

salaries and benefits. Funding will begin once the new officers have been hired or on the date of the award, whichever is later, and will be paid over the course of the grant.

In hiring new officers with a COPS Universal Hiring Program grant, grantees must follow standard local recruitment and selection procedures. All personnel hired under this program will be required to be trained in community policing. In addition, all personnel hired under this program must be *in addition to*, and not in lieu of, other hiring plans of the grantees.

An award under the COPS Universal Hiring Program will not affect the eligibility of an agency for a grant under any other COPS program.

The Catalog of Federal Domestic Assistance reference number for this program is 16.710.

Dated: August 29, 1997.

Joseph E. Brann,

Director.

[FR Doc. 97-23986 Filed 9-9-97; 8:45 am]

BILLING CODE 4410-AT-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act and the Safe Drinking Water Act

Under 28 C.F.R. 50.7, notice is hereby given that on August 25, 1997, a proposed Consent Decree in *United States v. Bethlehem Steel Corp.*, Civil Action No. 2-96-096, was lodged with the United States District Court for the Northern District of Indiana.

In this action, the United States sought penalties and injunctive relief for claims under Section 301(a) of the Clean Water Act ("CWA"), 33 U.S.C. 1311(a), for unpermitted discharges of pollutants, and for claims under Section 1423 of the Safe Drinking Water Act, 42 U.S.C. 300h-2, for violation of underground injection control ("UIC") permits issued by EPA. The claims arose in connection with Bethlehem Steel Corporation's facility in Burns Harbor, Indiana. Under the Consent Decree, Bethlehem Steel Corporation will pay a civil penalty of \$441,300 and will perform injunction relief, including the continued operation and maintenance of a series of dewatering wells designed to prevent unpermitted discharges of pollutants, the reconstruction of a blast furnace slag quench basin, and the training of operators of its underground injection control wells.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree.

Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Bethlehem Steel Corp.*, D.J. Ref. No. 90-5-1-1-4271.

The Consent Decree may be examined at the Office of the United States Attorney, 1001 Main St., Suite A, Dyer, IN 46311, at the Region 5 Office of the United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL 60604-3590, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the above-referenced case and enclose a check in the amount of \$13.75 (\$.25 per page reproduction costs) payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97-23877 Filed 9-9-97; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Final Judgment and Competitive Impact Statement

United States v. USA Waste Services, Inc. et al.

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed Final Judgment, Stipulation and Order, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court in the Western District of Pennsylvania, Pittsburgh Division, Civil No. 97-1524.

On August 22, 1997, the United States filed a Complaint alleging that the proposed acquisition by USA Waste through Riviera of the voting stock of United Waste would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint further alleges that competition in providing disposal services to haulers of MSW generated in Allegheny County and competition in providing hauling of MSW generated in Allegheny County would be lessened by the acquisition. The proposed Final Judgment, filed the same time as the Complaint, requires USA Waste to divest the Kelly Run Landfill in Pittsburgh, Pennsylvania, which it will

obtain in connection with its acquisition of United Waste.

Public comment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to J. Robert Kramer, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530 (telephone: 202/307-0924).

Copies of the Complaint, Stipulation and Order, Hold Separate Stipulation and Order, Proposed Final Judgment, and Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, N.W., Washington, D.C. 20530, (202) 514-2481. Copies of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations.

United States District Court, Western District of Pennsylvania, Pittsburgh Division

United States of America, and Commonwealth of Pennsylvania Plaintiffs, v. USA Waste Services, Inc., Riviera Acquisition Corporation, and United Waste Systems, Inc. Defendants. Civil No.: 97-1524. Filed 8/22/97, Judge Ambrose.

Stipulation and Order

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the Western District of Pennsylvania.

2. The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiffs have not withdrawn their consent, which they may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

3. Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment, or until expiration of time for all appeals of any court ruling declining entry of the

proposed Final Judgment, and shall, from the date of the signing of this Stipulation., comply with all the terms and provisions of the proposed Final Judgment as though they were in full force and effect as an order of the Court.

4. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

5. In the event (a) plaintiffs have withdrawn their consent, as provided in paragraph 2 above, or (b) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

6. Defendants represent that the divestiture ordered in the proposed Final Judgment can and will be made, and that the defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

Dated: August 21, 1997.

For Plaintiff United States:

Frederick H. Parmenter,

U.S. Department of Justice, Antitrust Division, Litigation II Section, Suite 3000, Washington, D.C. 20530, (202) 307-0620.

Linda L. Kelly,

United States Attorney.

Amy Reynolds Hay,

Assistant United States Attorney, Western District of Pennsylvania.

For the Commonwealth of Pennsylvania Office of the Attorney General:

D. Michael Fisher,

Attorney General.

James A. Donahue, III,

Chief Deputy Attorney General, Antitrust Section.

Garrett F. Gallia,

Deputy Attorney General, Antitrust Section.

