

STATE OF VERMONT
WASHINGTON COUNTY, SS.

FILED
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IN RE:

CASELLA WASTE SYSTEMS, INC.

Respondent

WASHINGTON SUPERIOR COURT

DOCKET NO.

WnC

296-5-02 Wnc

ASSURANCE OF DISCONTINUANCE

BACKGROUND

Whereas the Vermont Attorney General (hereinafter "Attorney General") has conducted an investigation into the practices of Casella Waste Systems, Inc. (hereinafter "Casella" or "Respondent");

Whereas Casella is a corporation organized under the laws of the State of Delaware with a principal place of business in Rutland, Vermont;

Whereas Casella is engaged in the business of providing solid waste hauling services throughout the State of Vermont;

Whereas a large portion of Casella's solid waste hauling services in Vermont are provided to businesses and individuals who use small containers for the collection of their solid waste, and sign a contract with Casella for the provision of small containerized solid waste hauling services;

Whereas the Attorney General believes that Casella has market power in the small containerized solid waste hauling market within various geographic markets throughout Vermont;

Whereas the Attorney General believes that (a) Casella has entered into written contracts with the vast majority of its existing small container customers in those markets; (b) many of these contracts contain terms that, when taken together in the relevant markets where Casella has market power, make it more difficult and costly for customers to switch to a competitor of Casella, thereby allowing Casella to bid to retain customers approached by a competitor; (c) these contracts enhance and maintain Casella's market power in the relevant markets by significantly raising the cost and time required by a new entrant or small incumbent firm to build its customer base and obtain efficient scale and route density; and (d) Casella's use and enforcement of these contracts in various markets in Vermont raise significant barriers to entry in those markets.

Whereas the contract provisions that the Attorney General believes create a barrier to entry are:

- a. a provision giving Casella the right to collect and dispose of all the customers' solid waste and recyclables;
- b. an initial term of three years;
- c. a renewal term of three years that automatically renews unless the customer sends Casella a written notice of cancellation by certified mail or facsimile more than 60 days from the end of either the initial term or renewal term;

d. a term that requires a customer that terminates the contract at any other time to pay Casella, as liquidated damages, its most recent monthly charge times six (if the remaining term is six or more months) or its most recent monthly charge times the number of months remaining under the contract (if the remaining term is less than six months); and

e. a "right to compete" clause that requires the customer to give Casella notice of any offer by or to another solid waste hauling firm or requires the customer to give Casella a reasonable opportunity to respond to such an offer for any period not covered by the contract;

Whereas the Attorney General believes that other practices of Casella have also created a barrier to entry, including the requirement of payment at its transfer stations by its competitors in the small containerized market for solid waste hauling under terms that are more onerous than the payment terms required of its other competitors;

Whereas Casella believes that its contracts provide its customers with a beneficial level of assurance and service and denies that it has market power and that its contracts or other practices raise significant barriers to entry.

Whereas the parties have agreed to resolve this dispute by entering into this Assurance of Discontinuance;

Whereas the Attorney General believes resolution of this matter is in the public interest;

NOW, THEREFORE, the parties enter into this Assurance of Discontinuance, pursuant to 9 V.S.A. §2459, without trial or adjudication of any issue of fact or law, and upon consent of the parties.

I.

JURISDICTION

This Court has jurisdiction over the Respondent.

II.

DEFINITIONS

As used in this Assurance of Discontinuance:

- (A) "Vermont" means the 14 counties that constitute the State of Vermont.
- (B) "Solid waste hauling" means the collection and transportation to a disposal site of trash and garbage (but not construction and demolition debris; medical waste; hazardous waste; organic waste; or special waste, such as contaminated soil, or sludge; or recyclable materials) from residential, commercial and industrial customers. Solid waste hauling includes hand pick-up, containerized pick-up, and roll-off service.
- (C) "Casella" or "Respondent" means Casella Waste Systems, Inc., a Delaware corporation with its headquarters in Rutland, Vermont, and its officers, directors, managers, agents, employees, successors, assigns, parents, and subsidiaries.
- (D) "Small Container" means a 2 to 10 cubic yard container.
- (E) "Small Containerized Solid Waste Hauling Service" means providing solid waste hauling service to customers by providing the customer with a Small Container that is picked up mechanically using a frontload, rearload, or sideload truck, and

expressly excludes hand pick-up service, and service using a stationary or self-contained compactor or a compactor attached to or part of a small container.

