

ORIGINAL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

FILED

MAR - 9 1998

NANCY DOHERTY, CLERK
By Carles
Deputy

UNITED STATES OF AMERICA and
STATE OF TEXAS,

Civil Action
No.: 497-CV 564 E

Plaintiffs,

Entered: March 9, 1998

v.

ALLIED WASTE INDUSTRIES, INC.

Defendant.

FINAL JUDGMENT

WHEREAS, plaintiffs, United States of America ("United States") and the State of Texas ("Texas"), having filed their Complaint herein on July 11, 1997, and Amended Complaint on July 29, 1997, and plaintiffs and defendant Allied Waste Industries, Inc. ("Allied"), by its 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 WHEREAS, defendant Allied has agreed to be bound by the provisions of this Final Judgment pending its approval by the Court:

AND WHEREAS, prompt and certain divestiture of certain assets to assure that competition is not substantially lessened is the essence of this agreement;

RECORDED
3-13-98

AND WHEREAS, the parties intend to require Allied to divest Airspace Assets as specified herein;

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

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

I

JURISDICTION

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. 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. "Allied" means defendant Allied Waste Industries, Inc., a Delaware corporation with its headquarters in Phoenix, Arizona, and its successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents and employees.

B. "USA Waste" means USA Waste Services, Inc., a Delaware corporation with its headquarters in Houston, Texas, and its

successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents and employees.

C. "Tarrant County Area" means the Texas counties of Tarrant, Johnson and Denton.

D. "Crow Landfill" means that landfill also known as the Fort Worth Landfill and located in Tarrant County at 7797 Confederate Park Road, Fort Worth, Texas 76108.

E. "Turkey Creek Landfill" means that landfill located in Johnson County at Interstate 35 West and Exit 21, P.O. Drawer 0, Alvarado, Texas 76009.

F. "Airspace Assets" means the assets to be divested by Allied in this Final Judgment. The term means the right to dispose (1) over a five-year period, beginning on the date of the divestiture, or the life of the Crow Landfill, whichever is longer, of up to a total of 880,000 cubic yards of waste, measured at the gate house, at the Crow Landfill, and (2) over a ten-year period, beginning on the date of the divestiture, of up to a total of 560,000 cubic yards of waste at the Turkey Creek Landfill. The disposal volumes specified at each landfill shall be subject to modification in accordance with the provisions of Sections IV.D(3) and IV.D(4) herein. The aggregate airspace rights at the Crow Landfill and the Turkey Creek Landfill may be divided and sold to separate purchasers. In addition, the airspace rights at each landfill may be sold to more than one purchaser. In any single year, the purchaser(s) of the airspace rights may not dispose of more than the Maximum Annual Disposal amount specified in Section II.G.

G. "Maximum Annual Disposal" means the maximum amount the purchaser of the airspace rights may dispose of in one year at the Crow or Turkey Creek Landfills under an agreement to purchase Airspace Assets. Based on the total cubic yards specified in Section II.F, the "Maximum Annual Disposal" is 275,000 cubic yards at the Crow Landfill and 125,000 cubic yards at the Turkey Creek Landfill, plus any increases in the Airspace Assets due to the inclusion of additional space as required by Sections IV.B, IV.D(3) and IV.D(4). If more than one company purchases the Airspace Assets at the Crow Landfill, the Maximum Annual Disposal for each purchaser shall be specified in the respective purchase agreement, and the collective total of all purchasers' Maximum Annual Disposals at the Crow Landfill shall be no less than 275,000 cubic yards. If more than one company purchases the Airspace Assets at the Turkey Creek Landfill, the Maximum Annual Disposal for each purchaser shall be specified in the respective purchase agreement, and the collective total of all purchasers' Maximum Annual Disposals at the Turkey Creek Landfill shall be no less than 125,000 cubic yards.

H. "Independent Hauler" means any private company (other than Waste Management of North America, Inc. ("WMI"), Waste Management, Incorporated ("WMX") or Allied) or municipality that provides waste hauling service in the Tarrant County Area.

III

APPLICABILITY

A. The provisions of this Final Judgment apply to the defendant Allied, its successors and assignees, its subsidiaries, affiliates, 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. Allied shall require, as a condition of the sale or other disposition of all or substantially or all of its assets, or of a business unit that includes Allied's disposal business in the Tarrant County Area, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

IV

DIVESTITURE OF ASSETS AND OTHER TERMS

A. Allied is hereby ordered and directed, within one hundred twenty (120) days from the filing of the Complaint in this matter, or within five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Airspace Assets as specified in Section II.F to a firm which is acceptable to the United States, in its sole determination, after consultation with Texas. Allied is further ordered and directed to notify plaintiffs in writing immediately when they have completed the divestitures.

B. Following the date of divestiture, Allied shall maintain detailed records, subject to inspection by the United States and Texas in accordance with the provisions of Section IX.

