Woodbury County

Mount Sinai Temple, 1320 Nebraska St., Sioux City, 99001268

MINNESOTA

Norman County

Zion Lutheran Church, Co. Hwy. 3, Shelly vicinity, 99001269

N. MARIANA ISLANDS

Tinian Municipality

Unai Dangkulo Petroglyph Site, Address Restricted, Unai Dangkulo vicinity, 99001270

OHIO

Summit County

Botzum Farm, (Agricultural Resources of the Cuyahoga Valley MPS) 3486 Riverview Rd., Cuyahoga Falls vicinity, 99001271

VERMONT

Chittenden County

Howard Mortuary Chapel, 455 North Ave., Burlington, 99001272

WISCONSIN

Lafayette County

Prairie Spring Hotel, WI 23 S, Willow Springs, 99001273

[FR Doc. 99–25743 Filed 10–1–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil No. 1:98 CV 1616 (AA)]

United States, States of Ohio, Arizona, California, Colorado, Florida, Maryland, Michigan, New York, Texas, Washington and Wisconsin and Commonwealths of Kentucky and Pennsylvania v. USA Waste Services, Inc., Dome Merger Subsidiary, and Waste Management, Inc.

Response to Public Comments on Antitrust Consent Decree

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that on September 14, 1999, the United States filed its responses to public comments on the proposed Final Judgment in *United States, et al.* v. *USA Waste Services, Inc., et al.*, Civil No. 1:98 CV 1616 (AA) (N.D. Ohio, filed July 16, 1998), with the United States District Court in Cleveland, Ohio.

On July 16, 1998, the United States and 13 states filed a civil antitrust complaint, which alleges that USA Waste Services proposed acquisition of Waste Management would violate Section 7 of the Clayton Act, 15 U.S.C. 18, by substantially lessening competition in waste collection and/or disposal services, or both, in a number of markets around the country, including Baltimore, MD; Akron/Canton, Cleveland and Columbus, OH; Denver, CO; New York, NY; Los Angeles, CA; Detroit, Flint and Northern Michigan; Miami; FL; Houston, TX; Louisville, KY; Milwaukee, WI; Philadelphia, Pittsburgh, and Allentown, PA; Tucson, AR; Portland, OR; and Gainesville, FL.

The proposed Final Judgment, filed on July 16, 1998, requires USA Waste and Waste Management to divest commercial waste collection and/or municipal solid waste disposal operations in each of the geographic areas alleged in the Complaint. A modified version of the proposed Judgment (''Modified Final Judgment''), filed on September 14, 1999, would eliminate the defendants' contingent obligation to divest one New York City transfer station (the Brooklyn Transfer Station, located on Scott Avenue).

Public comment on the proposed Judgment was invited within the statutory 60-day comment period. The public comments and the United States' responses thereto are hereby published in the **Federal Register** and have been filed with the Court. Copies of the Complaint Hold Separate Stipulation and Order, proposed Final Judgment, Competitive Impact Statement, and the United States' Certificate of Compliance with Provisions of the Antitrust Procedures and Penalties Act (to which the public comments and the United States' responses are attached), proposed Modified Final Judgment, and the Memorandum of the United States in Support of Entry of the Proposed Modified Final Judgment are available for inspection in Room 215 of the Antitrust Division, Department of Justice, 325 7th Street, NW, Washington, DC 20530 (telephone: 202–514–2481), and at the Office of the Clerk of the United States District Court for the Northern District of Ohio, Eastern Division, 201 Superior Avenue, Cleveland, OH 44114.

Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,]

Director of Operations & Merger Enforcement Antitrust Division.

Memorandum of the United States in Support of Entry of the Proposed Modified Final Judgment

I. Introduction

A. The Procedural Background

On July 16, 1998, the United States, and the states of Ohio, Arizona, California, Colorado, Florida, Maryland, Michigan, New York, Texas, Washington, and Wisconsin, and the commonwealths of Kentucky and Pennsylvania filed a civil antitrust complaint, which alleged that USA Waste Services, Inc.'s (''USA Waste's'') acquisition of Waste Management, Inc. would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleged that in 19 geographic areas around the country, the defendants were two of the most significant competitors in commercial waste collection, or disposal of municipal solid waste (*i.e.*, operation of landfills, transfer stations and incinerators), or both services, and that the elimination of competition as a result of the merger could lead to higher prices or reduced services for purchasers of waste collection or disposal services.

At the time the Complaint was filed, the parties submitted a proposal Final Judgment that would require the defendants to divest assets sufficient to preserve the competition that otherwise would be lost in each of the markets in which an antitrust violation had been alleged. The parties also filed—and the Court (per Chief Judge Matia) entered—a Hold Separate Stipulation and Order, allowing the defendants to complete their merger transaction, provided that they keep the assets required to be divested separate from their own business operations and adhere to the terms of the proposed Final Judgment pending the United States' compliance with the notice and comment provisions of the Antitrust Penalties and Procedures Act, 15 U.S.C. 16(b)–(h) (the ''APA'').[1]

B. The Pending Motion To Enter the Proposed Modified Final Judgment

Today, the United States has filed a Certificate of Compliance with Provisions of the Antitrust Procedures

[1] Nothing in the Hold Separate Order, however, prevents the defendants from promptly selling the assets required to be divested to an acceptable purchaser, and in this instance, the defendants chose to do so prior to APPA compliance. In a series of transaction beginning in September 1998 and ending in February 1999, the defendants divested all of the assets available for sale under the decree (except the Baltimore disposal assets) to Republic Services, Inc. (''Republic'') for approximately $500 million. In October 1998, the defendants sold the Baltimore disposal assets to Browning-Ferris Industries, Inc. (''BFT'') for roughly $60 million over a ten-year time period.

The United States, after consultation with the relevant states, concluded that Republic and BFI were both acceptable purchasers under the terms of the proposed Judgment. The defendants informed the Court of the pending sales of these assets before consummation. (See Letter from James R. Weiss, counsel for defendants USA Waste and Waste Management, to Honorable Ann Aldrich, United States District Judge, dated October 30, 1998).

and Penalties Act, certifying that it has notified the public of the terms of the proposed settlement and fully responded to the public comments that were received. The parties also have submitted, and moved the Court to enter, a slightly modified version of the Final Judgment that was originally proposed. A copy of the proposed Modified Final Judgment is attached hereto as Exhibit A.

The modification affects only a single waste transfer station in a single market, New York City, NY.[2] As originally conceived, the proposed Final Judgment contained a contingent divestiture, requiring the defendants to sell the Brooklyn (or ''Scott Avenue'') Transfer Station, a 1,000 ton/day waste disposal facility located in Brooklyn, NY, if the proposed Nekboh Transfer Station, previously sold by the defendants, has not been licensed or permitted within a year after entry of the proposed Final Judgment. See Final Judgment, §§ II(C)(2)(i) and IV(B). The Modified Final Judgment would eliminate the contingent divestiture of the Scott Avenue Transfer Station (*i.e.*, remove §§ II(C)(2)(i) and IV(B) from the decree) and substitute instead an immediate divestiture of either of two other New York transfer stations, Gesuale (500 ton/day) or Vacarro (400 ton/day).[3]

[2] To put the proposed modification in perspective, the proposed Final Judgment orders the defendants to divest ownership rights in twelve waste transfer stations (including four in New York City) and disposal rights in as many as five other transfer stations. In addition, the defendants were ordered to divest disposal or ownership rights in as many as 18 different landfills.

[3] The defendants' commitment to sell either the Gesuale or Vacarro transfer stations and the government's agreement to join the defendants in moving for the entry of the proposed Modified Final Judgment, were key elements of a consent decree, filed in December 1998 in federal district court in Brooklyn, NY, and entered in May 1999 in settlement of an antitrust suit brought by the United States, the State of New York, and others against the defendants' acquisition of a major New York City waste industry rival, Eastern Environmental Services, Inc. See Final Judgment in United States, States of New York and Florida, and Commonwealth of Pennsylvania v. Waste Management, Inc., Eastern Environmental Services, Inc., *et. al*, Civil No. 98–7168 (E.D.N.Y., entered May 25, 1999) (the ''Waste/Eastern'' case), attached hereto as Exhibit B. The federal district court in Brooklyn (J. Block), following public notice, comment, and government response, entered the Waste/Eastern Final Judgment on May 25, 1999, concluding that an exchange of the contingent divestiture of the Scott Avenue Transfer Station in Brooklyn, NY, for an immediate divestiture of the Scott Avenue Transfer Station in Brooklyn, NY, for an immediate divestiture of one of the two smaller New York transfer stations would be ''in the public interest.'' See the Waste/Eastern Judgment, §§ II(D)(2)(c), IV(A)(2), IV(L), and XIII, Ex. B at 5, 7–8, 12 and 22 (emphasis supplied).

Although this Court must decide for itself whether the Modified Final Judgment submitted for entry in this case would be in the public interest, the judgment of the federal district court in Brooklyn, NY with respect to competitive issues concerning New York City waste transfer stations has some bearing on that issue.

C. Reasons Why Entry of the Proposed Modification Would Be in the Public Interest

As explained below, the United States strongly believes that entry of the proposed Modified Final Judgment would be in the public interest. The major reasons for including this transfer station in the proposed decree are no longer valid. Divestiture of the Scott Avenue Transfer Station is not necessary to ensure the defendants' continued cooperation in licensing the Nekboh site since the purchaser of the Nikboh permit application has the financial resources and economic incentive to pursue on its own licensing of that transfer station. Further, divestiture of the Scott Avenue Transfer Station is not necessary to promote competition in the disposal of the New York City's commercial waste because that transfer station is incapable of effectively competing for such waste, having entered into a long term contract to dispose of the city's residential waste.

Finally, the United States agreed to join the defendants in a motion to eliminate the Scott Avenue Transfer Station from the pending Final Judgment in response to the defendant's twin commitments to divest either of two smaller, but more capable waste disposal facilities in New York City (Gesuale or Vacarro), and two large New York City waste transfer stations subsequently acquired by the defendants from Eastern Environmental Services, Inc. (PJ's and Atlantic Waste).

In our view, each of these reasons provides an independent basis for concluding that entry of the proposed Modified Final Judgment would be in the public interest, and taken together, they appear dispositive of that issue. (The State of New York, the only state plaintiff whose interests are directly affected by the proposed modification, has authorized us to state that it concurs in the motion to enter the proposed Modified Final Judgment and believes the modification to be in the public interest.)[4]

II. Statement of the Case

A. The Complaint, Proposed Final Judgment and Competitive Impact Statement

Although the Complaint in this case alleges that the defendants' combination would eliminate competition in a number of waste collection and disposal markets around the country, the critical issues here relate to competition in the disposal of New York City waste. In that market, the Complaint alleged, defendant USA Waste's acquisition of defendant Waste Management's transfer stations in Brooklyn and Bronx, NY, would substantially lessen competition in the disposal of the city's commercial waste.[5] The Final Judgment sought to remedy this problem by requiring the defendants to divest Waste Management's only waste disposal asset in the Bronx—the SPM Transfer Station [Final Judgment, §§ II (C)(2)(i)(1) and IV]—and to divest USA Waste's only disposal assets in Brooklyn, the All City Transfer Station [*id*, § II(C)(2)(i)(3) and IV] and an application for a permit to construct and operate a waste transfer station at 2 North 5th Street, a site known as the proposed Nekboh Transfer Station [*id.*, § II(C)(2)(i)(2) and IV(B)]. The proposed Judgment further provided that if the divested Nekboh site was not permitted within one year after entry of the Final Judgment, then the defendants must sell a fourth waste transfer station in New York, the Brooklyn (or ''Scott Avenue'') Transfer Station, located at 458 Scott Avenue [*id.*, § II (c)(2)(i)(4) and IV].

The defendants' divestiture of the proposed Scott Avenue Transfer Station was seen as a way both to ensure the defendant's continued cooperation and assistance in permitting the proposed Nekboh Transfer Station and to promote competition in disposal of New York City's commercial waste if, for some reason, that transfer station was not permitted and built within the prescribed time period.

In August 1998, however, the defendants agreed to divest the Nekboh permit to Republic, one of the nation's largest waste collection and disposal firms, which has over $2 billion in total assets. And in early September 1998, the City of New York awarded the Scott Avenue Transfer Station a three to five-year contract for the disposal of the city's residential waste. With the bulk of the facility's available capacity committed under a long-term municipal contract for disposal of residential

[4] The other twelve government plaintiffs also concur and urge the Court to enter the proposed Modified Final Judgment.

[5] *Commercial waste* is municipal solid waste generated by commercial establishments such as restaurants or department stores, private office and apartment buildings. ''Residential waste,'' on the other hand, is municipal solid waste produced by single family households and state and municipal agencies. In New York, commercial waste must be collected and disposed of by private firms. Residential waste is collected and disposed of by the city, which, until recently, maintained its own network of disposal facilities. New York, however, has recently begun contracting with private firms for disposal of the city's residential waste since the city landfill must be closed by 2001.

waste, if the defendants were to divest the Scott Avenue Transfer Station, the new owner could not complete effectively in the processing and disposal of New York City's private commercial waste, the relevant market the government alleged would be adversely affected by the defendants' combination.

B. The Defendants' Acquisition of Eastern Environmental Services, Inc. and the Parties' Resolution of the Competitive Issues Concerning the New York City Waste Disposal Market

In early fall 1998, the defendants [6] agreed to acquire Eastern Environmental Services, Inc. (''Eastern''), a major competitive rival in the disposal of New York City's residential and commercial waste. This agreement precipitated another government antitrust suit, filed in federal district court in Brooklyn, NY, in which the United States and the State of New York alleged that the transaction, if consummated, would substantially reduce competition in waste disposal services in New York.[7] The parties agreed to settle the Waste/Eastern case in late December 1998 and, inter alia, to resolve all of the outstanding issues relating to the defendants' acquisition of competitors in the New York market.

The defendants agreed to divest the two New York waste transfer stations that they would acquire from Eastern, PJ's and Atlantic Waste Disposal. Waste/Eastern a Final Judgment, § § II(D)(2)(1) and (b), IV(A)(1), Ex. B at 5, 7–8. They also agreed to divest either of two smaller waste transfer stations, Gesuale or Vacarro, both located in New York, NY.[8] *Id.* §§ II(D)(2)(c) and IV(A)(2). Because the United States and the State of New York concluded that circumstances had changed and that an immediate divestiture of a transfer station with capacity for disposal of commercial waste was competitively better than a contingent divestiture of Scott Avenue Transfer Station, which no longer had such capacity, they agreed to move for entry of a Modified Final Judgment that would eliminate the requirement that the defendants divest the Scott Avenue Transfer Station if the Nekboh site is not permitted within the prescribed one-year time period. *Id.* § IV(L), Ex. B at 12.