Attorneys for the Commonwealth of Pennsylvania:

14th Floor, Strawberry Square,
Harrisburg, Pennsylvania 17120,
(717) 787-4530

For Defendants USA Waste Services, Inc. and Riviera Acquisition Corporation:

James R. Weiss,

Preston, Gates, Ellis & Rouvelas Meeds, 1735 New York Avenue, N.W., Suite 500, Washington, D.C. 20530, (202) 662-8425.

For Defendant United Waste Systems, Inc. Ilene Knable Gotts,

Wachtell, Lipton, Rosen & Katz, 51 West 52d Street, New York, New York 10019-6150, (212) 403-1247.

Order

It is *so ordered*, this 22nd day of August, 1997.

Donetta Ambrose,

United States District Judge.

United States District Court, Western District of Pennsylvania, Pittsburgh Division

United States of America, and Commonwealth of Pennsylvania Plaintiffs, versus USA Waste Services, Inc., Riviera Acquisition Corporation, and United Waste Systems, Inc., Defendants. Civil No.: 97-1524. Filed: 8/22/97, Judge Ambrose.

Hold Separate Stipulation and Order

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I

Definitions

As used in this Hold Separate and Order:

A. "USA Waste" means defendant USA Waste Services, 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. "Riviera" means defendant Riviera Acquisition Corporation, a Delaware corporation which is a wholly owned subsidiary of USA Waste, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

C. "United" means defendant United Waste Systems, Inc., a Delaware corporation with its headquarters, in Greenwich, Connecticut, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

D. "Allegheny County" refers to Allegheny County, Pennsylvania.

E. "Kelly Run Sanitation" means Kelly Run Sanitation, Inc., which is a wholly owned subsidiary of United, and all assets excluding the hauling business, including:

1. All tangible assets, including all fee and all leasehold and renewal rights in a landfill located at Road #3, Route 51, Elizabeth, Pennsylvania 15037 (known as Kelly Run Landfill); the garage and related facilities; offices; and landfill-related assets including capital equipment, trucks and other vehicles, scales, power supply equipment, interests, permits, and supplies; and

2. All intangible assets, including landfill-related customer lists, contracts, and accounts.

F. "Hauling Business" means the Kelly Run Sanitation hauling-related assets, including:

1. All tangible assets, including capital equipment, trucks and other vehicles, interest, permits, supplies, and related facilities, except the garage and related facilities, located at Road #3, Route 51, Elizabeth, Pa. 15037; and

2. All intangible assets, including hauling-related customer lists, contracts, and accounts.

G. "Hauling" means the collection of nonhazardous solid waste from customers and the transporting of the collected waste to disposal sites.

H. "Waste Disposal Business" means the business of disposing of nonhazardous solid waste into Pennsylvania Department of Environmental Protection approved disposal sites.

II

Objectives

The Final Judgment filed in this case is meant to ensure USA Waste's prompt divestiture of Kelly Run Sanitation for the purpose of maintaining a viable competitor in the waste disposal business in Allegheny County to remedy the effects that the United States and the Commonwealth of Pennsylvania allege would otherwise result from USA Waste's proposed acquisition of United. This Hold Separate Stipulation and Order ensures, prior to such divestiture, that Kelly Run Sanitation which is being divested be maintained as an independent, economically viable, ongoing business concern, and that competition is maintained during the pendency of the divestiture.

III

Hold Separate Provisions

Until the divestiture required by the Final Judgment has been accomplished:

A. USA Waste shall preserve, maintain, and operate Kelly Run Sanitation and the Hauling Business as an independent competitor with management, sales and operations held entirely separate, distinct and apart from those of USA Waste. USA Waste

shall not coordinate the marketing or sale of its waste disposal and hauling business with the waste disposal and hauling business at Kelly Run Sanitation and the Hauling Business. Within thirty (30) days of the entering of this Order, USA Waste will inform plaintiffs of the steps taken to comply with this provision.

B. USA Waste shall take all steps necessary to ensure that Kelly Run Sanitation and the Hauling Business will be maintained and operated as an independent, ongoing, economically viable and active competitor in the waste disposal and hauling business in Allegheny County; and that the management of Kelly Run Sanitation will not be influenced by USA Waste, and the books, records, competitively sensitive sales, marketing and pricing information, and decision-making associated with Kelly Run Sanitation and the Hauling Business will be kept separate and apart from the operations of USA Waste. USA Waste's influence over Kelly Run Sanitation and the Hauling business shall be limited to that necessary to carry out USA Waste's obligations under this Order and the Final Judgment.

C. USA Waste shall use all reasonable efforts to maintain and increase waste disposal and hauling sales at Kelly Run Sanitation and the Hauling Business, and shall maintain at 1996 or previously approved levels, whichever are higher, promotional, advertising, sales, technical assistance, marketing and merchandising support for the disposal and hauling of waste associated with Kelly Run Sanitation.

