IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

FEDERAL TRADE COMMISSION 600 Pennsylvania Avenue, NW Washington, DC 20580, Plaintiff, v. RED SKY HOLDINGS LP 2400, 530 - 8th Avenue S.W. Calgary, Alberta T2P 3S8 Canada, CCS CORPORATION 2400, 530 - 8th Avenue S.W. Calgary, Alberta T2P 3S8, Canada, and NEWPARK RESOURCES, INC. 2700 Research Forest Drive, Suite 100 The Woodlands, Texas 77381 Defendants.	Civil Action No. _____

COMPLAINT FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION PURSUANT TO SECTION 13(b) OF THE FEDERAL TRADE COMMISSION ACT

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), by its designated attorneys, petitions the Court, pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), and Section 16 of the Clayton Act, 15 U.S.C. § 26, for a temporary restraining order and preliminary injunction enjoining defendants Red Sky Holdings LP and CCS Corporation, including their domestic and foreign agents, divisions, parents, subsidiaries, affiliates, partnerships, or joint ventures (collectively, "CCS"), from taking any steps toward acquiring any stock, assets, or other interest, either directly or indirectly, of or from

defendant Newpark Resources, Inc., or its domestic and foreign agents, divisions, subsidiaries, affiliates, partnerships, or joint ventures (collectively, "Newpark"); thereby maintaining the status quo during the pendency of an administrative proceeding that has already been commenced by the Commission pursuant to Sections 7 and 11 of the Clayton Act, 15 U.S.C. §§ 18 and 21, to adjudicate the proposed acquisition.

NATURE OF THE CASE

1. This is an action to stop defendants from consummating or otherwise taking any direct or indirect steps toward an anticompetitive transaction until the completion of an administrative proceeding begun by the Commission on October 23, 2008, pursuant to Section 7 of the Clayton Act, 15 U.S.C. § 18.

2. Defendants CCS and Newpark are two of only three providers of waste disposal services to the offshore oil and natural gas exploration and production ("E&P") industry in the Gulf Coast region of the United States. Newpark has agreed to sell its United States offshore E&P waste disposal operations to CCS for $85 million in cash. Absent Court action, the acquisition can occur as early as October 31, 2008.

3. The acquisition would create a duopoly in the offshore E&P waste disposal markets along the Louisiana Gulf Coast. Further, for many large customers, CCS and Newpark are their first and second choices. This acquisition would therefore create a monopoly for these customers. The administrative complaint issued by the Commission on October 23, 2008 alleges that the transaction would violate the Clayton Act, resulting in higher prices and diminished services for the parties' oil and gas industry customers and ultimately harming consumers of petroleum and natural gas products. Exh. 1. A hearing on the merits before an FTC Administrative Law Judge is scheduled to occur no later than January 22, 2009.

4. After the FTC staff informed defendant CCS it had serious concerns about CCS's acquiring its closest and most significant competitor, CCS announced on October 15, 2008 it would begin exiting the market. CCS is obviously seeking leverage over the FTC to obtain clearance of its facially anticompetitive acquisition.

5. Thus, equitable relief is imperative to preserve the status quo so that the FTC can examine the transaction on the merits. Allowing CCS to begin implementing its acquisition of Newpark would harm consumers and undermine the Commission's ability to remedy the anticompetitive effects of the proposed acquisition.

JURISDICTION AND VENUE

6. This Court's jurisdiction arises under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and Section 16 of the Clayton Act, 15 U.S.C. § 26, and under 28 U.S.C. §§ 1331, 1337 and 1345. Defendants transact business within this district pursuant to 28 U.S.C. § 1391(b) and (c). This is a civil action arising under Acts of Congress protecting trade and commerce against restraints and monopolies, and is brought by an agency of the United States authorized by an Act of Congress to bring this action. Venue is proper under 15 U.S.C. §§ 22 and 53(b), and 28 U.S.C. § 1391(b) and (c), as both CCS and Newpark transact business in the Southern District of Texas. Defendants and are engaged in "commerce" or activities affecting "commerce" as defined in Section 1 of the Clayton Act, 15 U.S.C. § 12.

7. Section 13(b) of the FTC Act, 15 U.S.C. 53(b), provides in pertinent part:

> (b) Whenever the Commission has reason to believe
>
> (1) that any person, partnership, or corporation is violating, or is about to violate, any provision of law enforced by the Federal Trade Commission, and
>
> (2) that the enjoining thereof pending the issuance of a complaint by the Commission and until such complaint is dismissed by the Commission or set

> aside by the court on review, or until the order of the Commission made thereon has become final, would be in the interest of the public the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States to enjoin any such act or practice. Upon a proper showing that weighing the equities and considering the Commission's likelihood of ultimate success, such action would be in the public interest, and after notice to the defendant, a temporary restraining order or a preliminary injunction may be granted without bond. . . .

PARTIES

8. Plaintiff, the Commission, is an administrative agency of the United States Government established, organized, and existing pursuant to the FTC Act, 15 U.S.C. § 41 *et seq.*, with its principal offices at 600 Pennsylvania Avenue, N.W., Washington, DC 20580. The FTC has the authority and responsibility to enforce, among other things, Section 7 of the Clayton Act and Section 5 of the FTC Act.