In essence, the United States and the State of New York agreed to a swap, trading a future divestiture of the capacity-constrained Scott Avenue Transfer Station for an immediate divestiture of either one of two small New York transfer stations, both with capacity available for processing commercial waste, and the two waste transfer stations, PJ's and Atlantic Waste, that the defendants had agreed to acquire from Eastern.

The parties filed the proposed Waste/Eastern Judgment on December 31, 1998. Following public notice and response to public comments,[9] the federal district court in Brooklyn entered the Final Judgment in the Waste/Eastern case on May 25, 1999, after concluding that that decree, including the provision requiring the United States and the State of New York to join the defendants in a joint motion to modify the Final Judgment in this case, would be ''in the public interest.'' Waste/Eastern Final Judgment, § XIII, Ex. B at 22.

III. Argument

A. Entry of the Modified Final Judgment Would Be in the Public Interest

At this stage of the proceedings, after the United States has certified its compliance with the public notice and response to comment requirements of the APPA, the Court must determine whether entry of the proposed Modified Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e). As noted in our Competitive Impact Statement, 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.'' [10] 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. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977). And ''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 omittted).'' [11]

B. The Public Comments on the Proposed Final Judgment Were Unpersuasive

''[T]his is not a case wherein objectors speak with one voice,'' *United States* v. *Natl. Broadcasting Co.*, 449 F. Supp. 1127, 1144 (C.D. Cal. 1978) (distinguishing *United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975), where the court confronted ''unified opposition'' to a proposed consent decree). Rather, in this case, the 13 public comments submitted on the proposed Final Judgment expressed a wide variety of views, which the United States carefully considered and addressed, but which ultimately failed to persuade the United States to withdraw its consent to entry of the proposed Judgment. (See Certificate of Compliance, Ex. 3–15.)

In its responses to the public comments, the United States carefully explained why requiring the defendants to make extensive divestitures (*id.*, Ex. 7–9, 12–15) or imposing more onerous restrictions on the defendants' business operations post-merger (*id.*, Ex. 1, 10) were unwarranted under the circumstances.[12] In our view, the proposed Final Judgment, without these additional requirements, falls well ''within the range of acceptability'' and the broad ''reaches of the public

[6] After the defendants USA Waste Services, Waste Management and Dome Merger Subsidiary merged, they named the new firm ''Waste Management, Inc.''

[7] The complaint also alleged the merger would create competitive problems in collection and disposal markets in Pennsylvania and Florida, and those states were co-plaintiffs in that lawsuit.

[8] The defendants later opted to divest the Vacarro Transfer Station.

[9] In accordance with the APPA, the United States published notice of the Waste/Eastern Judgment in the New York Times and the Washington Post, newspapers of general circulation in New York, NY and Washington, DC. The United States also published a copy of the complaint, proposed judgment and competitive impact statement in the **Federal Register** on February 26, 1999 (64 Fed. Reg. 9527), and published its responses to the public comments on the Waste/Eastern decree on June 11, 1999 (64 FR 31638).

[10] 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 government's 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.

[11] *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.*, 406 F. Supp. 713, 716 (D. Mass. 1975); *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

[12] The only comments related to the contingent divestiture of the Scott Avenue transfer Station were from individuals who favored converting the proposed site for the Nekboh transfer Station into an open space or a public park (see Certificate of Compliance, Ex. 4–6), comments which do not implicate the proposed modification.

interest.'' *United States* v. *AT&T*, 552 F. Supp. at 150.

C. Removing the Contingent Divestiture of the Scott Avenue Transfer Station From the Proposed Judgment Would Be in the Public Interest

This case, however, is somewhat atypical because the Modified Final Judgment that the parties now urge the Court to enter differs somewhat from the Final Judgment that they originally proposed.[13] The United States strongly believes that the difference—removal of the Scott Avenue Transfer Station from the modified decree—is a minor change that would make the Modified Final Judgment more effective and procompetitive than the earlier decree the parties proposed.

First, the defendants' divestiture of the Scott Avenue Transfer Station is not necessary to ensure that the Nekboh Transfer Station is permitted. As noted above, the defendants subsequently sold the permit application for the Nekboh site to Republic, now the nation's third largest waste collection and disposal firm. With over $2 billion in annual revenues, Republic certainly possesses the management skill, financial wherewithal and economic incentive to pursue on its own a permit for the proposed Nekboh Transfer Station. In addition, the proposed Modified Final Judgment requires the defendants to cooperate and enjoins them from interfering in any way with Republic's efforts to obtain a permit for the Nekboh site. Modified Final Judgment, §§ IV(H) and VIII (B) and (C), Ex. A at 20, 28. Thus, forcing a divestiture of the Scott Avenue Transfer Station would not advance the timing on the permitting and opening of the Nekboh site.

Moreover, a divestiture of the defendants' Scott Avenue Transfer Station would not promote competition in the disposal of New York City's private commercial waste because as a consequence of a long-term municipal contract, virtually all of that transfer station's capacity is committed to processing the city's residential waste.

In short, the compromise the parties reached in the Waste/Eastern case—returning the Scott Avenue Transfer Station for three transfer stations that would resolve the competitive problems created by the defendants' series of acquisitions of rivals in the New York City market for disposal of commercial waste—not only avoided an expensive and resource-intensive trial on the merits in that case, but also obtained immediate relief, not merely a contingent remedy, that would be more effective than that contained in the proposed Final Judgment in this case. In these circumstances, the United States strongly believes that entry of the proposed Modified Final Judgment in this case is squarely in the public interest.

IV. Conclusion

For the foregoing reasons, and for the reasons set forth in the United States' Certificate of Compliance with Provisions of the Antitrust Procedures and Penalties Act, the United States respectfully requests that this Court enter the proposed Modified Final Judgment.

Dated: September 13, 1999.

Respectfully submitted,

Anthony E. Harris, Illinois Bar No. 1133713,
U.S. Department of Justice, Antitrust Division, Litigation II, 1401 H Street, NW, Suite 3000, Washington, DC 20530, (202) 307–6583.

Modified Final Judgment

Whereas, plaintiffs, the United States of America, the State of Ohio, the State of Arizona, the State of California, the State of Colorado, the State of Florida, the Commonwealth of Kentucky, the State of Maryland, the State of Michigan, the State of New York, the Commonwealth of Pennsylvania, the State of Texas, the State of Washington, and the State of Wisconsin, and defendants USA Waste Services, Inc. (''USA Waste'') and Waste Management, Inc. (''WMI''), 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 provisions 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 the Relevant Disposal Assets and Relevant Hauling Assets to assure that competition is not substantially lessened;

And whereas, plaintiffs require defendants to make certain divestitures for the purpose of establishing one or more viable competitors in the waste disposal business, the commercial waste hauling business, or both in the specified areas;

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 (including Dome Merger

[13] There is no requirement that the government must republish the settlement or resolicit public comment simply because it proposes that the Court enter a modified version of the final judgment originally proposed. The reported cases interpreting the APPA strongly suggest that republication is unnecessary. In *United States* v. *Nat'l. Broadcasting Co.*, 449 F. Supp. 1127 (C.D. Cal. 1978), modified, 1993–2 Trade Case. (CCH) ¶ 70,418 (C.D. Cal. 1993), the government amended a proposed consent decree after comments were received, then submitted the amended proposed judgment for approval by the court. The court said that ''the requirements of the APPA concerning publication and consideration of public comments have been satisfied'' (*id.* at 1129), and subsequently approved the decree. *Id.* at 1145. See also *Massachusetts Sch. of Law* v. *United States*, 118 F.3d 776, 778 (D.C. Cir. 1997) (relating the district court's decision to enter a consent judgment after several modifications had been made following the end of the public comment period). In *United States* v. *American Tel. & Tel. Co.*, 552 F. Supp. 131, 225 (D.D.C. 1982) (''AT&T''), aff'd sub nom. *Maryland* v. *United States*, 460 U.S. 1001 (1983), Judge Greene approved a proposed consent decree after the comment period had expired, also on the condition that the decree be amended to add a new section. In none of the cases did the court require republication of the amended proposed consent decree before entry. Rather, by eventually entering the consent judgments, the court in each case implicitly concluded that the requirements of the APPA were satisfied by the initial publication, comment, and response. See, *e.g.*, Nat'l. Broadcasting Co., 449 F. Supp. at 1129.

In any event, to the extent notice and opportunity to comment is necessary, it was provided when the United States complied with the APPA before entry of the Final Judgment in the Waste/Eastern case. The competitive impact statement filed in that case discussed the substitution of the Gesuale and Vacarro transfer stations for the Scott Avenue Transfer Station. 64 Fed. Reg. 9538. The Judgment in that case was published in The New York Times, prior to its entry, and thus provided ample notice and opportunity to comment to those persons affected most directly by the waste disposal relief in the New York City market. See the Certificate of Compliance in the Waste/Eastern case, 64 FR 31638, 31639 (July 11, 1999).

Subsidiary), divisions, groups, affiliates, directors, officers, managers, agents, and employees.

B. *WMI* means defendant Waste Management, Inc., a Delaware corporation with its headquarters in Oak Brook, Illinois, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agent, and employees.

C. *Relevant Disposal Assets* means, unless otherwise noted, with respect to each landfill or transfer station listed and described herein, all tangible assets, including all fee and leasehold and renewal rights in the listed landfill or transfer station; the garage and related facilities; offices; landfill- or transfer station-related assets including capital equipment, trucks and other vehicles, scales, power supply equipment, interests, permits, and supplies; and all intangible assets of the listed landfill or transfer station, including landfill- or transfer station-related customer lists, contracts, and accounts, or options to purchase any adjoining property. Relevant Disposal Assets, as used herein, includes each of the following properties:

1. Landfills and Airspace Disposal Rights

a. Akron/Canton, OH

WMI's Countywide R&D Landfill, located at 3619 Gracemont Street, SW, East Sparta, OH 44626, and known as the Countywide Landfill;

b. Columbus, OH

USA Waste's Pine Grove Landfill, located at 5131 Drinkle Road, SW, Amanda, OH 43102;

c. Denver, CO

USA Waste's Front Range Landfill, located at 1830 County Road 5, Erie, CO 80516–8005; and at purchaser's option, a two-year waste supply agreement that would require defendants to dispose of a minimum of 150 tons/day of waste at the Front Range Landfill, at disposal fees to be negotiated between purchaser and defendants;

d. Detroit, MI

USA Waste's Carleton Farms Landfill, located at 28800 Clark Road, New Boston, MI, subject to two conditions, *viz,* USA Waste's obligations to (1) dispose of ash from the Greater Detroit Resource Recovery Center's incinerator at a separate monofill cell on this site pursuant to an existing contract, and (2) dispose of waste from the Greater Detroit Resource Recovery Center's bypass transfer station at this landfill, until defendants transfer such obligation to another landfill, which they shall use their best efforts to accomplish expeditiously;

e. Flint, MI

USA Waste's Brent Run Landfill, located at Vienna Road, Montrose Township, Genesee County, MI;

f. Houston, TX

(1) USA Waste's Brazoria County Landfill, located at 10310 FM–523, Angleton, TX 77515; and

(2) Airspace disposal rights at WMI's Security Landfill, located at 19248 Highway 105E, Cleveland, TX, or WMI's Atascocita Landfill, located at 2020 Atascocita Road, Humble, TX, or both, pursuant to which defendants will sell to one or more purchasers rights to dispose of at least 3.0 million tons of waste, over a ten-year period, under the following minimum terms and conditions:

(a) The purchaser (or all purchasers combined), or their designee(s), may dispose of up to 360,000 tons of waste/year, or a maximum of 1,200 tons of waste/day, at either, or both of, WMI's Security or Atascocita landfills. If more than one person purchases the airspace disposal rights, the minimum annual and daily disposal rates for each purchaser shall be specified in its purchase agreement, and the total of all purchasers' maximum disposal amounts shall be no less than 360,000 tons/year and 1,200 tons/day;

(b) For each purchaser of airspace rights (or their designee), defendants must commit to operate the Atascocita Landfill and Security Landfill gates, scale houses, and disposal areas under terms and conditions no less favorable than those provided to defendants' own vehicles or to the vehicles of any municipality in the metropolitan Houston area, except as to price and credit terms;

(c) At the end of the first five years of the agreement, the purchaser or purchasers will have been considered to have used a minimum of 1.4 million tons of airspace and can have no more than 1.6 million tons left to use under the purchase agreements. If there is more than one purchaser of the airspace, the minimum amounts used during the first five years shall be specified in their purchase agreements, but the total amount shall be no more than 1.4 million tons; and

(d) At the end of the first seven years of the agreement, the purchaser (or purchasers) will have been considered to have used a minimum of 2.0 million tons of airspace and can have no more than 1.0 million tons left to use under the purchase agreements. If there is more than one purchaser of the airspace, the minimum amount used during the first five years shall be specified in their purchase agreements, but the total amount shall be no more than 2.0 million tons;

g. Los Angeles, CA

USA Waste's Chiquita Canyon Landfill, located at 29201 Henry Mayo Drive, Valencia, CA 91355;

h. Louisville, KY

USA Waste's Valley View Landfill, located at 9120 Sulphur Road, Sulphur, KY 40070;

i. Miami, FL

Airspace disposal rights at USA Waste's Okeechobee Landfill, controlled by a subsidiary of USA Waste, and located at 10800 NE 128th Avenue, Okeechobee, FL 34972, pursuant to which defendants will sell a total of 4.3 million tons of airspace, over a 20-year time period, to one or more purchasers, under the following minimum terms and conditions:

(1) The right to dispose of a maximum of 1.8 million tons of South Florida Waste, over a 20-year time period, as follows:

(a) The purchaser (or purchasers) must commit to dispose of no more than 600 tons/day, of South Florida Waste;

(b) The total amount of airspace used in each year may not exceed 150,000 tons; and

(2) Three options for additional airspace at Okeechobee Landfill, exercisable at the sole discretion of the purchaser of the airspace disposal rights, as follows:

(a) *First Option:* The right to dispose of an additional 1.0 million tons of South Florida Waste at the Okeechobee Landfill, for the remaining term of the agreement, as follows:

(i) The amount of airspace used each weekday must be at least 500 tons, but not more than 800 tons (including tonnage disposed of under prior air space commitments); and

(ii) the amount of airspace used in the year the option is exercised, and in each succeeding year over the term of the agreement, may not exceed 225,000 tons (including tonnage disposed of under prior air space commitments);