C. If Allied closes the Crow Landfill during the term of any agreement to purchase Airspace Assets applicable to the Crow Landfill, Allied shall meet its obligations under each purchase agreement for Airspace Assets by providing equivalent space at the Turkey Creek Landfill. The space at the Turkey Creek Landfill shall be provided under the same terms and conditions which were previously available to the purchaser(s) at the Crow Landfill, or, at the purchaser's option, under those disposal terms and conditions previously available to the purchasers of the Airspace Assets at the Turkey Creek Landfill.

D. Allied is hereby ordered and directed to comply with the following obligations:

(1) Assurance of Space Letters. Allied will supply, in a timely manner, any Independent Hauler with a letter assuring a municipality that the hauler can dispose of that municipality's waste in Allied's Crow or Turkey Creek Landfills.

(2) Nondiscrimination. Allied agrees that (a) for any hauler or municipality it has agreed to accept waste from at either the Crow or Turkey Creek Landfills, and (b) for each purchaser of Airspace Assets or such persons designated by the purchaser to dispose of waste at the Crow or Turkey Creek Landfills, it will operate that landfill, gate, scale house, and disposal area under terms and conditions no less favorable than those provided to

Allied's vehicles or to the vehicles of any municipality in the Tarrant County Area, except as to price and credit terms.

(3) *Additional Airspace Assets.* If Allied obtains a permit within ten years to expand the Crow Landfill or to develop a new landfill adjacent to the Crow Landfill, it agrees to sell 20% of the expanded capacity to the existing Airspace Assets purchaser(s) at rates agreed to in the original purchase agreement for airspace assets. If the purchaser(s) does not buy the Additional Airspace Assets, Allied agrees to offer those assets for sale in the same manner it sold the original Airspace Assets.

(4) *Airspace Asset Minimums.* The amounts of waste to be divested under the sale of the Airspace Assets are minimums and are based on cubic yards measured at the gate. If the actual remaining capacity at the Crow Landfill is greater than the original estimate of 4.4 million gate yards, Allied shall offer to sell (a) at the Crow Landfill, 20% of the remaining disposal capacity in excess of 4.4 million gate yards, and (b) at the Turkey Creek Landfill, 10% of the remaining disposal capacity in excess of 4.4 million gate yards, to the purchaser(s) of the Airspace Assets at the rates and terms specified in each purchase agreement for the Airspace Assets.

(5) *Approval.* Allied will not re-purchase any portion of the Airspace Assets without approval from the Department of Justice, in its sole determination, after consultation with Texas.

E. As part of the sale of the Airspace Assets, Allied will include an agreement to accept waste from each purchaser or such persons designated by the purchaser to dispose of waste at the Crow Landfill or the Turkey Creek Landfill.

F. Unless the United States, after consultation with Texas, otherwise consents in writing, divestiture under Section IV.A. or by the trustee appointed pursuant to Section V, shall be accomplished in such a way as to satisfy the United States, in its sole determination after consultation with Texas, that the Airspace Assets can and will be used by the purchaser as part of a viable, ongoing business engaged in solid waste disposal in the Tarrant County Area. The divestiture made by Allied under Section IV.A or by the trustee under Section V.A shall be made (1) to a purchaser or purchasers that, in the sole judgment of the United States, has or have the capability and intent of competing effectively in the Tarrant County Area, and (2) has or have the managerial, operational, and financial capability to compete effectively in solid waste disposal in the Tarrant County Area.

G. In accomplishing the divestitures ordered by this Final Judgment, Allied promptly shall make known, by usual and customary means, the availability of the Airspace Assets described in this Final Judgment. Allied 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. Allied shall also

offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all information regarding the Airspace Assets customarily provided in a due diligence process except such information subject to attorney-client or work-product privileges. Allied shall make available such information to plaintiffs at the same time such information is made available to any other person. In giving notice of the availability of the Airspace Assets, Allied shall not exclude any persons bound by any non-compete obligations to Allied or USA Waste.

H. Allied shall waive any non-compete obligation that would prohibit any person from acquiring the Airspace Assets.

I. Allied shall take all reasonable steps to accomplish quickly the divestiture contemplated by this Final Judgment.

J. Pursuant to its divestiture of the Airspace Assets, Allied shall promptly advise the United States and Texas of its method for determining capacity at the Crow Landfill and for informing purchaser(s) expeditiously of any increase in the Airspace Assets as specified in Section IV.D(4). The proposed method shall be subject to the approval of the United States, in its sole determination, after consultation with Texas.

APPOINTMENT OF TRUSTEE

A. In the event that Allied has not divested all of the assets required by Section IV.A, within the applicable time period specified, the Court shall appoint, on application of the United States, after consultation with Texas, a trustee selected by the United States to effect the divestiture required by Section IV.A. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the assets required to be divested pursuant to Section IV.A. Subject to Sections V.B and VI of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Allied any investment banker, attorneys or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals or agents shall be solely accountable to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Section VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to the United States, in its sole judgment after consultation with Texas. Allied shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance.