D. USA Waste shall provide sufficient working capital to maintain Kelly Run Sanitation and the Hauling Business as an economically viable, ongoing business.

E. USA Waste shall take all steps necessary to ensure that the Kelly Run Landfill is fully maintained in operable condition at no lower than its current rated capacity, and shall maintain and adhere to normal repair and maintenance schedules for Kelly Run Sanitation and the Hauling Business.

F. USA Waste shall not, except as part of a divestiture approved by plaintiffs, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any assets of Kelly Run Sanitation, including intangible assets that relate to the permits described in Section II of the Final Judgment.

G. USA Waste shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every

month, consistent with past practices, the assets, liabilities, expenses, revenues and income of Kelly Run Sanitation and the Hauling Business.

H. Except in the ordinary course of business or as is otherwise consistent with this Hold Separate Agreement, defendants shall not hire and defendants shall not transfer or terminate, or alter any current employment or salary agreements for any USA Waste or United employees who (i) on the date of the signing of this Agreement, work at Kelly Run Sanitation and the Hauling Business or (ii) are members of management referenced in Section III(I) of this Order.

I. Until such time as Kelly Run Sanitation is divested, the Assets to be Divested shall be managed by Stephen M. Callahan. Stephen M. Callahan shall have complete managerial responsibility for Kelly Run Sanitation and the Hauling Business, subject to the provisions of this Order and the Final Judgment. In the event that Stephen M. Callahan is unable to perform his duties, USA Waste shall appoint, subject to plaintiffs' approval, a replacement within ten (10) working days. Should USA Waste fail to appoint a replacement acceptable to plaintiffs within ten (10) working days, plaintiffs shall appoint a replacement.

J. USA Waste shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestiture pursuant to the Final Judgment to a suitable purchaser.

K. This Hold Separate Stipulation and Order shall remain in effect until consummation of the divestiture contemplated by the Final Judgment or until further Order of the Court.

Dated: August 21, 1997.

For Plaintiff United States:

Frederick H. Parmenter,

*U.S. Department of Justice, Antitrust Division,
Litigation II Section, Suite 3000, Washington,
D.C. 20530, (202) 307-0620.*

Linda L. Kelly,

United States Attorney.

Amy Reynolds Hay,

*Assistant United States Attorney, Western
District of Pennsylvania.*

For the Commonwealth of Pennsylvania
Office of the Attorney General:

D. Michael Fisher,

Attorney General.

James A. Donahue, III,

*Chief Deputy Attorney General, Antitrust
Section.*

Garrett F. Gallia,

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For Defendants USA Waste Services, Inc.
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Washington, D.C. 20530, (202) 662-8425.*

For Defendant United Waste Systems, Inc.

Ilene Knable Gotts,

*Wachtell, Lipton, Rosen & Katz, 51 West 52d
Street, New York, New York 10019-6150,
(212) 403-1247.*

Order

It is so ordered, this 22d day of
August, 1997.

Donetta Ambrose,

United States District Judge.

United States District Court, Western District of Pennsylvania, Pittsburgh Division

United States of America, and
Commonwealth of Pennsylvania Plaintiffs, v.
USA Waste Services, Inc., Riviera
Acquisition Corporation, and United Waste
Systems, Inc. Defendants. Civil No.: 97-1524.
Filed: 8/22/97, Judge Ambrose.

Final Judgment

Whereas, plaintiffs, the United States
of America and the Commonwealth of
Pennsylvania, and defendants USA
Waste Services, Inc. ("USA Waste"),
Riviera Acquisition Corporation
("Riviera"), and United Waste Systems,
Inc. ("United"), 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 whereas, defendants have agreed
to be bound by the provision 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 Kelly Run Sanitation, Inc.
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 in
the Allegheny County, Pennsylvania
area;

And whereas, defendants have
represented to the 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;

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. "USA Waste" means defendant USA Waste Services, 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. "Riviera" means defendant Riviera Acquisition Corporation, a Delaware corporation which is a wholly owned subsidiary of USA Waste, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

C. "United" means defendant United Waste Systems, Inc., a Delaware corporation with its headquarters in Greenwich, Connecticut, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

D. "Allegheny County" refers to Allegheny County, Pennsylvania.

E. "Kelly Run Sanitation" means Kelly Run Sanitation, Inc., which is a wholly owned subsidiary of United, and all assets excluding the Hauling Business, including:

1. All tangible assets, including all fee and all leasehold and renewal rights in a landfill located at Road #3, Route 51, Elizabeth, Pennsylvania 15037 (known as Kelly Run Landfill); the garage and related facilities; offices; and landfill-related assets including capital equipment, trucks and other vehicles, scales, power supply equipment, interests, permits, and supplies; and

2. All intangible assets, including landfill-related customer lists, contracts, and accounts.

F. "Hauling Business" means the Kelly Run Sanitation hauling-related assets, including:

1. All tangible assets, including capital equipment, trucks and other

vehicles, containers, interests, permits, supplies, and related facilities, except the garage and related facilities, located at Road #3, Route 51, Elizabeth, PA 15037; and

2. All intangible assets, including hauling-related customer lists, contracts, and accounts.

G. "Hauling" means the collection of nonhazardous solid waste from customers and the transporting of the collected waste to disposal sites.

