

OFFICE OF THE ATTORNEY GENERAL
OF THE STATE OF NEW YORK

In the Matter of the

Assurance No. 14-162

**Investigation by Eric T. Schneiderman,
Attorney General of the State of New York, of
Casella Waste Systems, Inc.**

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York (“the NYAG”) investigated, pursuant to Section 343 of the New York General Business Law and Section 63(12) of the New York Executive Law, potentially anticompetitive conduct by Casella Waste Systems, Inc. (“Casella”) in the business of waste collection in upstate New York, including the geographic areas sometimes referred to as the North Country and the Southern Tier. As part of its investigation, the NYAG, among other things, reviewed complaints by New York businesses, interviewed numerous other market participants, gathered and analyzed relevant market data, and reviewed documentation produced by Casella at the NYAG’s request. Casella provided significant cooperation to NYAG during the course of the investigation.

This Assurance of Discontinuance (“Assurance”) contains the findings of the NYAG’s investigation and the relief agreed to by the NYAG and Casella (collectively, “the parties”).

THE ATTORNEY GENERAL’S FINDINGS

1. Casella (together with its subsidiaries and controlled affiliates, “the Company”) is a corporation organized under the laws of Delaware with its headquarters in Rutland, Vermont. The Company provides waste services, including collection and disposal, across large sections of

New York.

2. In several counties in upstate New York, the Company is the largest solid waste hauler. In some of these counties, its market share may be larger than that of all other competitors in the county combined.

3. In operating its business in New York State, the Company enrolls many of its customers into long-term contracts. In particular, in many of the Company's existing contracts:

a. The customer provides the Company with the exclusive right to provide all non-hazardous waste and recycling collection services to the customer for five years;

b. The customer's ability to cancel the contract during the five-year period is limited in light of the following provisions:

i. In the event of a unilateral cancelation, the customer is required to pay the Company up to six times its average monthly bill as "liquidated damages"; and

ii. In some contracts, in the event of a unilateral cancelation, the Company has a right to match any offer from a competitor (a "right-to-compete" clause).

4. The contract provisions described in Paragraph 3, in conjunction with the Company's significant market share in certain counties of upstate New York, may have the effect of impeding new entry or expansion by competing waste haulers. A high proportion of customers in each of the Relevant Counties (defined below) are subject to the Company's long-term, restrictive contracts, thus making it difficult for competitors to obtain business from these customers in the short to medium term—even if the customer believes that the competitor's offering is superior. This fact may make it more difficult for competing firms to acquire, in a

timely manner, a sufficiently dense network of customers to permit them to achieve operational efficiencies that would enable them to compete with the Company on a level playing field. These factors may enhance the risks faced by competitors considering new expansion or entry in the Relevant Counties, and may decrease the likelihood that competitors will invest resources in order to compete in these counties.

5. In several of these counties, the Company has also acquired competing waste haulers (or their customer routes), which had the effect of eliminating those haulers as competitors.

6. The contract provisions described in Paragraph 3 appear on the back of the document, and the document is not labeled as a “contract.” The NYAG’s investigation indicates that these factors may have caused some customers to enter into long term, restrictive contracts without understanding the full scope of their commitments.

7. The NYAG believes that the Company’s practices may substantially harm competition and thereby violate the Donnelly Act, Gen. Bus. Law § 340 *et. seq.*

PROSPECTIVE RELIEF

WHEREAS, the Company neither admits nor denies the NYAG’s Findings 1–7 above;

WHEREAS, the NYAG is willing to accept the terms of this Assurance pursuant to Section 63(15) of the Executive Law and to discontinue its investigation; and

WHEREAS, the parties each believe that the obligations imposed by this Assurance are prudent and appropriate;

IT IS HEREBY UNDERSTOOD AND AGREED by and between the parties that:

1. In consideration of the making and execution of this Assurance, and within ten (10) business days thereafter, the Company agrees that it will pay by wire transfer payable to the

State of New York \$100,000.

