

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

JAN 25 1996

NANCY MAYER-WHITTINGTON, CLERK
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)

and)

STATE OF FLORIDA,)
by and through)
its Attorney General,)

Plaintiffs,)

v.)

REUTER RECYCLING OF)
FLORIDA, INC., and)
WASTE MANAGEMENT INC. OF)
FLORIDA,)

Defendants.)

CIVIL ACTION NO.:

95 1982

Filed:

Entered: January 22, 1996

FINAL JUDGMENT

WHEREAS Plaintiffs, United States of America (hereinafter "United States") and the State of Florida (hereinafter "Florida"), having filed their Complaint in this action on October 20, 1995, and Plaintiffs and Defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law; and without this Final Judgment constituting any evidence or admission by any party with respect to any issue of fact or law;

AND WHEREAS, Defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the Plaintiffs intend Defendants to be required

to preserve competition for solid waste disposal by honoring certain contracts, as amended, and by giving to a competitor an option to purchase real property capable of being used as a municipal solid waste transfer station to preserve competition in solid waste disposal in Dade and Broward Counties, Florida, now and in the future, and, by permitting a competitor to preserve its ability to compete for and to have access to capacity for sufficient volumes of municipal solid waste to remain a viable solid waste disposal competitor while it seeks another transfer station site;

AND WHEREAS, Defendants have represented that the contract changes and the option agreement to purchase real estate described below can and will be made and honored and that Defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below;

NOW, THEREFORE, before any testimony is taken, 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 as follows:

I.

JURISDICTION

This Court has jurisdiction of 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 Defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

II.

DEFINITIONS

As used in this Final Judgment:

(A) "Broward" means Broward County, Florida.

(B) "Chambers" means Chambers Waste Systems of Florida, Inc., a subsidiary of USA Waste Services, Inc. Chambers is a corporation organized and existing under the laws of the State of Florida with its principal offices in Okeechobee, Florida.

(C) "Dade" means Dade County, Florida.

(D) "Defendants" means Reuter and WMF, as hereinafter defined.

(E) "Reuter" means defendant Reuter Recycling of Florida, Inc. Reuter is a corporation organized and existing under the laws of the State of Florida with its principal offices in Pembroke Pines, Florida.

(F) "Solid waste disposal service" means the final disposal of municipal solid waste, generally in a landfill or incineration facility.

(G) "Transfer Station Agreement" means the agreement between Reuter and Chambers dated as of July 14, 1993 pursuant to which Reuter, among other things, accepts for transfer certain solid waste material delivered by Chambers or Chambers' subcontractors. A copy of the Transfer Station Agreement is attached as Exhibit A.

(H) "Amendment to Transfer Station Agreement" means the Agreement between Reuter and Chambers dated October 20, 1995 modifying the Transfer Station Agreement. A copy of the Amendment to Transfer Station Agreement is attached as Exhibit B.

(I) "Option Agreement" means the Agreement between Reuter and Chambers dated October 20, 1995. A copy of the Option Agreement is attached as Exhibit C.

(J) "WMF" means defendant Waste Management Inc. of Florida, a subsidiary of Waste Management, Inc. WMF is a corporation organized and existing under the laws of the State of Florida with its principal offices in Pompano Beach, Florida.

(K) "Acquisition" means the acquisition of the majority of the outstanding stock of Reuter by WMF.

(L) "Reuter Transfer Station" means the facility owned by Reuter and located at 2079 Pembroke Road, Pembroke Pines, FL which currently, among other things, accepts for transfer certain solid waste material delivered by Chambers or Chambers' subcontractors and also accepts waste from the cities of Pompano Beach, Pembroke Pines, Dania, and Hallandale, FL.

III.

APPLICABILITY

This Final Judgment applies to Defendants and to their officers, directors, managers, agents, employees, successors, assigns, affiliates, parents and subsidiaries, and to 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. Nothing contained in this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

IV.

ENTRY INTO AND COMPLIANCE WITH AGREEMENTS

On or before the date the Acquisition is consummated, Reuter shall enter into the Amendment to Transfer Station Agreement and the Option Agreement. Defendants shall be bound by the terms of the Transfer Station Agreement, as modified by the Amendment to Transfer Station Agreement, and the Option Agreement. Defendants shall not convey to any person other than Chambers, the property subject to the Option Agreement, prior to the later of July 14, 1998 or any extension of that Option Agreement, except as provided in the Option Agreement. Defendants shall not exercise their right to replace Chambers as the Facility operator under Paragraph 3f of the Amendment to Transfer Station Agreement without the prior approval of the United States, in consultation with Florida.

V.