(F) "Customer" means a Small Containerized Solid Waste Hauling Service customer.

(G) "Transfer station" means a solid waste management facility where solid waste is collected, aggregated, sorted, stored or processed for the purpose of subsequent transfer to another solid waste management facility for further processing, treatment, transfer or disposal, or for the purpose of subsequent transfer to a landfill.

(H) "Landfill" means a land disposal site for solid waste that employs one of a number of methods of disposing of solid waste on land.

(I) "Service location" means each separate address at which Respondent provides small containerized solid waste hauling services in Vermont; more than one service location may be governed by a single contract.

III.

APPLICABILITY

This Assurance of Discontinuance applies to Casella and to its officers, directors, managers, agents, employees, successors, assigns, 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 Assurance of Discontinuance by personal service or otherwise. Nothing contained in this Assurance of Discontinuance 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.

PROHIBITED CONDUCT

Respondent is enjoined and restrained as follows:

- (A) Except as set forth in paragraph IV(B) and IV(H), Respondent shall not enter into any contract with a Customer for a service location in Vermont that:
- (1) has an initial term longer than two (2) years;
 - (2) has any renewal term longer than one (1) year;
 - (3) requires that the Customer give Respondent notice of termination more than thirty (30) days prior to the end of any initial term or renewal term;
 - (4) prohibits the Customer from giving notice of intent to cancel by regular mail, facsimile or certified mail;
 - (5) is not signed by an individual who holds himself or herself out to be an authorized agent with authority to enter into the contract;
 - (6) requires that the Customer pay liquidated damages in excess of three times the greater of its prior monthly charge or its average monthly charge over the most recent six months during the first year of the initial term of the Customer's contract;
 - (7) requires that the Customer pay liquidated damages in excess of two times the greater of its prior monthly charge or its average monthly charge over the most recent six months after the Customer has been a Customer of Respondent for a continuous period in excess of one (1) year;

(8) requires the Customer to give Respondent notice of any offer by or to another solid waste hauling firm or requires the Customer to give Respondent a reasonable opportunity to respond to such an offer for any period not covered by the contract (sometimes referred to as a "right to compete" clause);

(9) does not prominently set forth the contract terms clearly and conspicuously, and is not labeled, in large letters, SERVICE CONTRACT; or

(10) requires a Customer to give Respondent the right or opportunity to provide hauling service for recyclables for a Customer unless the Customer affirmatively chooses to have Respondent provide such recycling services by so stating on the front of the contract.

(B) Notwithstanding the provisions of paragraph IV(A) of this Assurance of Discontinuance, Respondent may enter into a contract with a Customer for a service location in Vermont with an initial term in excess of two years provided that:

(1) The Customer has acknowledged in writing that the Respondent has offered to the Customer the form contracts Respondent is required herein to offer generally to Customers;

(2) the Customer has the right to terminate the contract after 2 years by giving notice to Respondent thirty (30) days or more prior to the end of that 2 year period;

(3) the contract otherwise complies with the provisions of paragraph IV(A)(2)-(10); and

(4) the number of service locations subject to contracts permitted under subparagraph (B) in Vermont does not exceed 25% of the total number of service

locations for small containerized solid waste hauling service in Vermont in any year; however, for purposes of this paragraph (IV)(B)(4) only, Respondent shall have a thirty (30) day right to cure any such exceedances.

(C) Within forty-five (45) days of the filing of this Assurance, Respondent shall offer only contracts that conform to the requirements of paragraphs IV(A) or (B) of this Assurance of Discontinuance, except as provided in IV(H). During the first 45 days after filing this Assurance, Respondent may use an older version of its contract with respect to new customers, but in the event the Respondent chooses to use said older version of its contract with respect to new customers, Respondent shall also provide said new customers a copy of Exhibit C.

(D) Within forty-five (45) days following the filing of this Assurance of Discontinuance in Court, Respondent shall send to all existing Customers with service locations in Vermont with contracts that are currently in either the initial or renewal term, that have an initial term longer than 2 years, or which otherwise do not conform with paragraph IV(A), a notice in the form attached hereto as Exhibit B.

(E) Upon filing of this Assurance of Discontinuance, Respondent may not enforce those contract provisions that are inconsistent with this Assurance of Discontinuance.