2. All correspondence related to this Assurance must reference Assurance #14-162.

3. Following the date of execution of this Assurance, the Company agrees to comply with the following guidelines.

Definitions

4. As used below, the term “Notification” means the provision of notice to the NYAG 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 (or on a similar document that provides all of the same information), except that:

a. The Company is not required to complete items 4(a) and 5(a)–(b); and

b. Subject to Paragraph 15 of the Prospective Relief, the Notification shall be subject to limitations based on the value of the acquisition and shall not require any filing fee.

5. “Relevant County” means any of the following counties in New York State:

a. Allegany County;

b. Cattaraugus County;

c. Chautauqua County;

d. Chemung County;

e. Clinton County;

f. Franklin County;

g. Schuyler County;

h. St. Lawrence County;

i. Steuben County; and

j. Tompkins County.

6. “Relevant Service” means providing Solid Waste Hauling or Recycling Hauling service to customers by providing the customer with one or more 2- to 10-cubic-yard containers that are 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.

7. “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.

8. “Recycling Hauling” means the collection and transportation to a disposal site of recyclable materials from residential, commercial and industrial customers.

9. “Service Contract” means any contract or agreement for Casella to provide a Relevant Service to a customer, for any duration, whether or not styled as a “service agreement.”

Restrictions on Service Contracts

10. The Company shall not enter into any Service Contract with a customer for a service location in any Relevant County that:

- a. Has an initial term longer than two (2) years;
- b. Has any renewal term longer than one (1) year;
- c. Requires that the customer give the Company notice of termination more than forty-five (45) days prior to the end of any initial term or renewal term;
- d. Requires that the customer pay liquidated damages in excess of three (3) times the greater of its prior monthly charge or its average monthly charge over the most recent three (3) months during the first year of the customer’s Service Contract;

e. Requires that the customer pay liquidated damages in excess of one (1) time the greater of its prior monthly charge or its average monthly charge over the most recent three (3) months after the customer has been a customer of the Company for a continuous period in excess of one (1) year;

f. Requires the customer to give the Company notice of any offer by or to another Solid Waste Hauling firm and/or requires the customer to give the Company an opportunity to respond to such an offer for any period not covered by the Service Contract (sometimes referred to as a “right-to-compete” clause);

g. Does not prominently set forth the contract terms clearly and conspicuously;

h. Is not labeled, in print no smaller than any other print on the document, with the word SERVICE CONTRACT; or

i. Conditions the sale of Solid Waste Hauling services on a commitment by the customer to purchase Recycling Hauling services from the Company exclusively (or vice versa).

11. Within forty-five (45) days following the execution of this Assurance, the Company shall send a notice in the form attached to this Assurance as Exhibit A to all existing customers with service locations in any Relevant County with Service Contracts that are currently in the initial or renewal term and do not conform with Paragraph 10. The Company shall honor requests by the customer to replace its existing non-conforming Service Contract with a new Service Contract that conforms to Paragraph 10 immediately upon receipt of said request.

12. Upon execution of this Assurance of Discontinuance, Respondent shall not

enforce any Service Contract provisions that are inconsistent with this Assurance of Discontinuance.

13. For the avoidance of doubt, this Assurance does not prohibit the Company from acting as the exclusive provider of a Relevant Service to a customer.

14. Notwithstanding the provisions of Paragraph 10, the Company may enter into a Service Contract with a customer for a service location in a Relevant County with an initial term in excess of two (2) years provided that:

a. The customer has acknowledged in writing that the Company has offered to the customer the terms the Company is required herein to offer generally to customers;

b. The customer has the right to terminate the contract after two (2) years by giving notice to the Company forty-five (45) days or more prior to the end of that two (2) year period;

c. The Service Contract otherwise complies with the provisions of Paragraph 10; and

d. The revenue the Company derives from providing Relevant Services to service locations in the Relevant County subject to Service Contracts permitted under this Paragraph do not exceed ten percent (10%) of the total revenue the Company derives from providing Relevant Services in the Relevant County in any year.