H. "Waste" means nonhazardous solid waste.

I. "Disposal" means the business of disposing of nonhazardous solid waste into Pennsylvania Department of Environmental Protection approved disposal sites.

III

Applicability

A. The provisions of this Final Judgment apply to USA Waste, its 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. USA Waste shall require, as a condition of the sale or other disposition of all or substantially all of the assets that comprise Kelly Run Sanitation, that the transferee agrees to be bound by the provisions of this Final Judgment.

IV

Divestiture

A. USA Waste is 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 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 Kelly Run Sanitation as an ongoing business to a purchaser acceptable to the United States in its sole discretion, after consultation with the Commonwealth of Pennsylvania.

B. USA Waste shall use its best efforts to accomplish the divestiture as expeditiously and timely as possible. The United States, in its sole determination after consultation with the Commonwealth of Pennsylvania, may extend the time period for any divestiture an additional period of time not to exceed sixty (60) calendar days.

C. In accomplishing the divestiture ordered by this Final Judgment, USA Waste promptly shall make known, by usual and customary means, the availability of Kelly Run Sanitation.

USA Waste 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. USA Waste shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all information regarding Kelly Run Sanitation customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. USA Waste shall make available such information to the plaintiffs at the same time that such information is made available to any other person.

D. USA Waste shall not interfere with any negotiations by any purchaser to employ any USA Waste (or former United) employee who works at, or whose principal responsibility is the waste disposal business concerning Kelly Run Sanitation.

E. USA Waste shall permit prospective purchasers of Kelly Run Sanitation to have access to personnel and to make such inspection of Kelly Run Sanitation; 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.

F. USA Waste shall warrant to the purchaser of Kelly Run Sanitation that Kelly Run Sanitation will be operational on the date of sale.

G. USA Waste shall not take any action, direct or indirect, that will impede in any way the operation of Kelly Run Sanitation.

H. USA Waste shall warrant to the purchaser of Kelly Run Sanitation that there are no material defects in the environment, zoning, or other permits pertaining to the operation of Kelly Run Sanitation and that USA Waste will not undertake, directly or indirectly, following the divestiture of Kelly Run Sanitation, any challenges to the environment, zoning, or other permits pertaining to the operation of Kelly Run Sanitation.

I. At the option of the purchaser, USA Waste will enter into an agreement with the purchaser, at commercially available reasonable terms and conditions, guaranteeing a flow of waste into the Kelly Run Landfill for the purpose of maintaining Kelly Run Sanitation as a viable, ongoing waste disposal business and preserving competition in the disposal and hauling businesses in Allegheny County.

J. USA Waste shall not be permitted to locate any of its operations at Kelly Run Sanitation.

K. Unless the United States, after consultation with the Commonwealth of Pennsylvania, otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V of this Final Judgment, shall include Kelly Run Sanitation and be accomplished by selling or otherwise conveying the Kelly Run Sanitation to a purchaser in such a way as to satisfy the United States, in its sole discretion, after consultation with the Commonwealth of Pennsylvania, that Kelly Run Sanitation can and will be used by the purchaser as part of a viable, ongoing business or businesses, engaged in the waste disposal business in Allegheny County. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser for whom it is demonstrated to the United States' sole satisfaction, after consultation with the Commonwealth of Pennsylvania: (1) Has the capability and intent of competing effectively in the waste disposal business in Allegheny County; (2) has or soon will have the managerial, operational, and financial capability to compete effectively in the waste disposal business in Allegheny County; and (3) none of the terms of any agreement between the purchaser and USA Waste gives USA Waste the ability unreasonably to raise the purchaser's costs, to lower the purchaser's efficiency, or otherwise to interfere in the ability of the purchaser to compete effectively in Allegheny County.

V

Appointment of Trustee

A. In the event that USA Waste has not divested Kelly Run Sanitation within the time 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, to effect the divestiture of Kelly Run Sanitation.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell Kelly Run Sanitation described in Section II(E) of this Final Judgment. 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 Sections IV and VIII of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. The trustee shall have the right, in its sole discretion, to include in the package of assets to be divested the

Hauling Business: in such event, all of the obligations of USA Waste under Section IV of this Final Judgment shall apply to the Hauling Business as well. 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 USA Waste any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals and agents shall be accountable solely to the trustee. 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, upon consultation with the Commonwealth of Pennsylvania, and shall have such other powers as this Court shall deem appropriate. USA Waste shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by USA Waste must be conveyed in writing to the 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 USA Waste, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of Kelly Run Sanitation 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 USA Waste 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. USA Waste shall use its best efforts to assist the trustee in accomplishing the required divestiture, 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 business to be divested, and USA Waste shall develop financial or other information relevant to the business to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. USA Waste shall permit

bona fide prospective acquirers of Kelly Run Sanitation 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 divestiture 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 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, 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 business to be divested.