(F) Respondent shall honor requests to cancel signed by the customer and transmitted by regular mail, facsimile or certified mail immediately upon receipt of said cancellation. Respondent may seek to obtain from the customer any amounts owed for services rendered prior to Respondent's receipt of such cancellation notice and any liquidated damages permitted by this Assurance of Discontinuance that might apply.

(G) Respondent may not, in the operation of its transfer stations or landfills, impose payment, credit or other terms upon any of its solid waste hauling competitors that are more onerous than Respondent imposes upon other competitors.

(H) Notwithstanding the provisions of this Assurance of Discontinuance, Respondent shall not be required to do business with any Customer.

V.

PRIOR NOTIFICATION OF FUTURE ACQUISITIONS

(A) Respondent shall not, without providing Notification to the Antitrust Unit of the Vermont Attorney General's Office, through subsidiaries, partnerships, joint ventures or otherwise, directly or indirectly:

(1) Except as provided in paragraph V(B), acquire any ownership or leasehold interest that has a fair market value of \$200,000 or more in any entity that has engaged in solid waste hauling within six (6) months of the date of such proposed acquisition; or

(2) Except as provided in paragraph V(B), acquire any stock, share capital, equity or other interest that has a fair market value of \$200,000 in any entity that: (a) owns a company that is, or within the six (6) months prior to such proposed acquisition has been, engaged in solid waste hauling in Vermont; or (b) operates any entity that is engaged in solid waste hauling in Vermont; or

(3) Acquire any ownership or leasehold interest in any entity that has engaged in the transfer of solid waste in Vermont within six (6) months of the date of such proposed acquisition; or

(4) Acquire any stock, share capital, equity or other interest in any entity that: (a) owns a company that is, or within the six (6) months prior to such proposed acquisition has been, engaged in the transfer of solid waste in Vermont; or (b) operates any entity that is engaged the transfer of solid waste in Vermont; or

(5) Acquire any ownership or leasehold interest in any entity that has engaged in the final disposal of solid waste from Vermont within six (6) months of the date of such proposed acquisition; or

(6) Acquire any stock, share capital, equity or other interest in any entity that: (a) owns a company that is, or within the six (6) months prior to such proposed acquisition has been, engaged in the final disposal of solid waste from Vermont; or (b) operates any entity that is engaged in the final disposal of solid waste from Vermont.

(B) In the event that the Attorney General's prosecution of a court proceeding results in a court finding that Respondent has, within any geographic market within Vermont, a market share of 60% or greater, then the fair market value of an acquisition that triggers a prior notification to the Attorney General pursuant to paragraphs V(A)(1) and V(A)(2) shall be lowered to \$100,000 for the geographic market that is the subject of the court's finding.

(C) Respondent shall provide the Notification at least (30) thirty days prior to acquiring any such interest.

(D) If, within the thirty (30) days after receiving such Notification, the Antitrust Unit of the Vermont Attorney General makes a written request for additional information

or documentation regarding Respondent's proposed acquisition of a transfer station or landfill, Respondent shall not consummate the proposed acquisition of said transfer station or landfill until thirty (30) days after substantially complying with such request.

(E) Early termination of the waiting periods in this section may be requested and, where appropriate, granted at the discretion of the State of Vermont when all agree in writing to do so.

(F) For purposes of this Assurance of Discontinuance, "Notification" means the provision of notice to the Attorney General on the Notification and Report Form set forth in the Appendix to part 803 of Title 16 of the Code of Federal Regulations as amended, and prepared in accordance with the requirements of that part, except that (1) items 4(a) and 5(a), (b) and (c) are not required to be completed by Respondent; and (2) subject to paragraphs V(A)(1) and (2) it shall not be subject to any limitations based on the value of the acquisition, and shall not require any filing fee.

VI.

REPORTING

(A) To determine or secure compliance with this Assurance of Discontinuance, duly authorized representatives of the State of Vermont shall, on reasonable notice given to Respondent at its 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 Respondent, which may have counsel present,

where the Attorney General has reason to believe Respondent has violated this Assurance of Discontinuance, and the documents and records to be inspected and copied relate to the alleged violation of this Assurance of Discontinuance.

(2) Subject to the reasonable convenience of Respondent and without restraint or interference from them, to interview officers, employees, or agents of Respondent, who may have counsel present, regarding any matters contained in this Assurance of Discontinuance.