Notification of Acquisitions

15. The Company shall not, without providing Notification to the Antitrust Bureau of the NYAG, through subsidiaries, partnerships, joint ventures or otherwise, directly or indirectly:

a. Acquire any ownership or leasehold interest that has a fair market value of \$350,000 or more, or had such value within the preceding six (6) months of the date of

such proposed acquisition, in any entity that has provided a Relevant Service in any Relevant County within six (6) months of the date of such proposed acquisition;

b. Acquire any stock, share, capital, equity, or other interest that has a fair market value of \$350,000 or more, or had such value within the preceding six (6) months of the date of such proposed acquisition, in any entity that:

i. Owns a company that provides, or within the six (6) months prior to such proposed acquisition has provided, any Relevant Service in any Relevant County, or

ii. Operates any entity that provides any Relevant Service in any Relevant County; or

c. Acquire from any entity any business (including but not limited to Service Contracts and collection routes) providing any Relevant Service in any Relevant County that has a combined fair market value of \$350,000 or more, or had such value within the preceding six (6) months of the date of such proposed acquisition.

16. The Company shall provide the Notification no more than thirty (30) days after acquiring any such interest.

17. The Antitrust Bureau of the NYAG may make a written request for additional information or documentation regarding the Company's acquisition within sixty (60) days after receiving such Notification, and the Company shall substantially comply with such request within thirty (30) days of receiving it, unless the NYAG agrees in writing to extend the time for responding.

Certification

18. Within forty-five (45) days following the execution of this Assurance, the

Company shall provide the NYAG with a sworn statement confirming that it has taken the steps required to comply with this Assurance and setting forth such compliance (the “Certification”). The Certification shall include a listing of the customers that received notice in the form attached to this Assurance as Exhibit A, consistent with Paragraph 11 of the Prospective Relief.

Miscellaneous

19. The NYAG has agreed to the terms of this Assurance based on, among other things, the representations made to the NYAG by the Company and its counsel and the NYAG’s own factual investigation as set forth in Findings 1–7 above. To the extent that any material representations by the Company are later found to be inaccurate or misleading, this Assurance is voidable by the NYAG in its sole discretion.

20. If the Assurance is voided or breached, the Company agrees that any statute of limitations or other time-related defenses applicable to the subject of the Assurance and any claims arising from or relating thereto are tolled from and after the date of this Assurance. In the event the Assurance is voided or breached, the Company expressly agrees and acknowledges that this Assurance shall in no way bar or otherwise preclude the NYAG from commencing, conducting or prosecuting any investigation, action or proceeding, however denominated, related to the Assurance, against the Company, or from using in any way any statements, documents or other materials produced or provided by the Company prior to or after the date of this Assurance.

21. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by the Company in agreeing to this Assurance.

22. The Company represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is

duly authorized. The Company shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance or expressing the view that this Assurance is without factual basis. Nothing in this Paragraph affects the Company's (i) testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings to which the NYAG is not a party. This Assurance is not intended for use by any third party in any other proceeding and is not intended, and should not be construed, as an admission of liability by the Company.

23. This Assurance may not be amended except by an instrument in writing signed on behalf of all the parties to this Assurance.

24. This Assurance shall be binding on and inure to the benefit of the parties to this Assurance and their respective successors and assigns, provided that no party, other than the NYAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the NYAG.

25. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the NYAG such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

26. To the extent not already provided under this Assurance, the Company shall, upon request by the NYAG, provide all documentation and information necessary for the NYAG to verify compliance with this Assurance.

27. All notices, reports, requests, and other communications to any party pursuant to this Assurance shall be in writing and shall be directed as follows:

If to the Company, to:

Edwin D. Johnson
President and Chief Operating Officer
Casella Waste Systems
25 Greens Hill Lane
Rutland, VT 05701

-and-

David L. Schmitt, Esq.
Senior Vice President and General Counsel
Casella Waste Systems
25 Greens Hill Lane
Rutland, VT 05701

If to the NYAG, to:

Zachary W. Biesanz, Esq.
Antitrust Bureau
New York State Office of the Attorney General
120 Broadway
New York, NY 10271

28. Acceptance of this Assurance by the NYAG shall not be deemed approval by the NYAG of any of the practices or procedures referenced herein, and the Company shall make no representation to the contrary.