Any such objections by Allied must be conveyed in writing to plaintiffs and the trustee within ten (10) days after the trustee has provided the notice required under Section VI.

B. The trustee shall serve at the cost and expense of Allied, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services, all remaining money shall be paid to Allied and the trust shall then be terminated. The compensation of such trustee shall be reasonable 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.

C. Allied shall use its best efforts to assist the trustee in accomplishing the required divestiture. Subject to a customary confidentiality agreement, 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 divestiture assets, and Allied shall develop financial or other information relevant to such assets as the trustee may reasonably request. Allied shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

D. After its appointment becomes effective, the trustee shall file monthly reports with the parties and the Court setting

forth the trustee's efforts to accomplish the divestiture 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, the Airspace Assets, and shall describe in detail each contact with any person during that period. The trustee shall maintain full records of all efforts made to divest the Airspace Assets.

E. If the trustee has not accomplished such divestiture within six months after its appointment becomes effective, the trustee shall thereupon 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, 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 Final Judgment. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out

the purpose of the Final Judgment, which shall, if necessary, include extending the trust and the term of the trustee's appointment.

VI

NOTIFICATION

A. Within two (2) business days following execution of a binding agreement to divest, including all contemplated ancillary agreements required to effect any proposed divestiture pursuant to Section IV or V of the Final Judgment, Allied or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify plaintiffs of the proposed divestiture. If the trustee is responsible, it shall similarly notify Allied. 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 or expressed an interest or desire to acquire any ownership interest in the Airspace Assets or any of them, together with full details of the same. Within fifteen (15) days after receipt of the notice, plaintiffs may request from Allied, the proposed purchasers, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed purchaser or purchasers, and any other potential purchaser. Allied or the trustee shall furnish the additional information within fifteen (15) days of the receipt of the request. Within thirty (30) days after receipt of the notice or within fifteen (15) days after

receipt of the additional information, whichever is later, the United States, after consultation with Texas, shall notify in writing Allied and the trustee, if there is one, if it objects to the proposed divestiture. If the United States fails to object within the period specified, or if the United States notifies in writing Allied and the trustee, if there is one, that it does not object, then the divestiture may be consummated, subject only to Allied's limited right to object to the sale under Section V.A. Upon objection by Allied under Section V.A, a divestiture proposed shall not be consummated unless approved by the Court.

B. Thirty (30) days from the date when the sale of the Crow Landfill from USA Waste to Allied is consummated, but in no event later than August 30, 1997, and every thirty (30) days thereafter until the divestiture has been completed, Allied shall deliver to plaintiffs an affidavit as to the fact and manner of compliance with Sections IV and V of this Final Judgment. Each such report shall include, for each person who during the preceding thirty (30) days made an offer, expressed an interest or desire to acquire, entered into negotiations to acquire, or made an inquiry about acquiring any ownership interest in the Airspace Assets or any of them, the name, address, and telephone number of that person and a detailed description of each contact with that person during that period. Allied shall maintain full records of all efforts made to divest the Airspace Assets or any of them.

VII

FINANCING

Allied shall not finance all or any part of any purchase made pursuant to Sections IV or V of this Final Judgment without the prior written consent of the United States, after consultation with Texas.

VIII

PRESERVATION OF ASSETS

Until the divestitures required by the Final Judgment have been accomplished, Allied shall take all steps necessary to ensure that the Airspace Assets are fully maintained in operable condition, and shall maintain and adhere to normal or previously approved repair, improvement, and maintenance schedules and comply with all federal and state regulations concerning landfills. Allied shall also take no action that would jeopardize the sale of the Airspace Assets. Allied shall appoint a person with oversight responsibility for the preservation of assets to insure compliance with this section of the Final Judgment.

IX

COMPLIANCE INSPECTION

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

A. Duly authorized representatives of the United States or Texas, including consultants and other persons retained by the plaintiffs, shall, upon the written request of the Assistant Attorney General in charge of the Antitrust Division or the Attorney General of the State of Texas, and on reasonable notice to Allied made to its principal offices, be permitted:

1. access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Allied, which may have counsel present, relating to any matters contained in this Final Judgment; and

2. subject to the reasonable convenience of Allied and without restraint or interference from them, to interview, either informally or on the record, Allied's directors, officers, employees, and agents who may have counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division or the Attorney General of the State of Texas made to Allied and USA Waste at its principal offices, defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information nor any documents obtained by the means provided in this Section IX shall be divulged by any representative of the United States or the Office of the Attorney

General of Texas to any person other than a duly authorized representative of the Executive Branch of the United States or of the Office of the Attorney General of Texas except in the course of legal proceedings to which the United States or Texas 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 Allied to plaintiffs, Allied represents and identifies in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and 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 plaintiffs shall give ten (10) days notice to Allied prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Allied is not a party.

X

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, implementation, or modification of any of the provisions of this Final Judgment, for the enforcement of compliance herewith, and

for the punishment of any violations hereof.

XI

TERMINATION

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

XII

PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

Dated:

March 9, 1998

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


United States District Judge