, DC 20530

December 30, 1998

FACSIMILE TRANSMITTAL

Steven C. Sunshine, Esquire
Shearman & Sterling
801 Pennsylvania Avenue, NW
Washington, D.C. 20004-2604

Re: *United States v. Waste Management, Inc.*, No. 98 CV 7168 (FB)(MDG)
(E.D.N.Y., filed Nov. 17, 1998)

Dear Mr. Sunshine:

You have asked for the United States's and the State of New York's joint interpretation of the following portion of Section VI of the proposed Final Judgment that the parties signed earlier today to settle the above captioned litigation:

> Within fifteen (15) calendar days of receipt by plaintiffs of such notice . . . or with respect to the Rights to Eastern's RFP proposal or the sale of Vacarro or Gesuale transfer station [Section II(D)(2)(c)], both the United States and the State of New York jointly, in their sole discretion--may request from Waste Management, the proposed purchaser, or any other third party information concerning the proposed divestiture and the proposed purchaser.

In our negotiations we have modified the language of the proposed decree by adding the words "both" and "jointly" to make clear that any request for information involving the RFP or the Vacarro or Gesuale transfer stations must be a joint request from New York and the Antitrust Division. Since a request continues until such time as it is answered, it can effectively be withdrawn by either New York or the Antitrust Division withdrawing the request--under the decree, such action would mean that there was no ongoing "joint" request for additional information.

Sincerely yours,

J. Robert Kramer II
Chief, Litigation II Section

Reviewed and Agreed:

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Richard E. Grimm, Esquire
State of New York