9. Defendant Red Sky Holdings LP ("Red Sky") is a limited partnership formed, on information and belief, in 2007 under the laws of Alberta, Canada.

10. Red Sky wholly owns defendant CCS Corporation (formerly CCS Inc.), an Alberta corporation with its principal place of business at 2400, 530 – 8th Avenue S.W., Calgary, Alberta T2P 3S8, Canada. CCS, in turn, owns CCS Energy Services LLC ("CCS Energy"), a corporation organized, existing, and doing business under and by virtue of the laws of the State of Louisiana, with its principal place of business at 363 North Sam Houston Parkway East, Suite 330, Houston, Texas 77060. CCS Energy provides offshore E&P waste disposal services in the Gulf Coast.

11. Defendant Newpark is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business at 2700 Research Forest Drive, Suite 100, The Woodlands, Texas 77381. Newpark wholly owns

Newpark Environmental Services, LLC and Newpark Environmental Services Mississippi, L.P. (collectively, "Newpark Environmental Services"), which provide offshore E&P waste disposal services on the Gulf Coast.

12. Red Sky, CCS, Newpark, and their relevant operating subsidiaries are engaged in "commerce" as defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12.

THE PROPOSED TRANSACTION

13. Pursuant to a Membership Purchase Agreement dated April 16, 2008, CCS Energy would acquire 100 percent of the United States operations of Newpark Environmental Services for $85 million in cash.

14. Pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a, and an agreement with the FTC staff, unless restrained or enjoined by this Court, defendants may complete the acquisition at 12:00 a.m. on October 31, 2008. Defendants have indicated they intend to close as soon as possible. Indeed, as noted, it appears that CCS is already taking steps to effectuate the deal by closing down part of its operations.

15. On October 23, 2008, the Commission authorized the commencement of this action under Section 13(b) of the FTC Act to seek a preliminary injunction barring the Acquisition until resolution of the administrative proceeding that was commenced by the Commission on October 23, 2008, pursuant to Section 11(b) of the Clayton Act, 15 U.S.C. § 21(b). The legality of the Acquisition under Section 7 of the Clayton Act, and the appropriate remedy, in the event liability is found, will be determined by the Commission through an administrative proceeding and will be subject to judicial review. In authorizing the filing of this complaint, the Commission has determined that (1) it has reason to believe this acquisition

would violate the Clayton Act by substantially reducing competition in one or more markets, and (2) it will promote the public interest for this Court to enjoin the transaction pending the outcome of the Commission's administrative proceeding, and any appeals, so as to minimize potential harm to customers and preserve the Commission's ability to craft an adequate remedy if it concludes, after the full hearing on the merits in the administrative proceeding, that the transaction is unlawful.

AFFECTED MARKETS

16. The relevant product market that would be affected by CCS Energy's acquisition of Newpark Environmental Services involves the provision of offshore E&P waste disposal services. The relevant geographic markets are the specific ports of Fourchon, Venice, Morgan City, and Intracoastal City, Louisiana. Alternatively, the Louisiana Gulf Coast as a whole is the geographic market. "E&P waste" refers to waste generated during the exploration for or production of oil or natural gas. "Offshore E&P waste" refers to E&P waste generated in a body of water, including a wetland, navigable State or Federal waterway, or the Gulf of Mexico.

17. The affected markets are already highly concentrated. Moreover, due to the technical complexity and regulatory permitting of E&P waste processing and disposal sites, barriers to entry are high.

MARKET CONCENTRATION

18. Only three firms compete in the offshore E&P waste disposal services markets along the Louisiana Gulf Coast: CCS, Newpark, and U.S. Liquids of Louisiana ("U.S. Liquids").

19. As a result of the proposed acquisition, the number of competitors would fall to two, and CCS would have a market share of 50 percent or greater in each of the four geographic markets, and in the alternative geographic market consisting of the Louisiana Gulf Coast.

20. Moreover, for many large customers in the Gulf Coast, CCS and Newpark are their first and second choices. Thus, for this class of customers (or submarket), the transaction would create a monopoly, eliminate choice, and lead to higher prices and lower service quality.

21. The Herfindahl-Hirschman Index ("HHI") – the sum of the squares of the market shares of each individual market participant – is a commonly accepted measure of market concentration. Markets with HHIs greater than 1,800 are considered highly concentrated. The post-acquisition Herfindahl-Hirschman Indexes ("HHIs") in the relevant geographic markets would be at least 5,000, reflecting HHI increases of at least 300 over preacquisition levels. These measures establish a presumption of anticompetitive effects and illegality.

ANTICOMPETITIVE EFFECTS

22. CCS would be acquiring its primary and closest competitor. The acquisition would consolidate the two most significant providers of offshore E&P waste disposal services to the major oil and gas exploration and production companies operating in the Louisiana Gulf Coast, eliminating substantial head-to-head competition between CCS and Newpark.

23. Thus, the acquisition would eliminate both price and nonprice competition between CCS and Newpark and facilitate CCS's unilateral exercise of market power.