(b) *Second Option:* Exercisable at any time after the second anniversary of the agreement, and after exercise of the first option, the right to dispose of an additional 1.0 million tons of South Florida Waste at the Okeechobee Landfill, for the remaining term of the agreement, as follows:

(i) The amount of airspace used each weekday must be at least 600 tons, but

not more than 1,000 tons/day (including tonnage disposed of under prior air space commitments); and

(ii) The amount of airspace used in the year Option Two is exercised and in each succeeding year of the life of the rights may not exceed 300,000 tons (including tonnage disposed of under prior air space commitments); and

(c) *Third Option:* Exercisable any time after the fifth anniversary of the agreement, and after exercise of the second option, the right to dispose of an additional 500,000 tons of South Florida Waste, for the remaining term of the agreement, as follows:

(i) The amount of airspace used must be at least 600 tons/weekday, but may not exceed 1,100 tons/weekday (including tonnage disposed of under prior air space commitments);

(ii) The amount of airspace used in the year the third option is exercised, and in each succeeding year of the life of the rights may not exceed 300,000 tons/year (including tonnage disposed of under prior air space commitments); provided, that in any event,

(d) The Okeechobee Landfill Rights shall expire when the purchaser has used the maximum tonnages available under the rights and any exercised options, or twenty years from the date of purchase of the rights, whichever is sooner; and

(e) For each purchaser of airspace rights (or its designee), defendants must commit to operate the Okeechobee Landfill, and its gate, scale house, and disposal area under terms and conditions no less favorable than those provided to defendants' own vehicles or to the vehicles of any municipality in Florida, except as to price and credit terms;

j. Milwaukee, WI

USA Waste's Kestrel Hawk Landfill, located at 1989 Oakes Road, Racine, WI 53406; and WMI's Mallard Ridge Landfill, located at W. 8470 State Road 11, Delavan, WI 53115;

k. New York, NY/Philadelphia, PA

WMI's Modern Landfill & Recycling, located at 4400 Mt. Piscah Road, York, PA 17402, and known as the Modern Landfill;

l. Northeast Michigan

USA Waste's Whitefeather Landfill, located at 2401 Whitefeather Road, Pinconning, MI; and Elk Run Sanitary Landfill, located at 20676 Five Mile Highway, Onaway, MI;

m. Pittsburgh, PA

WMI's Green Ridge Landfill, located at 717 East Huntingdon Landfill Road, Scottdale, PA 15683, and variously known as the Green Ridge Landfill, the Y&S Landfill, or the Greenridge Reclamation Landfill;

n. Portland, OR

USA Waste's North WASCO Landfill, located at 2550 Steele Road, the Dalles, OR 97058; and

2. Transfer Stations, Disposal Rights and Throughput Agreements

a. Akron/Canton, OH

Throughput disposal rights of a maximum of 400 tons/day of waste, for a ten-year time period, at WMI's Akron Central Transfer Station, located at 389 Fountain Street, Akron, OH, under the following terms and conditions:

(1) The purchaser (or its designee) can deliver waste to the Akron Central Transfer Station for processing and, at the purchaser's option, load the processed waste into the purchaser's (or its designee's) vehicles for disposal;

(2) For each purchaser of such disposal rights (or its designee), defendants must commit to operate the listed Akron Central Transfer Station's gate, scale house, and disposal area under terms and conditions no less favorable than those provided to defendants' own vehicles or to the vehicles of any municipality in Ohio, except as to price and credit terms;

b. Baltimore, MD

Disposal rights of at least 600 tons of waste/day, pursuant to which defendants will sell to one or more purchasers rights to dispose, for a five-year time period, under the following terms and conditions:

(1) The purchaser(s) or its designee(s) may dispose of waste at any one or any combination of the following facilities, as specified in its purchase agreement: Southwest Resource Recovery Facility (known as Baltimore RESCO or BRESCO), located at 1801 Annapolis Road, Baltimore, MD 21230; Baltimore County Resource Recovery Facility, located at 10320 York Road, Cockeysville, MD; Western Acceptance Facility, located at 3310 Transway Road, Baltimore, MD; or Annapolis Junction Transfer Station, located at 8077 Brock Bridge Road, Jessup, MD 20794. If more than one person purchases the disposal rights, the minimum daily disposal rates, and the total of all purchasers' maximum disposal amounts at all facilities specified shall be no less than 600 tons/day;

(2) For each purchaser of disposal rights (or its designee), defendants must commit to operate the listed Baltimore, MD area facilities' gates, scale houses, and disposal areas under terms and conditions no less favorable than those provided to defendants' own vehicles or to the vehicles of any municipality in Maryland, except as to price and credit terms;

c. Cleveland, OH

At purchaser's option, either USA Waste's Newburgh Heights Transfer Station, located at 3227 Harvard Road, Newburgh Heights, OH 44105 (and known as the Harvard Road Transfer Station); or all of WMI's right, title and interest in the Strongsville Transfer Station, located at 16099 Foltz Industrial Parkway, Strongsville, OH; provided, however, that the City of Strongsville, owner of the transfer station, approves such sale or assignment. Defendants will exercise their best efforts to secure the assignment to the purchaser of all their rights, title and their interests in the Strongsville Transfer Station, and in the event the purchaser selects Strongsville, defendants will not reacquire any right, title or interest in the Strongsville transfer station. If the contract is not assigned, defendants will enter into a disposal rights agreement with the purchaser (or purchasers), which will provide, in effect, that the purchaser(s) will enjoy all disposal rights and privileges now enjoyed by defendants at the Strongsville Transfer Station, and that defendants will operate the facility's gate, scale house, and disposal areas under terms and conditions no less favorable than those provided to defendant's own vehicles or to the vehicles of any municipality in Ohio, except as to price and credit terms;

d. Columbus, OH

WMI's Reynolds Road Transfer Station, located at 805 Reynolds Avenue, Columbus, OH 43201;

e. Detroit, MI

WMI's Detroit Transfer Station, located at 12002 Mack Avenue, Detroit, MI 48215;

f. Houston, TX

USA Waste's Hardy Road Transfer Station, located at 18784 East Hardy, Houston, TX;

g. Louisville, KY

USA Waste's Poplar Level Road Transfer Station, located at 4446 Poplar Level Road, Louisville, KY;

h. Miami, FL

All USA Waste's right, title, and interest in the Reuters Transfer Station Rights, as conveyed to Chambers Waste Systems of Florida, a subsidiary of USA Waste, pursuant to the Final Judgment in *United States* v. *Reuter Recycling of*

Florida, Inc., 1996–1 Trade Cas. (CCH) ¶ 71,353 (D.D.C. 1996), a copy of which is attached as Exhibit A;

i. New York, NY

(1) WMI's SPM Transfer Station, located at 912 East 132nd Street, Bronx, NY 10452, and all rights and interests, legal or otherwise, that WMI now enjoys, has had or made use of out of the SPM Transfer Station, to deliver waste by truck to rail siding at the Oak Point Rail Yard in the Bronx, NY, and at the Harlem River Yards facility, located at St. Ann's and Lincoln Avenues at 132nd Street, Bronx, NY 10454;

(2) All right, title, and interest in USA Waste's pending application to construct and operate a waste transfer station located at 2 North 5th Street, Brooklyn, NY 11211, and known as the Nekboh Transfer Station; and

(3) USA Waste's All City Transfer Station, located at 246–252 Plymouth Street, Brooklyn, NY 11202;

j. Philadelphia, PA

USA Waste's Girard Point Transfer Station, located at 3600 South 26th Street, Philadelphia, PA 19145; and USA Waste's Quick Way Inc. Municipal Waste Transfer Station, located at SE Corner, Bath and Orthodox Streets, Philadelphia, PA 19137, subject to the conditions that (1) the existing City of Philadelphia waste contract is transferred to a WMI transfer station, which defendants must use their best efforts to accomplish, and (2) until such transfer is effect3ed, USA Waste will be granted throughput capacity at the Quick Way Transfer Station to handle this contract.

D. *Relevant Hauling Assets,* unless otherwise noted, means with respect to each commercial waste collection route or other hauling asset described herein, all tangible assets, including capital equipment, trucks and other vehicles, containers, interests, permits, supplies [except real property and improvements to real property (*i.e.*, buildings)]; and it includes all intangible assets, including hauling-related customer lists, contracts, and accounts.

Relevant Hauling Assets, as used herein, includes the assets in the following locations:

1. Akron, OH

USA Waste's and American Waste Corporation's front-end loader truck (''FEL'') commercial routes that serve the City of Akron and Summit County, Ohio;

2. Allentown, PA

WMI's FEL commercial routes that serve the cities of Allentown and Northampton and Lehigh County, PA;

3. Cleveland, OH

WMI's FEL commercial routes that serve the City of Cleveland and Cuyahoga County, Ohio (not including the northwest quadrant);

4. Columbus, OH

WMI's FEL commercial routes that serve Franklin County, Ohio;

5. Denver, CO

USA Waste's FEL commercial routes that serve the City of Denver, and Denver and Arapahoe County, CO;

6. Detroit, MI

WMI's FEL commercial routes that serve the City of Detroit and Wayne County, MI;

7. Houston, TX

WMI's FEL commercial routes that serve the City of Houston, the Dickinson area, and Harris County, TX;

8. Louisville, KY

USA Waste's FEL commercial routes that serve the City of Louisville and Jefferson County, KY;

9. Pittsburgh, PA

WMI's FEL commercial routes that serve Allegheny County and Westmoreland County, PA, and the garage facility (real estate and improvements) located at the Y&S Landfill;

10. Portland, OR

WMI's FEL commercial routes that serve the City of Portland, OR;

11. Tucson, AZ

USA's Waste's FEL commercial routes that serve the City of Tucson and Pima County, AZ; and

12. Gainesville, FL

WMI's FEL commercial routes that serve Alachua County, FL.

E. *Hauling* means the collection of waste from customers and the shipment of the collected waste to disposal sites. Hauling, as used herein, does not include collection of roll-off containers.

F. *Waste* means municipal solid waste.

G. *Disposal* means the business of disposing of waste into approved disposal sites.

H. *Relevant Area* means the county in which the Relevant Hauling Assets or Relevant Disposal Assets are located and any adjacent city or county, except with respect to the Modern Landfill [*see* Section II(C)(1)(k)], for which the Relevant Area means Philadelphia, PA, and New York, NY.

I. *Relevant State* means the state in which the Relevant Disposal Assets or Relevant Hauling Assets are located, provided however, that state is a party to this Final Judgment. With respect to the Modern Landfill [*see* Section II(C)(1)(k)], the Relevant State means the Commonwealth of Pennsylvania and the State of New York. With respect to section VII, the Relevant State means each state in which the disposal or hauling assets to be acquired are located, provided that state is a party to this Final Judgment.

J. *South Florida Waste* means waste collected, or delivered directly from a transfer station located, in Broward, Dade or Monroe County, FL.

III

Applicability

A. The provisions of this Final Judgment apply to defendants, their successors and assigns, subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert of participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of its assets, or of a lesser business unit that includes defendants' hauling or disposal businesses in any Relevant Area, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

IV

Divestitures

A. Defendants are 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 sell all Relevant Disposal Assets and Relevant Hauling Assets as viable, ongoing businesses to a purchaser or purchasers acceptable to the United States, in its sole discretion, after consultation with the Relevant State.

B. Defendants shall use their best efforts to accomplish the divestitures ordered by this Final Judgment as expediously and timely as possible. The United States, in its sole discretion, after consultation with the Relevant State, may extend the time period for any

divestiture on additional period of time, not to exceed sixty (60) calendar days.

C. In accomplishing the divestitures ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Relevant Disposal Assets and the Relevant Hauling Assets. Defendants 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. Defendants shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all information regarding the Relevant Disposal Assets and Relevant Hauling Assets customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Defendants shall make available such information to the plaintiffs at the same time that such information is made available to any other person.

D. Defendants shall not interfere with any negotiations by any purchaser to employ any USA Waste (or former WMI) employee who works at, or whose primary responsibility concerns, any disposal or hauling business that is part of the Relevant Disposal Assets or Relevant Hauling Assets.

E. Defendants shall permit prospective purchasers of the Relevant Disposal Assets or Relevant Hauling Assets to have access to personnel and to any and all environmental, zoning, and other permit documents and information, and to make inspection of the Relevant Disposal Assets and Relevant Hauling Assets and of any and all financial, operational, or to other documents and information customarily provided as part of a due diligence process.

F. With the exception of the facilities described in Sections II(C)(2) (e), (h) and (i)(2), defendants shall warrant to each purchaser of Relevant Disposal Assets or Relevant Hauling Assets that each asset will be operational of the date sale.

G. Defendants shall not take any action, direct or indirect, that will impede in any way the operation of the Relevant Disposal Assets or Relevant Hauling Assets.

H. Defendants shall warrant to each purchaser of Relevant Disposal Assets or Relevant Hauling Assets that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that defendants will not undertake, directly or indirectly, following the divestiture of each asset, any challenges to the environmental, zoning, or other permits or applications for permits or licenses pertaining to the operation of the asset.

I. Unless the United States, after consultation with the Relevant State, otherwise consents in writing, the divestitures pursuant to Section IV, or by trustee appointed pursuant to Section V of this Judgment, shall include all Relevant Disposal Assets and Relevant Hauling Assets and be accomplished by selling or otherwise conveying each asset to a purchaser in such a way as to satisfy the United States, in its sole discretion, after consultation with the Relevant State, that the Relevant Disposal Assets or Relevant Hauling Assets can and will be used by the purchaser as part of a viable, ongoing business or businesses engaged in waste disposal or hauling. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser (or purchasers) for whom it is demonstrated to the United State's sole satisfaction, after consultation with the Relevant State, that: (1) the purchaser(s) has the capability and intent of competing effectively in the waste disposal or hauling business in the Relevant Area; (2) the purchaser(s) has the managerial, operational, and financial capability to compete effectively in the waste disposal or hauling business in the Relevant Area; and (3) none of the terms of any agreement between the purchaser and defendants gives any defendant the ability unreasonably to raise the purchaser's costs, lower the purchaser's efficiency, or otherwise interfere in the ability of the purchaser to compete effectively in the Relevant Area.

J. A purchaser of any Relevant Disposal Asses or Relevant Hauling Assets under this Final Judgment must demonstrate to the satisfaction of the United States, after consultation with the Relevant State, that the purchaser will comply with any and all applicable federal, state and local environmental and licensing laws.