29. Pursuant to Section 63(15) of the Executive Law, evidence of a violation of this Assurance shall constitute *prima facie* proof of violation of the applicable law in any action or proceeding thereafter commenced by the NYAG.

30. Within sixty (60) days of the execution of this Assurance, the Company shall implement a compliance program for its operations in New York, as follows. The Company shall create policies and procedures, memorialized in writing and maintained by the Company's legal department, to ensure that all changes to the terms of its Service Contracts are in compliance with this Assurance. The compliance policies and procedures shall include training to relevant employees regarding the Assurance and the establishment of a member of the Company's legal

department who is responsible for ensuring the Company's compliance with this Assurance.

31. If a court of competent jurisdiction determines that the Company has breached this Assurance, then:

a. For each breach of Paragraphs 10 or 11 of the Prospective Relief Section of this Assurance, unless the Company establishes that the breach was unintentional and that the Company cured the breach within twenty (20) business days of receipt of written notice from the NYAG, the Company shall pay up to \$1,000 to the State of New York at the NYAG's discretion for each customer affected by the breach of any of those paragraphs. For any one incident involving the same breach across multiple customers, this payment shall not exceed \$400,000;

b. For each breach of any other Paragraph of the Prospective Relief Section of this Assurance, unless the Company establishes that the breach was unintentional and that the Company cured the breach within twenty (20) business days of receipt of written notice from the NYAG, the Company shall pay the NYAG an amount up to \$20,000, at the NYAG's discretion; and

c. In the event that a payment is due under this Paragraph, the Company shall also pay, at the NYAG's discretion, any costs incurred by the NYAG in enforcing the terms of this Assurance, including without limitation legal fees, expenses, and court costs.

32. The NYAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. The NYAG is willing to accept this Assurance pursuant to Section 63(15) of the Executive Law, in lieu of commencing a statutory proceeding against the Company. This Assurance shall be governed by the laws of the State of New York without

Section 63(15) of the Executive Law, in lieu of commencing a statutory proceeding against the Company. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

33. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

34. This Assurance may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, this Assurance is executed by the parties hereto on July 10, 2014.

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
120 Broadway
New York, NY 10271

By: Eric J. Stock
Eric J. Stock, Chief, Antitrust Bureau
Zachary W. Biesanz, Assistant Attorney General

By: William Kolasky *KMF*
William Kolasky
Hughes Hubbard and Reed LLP
Counsel for the Company

By: John W. Casella
John W. Casella
Chief Executive Officer and Chairman of the Board
On behalf of the Company

EXHIBIT A
NOTICE TO CUSTOMERS IN THEIR INITIAL OR RENEWAL TERM

Dear Valued Customer:

As a result of a settlement with the New York Attorney General, [Casella, or other name of local operating company] is offering a new Service Contract to all small containerized solid waste hauling customers with service locations in [name] County. We would like to take this opportunity to offer this Service Contract to you for the rest of your current contract term. Of course, if you prefer, you can continue with your existing Service Contract.

In most cases, this new contract will have terms that are better for customers than their current Service Contracts. This new Service Contract has the following features:

- The Service Contract initially lasts for 2 years (unless you request a longer term) or until your current Service Contract runs out, whichever is shorter.
- After that, the Service Contract renews for 1 year.
- At the end of the first 2 years, if you do nothing, your Service Contract will renew for 1 year. If you don't want to renew your Service Contract, simply give us notice at least 45 days before it runs out.
- If you want to end the Service Contract at any other time, you will have to pay for any services provided up to the time when you want to end the Service Contract and you will have to pay "liquidated damages." Liquidated damages is at most three times your monthly bill if you are in the first year of your contract, or one time your monthly bill if you have been our customer for more than a year. In this case, we measure liquidated damages by the greater of your most recent bill when you cancel or your average monthly bill for the last three months of service. These liquidated damages are not a penalty. The reason we assess these charges is because actual damages would be difficult, if not impossible, to calculate.

If you want a new Service Contract containing these terms, call [insert CSR telephone number or sales rep name and number].

If you prefer, you may continue with your existing Service Contract. If you do, we will not enforce any terms that are inconsistent with our new form Service Contract.

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.]