TERMINATION OF THE AGREEMENTS

In the event Chambers has secured the right to use and is using another transfer station capable of serving Broward or Dade Counties prior to July 14, 1998, Defendants may notify Plaintiffs of that fact and Defendants may request in writing that they be relieved of the obligation to extend the term of the Transfer

Station Agreement as set forth in Paragraph 2 of the Amendment to Transfer Station Agreement, and of the obligation to convey property under the Option Agreement. The United States may grant one or both of Defendants' requests if it determines, in its sole discretion after consultation with Florida, that Chambers can effectively compete in the relevant markets without access to the Reuter Transfer Station or without access to the property subject to the Option Agreement.

VI.

INTERIM PRESERVATION OF VIABLE COMPETITION

(A) Defendants shall not enter into any contract or contracts, with any firm listed on Exhibit D, having a term in excess of one (1) year, or having multiple consecutive one (1) year terms, for the disposal of solid waste, where any such waste would be transported through the Reuter Transfer Station for disposal elsewhere. Exhibit D is a list of the customers of Chambers for whom Chambers uses the Reuter Transfer Station to enable it to dispose of solid waste as of the date this Final Judgment is filed ("Chambers Customers").

(B) Defendants' obligations under Paragraph VI.A. shall terminate upon the United States providing Defendants with written notice, following application by Defendants, that the United States, in its sole discretion after consultation with Florida, has determined that Chambers can compete effectively in the relevant market if Defendants are permitted to contract with

Chambers' Customers as proscribed in Paragraph VI.A. In any event, Paragraph VI.A. shall terminate on the date the Transfer Station Agreement, as amended by the Amendment to the Transfer Station Agreement, terminates.

(C) Nothing herein shall preclude Defendants from contracting with any of the Chambers' Customers for a period of one (1) year or less; or, for a period in excess of one (1) year where that customer's solid waste is not transported by Defendants, directly or indirectly, through the Reuter Transfer Station.

VII.

DEFENDANTS' OBLIGATIONS OF NONINTERFERENCE AND ASSISTANCE

In the event that Chambers seeks to permit a new transfer station or seeks access to a new or existing transfer station other than the Reuter Transfer Station, Defendants shall take no action to protest, lobby against, object to, or otherwise impede, directly or indirectly, any attempts by Chambers to lease, purchase, site, obtain appropriate zoning for, obtain permits and any and all other governmental approvals for a solid waste transfer station capable of serving Broward or Dade, nor shall Defendants provide financing or other assistance to any person who does so. Furthermore, from the effective date of the Option Agreement through the termination date of that Agreement, including any extensions thereof, Defendants will cooperate with Chambers' efforts to obtain any necessary government approvals on the property subject to the Option Agreement.

Notwithstanding the provisions of this Final Judgment, Defendants may bid on and enter into contracts with municipal or governmental entities for the provision or use of transfer station facilities in Dade and Broward.

VIII.

ACQUISITION OF THE OPTION PROPERTY

If the option to purchase under the Option Agreement is exercised, Defendants shall not, without prior written consent of the United States, after consultation with Florida, re-acquire any of the property conveyed pursuant to the Option Agreement.

IX.

REPORTING AND PLAINTIFFS' ACCESS

(A) To determine or secure compliance with this Final Judgment, duly authorized representatives of the Plaintiffs shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division or the Florida Attorney General or his duly authorized representative, respectively, on reasonable notice given to Defendants at their principal offices, subject to any lawful privilege, be permitted:

(1) Access during normal office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other documents and records in the possession, custody, or control of Defendants, which may have counsel present, relating to any matters contained in this Final Judgment.

(2) Subject to the reasonable convenience of

Defendants and without restraint or interference from them, to interview officers, employees, or agents of Defendants, who may have counsel present, regarding any matters contained in this Final Judgment.

(B) Upon written request of the Assistant Attorney General in charge of the Antitrust Division or the Florida Attorney General or his duly authorized representative, on reasonable notice given to Defendants at their principal offices, subject to any lawful privilege, Defendants shall submit such written reports, under oath if requested, with respect to any matters contained in this Final Judgment.

(C) No information or documents obtained by the means provided by this Section shall be divulged by the Plaintiffs to any person other than a duly authorized representative of the Executive Branch of the United States government or of the State of Florida, except in the course of legal proceedings to which the United States is a party, 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 Plaintiffs, Defendants represent and identify in writing the material in any such information or document to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,"

then ten days notice shall be given by Plaintiffs to Defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Defendants are not a party.

X.

FURTHER ELEMENTS OF JUDGMENT

(A) This Final Judgment shall expire on the tenth anniversary of the date of its entry.

(B) Jurisdiction is retained by this Court over this action and the parties thereto for the purpose of enabling any of the parties thereto 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 or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

XI.

PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

Plaintiffs' motion (unopposed) for entry of judgment is GRANTED

Entered: 1-22-96

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

Rayce C. Lankheit

UNITED STATES DISTRICT JUDGE