K. Defendants may enter into an agreement, after review and approval of the United States, in its sole discretion, after consultation with the Relevant State, with a purchaser or purchasers of the Chiquita Canyon, Brazoria or Carleton Farms landfills (*See* Sections II (C)(1)(g), and (d)) for disposal of commercially acceptable waste collected or transferred from defendants' own route operations.

V

Appointment of Trustee

A. In the event that defendants have not sold the Relevant Disposal Assets or Relevant Hauling Assets 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 each Relevant Disposal Asset or Relevant Hauling Asset not sold.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Relevant Disposal Assets or Relevant Hauling Assets described in Sections II(C) and (D) of this Final Judgment. The trustee shall have the power and authority to accomplish any and all divestitures at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV, VI, and IX of this Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section V(C) of this Judgment the trustee shall have the power and authority to hire at the cost and expense of defendants any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestitures, and such professionals and agents shall be accountable solely to the trustee. To assist in the sale of the Brent Run Landfill, described in Section II II(C)(1)(e) of this Judgment, the trustee also shall have the power and authority to commit defendants to supply waste from defendants' routes in the Relevant Area to that landfill for up to a five-year time period at the best disposal price then obtainable upon reasonable effort by the trustee. The trustee shall have the power and authority to accomplish the divestitures at the earliest possible time to a purchaser or purchasers acceptable to the United States, in its sole discretion, after consultation with the Relevant State, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the Relevant State 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 defendants, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of each Relevant Disposal Asset or Relevant Hauling Asset 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 defendants 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. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestitures, 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 businesses to be divested, and defendants shall develop financial or other information relevant to the businesses to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. Defendants shall permit bona fide prospective purchasers of each Relevant Disposal Asset or Relevant Hauling Asset 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 divestitures 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 divestitures 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 sell the businesses to be divested.

F. If the trustee has not accomplished such divestitures 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 divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have 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

Notice of Proposed Divestitures

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, defendants or the trustee, whichever is then responsible for effecting the divestiture, shall notify the United States and the Relevant State of the proposed divestiture. If the trustee is responsible, it shall similarly notify defendants. 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 the United States and the Relevant State of such notice, the United States, in its sole discretion, after consultation with the Relevant State, may request from defendants, the proposed purchaser, or any other third party additional information concerning the proposed divestiture and the proposed purchaser. Defendants 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 United States and the Relevant State have been provided the additional information requested from defendants, the proposed purchaser, and any third party, whichever is later], the United States, after consultation with the Relevant State, shall provide written notice to defendants 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 defendants (and the trustee, if applicable) that it does not object, then the divestiture may be consummated, subject only to defendants' 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 of this Final Judgment shall not be consummated. Upon objection by defendants under the provision in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII

Notice of Future Acquisitions

A. Defendants shall provide each Relevant State with 30 days' written notice (which period may be shortened by permission of the Relevant State) before acquiring, directly or indirectly, any interest in any business, assets (other than in the ordinary course of business), capital stock, or voting securities of any person that, at any time during the twelve (12) months immediately preceding such acquisition, was engaged in waste disposal or small containerized solid waste hauling in any area listed in Section VII(B), where that person's annual revenues from waste disposal or small containerized solid waste hauling in the area were in excess of $500,000 annually, or its total revenues were in excess of $1,000,000 annually.

B. The notice provisions set forth in Section VII(A) above apply whenever defendants seek to acquire any interest in any business, assets (other than in the ordinary course of business), capital stock, or voting securities of any person that was engaged in waste disposal or small containerized solid waste hauling in any of the following areas:

Relevant State	Area for which defendants must provide relevant state notice of future acquisitions
Arizona	Pima Co. (hauling and disposal).
California	Los Angeles and Riverside (hauling and disposal); Ventura and Orange Co. (disposal only).
Colorado	Boulder and Denver Co. (hauling and disposal).
Florida	Brevard, Alachua, Marion, Orange, Osceola, Seminole, Lee, Charlotte, Sarastoa, Putnam, Volusia and Flagler Co. (hauling and disposal).
Kentucky	Jefferson and Oldham Co. (hauling and disposal).
Maryland	Baltimore City, Baltimore, Anne Arundel, Harford, Carroll, Howard, Montgomery, and Prince George's Co. (hauling and disposal).
Michigan	Wayne, Macomb, and Oakland Co. (hauling and disposal); Genessee, Shiawassee, Saginaw, Bay, Midland, Wexford, Manistee and Montgomery Co. (disposal only).
New York	New York, Bronx, Kings, Queens, and Richmond Co. (disposal only).
Ohio	Ashtabula, Cuyahoga, Delaware, Fairfield, Franklin, Geauga, Lake, Licking, Lorain, Lucas, Mahoning, Medina, Pickaway, Portage, Stark, Summit, Trumbull, and Wood Co. (hauling and disposal); Carroll, Columbiana, Coshocton, Holmes, Knox, Madison, Tuscarawas, Union and Wayne Co. (disposal only).
Pennsylvania	Allegheny, Westmoreland, Washington, Beaver, Butler, Lehigh, Northampton, Dauphin, Cumberland, and Perry Co. (hauling and disposal).
Texas	Brazoria, Chambers, Ft. Bend, Galveston, Harris, Liberty, Montgomery, Walker and Waller Co. (hauling and disposal).
Washington	Cowlitz and Clark Co. (hauling and disposal).
Wisconsin	Milwaukee, Waukesha, Racine, Washington, Kenosha, Ozaukee, Walworth, Jefferson and Dane Co. (disposal only).

C. For purposes of this Section VII, the term ''small containerized solid waste hauling'' means the provision of solid waste hauling service to commercial customers by providing the customer with a one to ten cubic yard container, which is picked up mechanically using a frontload, rearload or sideload truck, and excludes hand pick-up service, and service using a compacter attached to or part of a container.

VIII

Defendants' Additional Obligations

Defendants are hereby ordered and directed to, in accordance with the terms of this Final Judgment:

A. Offer to extend, for an additional ten-year time period, the Solid Waste Service Agreement, dated August 8, 1996, by and between the Northeast Maryland Waste Disposal Authority and USA Waste's subsidiary, Garnet of Maryland, Inc. (attached hereto as Exhibit B), for the disposal of Anne Arundel County, MD and Howard County, MD waste at the Annapolis Junction Transfer Station;

B. Use their best efforts, prior to its divestiture, to obtain any and all licenses and permits to open and operate USA Waste's Nekboh Transfer Station, described in Section II(C)(2)(i)(2); and for a five-year period following such divestiture, to cooperate and assist the purchaser in obtaining any and all licenses or permits required to operate Nekboh Transfer Station and to refrain from opposing any application by the purchaser to obtain a license or permit to expand the Nekboh Transfer Station;

C. For a one-year period following entry of this Final Judgment, refrain from opposing any application by any person for a permit or license to operate any waste transfer station in any borough of the City of New York, NY;

D. For a five-year period following entry of this Final Judgment, refrain from opposing any application by any person to obtain a license or permit to expand the remaining capacity or the average daily capacity of the Emerald Park Landfill, Glacier Ridge Landfill, or Valley Meadows Landfill, in the Greater Milwaukee, WI area;

E. Refrain from reacquiring any interest in any Relevant Disposal Assets or Relevant Hauling Assets divested pursuant to the terms of this Final Judgment, without prior written notice to, and written consent of, the United States and the Relevant State;

F. Refrain from conditioning the sale of any landfill pursuant to this Final Judgment on any understanding, agreement or commitment, written or understood, that the purchaser (or purchasers) will agree to sell airspace or otherwise permit defendants to dispose of waste in that landfill; provided, however, that USA Waste's Carleton Farms Landfill may be divested subject to USA Waste's obligation to dispose of ash from the Greater Detroit Resource Recovery Center's incinerator at a separate monofill cell on the Carleton Farms Landfill site;

G. Refrain from taking any action to enforce any agreement or understanding that would prohibit any person from competing in Alachua or Marion County, FL; provided, however, that this provision shall not apply to a current or former employee of defendants (other than any employee who may be responsible in any way for route operations subject to divestiture under Sections II(D)(12), IV and V of this Judgment); and

H. Provide access to the gate, scale house and disposal area of the WMI Tucson transfer station, located at 5200 West Ina, Tucson, AZ, under terms and conditions no less favorable than those provided to defendants' own vehicles or to the vehicles of any county or municipality in Arizona.

IX

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 divesture has been competed whether pursuant to Section IV or Section V of this Final Judgment, defendants shall deliver to plaintiffs an affidavit as to the fact and manner of compliance with Sections IV or 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 contacted or made an inquiry about acquiring, any interest in the businesses to be divested, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that defendants have taken to solicit a buyer for any and all Relevant Disposal Assets and Relevant Hauling Assets 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 obligation by the

United States, after consultation with the Relevant State, to information provided by defendants, 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, defendants shall deliver to plaintiffs an affidavit which describes in detail all actions defendants have taken and all steps defendants have implemented on an on-going basis to preserve the Relevant Disposal Assets and Relevant Hauling Assets pursuant to Section X 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, defendants' efforts to maintain and operate each Relevant Disposal Asset and Relevant Hauling Asset as a viable active competitor; to maintain separate management, staffing, sales, marketing and pricing of each asset; and to maintain each asset in operable condition at current capacity configurations. Defendants shall deliver to plaintiffs an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after any such change has been implemented.

C. For a one-year period following the completion of each divestiture, defendants shall preserve all records of any and all efforts made to preserve the Relevant Disposal Assets and Relevant Hauling Assets that were divested and to effect the ordered divestitures.

X

Hold Separate Order

Until the divestitures required by the Final Judgment have been accomplished, defendants 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 jeopardized the sale of any Relevant Disposal Asset or Relevant Hauling Asset.

XI

Financing

Defendants are ordered and directed not to finance all or any part of any acquisition by any person made pursuant to Sections IV or V of this Final Judgment.

XII

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 any other plaintiff, and on reasonable notice to defendants made to their principal offices, shall be permitted:

1. Access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, 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 defendants and without restraint or interference from them, to interview, either informally or on the record, their 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 any other plaintiff, defendants shall submit such written reports, under oath if request, 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 in Sections VII or X or 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 any other plaintiff, except in the course of legal proceedings to which the United States or any other plaintiff 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 defendants to plaintiffs, defendants represent and identify 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 defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten (10) calendar days notice shall be given by plaintiffs to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendants are not a party.

XIII

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.

XIV

Termination

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

XV

Public Interest

Entry of this Final Judgment is in the public interest.

Dated _____, 1998.

_____

United States District Judge

United States's Certificate Of Compliance With Provisions of the Antitrust Procedures and Penalties Act

The United States of America hereby certifies that it has complied with the provisions of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), and states:

1. The Complaint in this case, the proposed Final Judgment (''Judgment''), and the Hold Separate Stipulation and Order (''Hold Separate Order'') were filed on July 16, 1998. The United States's Competitive Impact Statement was filed on July 23, 1998.

2. Pursuant to 15 U.S.C. 16(b), the Judgment, Hold Separate Order, and Competitive Impact Statement were published in the **Federal Register** on September 24, 1998 (63 Fed. Reg. 51125). A copy of that **Federal Register** notice is attached as Exhibit 1.

3. Pursuant to 15 U.S.C. 16(d), the United States furnished copies of the Complaint, Hold Separate Order, proposed Judgment and Competitive Impact Statement to anyone requesting them.

4. Pursuant to 15 U.S.C. 16(c), a summary of the terms of the proposed Judgment and the Competitive Impact Statement were published in The Cleveland Plain Dealer, a newspaper of

general circulation in Cleveland, OH, and in The Washington Post, a newspaper of general circulation in the District of Columbia. Copies of the certificates of publication from The Cleveland Plain Dealer and The Washington Post appear in Exhibit 2.

5. On January 21, 1999, the defendants—USA Waste Services, Inc.; Dome Merger Subsidiary; and Waste Management, Inc.—filed with the Court a joint statement describing their communications with employees of the United States Department of Justice concerning the proposed Judgment, as required by 15 U.S.C. 16(g).

6. During the 60-day comment period after publication of notice in the **Federal Register**, The Cleveland Plain Dealer and The Washington Post, the United States received a total of 13 written comments on the proposed settlement. The comments were from:

(a) Recycle Worlds Consulting Corp., Madison, WI (Ex. 3);
(b) Honorable Joseph R. Lenthol, New York State Assemblyman for the 50th District, Brooklyn, NY (Ex. 4);
(c) Sierra Club of New York City Group, New York, NY (Ex. 5);
(d) Neighbors Against Garbage, Brooklyn, NY (Ex. 6);
(e) Red Hook Civic Association, Brooklyn, NY (Ex. 7);
(f) Rose Institute of State and Local Government, Claremont College, Claremont, CA (Ex. 8);
(g) Gold Fields Mining Corporation, Los Angeles, CA (Ex. 9);
(h) Coastal Waste Management, Sacramento, CA (Ex. 10);
(i) York County Solid Waste and Refuse Authority, York, PA (Ex. 11);
(j) Calvert Trash Systems, Inc., Owings, MD (Ex. 12);
(k) LaPlata Recycling Center and Depository, Bayfield, CO (Ex. 13);
(l) Conrad S. Magnuson, Kingston, NH (Ex. 14); and
(m) Three Rivers Disposal Company, Bozeman, MT (Ex. 15).

7. The United States evaluated and responded to each of the comments it received. The comments did not convince the United States that it should withdraw its consent to the proposed settlement. However, for the reasons set forth in its Memorandum in Support of Entry of the Modified Final Judgment, the United States was persuaded to move for a minor modification of the proposed Judgment, which would eliminate the defendants' obligation to divest the Scott Avenue Transfer Station in Brooklyn, NY, and substitute a divestiture of one of two smaller transfer stations, Vaccarro or Gesuale, also in New York City.

Copies of the comments and the United States's responses appear in Exhibits 3–15; they are summarized below.

A. General Comment on the Divestiture Relief in the Proposed Judgment

Recycle Worlds, a private waste industry consultant, urged the United States not to approve any asset divestiture under the proposed Judgment to one of the major integrated waste collection and disposal firms, such as Republic Services, Inc.; Allied Waste Industries, Inc.; or Browning-Ferris Industries, Inc. (Ex. 3). In Recycle Worlds's view, these firms may be more inclined to cooperate with the defendants in raising prices in some markets in order to avoid potential price wars with the defendants elsewhere.