F. If the trustee has not accomplished such divestiture 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 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 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.

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, USA Waste 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 USA Waste. 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 Commonwealth of Pennsylvania, may request from USA Waste, the proposed purchaser, or any other third party additional information concerning the proposed divestiture and the proposed purchaser. USA Waste 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 the plaintiffs have been provided the additional information requested from USA Waste, the proposed purchaser, and any third party, whichever is later, the United States, after consultation with the Commonwealth of Pennsylvania, shall provide written notice to USA Waste and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice to USA Waste and the trustee that it does not object, then the divestiture may be consummated, subject only to USA Waste's limited right to object to the sale under Section V(B) of this Final Judgment. Upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by USA Waste 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 Final Judgment in this matter and every thirty (30) calendar days thereafter until the divestiture has been completed whether pursuant to Section IV of Section V of this Final Judgment, USA Waste shall deliver to plaintiffs an affidavit as to the fact and manner of compliance with

Section IV of Section 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 contact or made an inquiry about acquiring, any interest in the business to be divested, and shall described in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that USA Waste has taken to solicit a buyer for Kelly Run Sanitation 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 the consultation with the Commonwealth of Pennsylvania to information provided by USA Waste 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 USA Waste shall deliver to plaintiffs and affidavit which describes in detail all actions USA Waste has taken and all steps USA Waste has implemented on an on-going basis to preserve Kelly Run Sanitation and the Hauling Business 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, USA Waste's efforts to maintain and operate Kelly Run Sanitation and the Hauling Business as an active competitor, maintain the management, staffing, sales, marketing and pricing of Kelly Run Sanitation and Hauling Business, and maintain the Kelly Run Landfill in operable condition at current capacity configurations. USA Waste shall deliver to plaintiffs an affidavit describing any changes to the efforts and actions outlined in USA Waste'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, USA Waste shall preserve all records of all efforts made to preserve the business to be divested and effect the divestiture.

Hold Separate Order

Until the divestitures required by the Final Judgment have been accomplished. USA Waste shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no

action that would jeopardize the divestiture of Kelly Run Sanitation.

IX

Financing

USA Waste is ordered and directed not to finance all or any part of any purchase by an acquirer made pursuant to Sections IV or V of this Final Judgment without prior written consent of the United States, in its sole discretion, after consultation with the Commonwealth of Pennsylvania.

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 the Commonwealth of Pennsylvania, and on reasonable notice to USA Waste made to its principal offices, shall be permitted:

1. Access during office hours of USA Waste to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of USA Waste, 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 USA Waste 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 the Commonwealth of Pennsylvania. USA Waste 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 the Commonwealth of Pennsylvania, except

in the course of legal proceedings to which the United States or the Commonwealth of Pennsylvania 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 USA Waste to plaintiffs, USA Waste 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 USA Waste 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 USA Waste prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which USA Waste 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 _____, 1997.

United States District Judge

United States District Court, Western District of Pennsylvania, Pittsburgh Division

United States of America, and Commonwealth of Pennsylvania, Plaintiffs, versus USA Waste Services, Inc., Riviera Acquisition Corporation, and United Waste Systems, Inc., Defendants. Civil No: 97-1524. Filed: 8/22/97, Judge Ambrose.

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil proceeding.

I

Nature and Purpose of the Proceeding

On August 22, 1997, the United States filed a civil antitrust Complaint which alleges that the proposed acquisition of the voting stock of United Waste Systems, Inc. ("United") by USA Waste Services, Inc. ("USA Waste") would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that the combination of these two significant competitors would substantially lessen competition in providing disposal services to haulers of municipal solid waste ("MSW") generated in Allegheny County, Pennsylvania. MSW means garbage, refuse, industrial lunchroom and office waste and other materials generated by residential, municipal, commercial or industrial establishments. It does not include special hauling waste or construction demolition debris. The prayer for relief in the Complaint seeks: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act; and (2) a permanent injunction preventing USA Waste from acquiring control of United.

When the Complaint was filed, the United States also filed a proposed settlement that would permit USA Waste to complete its acquisition of United but requires a divestiture that will preserve competition in the Allegheny County market. This settlement consists of a Stipulation and Order, a Hold Separate Stipulation and Order, and a proposed Final Judgment.