(B) Upon written request of the State of Vermont, on reasonable notice given to Respondents at their principal offices, subject to any lawful privilege, Respondent shall submit such written reports, under oath if requested, with respect to any matters contained in this Assurance of Discontinuance.

(C) No information or documents obtained by the means provided by this Section shall be divulged by the State of Vermont to any person other than a duly authorized representative of the Executive Branch of the State of Vermont, except in the course of legal proceedings to which the State of Vermont is a party, or for the purpose of securing compliance with this Assurance of Discontinuance, or as otherwise required by law.

(D) If at the time information or documents are furnished by Respondent to the State of Vermont, Respondent represents and identifies 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 Vermont Rules of Civil Procedure, and Respondent marks each pertinent page of such material "Subject to claim of protection under Rule 26(c)(7) of the Vermont Rules of Civil Procedure," then ten days notice shall be given by the State of

Vermont to Respondent prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Respondent is not a party, except as required by law or court order.

VII.

FURTHER ELEMENTS OF JUDGMENT

(A) This Assurance of Discontinuance shall expire on the tenth anniversary of the date it is filed in Court, except as provided in Section VIII, below.

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

(C) Within ten days of entry of this Assurance of Discontinuance, Respondent shall pay the State of Vermont the sum of \$50,000 as reimbursement of the costs associated with investigating the matters contained in this Assurance of Discontinuance.

VIII.

VIOLATIONS AND STIPULATED PENALTIES

(A) In the event that the Attorney General alleges that Casella has violated any of the terms of this Assurance of Discontinuance, then the parties agree that the provisions of this Section VIII shall be in full force and effect.

(B) If this Court enters an order finding Casella to be in violation of this Assurance of Discontinuance, then the parties agree that penalties to be assessed by

the Court for each act in violation of this Assurance of Discontinuance shall be \$10,000. For purposes of this Section VIII, the term "each act" shall mean: each contract with a Customer into which Casella enters in violation of the provisions of this Assurance, or each separate act with respect to each Customer that Casella takes in violation of the provisions of this Assurance.

(C) If this Court enters an order finding Casella to be in violation of this Assurance of Discontinuance, then the Court shall enter a Final Judgment in the form attached hereto as Exhibit E, and such additional order or orders that the Court believes necessary to appropriately address the violations proved by the Attorney General.

(D) In the event that the Attorney General alleges that Casella has violated any of the terms of this Assurance of Discontinuance, then the parties agree that the Attorney General shall be entitled to bring any other matters to the Court's attention involving potential violations of law by Casella, and that the Attorney General shall not have waived any of its rights to assert and prove any violations of law by Casella.

(E) If this Court enters an order finding Casella to be in violation of this Assurance of Discontinuance, then this Assurance of Discontinuance shall not expire on the tenth anniversary of the date it is filed in Court, but rather shall expire on the earlier of (i) the date that Exhibit E becomes effective thereby superceding this Assurance of Discontinuance; or (ii) the tenth anniversary of the date this Court enters an order finding Casella to be in violation of this Assurance of Discontinuance.

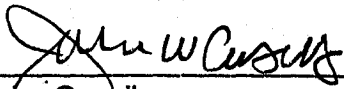
IX.

PUBLIC INTEREST

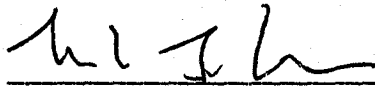
Entry of this Assurance of Discontinuance is in the public interest.

Agreed to this 16th day of May, 2002.

CASELLA WASTE SYSTEMS, INC.

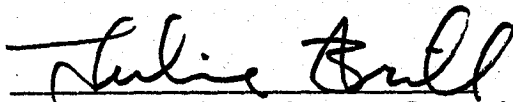
By: 
John Casella
Chief Executive Officer and
Chairman of the Board of Directors

Approved as to form:


Mark G. Hall
Counsel for Casella Waste Systems, Inc.

Agreed to this 17th day of May, 2002.