In response, we noted that the United States could not categorically conclude that selling the consent decree assets to a large national waste collection and disposal firm, such as Republic, would be less competitive than a sale to municipal agency or small independent firm, or that large waste companies are more prone to collude, when given the opportunity, than small independent firms. Also, large waste collection and disposal companies may enjoy some competitive advantages, such as better access to capital and more extensive experience, that would make them in some respects more formidable competitors than small independent firms.

In a series of transactions beginning in September 1998 and ending in early 1999, the United States approved Republic as a purchaser of all of the waste collection and disposal assets ordered divested under the Judgment, except the Baltimore area disposal assets, which the United States approved for sale to BFI in October 1999.

B. Comments on the New York City Divestiture Relief

The United States received four comments on provisions of the proposed Final Judgment that relate to the divestiture relief in the New York City area. Three commentators—New York State Assemblyman Joseph Lenthol (Ex. 4), the Sierra Club of New York City Group (Ex. 5), and Neighbors Against Garbage (Ex. 6)—expressed considerable concern that by ordering the defendants to divest the application for a permit to construct and open the proposed Nekboh Transfer Station in Brooklyn, NY, the Final Judgment would ensure that the new owner would continue the attempt to open a transfer station on that site, despite strong community opposition. The commentators suggested that the United States's move to amend the proposed Judgment in such a way as to end the effort to develop the Nekboh site as a waste transfer station (*e.g.*, requiring the defendants to sell the Nekboh site to a government agency for development as a public park).

In response, we pointed out that the aesthetic and environmental concerns that have fueled community opposition to the proposed Nekboh Transfer Station are unrelated to the competitive concerns that precipitated the governments' antitrust suit. Issues concerning whether a waste transfer station should be constructed on the Nekboh site ought to be presented to, and resolved by, the state and local regulatory officials responsible for issuing the site's operating permit.

A fourth commentator Red Hook Civic Association (Ex. 7), wanted to know why the United States did not seek divestiture of defendant USA Waste's massive proposed Erie Basin Transfer Station, also in Brooklyn, NY. We noted that Erie Basin, if it is constructed, would primarily handle the city's residential waste, a market unrelated to the disposal of commercial waste market in which the United States alleged that the defendants' merger would substantially eliminate competition.

C. Comments on the California Divestiture Relief

The United States received three comments on those provisions of the Final Judgment relating to the divestiture relief in the California market. Two commentators—the Rose Institute of State and Local Government, Claremont College, CA (Ex. 8), and Gold Fields Mining Corporation (Ex. 9)—submitted very lengthy papers that questioned our definition of the relevant geographic market for the disposal of commercial waste from the City of Los Angeles. As these commentators see it, the geographic market should be expanded to include public and private landfills located up to 170 miles east of Los Angeles. This expanded market would include a massive new landfill, Mesquite Regional, partly-owned by the defendants. And they would order the defendants to divest that landfill in order to alleviate the competitive concerns that they believe the combination would raise in the expanded geographic market.

The United States noted, in its response, that it made good economic sense to exclude the remote Mesquite Regional Landfill from the competitive analysis since it is relatively

inaccessible to commercial waste haulers from the Los Angeles area. Given this landfill's 170 mile distance from Los Angeles, it would be very expensive for haulers to ship and dispose of commercial waste collected in Los Angeles at Mesquite Regional. Private landfills located much closer to Los Angeles could profitably raise disposal prices without fear of losing significant revenues to this distant landfill. Since Mesquite Regional is not in the relevant market, the defendants should not be required to divest it in order to obtain effective relief.

A third commentator, Coastal Waste Management (Ex. 10), questioned the United States' decision not to allege in its Complaint or seek relief in the proposed judgment relating to commercial waste hauling in the Sacramento, CA market. We noted, in response, that based on the evidence available to us at the time, injunctive relief was not warranted in the Sacramento hauling market. Coastal, however, remains free to pursue such a remedy by filing a private antitrust action.

D. Comments on the Divestiture Relief in Other Areas

The York County Solid Waste and Refuse Authority of York County, PA, was very concerned that the ordered divestiture of Waste Management's Modern Landfill would adversely affect its contract to deliver waste to the Authority's incinerator and dispose of ash and noncombustible waste from the incinerator (Ex. 11). Since the proposed Judgment orders that the landfill be divested ''subject to'' such existing contractual commitments, the sale should not affect these local disposal agreements.

Finally, four commentators—Calvert Waste Systems (Ex. 12), LaPlata Recycling (Ex. 13), Conrad Magnuson (Ex. 14), and Three Rivers Disposal (Ex. 15)—complained that the United States should have sought injunctive relief with respect to several markets not alleged in the governments' complaint, *viz.*, the eastern shore of Maryland; Bayfield, CO; Kingston, NH; and Bozeman, MT.

In our response, we noted that the United States did not seek divestiture relief as to these markets because it was not convinced, based on information available to it at the time, that the merger would create serious competitive problems warranting the imposition of this remedy. Private parties, such as the commentators, certainly remain free to pursue such relief against the defendants by filing a private antitrust suit.

8. Pursuant to 15 U.S.C. 16 (b)–(h), the United States has arranged to publish in the **Federal Register** by September 27, 1999, a copy of the comments and the United States's responses.

9. With these steps having been taken, the parties have fulfilled their obligations under the APPA. Pursuant to the Hold Separate Order that the Court entered on July 16, 1998, the Court may now enter the proposed Judgment, if it determines that the entry of the Judgment is in the public interest. For the reasons set forth in the Competitive Impact Statement, its responses to the public comments, and in its Memorandum in Support of Entry of the Proposed Modified Final Judgment, the United States—and all of the other parties—strongly believe that the proposed decree, as amended, is in the public interest and that the Court therefore promptly should enter it.

Dated: September 13, 1999.

Respectfully submitted.

Anthony E. Harris, Illinois Bar No. 1133713,

U.S. Department of Justice, Antitrust Division, Litigation II, 1401 H Street, NW, Suite 3000, Washington, DC 20530, (202) 307–6583.

Note: Exhibits 1 and 2 were unable to be published in the **Federal Register**. A copy can be obtained from the U.S. Department of Justice, Documents Office, 325 7th St., Room 215, Washington, DC or (202) 514–2481.

Exhibit 3

U.S. Department of Justice Antitrust Division

August 27, 1999.

Mr. Peter Anderson,

Recycle Worlds Consulting Corp., 4513 Vernon Blvd., Suite 15, Madison, Wisconsin 53705–4964.

Re: Comment on Proposed Final Judgment in *United States, State of Ohio, et al.* v. *USA Waste Services, Inc., Waste Management, Inc., et al.,* Civil No. 98–1616 (N.D. Ohio, filed July 16, 1998)

Dear Mr. Anderson: This letter responds to your written comment on the proposed Final Judgment in the above case. The Complaint in this case charged, among other things, that USA Waste's acquisition of Waste Management would substantially lessen competition in the disposal of municipal solid waste in 16 markets throughout the country. The proposed Judgment, now pending in federal district court in Cleveland, Ohio, would settle the case by, inter alia, requiring that the defendants divest waste disposal facilities that serve each of the disposal markets alleged in the Complaint. In a series of transactions in August and December 1998, and in January and February 1999, the United States approved, under the terms of the Judgment, a sale to Republic Services, Inc. (''Republic'') of all assets that had been ordered divested (except the Baltimore area disposal assets). The United States subsequently approved a sale to Browning Ferris Industries, Inc. (''BFI'') of the Baltimore area disposal assets.

In your letter, you questioned whether Republic or any other major waste collection and disposal firm should be allowed to acquire the assets ordered divested under the proposed decree. As you see it, a sale to a large national or regional firm is undesirable because such firms would cooperate with the defendants and other market participants in raising prices to customers after a divestiture. Competition would be better served if the waste collection and disposal assets under the decree were sold to a municipal agency or a small independent firm, entities which, you contend, would have a greater incentive to vigorously compete against the defendants' waste collection and disposal operations.

The United States, however, does not have any evidence that would lead it categorically to conclude that selling the assets under the Judgment to a large national waste collection and disposal firm, such as Republic, would be a less competitive alternative than a sale to municipal agency or small independent firm, or that large waste companies are more prone to collude, when given the opportunity, than small independent firms. Also, it is possible that large waste collection and disposal companies enjoy some competitive advantages, such as better access to capital and more extensive experience, that would make them in some respects more formidable competitors than small independent firms. Thus, United States did not object to Republic's purchase of most of the waste collection and disposal assets that the defendants divested under the proposed Judgment. And since BFI did not compete in the disposal of waste in the Baltimore market, the United States saw no reason to prevent BFI's acquisition of the transfer station disposal capacity divested by the defendants under the proposed Judgment.

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(d), a copy of your comments and this response will be published in the **Federal Register** and filed with the Court.

Sincerely yours,

J. Robert Kramer, II,

Chief, Litigation II Section.

Note: Letter dated 11/27/98 from Peter Anderson of Recycle Worlds Consulting with attachments was unable to be published in the **Federal Register**. A copy can be obtained from the U.S. Department of Justice, Documents office, 325 7th St., Room 215, Washington, DC or (202) 514–2481.

Exhibit 4

U.S. Department of Justice Antitrust Division

August 27, 1999.

The Honorable Joseph R. Lenthol, Assemblyman 50th District, Kings County, New York

State of New York Assembly, 619 Lorimer Street, Brooklyn, NY 11211.

Re: Comment on Proposed Final Judgment in *United States*v. *State of Ohio et al.* v. *USA Waste Services, Inc., Waste Management, Inc., et al.,* Civil No. 98–1616 (N.D. Ohio, filed July 16, 1998)

Dear Assemblyman Lenthol: This letter responds to your written comment on the proposed Final Judgment in *United States USA Waste Services, Inc.,* now pending in federal district court in Cleveland, Ohio. The Complaint in that case charged, among other things, that USA Waste's acquisition of Waste Management would substantially lessen competition in the disposal of New York City's commercial waste. The proposed final Judgment would settle the case by, *inter alia,* requiring the defendants to divest (a) the Waste Management's SPM Transfer Station in the Bronx, NY; (b) USA Waste's All City Waste Transfer Station in Brooklyn, NY; and (c) USA Waste's proposed Nekboh Transfer Station in Brooklyn, NY. *See* Judgment, §§ II(C)(2) (i)(1)–(3), IV(A). To ensure USA Waste's continued cooperation with the purchaser in its efforts to permit and construct a transfer station on the Nekboh site, the proposed Judgment further provides that, if the Nekboh Transfer Station is not permitted within one year after entry of the decree, USA Waste must, in addition, divest Waste Management's Scott Avenue Transfer Station, also in Brooklyn, NY. Judgment, §§ II(C)(2)(i)(4) and IV(B).

Your letter raises two issues related to the divestiture of the Nekboh and Scott Avenue transfer stations. First, you point out that the proposed Nekboh facility, though much larger than the Scott Avenue station, is still in the permitting stage and may never obtain a permit to open and operate. For that reason, you urged that we amend the consent decree to require an immediate divestiture of the already-permitted Scott Avenue transfer station. Second, you note that in any event, the proposed Nekboh facility would be adjacent to the Eastern District Terminal, ''a beautiful 20 acre parcel of waterfront property'' recently placed on an open-spaces list. You suggested that the public interest would be better served if the Decree contained a prohibition on the use of the Nekboh site as a waste transfer station.

A. The Contingent Divestiture of the Scott Avenue Transfer Station

After considering your comments, and arguments advanced by the defendants and others, the United States (and its New York co-plaintiff, the State of New York) concluded that the divestiture provisions in the proposed Judgment concerning the defendants' Scott Avenue Transfer Station should indeed be modified. The United States and the State of New York agreed to join the defendants in moving the Court to enter a modified Final Judgment that would replace the current contingent divestiture of the Scott Avenue Transfer Station with a requirement that the defendants immediately divest either of two smaller transfer stations, Gesuale or Vacarro, both in New York City. That obligation was imposed by a recent consent decree, entered in federal district court in Brooklyn, NY, that settled another merger case involving a proposed acquisition by Waste Management of other transfer stations in the *New York market, United States, States of New York and Pennsylvania, and Commonwealth of Florida* v. *Waste Management, Inc., Eastern Environmental Services, Inc., et al,* Civil No. 98–7168 (E.D.N.Y., entered May 25, 1999) (the ''Waste/Eastern case''). The United States agreed to move to modify the proposed Judgment for basically two reasons.

First, divestiture of the Scott Avenue Transfer Station was primarily an inducement to defendants to ensure that they continue their efforts to get the Nekboh site permitted. However, the Nekboh Transfer Station permit application was divested to a major waste industry firm, Republic, which is fully capable of vigorously pursuing the permitting process. In August 1998, defendants sold the proposed Nekboh Transfer Station (and virtually all of the other assets under the decree) to Republic Services, Inc. With over $2 billion in annual revenues, Republic is the nation's third largest waste collection and disposal firm. Republic has the financial resources and economic incentive to continue pursuing a permit for the proposed Nekboh Transfer Station without defendants' assistance. In addition, permanent injunctions in the proposed Judgment prohibit the defendants from interfering in any way with Republic's efforts to obtain a permit for that site. Thus, the contingent divestiture of Scott Avenue is unnecessary to ensure that the defendants cooperate in the permitting process.

Second, by permitting the defendants to retain the Scott Avenue Transfer Station, in return for divestiture of the smaller Gesuale or Vaccarro sites, the United States and the State of New York were able to obtain a favorable settlement of the subsequent Waste/Eastern merger case. In September 1998, USA Waste agreed to acquire Eastern Environmental Services, Inc. (''Eastern''), another major competitor in the disposal of New York City's commercial waste. In November 1998, the United States, the State of New York and other states filed an antitrust suit that sought to block that acquisition. To resolve the governments' competitive concerns in that litigation, the defendants agreed to divest two large Brooklyn, NY transfer stations acquired from Eastern (Atlantic and PJ's) in return for the governments' agreement to join the defendants in this case in a motion to modify the proposed Final Judgment to substitute an immediate divestiture of the Gesuale or Vaccaro transfer station for a contingent divestiture of the Scott Avenue Transfer Station. (*See* Waste/Eastern Final Judgment, §§ II (D)(2)(a)–(c), IV(A)(2) and (L), filed in federal district court in Brooklyn, NY on December 31, 1998, and entered on May 25, 1999, after the United States had responded to all public comments submitted during the 60-day public comment period.)

In light of the divestiture of the Nekboh proposal to Republic, a well-financed industry giant, the United States does not believe that the contingent divestiture of the Scott Avenue transfer station was necessary to alleviate any competitive concerns arising from USA Waste's acquisition of Waste Management. And by agreeing to join Waste Management in seeking to remove that requirement from the Ohio consent decree, the United States and the State of New York were able to void a trial on the merits of defendants' acquisition of Eastern.