The proposed Final Judgment orders USA Waste to divest Kelly Run Sanitation, Inc. ("Kelly Run Sanitation") which is located in Pittsburgh, Pennsylvania. Kelly Run Sanitation is a subsidiary of United and owns the Kelly Run Landfill. The proposed Final Judgment excludes the hauling-related Kelly Run Sanitation assets from divestiture. At the option of the purchaser of Kelly Run Sanitation, USA Waste will enter into an agreement with the purchaser, containing reasonable terms and conditions, guaranteeing a flow of waste into the Kelly Run Landfill for the purpose of maintaining Kelly Run Sanitation as a viable ongoing waste disposal business.

The Stipulation and Order, Hold Separate Stipulation and Order, and

proposed Final Judgment require USA Waste to ensure that, until the divestitures mandated by the proposed Final Judgment have been accomplished, Kelly Run Sanitation will be maintained and operated as an independent, ongoing, economically viable and active competitor. USA Waste must preserve and maintain Kelly Run Sanitation as a saleable, ongoing concern, with competitively sensitive business information and decision-making divorced from that of USA Waste. USA Waste will appoint a person or persons to monitor and ensure its compliance with these requirements of the proposed Final Judgment.

The United States and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate the action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II

Description of the Events Giving Rise to the Alleged Violation

USA Waste is a Delaware corporation with its principal office in Houston, Texas. USA Waste is engaged in providing nonhazardous solid waste hauling and/or disposal services in 36 states in the United States; Washington, D.C., and Puerto Rico. In 1996, USA Waste had total revenues of approximately \$1.3 billion.

United is a Delaware corporation with its principal office in Greenwich, Connecticut. United is engaged in providing nonhazardous solid waste hauling and/or disposal services in 23 states in the United States. In 1996, United had total revenues of approximately \$335,743,000.

Rivera is a Delaware corporation. It is a wholly owned subsidiary of USA Waste. USA Waste, Riviera, and United entered into an Agreement and Plan of Merger on April 13, 1997 through which Riviera will be merged with United and United's common stock will be converted into USA Waste common stock. As a result of the Agreement and Plan of Merger, USA Waste will hold 100 percent of the voting securities of United. This transaction, which would take place in a highly concentrated Allegheny County, Pennsylvania MSW disposal market, precipitated the government's suit.

A. The Transaction's Effects in the Allegheny County, Pennsylvania Market

The Complaint alleges that MSW disposal services constitutes a line of commerce, or relevant product market, for antitrust purposes, and that Allegheny County constitutes an appropriate section of the country, or relevant geographic market. The Complaint alleges the effect of USA Waste's acquisition may be to substantially lessen competition in providing disposal services to haulers of MSW generated in Allegheny County.

Disposal of MSW in the Commonwealth of Pennsylvania is regulated and the requirements imposed by Pennsylvania law limit the means by which MSW can properly be disposed. The Pennsylvania Solid Waste Management Act ("Solid Waste Act"), 35 P.S. 6018.101 *et seq.*, is intended to protect the public by setting forth requirements for the proposed disposal of solid waste in the Commonwealth of Pennsylvania. The statute authorizes the Pennsylvania Department of Environmental Protection to oversee the storage, collection, transportation, processing, treatment and disposal of non-hazardous solid waste through, among other things, a comprehensive system of permits and regulations governing Pennsylvania landfills. MSW regulated by the Solid Waste Act include garbage, refuse, industrial lunchroom and office waste, and other materials generated by residential, municipal, commercial or institutional establishments.

In Pennsylvania, MSW is a separate and distinct waste product. The statutes and regulations of the Commonwealth of Pennsylvania which regulate MSW and the physical characteristics of MSW result in MSW being stored, handled, hauled, and disposed of differently from other types of waste.

MSW haulers use landfills to dispose of waste. Access to landfills at competitive prices where a hauler is operating (e.g. Allegheny County) is essential to hauling companies. Disposal costs account for approximately 30 to 40 percent of the amount a hauler charges for collection services. A large amount of MSW is generated in Allegheny County and the defendants' landfills are the recipients of a very large percentage of the MSW generated in Allegheny County.

MSW generated in Allegheny County is generally transported by collection trucks to landfills, and the availability of landfills close to a hauler's MSW routes is a major element that determines a hauler's competitiveness and profitability. In addition, MSW

haulers must achieve route density (a large number of customers that are located close together in a small geographic area) for them to be profitable. As a result, local haulers generally establish MSW routes, utilize landfills, and establish garages and related facilities in a local geographic area.

Due to the high costs of transporting MSW, and the substantial travel time to other landfills based on distance, natural barriers and congested roadways, haulers of MSW generated in Allegheny County are limited to landfills located in Allegheny County and in central Washington County, western Westmoreland County and Butler County, (hereinafter the "greater Pittsburgh area"). Virtually all of the MSW generated in Allegheny County is disposed of exclusively in landfills in the greater Pittsburgh area. In addition, landfills in the greater Pittsburgh area price discriminate—in other words, they charge higher prices to haulers of MSW generated in Allegheny County than they charge to other haulers outside of Allegheny County where more MSW disposal facilities are available to them. In the event of a small but significant and non-transitory price increase by landfills in the greater Pittsburgh area, haulers of MSW generated in Allegheny County would not turn to disposal facilities outside the greater Pittsburgh area.