STATE OF VERMONT

By: 
Julie Brill, Assistant Attorney General
Director of Antitrust
Vermont Attorney General's Office

**EXHIBIT A
STIPULATION**

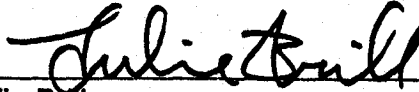
It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto for the purposes of this proceeding. Respondent, Casella Waste Systems, Inc., transacts business and is found within the district. Respondent, Casella Waste Systems, Inc., consents to personal jurisdiction in this proceeding and for the purpose of any proceeding relating to the Attorney General's allegation that Respondent has violated this Assurance of Discontinuance. Respondent waives any objections as to venue and the parties stipulate that venue for this action is proper in the Superior Court of Washington County;

2. The parties consent that an Assurance of Discontinuance 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 this Stipulation is signed;

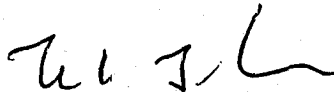
3. Respondents agree to be bound by the provisions of the Assurance of Discontinuance pending approval by the Court of the parties' proposed motion, attached as Exhibit D, to file Exhibit E under seal. If the proposed motion is not granted by this Court, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to any party in this or in any other proceeding.

DATED this 17 day of May, 2002, for the State of Vermont:



Julie Brill
Assistant Attorney General
Director of Antitrust
Vermont Attorney General's Office

Dated this 17 day of May, 2002, for Casella Waste Systems, Inc.:



Mark G. Hall
Counsel for Casella Waste Systems, Inc.

EXHIBIT B
NOTICE TO CUSTOMERS IN THEIR INITIAL OR RENEWAL TERM

Dear Valued Customer:

[Casella or All-Cycle, or other name of local operating company] is offering a new contract to all small containerized solid waste hauling customers with service locations in Vermont. We would like to take this opportunity to offer this contract to you for the remainder of your initial contract term or your current renewal term. Of course, if you prefer, you can continue with your existing contract.

In most cases, this new contract will have terms that are more advantageous to customers than their current contracts. This new contract has the following features:

- an initial term of 2 years (unless you request a longer term) or the remainder of your current contract, whichever is less.
- a renewal term of 1 year.
- at the end of your initial term or 1- year renewal term, you may take no action and your contract will renew or you can choose not to renew the contract by simply giving us notice at any time up to 30 days prior to the end of your term.
- if you terminate the contract at any other time, you will be required to pay for any services rendered prior to termination, as well as liquidated damages. If your contract is in its initial term, the liquidated damages will be no more than 3 times the greater of your prior monthly or average monthly charge. If you've been a customer continuously for more than 1 year, the liquidated damages will be reduced to 2 times the greater of your prior monthly or average monthly charge. The liquidated damages allowed under our new contract are not a penalty. The reason we assess these charges is because actual damages would be difficult, if not impossible, to calculate.

You may obtain a new contract containing these terms by calling [insert CSR telephone number or sales rep name and number].

If you prefer, you may continue with your existing contract. If you retain your existing contract, we will not enforce any terms that are inconsistent with the new form contract terms.

We thank you for your business and look forward to a continued relationship with you. If you have any questions, please call [Casella contact person and phone number.]

EXHIBIT C
NOTICE TO NEW CUSTOMERS

Dear Valued Customer:

[Casella or All-Cycle, or other name of local operating company] is in the process of developing a new contract to all small containerized solid waste hauling customers with service locations in Vermont. Upon completion, this new contract will be offered to you for the remainder of your initial contract term.

In most cases, this new contract will have terms that are more advantageous to customers. This new contract has the following features:

- an initial term of 2 years (unless you request a longer term) or the remainder of your current contract, whichever is less.
- a renewal term of 1 year.
- at the end of your initial term or 1- year renewal term, you may take no action and your contract will renew or you can choose not to renew the contract by simply giving us notice at any time up to 30 days prior to the end of your term.
- if you terminate the contract at any other time, you will be required to pay for any services rendered prior to termination, as well as liquidated damages. If your contract is in its initial term, the liquidated damages will be no more than 3 times the greater of your prior monthly or average monthly charge. If you've been a customer continuously for more than 1 year, the liquidated damages will be reduced to 2 times the greater of your prior monthly or average monthly charge. The liquidated damages allowed under our new contract are not a penalty. The reason we assess these charges is because actual damages would be difficult, if not impossible, to calculate.

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If you prefer, you may continue with your existing contract. If you retain your existing contract, we will not enforce any terms that are inconsistent with the new form contract terms.

We thank you for your business and look forward to a continued relationship with you. If you have any questions, please call [Casella contact person and phone number.]