B. Prohibiting the Construction of a Waste Transfer Station on the Nekboh Site

Finally you suggest that we modify the decree to prohibit the construction of a waste transfer station on the Nekboh site. We strongly believe that promptly permitting and operation of the Nekboh transfer station is necessary to provide an important competitive check on USA Waste in the disposal of New York City's commercial waste. Nothing in the proposed decree, however, would preclude New York state and city officials from deciding not to grant a permit to operate a waste transfer facility on the Nekboh site. Whether the transfer station receives an operating permit depends on any number of factors, including a considered assessment of the environmental impact of the facility. Whether a waste transfer facility on the Nekboh site will have detrimental effects is an issue that is best left to the regulatory agency to review and ultimately resolve.

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, a copy of your comment and this response will be published in the **Federal Register** and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

The Assembly, State of New York; Albany

August 7, 1998.

Honorable Janet Reno, Attorney General of the United States,

Department of Justice, 950 Pennsylvania Avenue, NW, Room 4400, Washington, DC 20530–0001

Dear Attorney General Reno: I write in regard to the recently announced agreement between the United States Justice Department and the New York State Attorney General's Office, with USA Waste and Waste Management, relative to the proposed merger of these two corporations. Unfortunately, I find this settlement to be problematic. I believe, however, that these problems can be resolved if the following concerns are addressed.

It is my understanding that this agreement would require USA Waste to divest itself of the Nekboh Transfer Station which it is planning to operate at 2 North 5th Street in Brooklyn, and that this divestiture would be conditioned upon USA Waste being granted the necessary operating permits. I cannot understand why, if this agreement truly seeks to protect the public from monopoly power, USA Waste would be required to divest itself of a transfer station it does not yet, and may never have, the authority to operate. Unless the administrative hearing process is a mere formality, USA Waste may never obtain the necessary permits. Should that be the case, the merged company would instead be required to divest itself of USA Waste's present transfer station located at 485 Scott Avenue in Brooklyn. Unfortunately, the Scott Avenue transfer station is a much smaller facility. It only has the capacity to process approximately 1,000 tons per day, while the proposed Nekboh facility has a capacity in

excess of 5,000 tons per day. These are hardly comparable facilities. The only way in which this agreement would truly serve to protect the public from an unfair monopoly would be for it to require the unconditional divestiture of both properties.

In addition, it would be an inexcusable waste of resources to allow USA Waste to proceed with the permitting process (as would be required by the consent agreement) since it would only be forced to divest once it has obtained the necessary permits. In order to save time and money, the process should be stopped now and USA Waste should be required to divest itself of these sites immediately.

Although it may not fall within the purview of this settlement, a provision that would prohibit the future use of the Nekboh property, as well as the adjacent Eastern District Terminal property, as a transfer station should be added to this agreement. The Eastern District Terminal is a beautiful 20-acre parcel of waterfront property which has recently been placed on the Environmental Bond Act Open Spaces List. This parcel is truly a treasure in my community and must be protected at all cost. I urge you to join our effort to save this irreplaceable piece of land.

For the above reasons, I must object to this settlement. I urge you to revisit this agreement and revise its terms to (1) require that USA Waste divest itself unconditionally of both the Nekboh and Scott Avenue properties, and (2) prohibit the future use of the Nekboh/Eastern District Terminal property as a waste transfer station. Thank you for your kind consideration of my comments.

Sincerely,

Joseph R. Lentol,

Assemblyman, 50th A.D.

JRL/jl

cc: Vice President Albert Gore

Exhibit 5

U.S. Department of Justice Antitrust Division

August 27, 1999.

Ms. Rosalind Rowen,

Sierra Club New York City Group, c/o 225 East 6th Street—Suite 3H, New York, New York 10003.

Re: Comment on Proposed Final Judgment in *United States, State of Ohio, et al.* v. *USA Waste Services, Inc., Waste Management, Inc., et al.,* Civil No. 98–1616 (N.D. Ohio, filed July 16, 19998)

Dear Ms. Rowen: Thank you for your letter commenting on the Final Judgment submitted for entry in the above case. The Complaint in this case charged, among other things, that USA Waste's acquisition of Waste Management would substantially lessen competition in the disposal of New York City's commercial waste. The proposed Judgment would settle the competitive concerns with respect to the New York City market by, *inter alia,* requiring the defendants to divest (a) the USA Waste's SPM Transfer Station; (b) USA Waste's All City Transfer Station; and (c) the pending application by USA Waste for a permit to construct and operate the Nekboh Transfer Station, also in Brooklyn, NY. *See* Judgment, §§ II (C)(2) (i)(1)–(3) and IV(A). To ensure the defendants' continued cooperation with the purchaser in its efforts to get the Nekboh site permitted, the proposed Judgment further provides that if the Nekboh Transfer Station does not receive an operating permit within one year after entry of the Judgment, the defendants must divest the Scott Avenue Transfer Station, also in Brooklyn, NY. *See* Judgment, §§ II (C)(2)(i)(4) and IV(B). In a transaction approved by the United States in August 1998, under the terms of the decree, the defendants divested All City Waste Transfer Station and their application for a permit for the proposed Nekboh site to Republic Services, Inc., which previously did not operate any waste disposal sites in the New York City area.

Your comment relates solely to those portions of the Judgment that require USA Waste to divest all title and interest in its application to construct and operate the Nekboh transfer station in Brooklyn, New York. *See* Judgment, §§ II (C)(1)(i)(2) and IV(A) and (B). As you point out the site of the proposed Nekboh facility abuts an area that the state of New York recently identified for potential preservation under its Clean Water/Clean Air Bond Act. Though Governor Pataki vetoed legislation that would have provided funds for purchasing the site for development as a park, he instructed the state Department of Environmental Conservation to conduct an environmental assessment of the Nekboh site before issuing an operating permit for a transfer station on that site.

You requested that we modify the Judgment to permit the Nekboh site to be sold to the state for development as a public park. We strongly believe that prompt divestiture of the Nekboh permit application, and speedy permitting, construction and opening of a transfer situation on the Nekboh site is essential to ensure vigorous competition in the disposal of New York City's commercial waste. Developing this site as a public park would frustrate that goal.

On the other hand, nothing in the proposed Judgment would preclude the appropriate New York permitting authorities from lawfully deciding not to issue a permit to operate a waste transfer facility on the Nekboh site. Whether Republic obtains an operating permit for a transfer station on the Nekboh site would depend on a variety of factors, including an assessment of the environmental impact of a waste transfer station on that site. Your contention that constructing the Nekboh waste transfer station would preclude preservation of the site as a public park should be addressed to the state and local regulatory agencies that review and ultimately resolve such issues in the ordinary course of the permitting process.

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. section 16(d), a copy of your comment and this response will be published in the **Federal Register** and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

Note: Letter dated 9/14/98 from Rosalind Rowen of Sierra Club New York City Group was unable to be published in the **Federal Register**. A copy can be obtained from the U.S. Department of Justice, Document Office, 325 7th St., Room 215, Washington, DC 20530 or (202) 514–2481.

Exhibit 6

U.S. Department of Justice Antitrust Division

August 27, 1999.

Douglas H. Ward, Esquire

Ward, Sommers & Moore, L.L.C., Plaza Office Center, 122 South Swan Street, Albany, NY 12210.

Re: Comment on Proposed Final Judgment in *United States, State of Ohio, et al.* v. *USA Waste Services, Inc., Waste Management, Inc., et al.,* Civil No. 98–1616 (N.D. Ohio, filed July 16, 1998)

Dear Mr. Ward: Thank you for your letter commenting on the proposed Final Judgment submitted for entry in the above case. The proposed Judgment requires the defendants to divest their interest in the proposed Nekboh Transfer Station, which, if permitted by local government regulatory officials, would be constructed in Brooklyn, NY. Your client, Neighbors Against Garbage, strongly opposes permitting, construction and operation of a waste transfer station on the Nekboh site. It proposes, instead, that we modify the proposed Final Judgment to provide an incentive for using the Nekboh site not as a waste transfer facility, but as a public park.

We strongly believe that divestiture of the Nekboh permit application to an acceptable purchaser, and prompt permitting, construction and opening of a waste transfer station on the Nekboh site are steps that must be taken in order to provide an important competitive constraint on defendants' disposal operations in the New York City area. There is, however, nothing in the proposed Judgment that precludes the responsible New York state and city agencies from deciding not to issue a permit to operate a waste transfer station on the Nekboh site. In fact, whether these regulatory agencies decide to issue an operating permit for the Nekboh site depends on a variety of factors, including an assessment of the environmental impact of such a waste disposal facility. For that reason, your argument that opening a waste transfer station on the Nekboh site will have devastating environmental effects should be left to the appropriate state and local regulatory agencies to review and ultimately resolve.

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comment and this response will be published in the **Federal Register** and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

Ward, Sommer & Moore, L.L.C., Counselors at Law

September 14, 1998.

J. Robert Kramer II,

Anti Trust Division, Chief Litigation II Sect., United States Department of Justice, 1401 H Street N.W., Suite 3000, Washington, DC 20530.

Re: *USA Waste et al.* v. *USA Waste Services Inc.,* CV 1:98CV1616

Dear Mr. Kramer: The undersigned represents a group known as Neighbors Against Garbage. In conjunction with numerous individuals and public representatives, we have participated in New York State Administrative proceedings opposing the construction and/or operation of a waste transfer station in Brooklyn New York known as the Nekboh Transfer Station (attached as Exhibit A). We write to oppose approval of the Draft Consent Order which will encourage the construction and operation of this ill-advised and unnecessary waste transfer station.

Under the terms of the Draft Consent Order, (DCO at II(c)(1)(i)(2), IV (A) and (B) and VIII [B] and [C]), it appears that USA Waste *must* obtain a license for, and transfer its ownership in, the Nekboh facility within one year from the entry of Final Judgment, or sell its Brooklyn Transfer Station, located at 485 Scott Ave. While the terms of the agreement are not entirely clear, it appears to provide an incentive for Waste Management to obtain prompt permitting for the proposed Nekboh facility. My client and the parties to this proceeding have steadfastly opposed any use of this site as a waste transfer station. Recently, after considerable public outcry, Governor Pataki and Mayor Guiliani convinced the NYS Department of Environmental Conservation and the NYC Department of Sanitation to ''go back to the drawing boards'' and conduct a thorough environmental review of the proposal. We are hopeful that this is the first step toward rejecting this unnecessary and ill-conceived plan. Unfortunately, the Draft Consent Order, in pressing USA Waste to obtain prompt approval of its application, is contrary to the directive of the Governor and Mayor and the ever growing factual record which demonstrates that the plan is a bad idea that will have devastating, adverse impacts on the environment and the neighborhood.

We suggest that these objectional provisions of the Draft Consent Order should be modified. We agree with the divestitive requirement, however, the Consent Order should allow that the site could (or should) be used for other purposes such as open space or recreation. Indeed, the agreement should provide an incentive for dedicating the site for park type purposes. This approach would conform this Consent Order to the direction of state and local efforts and would not undercut the recent progress toward an acceptable community compatible use for the Nekboh site.

Thank you for your attention to this matter.

Very truly yours,

Douglas H. Ward,

Ward, Sommer & Moore, LLC.

DHW/sak

cc: Cathleen Breen

State of New York—Department of Environmental Conservation

In the Matter of the Application of USA Waste Services of NYC, Inc.

For A Permit to Construct and Operate a Solid Waste Management Facility

DEC Application No. 26101–00013/00008

Petition for Full Party Status of Hon. Howard Golden, Hon. Sheldon Silver, Neighbors Against Garbage (''NAG''), Hon. Nydia Valazquez, Hon. Joseph R. Lentol, Hon. Martin Connor, Hon. Joan Millman, Hon. Felix Ortiz, Hon. Victor L. Robles, Hon. Kenneth Fisher, Hon. Angel Rodriguez, Hon. Stephen Di Brienza, Hon. Kathryn E. Freed, El Puente, de Williamsburg, Inc. (''El Puenta''), Make a Difference Community Action Program (''MADCAP''), Williamsburg Around the Bridge Block Association (''WABBA''), Northside Community Development Council, Inc., The Watchperson Project, The Sierra Club, United Jewish Council of the East Side, Inc., South Manhattan Development Corporation, Citizens Action Network, Katherine and Alex Kudiash, and Phil Smrek.

Attorneys for Petitioners

Frank J. Pannizzo, Esq.,

Counsel to the President of the Borough of Brooklyn, Borough Hall—209 Joralemon Street, Brooklyn, New York 11020, (718) 802–3807.

Ward, Sommer & Moore, Llc,

Plaza Office Center, 122 South Swan Street, Albany, New York 12210, (518) 472–1776.

Brooklyn Legal Services

Foster Maer, Copoation A, 260 Broadway, Brooklyn, NY 11211, (718) 782–6195.

New York Lawyers for the Public Interest

Sam Sue, Edward Copeland, of counsel, 30 West 21st St., 9th Floor, New York, NY 10010, (212) 727–2270.

Finder and Cuomo, Llp

Attorney for Petitioner Citizens Action Network, Matthew A. Cuomo, of counsel, 600 Third Ave., 27th Floor, New York, New York 10016, (212) 599–2244.

Dated: April 23, 1998.

Exhibit 7

U.S. Department of Justice Antitrust Division

August 27, 1999.

Mr. John McGettrick,

Co-Chairman, The Red Hook Civic Association, 178 Coffey Street, Brooklyn, New York 11231.

Re: Comment on Proposed Final Judgment in *United States, State of Ohio, et al.* v. *USA Waste Services, Inc., Waste Management, Inc., et al.,* Civil No. 98–1616 (N.D. Ohio, filed July 16, 1998)

Dear Mr. McGettrick: Thank you for your letter commenting on the Final Judgment submitted for entry in the above case. The Complaint in this case charged, among other things, that USA Waste's acquisition of Waste Management would substantially lessen competition in the disposal of New York City's commercial waste. The proposed Judgment would settle the competitive concerns with respect to the New York City market by, inter alia, requiring the defendants to divest: (a) the USA Waste's SPM Transfer Station; (b) USA Waste's All City Transfer Station; and (c) the pending application by USA Waste for a permit to construct and operate the Nekboh Transfer Station, also in Brooklyn, NY. See Judgment, §§ II (C)(2)(i)(1)–(3) and IV(A). To ensure the defendants' continued cooperation with the purchaser in its efforts to get the Nekboh site permitted, the proposed Judgment further provides that if the Nekboh Transfer Station does not receive an operating permit within one year after entry of the Judgment, the defendants must divest the Scott Avenue Transfer Station, also in Brooklyn, NY. See Judgment, §§ II(C)(2)(i)(4) and IV(B).