USA Waste and United compete with each other and with other companies to provide disposal for MSW generated in Allegheny County. USA Waste and United are the first and third largest disposers of MSW generated in Allegheny County. USA Waste, Browning Ferris Industries ("BFI"), and United dispose of more than 90 percent of the MSW generated in Allegheny County at their landfills. During 1996, based on Allegheny County MSW disposal data, USA Waste accounted for 51.3 percent of the market and United accounted for 8.2 percent. The acquisition would give USA Waste almost 60 percent of the market (59.5 percent) and two firms would control over 90 percent of the MSW disposal market for MSW generated in Allegheny County. The post-merger HHI based on the amount of municipal waste from Allegheny County disposed in 1996 would be approximately 4600, an increase of about 840 over the pre-acquisition HHI. Alternatively, the post merger HHI, based on the daily capacity available for MSW generated in Allegheny County, would be approximately 3480 with a change of about 590.

The substantial increase in concentration in the market for disposal of MSW generated in Allegheny County caused by the acquisition by USA Waste of United's Kelly Run Landfill would likely understate the impact of the acquisition on competition. Downtown Pittsburgh and other heavily populated areas of Allegheny County are located on the southern side of the Ohio and Allegheny Rivers. Travel from north to south in the county is time-consuming because of the need to use bridges and tunnels. These physical constraints on travel result in three firms, USA Waste, United and BFI, having substantial locational advantages in serving Pittsburgh and its close-in suburbs. After the acquisition, USA Waste will control four of the five landfills that are within 20 miles of downtown Pittsburgh and in the area of highest population in Allegheny County. More distant landfills in the greater Pittsburgh area, such as those located in Butler County, would not be realistic competitive alternatives south of the Allegheny and Ohio Rivers in the event of a small but significant and non-transitory price increase by landfills in that area.

USA Waste is also engaged in the collection and hauling of MSW in Allegheny County. Because USA Waste will control four of the five landfills that are within 20 miles of downtown Pittsburgh and the area of highest population in Allegheny County, USA Waste will be able to raise landfill rates to haulers competing against them for MSW collection in many of the highest populated areas of Allegheny County. In outlying areas of Allegheny County where alternative landfill operation may exist, USA Waste can charge lower prices to haulers (price discriminate) to retain their business. Because disposal costs range from approximately 30 percent to 40 percent of a hauler's revenue, USA Waste's ability to raise the competitors' hauling prices in many of the most populated areas of Allegheny County will quickly make those haulers uncompetitive.

Entry by a new landfill would not be timely, likely or sufficient to prevent substantial harm to competition. Opening a new landfill in the greater Pittsburgh area is considered to be difficult, time consuming, and costly. Commonwealth of Pennsylvania Executive Order 1996-5, Municipal Waste Facilities Review program, August 29, 1996, makes it difficult if not impossible to obtain a landfill permit. Local opposition to a new landfill would be considerable. In addition, it would be extremely difficult to obtain the necessary land and building the landfill would be very costly. A new

landfill built in the greater Pittsburgh area to serve Allegheny County is not expected in the next 10 years. Similarly, it is very difficult and possibly unlikely that a transfer station permit could be obtained to serve the populated areas of Allegheny County. Executive Order 1996-5 and opposition from local citizens would make it unlikely.

B. Harm to Competition as a Consequence of the Acquisition

The Complaint alleges that the transaction would have the following effects, among others: competition in providing disposal services to haulers of MSW generated in Allegheny County will be substantially lessened; actual and potential competition between USA Waste and United in providing disposal services to haulers of MSW generated in Allegheny County will be eliminated; and prices for disposal services to haulers of MSW generated in Allegheny County are likely to increase above competitive levels.

III

Explanation of the Proposed Final Judgment

The provisions of the proposed Final Judgment are designed to eliminate the anticompetitive effects of the acquisition in the market for the disposal of MSW generated in Allegheny County by establishing a new, independent and economically viable competitor in that market. The proposed Final Judgment requires USA Waste and United, within 120 days after the filing of the Complaint in this matter, or five days after notice of entry of this Final Judgment by the Court, whichever is later, to divest, as a viable ongoing business, Kelly Run Sanitation and related assets, but excludes the Kelly Run Sanitation hauling-related assets. The divestiture would include, among other assets, the Kelly Run Landfill, the garage and office, trucks and vehicles, scales, permits, and intangible assets such as landfill customer contracts. In addition, the proposed Final Judgment intends to eliminate the anticompetitive effects of the acquisition by providing that, at the option of the purchaser, USA Waste will enter into an agreement with the purchaser, containing reasonable terms and conditions, guaranteeing a flow of waste into the Kelly Run Landfill. Such a waste flow agreement would help assure the viability of the purchaser.