24. In addition, with a post-acquisition duopoly of CCS and U.S. Liquids, and with information relating to competitors' costs, customers, waste volumes, locations, and prices widely available, each of these markets is conducive to the coordinated exercise of market power. CCS, in particular, has already attempted to lead coordinated price increases in the past two years.

25. The acquisition is of particular concern, moreover, because, but for the merger, competition between CCS and Newpark likely will increase in intensity in the coming years as a

result of CCS's development of a new state-of-the-art salt cavern disposal facility in Weeks Island, Louisiana.

26. The acquisition would also eliminate potential competition in additional ports along the United States Gulf Coast.

27. Defendants cannot satisfy the requirements of a "failing firm" defense (*i.e.*, defendants cannot show that: either defendant would be unable to meet its financial obligations in the near future without the acquisition; it could not successfully reorganize under Chapter 11 of the Bankruptcy Act; it has made unsuccessful, good-faith efforts to find alternative offers to acquire the assets of the allegedly failing firm that would keep those tangible and intangible assets in the relevant market(s) and pose a less severe danger to competition than the proposed merger; or that, absent the merger, the assets of the allegedly failing firm would exit the relevant market). Similarly, defendants cannot establish a "failing division" defense.

ENTRY BARRIERS

28. Substantial and effective entry into the relevant markets sufficient to deter or counteract the anticompetitive effects of the proposed acquisition is unlikely to occur, as the Louisiana Gulf Coast offshore E&P waste disposal services business has significant barriers to entry – including complex technical and environmental permitting requirements – that limit competition to the incumbent providers.

CCS'S ALLEGED PLANS TO "SHUT DOWN ITS OPERATIONS IN THE GULF"

29. Hours after the FTC informed defendant CCS that it had serious concerns about CCS's acquiring its closest and most significant competitor, CCS hatched a plan to exit the

market and, on October 15, 2008, sent a letter to the FTC staff announcing that it was "shutting down operations in the Gulf Coast."

30. Only after the antitrust review process was well underway and it appeared that the Commission might challenge the acquisition did CCS claim it would exit the business if it could not acquire Newpark. Nothing in CCS's business files supports the arguments that CCS's Gulf Coast business is not viable, or that CCS's survival depends on its acquiring Newpark, its most significant competitor. CCS is merely executing its post-merger integration plan and disguising this action as evidence that the company is no longer competitively relevant, to influence the Court and increase the pressure on the FTC to clear this anticompetitive acquisition.

LIKELIHOOD OF SUCCESS ON THE MERITS, BALANCE OF EQUITIES, AND NEED FOR RELIEF

31. In deciding whether to temporarily restrain or preliminarily enjoin the CCS-Newpark transaction, the Court must balance the likelihood of the administrative complaint's ultimate success on the merits against the *public* equities, using a sliding scale, and without regard to any equities affecting only the defendants.

32. The administrative complaint raises questions about the lawfulness of the proposed transaction under the Clayton Act that are serious, substantial, difficult, or doubtful enough to make them fair ground for thorough investigation, study, deliberation, and determination by the Commission during the administrative proceeding in the first instance, subject to appellate review.

33. Specifically, the FTC staff is likely to succeed in demonstrating to the Commission in the administrative proceeding, among other things, that:

a. The proposed acquisition would have significant anticompetitive effects in the Louisiana Gulf Coast offshore E&P waste disposal services market or markets;

b. Substantial and effective entry by new competitors in the Louisiana Gulf Coast offshore E&P waste disposal services market(s) is difficult, and would not be likely, timely, or sufficient to offset the anticompetitive effects of this transaction;

c. Any efficiencies that defendants may assert will result from the transaction are speculative, not merger-specific, and are, in any event, insufficient as a matter of law to justify the creation of a duopoly; and

d. The defendants cannot establish a "failing company" or "failing division" defense, which defendants must affirmatively prove.

34. Should the Commission rule after the full trial in the administrative proceeding that the proposed transaction is unlawful, reestablishing the *status quo ante* of vigorous competition between CCS and Newpark would be difficult, if not impossible, if the sale of Newpark Environmental Services to CCS Energy had already occurred. Moreover, substantial harm to competition would be likely to occur in the interim, even if suitable divestiture remedies could be devised.

35. Accordingly, the equitable relief requested here is in the public interest.

WHEREFORE, the Commission respectfully requests that the Court:

1. Temporarily restrain and preliminarily enjoin CCS and Newpark from taking any steps to complete the proposed transaction, or any other similar or related acquisition or combination of stock, assets, or other interests, either directly or indirectly;

2. Retain jurisdiction and maintain the status quo until the administrative proceeding that the Commission has already initiated is concluded, including any appeals; and

3. Award such other and further relief as is appropriate, just, and proper.

October 23, 2008

Respectfully submitted,

By: *s/J. Robert Robertson*

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CERTIFICATE OF SERVICE

This will certify that the attached Complaint for Temporary Restraining Order and Preliminary Injunction Pursuant to Section 13(b) of the Federal Trade Commission Act was served on October 23, 2008, by Federal Express Overnight delivery to:

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