In a transaction approved by the United States in August 1998, under the terms of the proposed Judgment, the defendants divested All City Waste Transfer Station and their application for a permit for the proposed Nekboh site to Republic Services, Inc., which previously did not operate any waste disposal sites in the New York City area.

You have pointed out that although the proposed Final Judgment orders the defendants to divest a number of waste transfer stations in Brooklyn and in the Bronx, the Judgment does not order them to divest their interest in the proposed Erie Basin Marine Transfer Terminal, a large waste disposal facility that USA Waste had proposed permitting and constructing in the Red Hook section of Brooklyn, NY. You asked whether the defendants' retention of this disposal facility might nullify the effects of the ordered divestitures, and whether the defendants ought to be forced to withdraw their proposal to permit and construct the Erie Basin facility.

As noted above, the Complaint alleged that defendants' transaction would substantially reduce competition in the disposal of the city's commercial waste. The proposed Erie Basin site, however, was designed primarily for handling the city's residential waste, not its private commercial waste. This waste transfer station (and others proposed by competitors) would replace disposal capacity that would be lost when New York City closes its only municipal landfill, Fresh Kills, in late 2001. Although a portion of the Erie Basin facility, if permitted, might handle some private commercial waste, at the moment, whether Erie Basin will be permitted is somewhat speculative. In any event, we do not see Erie Basin as a significant competitive factor in the disposal of private commercial waste, and hence, there was no reason for us to insist that the defendants divest it to alleviate any competitive concerns regarding competition in the disposal of New York City's private commercial waste.

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comment and this

response will be published in the **Federal Register** and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

The Red Hook Civic Association

October 23, 1998.

J. Robert Kramer II,

Chief, Litigation II Section, U.S. Department of Justice, 1401 H Street NW, Suite 3000, Washington, D.C. 20530.

Re: Public Comment on *U.S.* v *USA Waste Services, Inc., Civ. No. 1:98 CV 1616 (E.D. Ohio 7/16/98)*

Dear Mr. Kramer: We would like to comment regarding the adequacy of the New York City divestitures required as part of the above captioned Final Judgment (the ''Settlement''). As you know, the settlement requires the divestiture of the SPM Transfer Station at 912 East 132nd Street in the Bronx, the 2 North 5th Street waste transfer station in Brooklyn, the Plymouth Street station in Brooklyn and the Scott Avenue station in Brooklyn (the ''NYC Divestitures'').

Waste Management is currently bidding to construct a huge new marine transfer station. The company has recently submitted a proposal to the New York Department of Sanitation to construct a huge new marine transfer station (''MTS'') in the Erie Basin in Brooklyn that would handle between 5,000 and 10,000 tons per day of solid waste. We understand that Waste Management and USA Waste already collectively control a substantial majority of the waste transfer business in New York City. This MTS project would nullify the competitive effects of the NYC Divestitures. In order to preserve competition we believe that Waste Management should be required to withdraw the MTS proposal as a condition of approval of the merger contemplated by the merger agreement.

Please comment on whether Waste Management has disclosed the Erie Basin MTS proposal to the Department of Justice and why Waste Management should not be required to withdraw the Erie Basin MTS proposal in order to give effect to the NYC Divestitures. Should you have any questions with regard to the foregoing please do not hesitate to call me at (718) 424–4040.

Yours very truly,

John McGettrick,

The Red Hook Civic Association.

cc: Dennis Vacco NYAG

Exhibit 8

U.S. Department of Justice Antitrust Division

August 27, 1999.

Dr. Alan Heslop,

Director, The Rose Institute of State and Local Government, Claremont McKenna College, Adams Hall, 340 E. Ninth Street, Claremont, CA 91711–6420.

Re: Comment on Proposed Final Judgment in *United States, State of Ohio, et al.* v. *USA Waste Services, Inc., Waste Management, Inc., et al.,* Civil No. 98–1616 (N.D. Ohio, filed July 16, 1998)

Dear Dr. Heslop: This letter responds to your written comment on the proposed Final Judgment in the above case, now pending in federal district court in Cleveland, Ohio. The Complaint in that case charged, among other things, that USA Waste's acquisition of Waste Management would substantially lessen competition in the disposal of commercial waste from portions of the City of Los Angeles. The proposed Judgment would settle the case by, *inter alia,* requiring the defendants to divest Chiquita Canyon Landfill, a large waste disposal site located about 40 miles northeast of the City of Los Angeles. In a transaction approved by the United States in August 1998, under the terms of the decree, the defendants divested the landfill to Republic Services, Inc., which prior to the sale, did not operate any landfills in the greater Los Angeles area.

Your letter raises two issues related to the competitive effect of the proposed acquisition in the Los Angeles area. First, you question the governments' allegation that the relevant geographic market for purposes of analyzing the effects of the acquisition is commercial waste from the City of Los Angeles, an area defined in the Complaint as those parts of the city east of the San Diego Freeway, Interstate 405. In your view, the relevant market, at a minimum, should include a five-county area comprising not only the City of Los Angeles, but also Los Angeles, Ventura, Orange, Riverside and San Bernardino counties. You note that if the relevant geographic market is broadly defined to include these areas, then the United States should have taken into account competition from—and sought divestiture of—defendants' newly-permitted Mesquite Regional Landfill, located nearly 170 miles southeast of the city of Los Angeles.

In defining the relevant geographic market for the disposal of Los Angeles' commercial waste, the United States took into account the extent to which each of the private and public landfills in Southern California could compete for the city's waste. In its competitive analysis, the United States excluded some firms from the relevant geographic market because their landfills were legally prohibited from accepting any municipal solid waste from the City of Los Angeles (*e.g.,* most of the Los Angeles County landfills). The United States excluded other facilities (*e.g.,* Mesquite Regional Landfill) because of their distance from, and relative inaccessibility to, the Los Angeles area. As noted above, Mesquite Regional Landfill is located 170 miles from the city. Rail is the only practical way to transport waste from Los Angeles to that landfill. With delivered costs in excess of $45/ton (including transportation and tipping fees costs), the cost of disposing of commercial waste from the City of Los Angeles at Mesquite Regional Landfill would be nearly twice as much as the cost of sending such waste to close-in LA area landfills, which have average tipping fees of about $23/ton. The four firms that own or operate close-in landfills can profitably increase their prices for disposal of Los Angeles's commercial waste by a small but significant amount, without losing significant business to distant landfills such as Mesquite Regional. In these circumstances, it made economic sense to exclude Mesquite Regional and similarly situated landfills from our competitive analysis in determining the significance of the defendants' merger in the disposal of Los Angeles's commercial waste. See U.S. Department of Justice Horizontal Merger Guidelines §§ 1.2–1.3 (1997 ed.)

For similar reasons, it made sense to limit the relevant market to commercial waste that originates in portions of the City of Los Angeles located east of the San Diego Freeway, Interstate 405. Private commercial waste generated in areas of the city west of the freeway can be legally disposed of in several Los Angeles County landfills, and in our view, the availability of the Los Angeles County landfills for the disposal of waste from this section of the city made it unlikely that the merger would substantially reduce competition for such waste.

Finally, you may have overlooked the fact that expanding the relevant geographic market to include the distant Mesquite Regional Landfill would sweep into the market a number of other similarly-situated large landfills that are not owned or otherwise controlled by the four firms that operate close-in Los Angeles landfills. Including these additional firms in the competitive analysis would substantially diminish, perhaps even eliminate, any anticompetitive effect of an acquisition by USA Waste of Waste Management, which would make it difficult to justify requiring that the defendants divest any Los Angeles area landfills.

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comment and this response will be published in the **Federal Register** and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief Litigation II Section.

Claremont McKenna College

November 23, 1998.

J. Robert Kramer II,

Chief, Litigation II Section, Antitrust Division, United States Department of Justice, Suite 3000, 1401 H. Street, NW, Washington, D.C. 20530.

Re: Proposed Final Judgment and Competitive Impact Statement **Federal Register,** Volume 63, Pages 51125 *et seq.*

Dear Mr. Kramer: The Rose Institute of State and Local Government at Claremont McKenna College (the ''Rose Institute'') respectfully submits the following comments concerning the subject **Federal Register** request for public comment. We note that the comments and opinions expressed herein do not necessarily reflect the opinions of the Trustees of Claremont McKenna College or the Governors of the Rose Institute, but are the findings of the scholars and researchers who have worked on the comments.

By way of introduction, the Rose Institute is a non-profit organization founded in 1973 with a goal of building a comprehensive and unmatched resource of information on the almost 20 million people and several hundred local governments in southern California. It is staffed primarily by the faculty and students of Claremont McKenna

College and the Claremont Graduate School, members of the Claremont University System. The institute specializes in public policy analysis and its researchers are trained in a wide range of disciplines, including government, finance, computer science (including GIS) and environmental regulation and law. While the Rose Institute has been involved in a number of matters of national interest, its general policy analyses are focused on matters affecting California and, in particular, the Los Angeles County and Inland Empire areas of southern California, including the Counties of San Bernardino, Riverside, and Imperial.

One of the major public policy issues which has been the focus of long-term and ongoing research within the Rose Institute is that of solid waste management—particularly concerning the issues of non-hazardous solid waste generation, recycling, reuse, and disposal.

Before the economic recession of the early 1990s, the Rose Institute undertook to play an important role in assisting public policy-makers as they reviewed and identified issues related to the development of plans and methodologies necessary to implement a waste-by-mail disposal system for southern California. The effects of the recession and the success of state-mandated waste recycling requirements delayed what had been projected as a critical need for waste-by-rail disposal options. Nevertheless, over the past several months, the Rose Institute has undertaken to review again the viability and necessity of potential waste-by-rail disposal options for southern California. A report, entitled ''Regional Solid Waste Management in Southern California for the New Millennium,'' sets forth our analysis and conclusions concerning this subject matter and is nearing final publication status. We expect formally to release the report in the near future. Nevertheless, because of the significance of this research for the issues raised in the subject **Federal Register** Notice, we have attached a draft copy of the report, noting that it has yet to be finally formatted, bound, etc., before formal release. We respectfully request that it be considered an integral part of the comments that follow.

During our research for the attached report, we necessarily reviewed the effects of the merger of Waste Management, Inc. and USA Waste Services, Inc. While it was not the initial intention of our research effort to address the specifics of that merger in our region, when the subject Proposed Final Judgment and Competitive Impact Statement (''Impact Statement'') appeared in the **Federal Register,** the Rose Institute as a matter of objective analysis, and in light of its research and the realities of waste disposal in our region, concluded that the Department of Justice had seriously mis-identified the relevant market area for southern California—at least with respect to ''disposal assets'' as that term is used in the Impact Statement.

The comments that follow are strictly limited to issues within the southern California geographical area. Furthermore, we express no opinion whether the relevant market area has been properly defined for purposes of ''hauling assets'' as that term is used in the Impact Statement. Based on our primary research related to waste-by-rail, our comments are directed only to ''disposal assets.''

In short, our conclusion is that the Department of Justice has mis-identified the relevant market area for waste disposal assets in Los Angeles and southern California in general and, in doing so, has provided a clear opportunity for the creation of substantial anti-competitive effects within the region related to solid waste disposal. Our detailed comments are attached.

We appreciate the opportunity to submit these comments and would be pleased to discuss them further with officials at the Department of Justice or before the United States District Court for the Northern District of Ohio, Eastern Division.

Sincerely,

Alan Heslop,

Director.

Comments of the Rose Institute of State and Local Government at Claremont McKenna College Regarding the Department of Justice Proposed Final Judgment and Competitive Impact Statement [1] 63 FR 51125 et seq.

Summary of comments and Conclusions

The Rose Institute of State and Local Government (''The Rose Institute'') at Claremont McKenna College respectfully concludes that the Department of Justice (''DOJ'') has not correctly defined the ''relevant geographic market'' for municipal solid waste (''MSW'') disposal in Los Angeles, California.[2] As a result, DOJ's analysis of the competitive impacts of the USA Waste/WMI merger in the Los Angeles area and its recommendations regarding the divestiture of ''Relevant disposal Assets'' [3] set forth in the proposed Final Judgment and Competitive Impact Statement are deficient. Our analysis indicates that the ''relevant geographic market'' should encompass, at a minimum, the entire County of Los Angeles and not merely a portion of the City of Los Angeles. So defined, the proposed Final Judgment and Competitive Impact Statement would necessarily have reached substantially different conclusions as to the need for further divestiture of ''Relevant Disposal Assets'' in the Los Angeles market. These conclusions are based upon the following:

(1) The definition of the Los Angeles market is overly restrictive and narrow in that:

(a) It is consistent with California state law establishing a comprehensive disposal site planning and utilization process that has been implemented by both the City and County of Los Angeles.[4]

(b) It is inconsistent with the City of Los Angeles' own MSW disposal and contracting practices and ignores Los Angeles County's state-approved integrated waste management plan and the disposal realities throughout southern California.

(c) The boundaries chosen appear to be arbitrary, artificial, and without any meaningful or logical relationship to the demographics, economics, or natural geographical features or boundaries of the City of Los Angeles.

(d) It fails to recognize the actual commercial MSW disposal and marketing practices of WMI in the City of Los Angeles market.

(e) It is inconsistent with the definitions of the geographic markets for all other metropolitan areas in the proposed Final Judgment and Competitive Impact Statement, and it appears to bear no relationship to the definition of ''relevant area'' set forth in the Hold Separate Stipulation and Order.

(2) The definition of the geographic market of Los Angeles is inconsistent with the DOJ's prior recent review and action taken regarding similar waste disposal asset transactions between competitors of USA Waste and WMI in the Los Angeles area.

(3) The proposed Final Judgment and Competitive Impact Statement appears to ignore the effects of recent acquisitions of disposal assets in the region by USA Waste prior to its merger with WMI and thereby compounds the potential anti-competitive effects of the subject merger.

(4) By expanding the Los Angeles market to include the entire county, the analysis of the competitive effects of the transaction would necessarily have included additional landfills in southern California, as well as outside of the state, in which USA Waste and WMI own, control, or hold an interest.

For the reasons set forth above, the proposed Final Judgment and

[1] The proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement were prepared in connection with a civil antitrust lawsuit filed by the United States of America and eleven (11) states, including California, in an effort to enjoin the merger of USA Waste Services, Inc. (''USA Waste'') and Waste Management, Inc. (''WMI'') as a violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. On July 16, 1998, a Complaint for Injunctive Relief Case No. 1:98 CV 1616 (the ''Complaint'') and the proposed competitive Impact Statement were filed in the United States District Court for the Northern District of Ohio Eastern Division.