If USA Waste and United cannot accomplish this divestiture within the above-described period, the Final Judgment provides that, upon application (after consultation with the

Commonwealth of Pennsylvania) by the United States as plaintiff, the Court will appoint a trustee to effect divestiture. The trustee has the power to include with Kelly Run Sanitation the Kelly Run Sanitation hauling-related assets to make Kelly Run Sanitation saleable.

The proposed Final Judgment provides that the assets must be divested in such a way as to satisfy plaintiff United States (after consultation with the Commonwealth of Pennsylvania) that the operation can and will be operated by the purchaser or purchasers as a viable, ongoing business that can compete effectively in the relevant market. The defendants must take all reasonable steps necessary to accomplish the divestiture, and shall cooperate with bona fide prospective purchasers and, if one is appointed, with the trustee.

If a trustee is appointed, the proposed Final Judgment provides that USA Waste will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the parties will make recommendations to the Court which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

IV

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendant.

V

Procedures Available for Modification of the Proposed Final Judgment

The United States defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States and has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**. Written comments should be submitted to: J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 3000, Washington, D.C. 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI

Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants USA Waste and United. The United States could have brought suit and sought preliminary and permanent injunctions against USA Waste's acquisition of the voting stock of United. The United States is satisfied, however, that the divestiture of the described assets outlined in the proposed Final Judgment will encourage viable competitors in the market identified by the United States as requiring the relief implemented. The United States is satisfied that the proposed relief will prevent the

acquisition from having anticompetitive effects in this market. The divestiture will restore the market to the structure that existed prior to the acquisition, and will preserve the existence of independent competitors in this area.

VII

Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the court may consider—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added). As the Court of Appeals for the District of Columbia Circuit recently held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See *United States v. Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995).

In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."¹ Rather,

absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should

* * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. Mid-America Dairymen, Inc., 1977-1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) quoting *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), cert. denied, 454 U.S. 1083 (1981); see also, *Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995). Precedent requires that

the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.²

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted)."³

VIII

Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the

² *United States v. Bechtel*, 648 F.2d at 666 (citations omitted) (emphasis added); see *United States v. BNS, Inc.*, 858 F.2d at 463; *United States v. National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States v. Gillette Co.*, 406 F. Supp. at 716. See also *United States v. American Cyanamid Co.*, 719 F.2d at 565.

³ *United States v. American Tel. and Tel. Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983) quoting *United States v. Gillette Co.*, *supra*, 406 F. Supp. at 716; *United States v. Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky 1985).

United States in formulating the proposed Final Judgment.

For Plaintiff United States of America:

Frederick H. Parmenter

Arthur A. Feiveson

Stephen F. Sonnett

Viqar M. Shariff

Attorneys, U.S. Department of Justice, Antitrust Division, 1401 H St., N.W., Washington, D.C. 20530 (202) 307-0620.

Certification of Service

I hereby certify that a copy of the foregoing has been served upon USA Waste Services, Inc., United Waste Systems, Inc., and the Office of the Attorney General of the Commonwealth of Pennsylvania, by placing a copy of this Competitive Impact Statement in the U.S. mail, directed to each of the above-named parties at the addresses given below, this ____ day of August, 1997.

USA Waste Services, Inc.: c/o James R. Weiss, Preston, Gates, Ellis & Rouvelas Meeds, Suite 500, 1735 New York Ave., NW, Washington, D.C. 20006-5209

United Waste Systems, Inc.: c/o Ilene Knable Gots, Wachtell, Lipton, Rosen & Katz, 51 West 52d Street, New York, NY 10019-6150

Commonwealth of Pennsylvania: James A. Donahue, III, Chief Deputy Attorney General, Antitrust Section, 14th Floor, Strawberry Square, Harrisburg, PA 17120

Fredrick H. Parmenter, Attorney, U.S. Department of Justice, Antitrust Division, 1401 H. Street, N.W., Suite 3000, Washington, D.C. 20530, (202) 307-0620.

[FR Doc. 97-23869 Filed 9-9-97; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Lead-Acid Battery Consortium

Notice is hereby given that, on July 24, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 et seq. ("the Act"), the Advanced Lead-Acid Battery Consortium ("ALABC"), a program of International Lead Zinc Research Organization, Inc., filed written notification simultaneously with

¹ 119 Cong. Rec. 24598 (1973). See, *United States v. Gillette Co.*, 406 F. Supp. 713, 715 (D.Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See, H.R. 93-1463, 93rd Cong. 2d Sess. 8-9, reprinted in (1974) U.S. Code Cong. & Ad. News 6535, 6538.