[2] The Complaint (page 4) defines ''Los Angeles'' as ''that area of the City of Los Angeles, CA, located east of Interstate 405, the San Diego Freeway.''

[3] The term ''Relevant Disposal Assets'' is defined at 63 FR 51130.

[4] The California Integrated Waste Management Act of 1989 (AB 939), as amended, California Public Resources Code §§ 40000 *et seq.*

Competitive Impact Statement should be amended to reflect the realities of waste disposal in the Los Angeles region consistent with the analysis contained in these comments. Divestiture of additional ''Relevant Disposal Assets'' in the Los Angeles market should be required, including the El Sobrante Landfill in western Riverside County and USA Waste's interest in the Mesquite Regional Landfill waste-by-rail project in Imperial County.

Introduction

Attached to these comments in the December 1998 report of The Rose Institute entitled ''Regional Solid Waste Management in Southern California for the New Millenium'' (''The Rose Report''). We respectfully request that The Rose Report be read in its entirety to provide essential background information for the following specific comments. The report provides an important factual and historical review of waste disposal in southern California—especially in the City and County of Los Angeles, and many of the comments that follow make specific reference to portions of that report.

By way of summary, The Rose Report shows that, for many years, issues relating to waste management—in particular that of disposal—have received regional attention in southern California. Long before the passage of AB 939, which mandates that waste disposal be addressed through joint city and county planning efforts, the Los Angeles area had a regional perspective on waste issues. Examples of the regionalization of waste management include Los Angeles' reliance upon disposal of organic wastes in San Bernardino ''pig farms'' well into the 1950s and the proposed development of large regional waste-to-energy facilities during the 1970s and 1980s. Regionalization is currently reflected in the formalized planning process for, and potential embrace of, regional waste-by-rail projects.

The Rose Report concludes that, despite the successes made in diverting waste from landfills into recyclable markets pursuant to AB 939, with the closure of three (3) large local landfills in the recent past,[5] the need for regional waste disposal capacity is critical—particularly in view of the extended time required to obtain permits and develop new or expanded landfill capacity in the southern California area. More importantly, our conclusions are not unique but reflect the consensus of other observers of the issue in the region.

We believe that, in a very real sense, and in a potentially harmful manner to consumers and the public interest, DOJ has failed to evaluate properly both the near and long term anti-competitive effects of the merger on Los Angeles County, the county with the largest population in the United States. We further believe that the consequence of the DOJ analysis, if left unamended, will be to place in one operator—WMI—overwhelming control of private landfill disposal capacity capable of serving the City and County of Los Angeles and the entire southern California area all the way to the eastern border of the State and south to the border of the United States with Mexico.

Since the late 1980s, the Rose Institute has been a regular ''player'' in the public policy debate over waste management issues for the southern California region. Our programs have been supported and attended by most of the major waste management firms operating in southern California, including WMI, Browning Ferris Industries (''BFI''), Norcal Waste Systems, Mine Reclamation Corporation, and others. We have no ''axe to grind'' with any firm, nor are we obviously ''interested'' from a competitive viewpoint. Rather, effective public policy guides our analyses and interests in this matter and underscore the obligation we feel to file these comments.

Finally, by way of limitation, the comments that follow are limited to issues related to the definitions of ''relevant geographic market'' and ''Relevant Disposal Assets'' as they relate to Los Angeles. The Rose Institute takes no position concerning the ''Relevant Hauling Assets'' as the term is used in the proposed Hold Separate Stipulation and Order that is part of the Final Judgment.

Specific Comments

(1) The Definition of Los Angeles Markets Is Overly Restrictive and Narrow

(a) The Definition of the Los Angeles Market Is Inconsistent With Applicable California State Law

The California Integrated Waste Management Act (commonly referred to as AB 939), establishes legal requirements for all California counties and municipalities to develop and implement a comprehensive integrated waste management program. Failure of timely compliance with the mandates of AB 939 can result in civil penalties of up to ten thousand dollars ($10,000) per day for each day of violation.

Key among the mandated requirements of AB 939 is that each county must prepare a countywide integrated waste management plan. Part of the plan includes a Countywide Siting Element that must provide for at least fifteen (15) years of waste disposal capacity to meet the county's projected needs. The plan must also include Source Reduction and Recycling Elements from each of the cities in the county demonstrating compliance with the statute's waste diversion mandates.[6] Each countywide plan is required to be prepared by a countywide task force made up of representatives of the county and cities within that county. The role of the task force is to identify waste management issues of countywide or regional concern, determine the need for waste facilities that can service more than one jurisdiction within the county, facilitate the development of multi-jurisdictional methods for marketing recyclable materials, and resolve conflicts and inconsistencies between the subject county.[7] The entire plan is then submitted to the California Integrated Waste Management Board in Sacramento for approval. No provision is made within the law for any city, per se (other than the City and County of San Francisco) to prepare or implement its own waste disposal siting mechanism. That mechanism provided for in the Countrywide Siting Element, is, by law, reserved for the county. However, before submitting the Countywide Siting Element to the Integrated Waste Management Board, it must first be approved by a ''majority of the cities within the county, which have a majority of the population of the incorporated areas of the county.'' [8]

No new landfill may be permitted and no existing landfill expanded within a region covered by an approved Siting Element without first being identified and included in the approved Siting Element.

In June 1997, the Los Angeles County Solid Waste Management Committee/ Integrated Waste Management Task Force, which included representatives from the City of Los Angeles, completed its draft of the Countywide Siting Element. It was subsequently approved in June 1998 by the California Integrated Waste Management Board. While a more thorough review of a key finding of the

[5] The Lopez Canyon Landfill in the City of Los Angeles, the BKK Landfill in the City of West Covina, and the prohibition of acceptance of MSW at the Azusa landfill in the City of Azusa.

[6] The law requires that each county and each city within each county demonstrate the ability to achieve 25% diversion (recycling) of generated wastes from landfills by the year 1995 and 50% diversion by the year 2000.

[7] California Public Resources Code § 40950.

[8] California Public Resources Code § 41721.

Siting Element is reserved for discussion below, the unavoidable point made here is that DJO's definition of the Los Angeles waste market for purposes of determining ''Relevant Disposal Assets'' is wholly inconsistent with the basic requirements of state law which addresses waste disposal issues and practices on a city or countywide basis. Only the county with the approval of the majority of its cities representing a majority of the population in that county has the authority to complete and promulgate a siting plan. Pursuant to law, Los Angeles County, with Los Angeles City's active involvement and approval, did precisely that. The geographical extent of that effort is substantially broader than the Los Angeles market as defined by DOJ.

(b) The Definition of the Los Angeles Market is Inconsistent With the City Los Angeles' Own Waste Disposal Practices

As reviewed in the Rose Report, the City of Los Angeles has long relied on disposal of its wastes at locations outside of its jurisdictional boundaries. As disclosed in the official records from the waste disposal reporting system maintained by the California Integrated Waste Management Board, the City of Los Angeles currently disposes of approximately twenty percent (20%) of its MSW at landfill facilities outside the City limits. Moreover, official waste disposal reports indicate that the City of Los Angeles regularly disposes of MSW in landfills in Orange, Riverside, and Ventura Counties in addition to landfills in Los Angeles County outside the City limits.[9] Figure 1 sets forth a map of the region indicating the sites where Los Angeles City wastes are currently disposed.

USA Waste and WMI landfills that provide MSW disposal services to the City of Los Angeles include the Azusa Landfill and Lancaster Landfill in Los Angeles County, the Simi Valley Landfill in Ventura County, and the El Sobrante Landfill in Riverside County (formerly owned by Western Waste Industries prior to its 1996 acquisition by USA Waste). While DOJ's analysis properly identifies the Chiquita Canyon Landfill (which is located outside of the Los Angeles market as defined by DOJ) as accepting MSW from the City of Los Angeles, the other USA Waste/WMI controlled disposal facilities are also important components in the Los Angeles solid waste management program.

[9] ''Total Disposal and Export for Jurisdictions Within a County Region'', November 2, 1998, California Integrated Waste Management Board.

In summary, Los Angeles City's own disposal practices, readily determined by review of official public records, are at odds with DOJ's delineation of the geographic market for purposes of identifying ''Relevant Disposal Assets'' to maintain competition in the Los Angeles marketplace.

(c) The Boundaries of the Los Angeles Market Area Are Arbitrary

Since the DOJ analysis apparently did not consider either the requirements of state law or the realities of actual disposal practices for the City of Los Angeles, there may have been some demographic or other factors relied upon by DOJ in defining the Los Angeles market. However, nowhere in the Complaint or the proposed final Judgment or Competitive Impact Statement is there any indication that DOJ relied on demographic or geographical factors in establishing the market. In any event, the Rose Institute is not aware of demographic or geographic features, waste industry practices, or legal constraints that could logically support a determination by DOJ to confine the relevant market to an area covering about one-half of the City of Los Angeles. Specifically, The Rose Institute is quite certain that there are no ''flow control'' legal restrictions in Los Angeles City or county that could have led the DOJ to restrict the market area to only a portion of Los Angeles City. Moreover, southern California is renowned for its ''regionalization'' of important social and policy matters such as air quality control and regulation, mass transportation, water supply and, as clearly documented in The Rose Report, solid waste disposal.

To illustrate further what we believe to be the illogic of the limited definition of the relevant area, we set forth in figure 2 a map of southern California population distribution, prepared employing the Rose Institute's Geographic Informational systems capabilities. The population of the Los Angeles market as defined by DOJ is set out against geographical population distributions in the region on Figure 2. In reviewing the population data, the obvious question is why did DOJ exclude from its market analysis almost eighty-five percent (85%) of the region's entire population—much of which is in jurisdictions that currently accept Los Angeles City's MSW for disposal? Also, why would DOJ's market analysis only consider a fraction of the total actual MSW generated by the City? Clearly, when compared to the geographic market definitions developed for the other metropolitan areas (discussed more fully below) considered in the Final Judgment and Competitive Impact Statement, DOJ's analysis of the Los Angeles market cannot be supported.

(d) The Boundaries of the Los Angeles Market Fail To Recognize the Actual Commercial Waste Disposal and Marketing Practices of WMI

Substantial amounts of MSW for the entire City of Los Angeles are disposed at the Bradley West Landfill, owned and operated by WMI and located within the relevant geographic market. However, the Rose Institute is not aware of any public information (including MSW disposal contracts) that either accounts for the generation of MSW in the area of Los Angeles delineated by DOJ (*i.e.*, east of Interstate 405 in the City of Los Angeles) or distinguishes between MSW generated ''east of the 405'' or ''west of the 405.''

Certainly, given the size and importance of the Los Angeles market, if such information existed it would be commonly known. Moreover, as detailed in The Rose Report, the information would be reflected in the Countywide Siting Element of Los Angeles County (discussed below). The Siting element specifically recognizes the possibility of using a number of USA Waste and WMI's landfills located in California, Arizona, Nevada, and even as far away as Oregon—WMI's Columbia Ridge Landfill. And, as noted above, the Siting element is, by law, the official ''blueprint'' for waste disposal pians for all 88 cities and the unincorporated areas in Los Angeles County, including the City of Los Angeles. Furthermore, even a cursory review of Los Angeles City and County public records would have revealed numerous and ongoing efforts of WMI to market these facilities to the City and County. An example is the 1989–90 proposal by WMI to the Los Angeles county Sanitation Districts to secure a waste commitment to its RailCycle project in San Bernardino County and to utilize rail-based transfer station sites in El Segundo (west of interstate 405) and in the City of Commerce, as discussed in detail in The Rose Report.

(e) The Definition of Los Angeles Market Is Inconsistent With DOJ's Analysis of Other Metropolitan Areas

In each and every other city identified in the Complaint (and unlike the approach taken for Los Angeles), the definition of ''relevant geographic market'' includes not only the entire area and population of the city, but also the surrounding or adjacent county(ies). Thus, for example:

—Baltimore—''means the City and Howard, Baltimore, Carroll, and Anne Arundel Counties.''
—Cleveland—''means the City of Cleveland and Cuyahoga County.''
—Detroit—''means the City of Detroit and Wayne County.''
—Miami—''means the City of Miami and Broward, Dade, and Monroe Counties.''
—New York—''means New York, Bronx, Queens, and Richmond Counties.''
—Pittsburgh—''means the City of Pittsburgh and Allegheny and Westmoreland Counties.''

(Complaint at pages 4 and 5, emphasis supplied.)

The fact of the matter is that Los Angeles is the only municipality in the Complaint that is restricted to a size smaller than its own municipal boundaries and which does not also include the county in which it is, at least in part, situated. The Rose Institute fails entirely to understand what type of criteria and methodology could have been utilized by DOJ for treating Los Angeles so differently from every other metropolitan waste disposal market in the country identified in the Complaint. Further, we note that a number of the other waste markets, as defined, have greater populations than the Los Angeles market, as defined by DOJ, and the market identified for the New York area has a substantially greater population that approximates the population of the entire County of Los Angeles. Based upon 1990 cenus data, the following table sets forth a summary of the populations in these areas (including the listed counties):

Baltimore	1,497,956
Detroit	1,411,209
Miami	3,309,246
New York	7,703,051
Pittsburgh	1,708,696
Portion of Los Angeles City Selected by DOJ	[10] 2,936,500

Given DOJ's characterization of the New York metropolitan area as the relevant market area (an area containing many natural potential barriers to the ''flow'' of MSW to landfills) it would seem that it should have also characterized the Los Angeles metropolitan areas, which contains over nine million people in Los Angeles County alone (current estimate), as the relevant market area. We also note that, in addition to New York, many of the other jurisdictions also contain some natural geographical features such as rivers and major waterways (not present in the Los Angeles area) that might have led an analyst to conclude that natural barriers exist that affect MSW disposal practices in the area. In any event, absent some logical explanation from DOJ for its remarkably different treatment of Los Angeles, one is left only to speculate over how the conclusions were arrived at.

In the context of the dissimilar treatment by DOJ of the Los Angeles market compared to other metroplitan areas, we also note that another key issue arises relating to the absence of any analysis of the growing importance of transfer stations generally in California, and particularly in the Los Angeles area.

Whole DOJ correctly analyses the potential for enlarging the geographical reach for disposal market purposes through the use of transfer stations (Pages 9 and 10 of the Complaint), it does not consider this factor in the Los Angeles market analysis. As outlined in The Rose Report, municipalties in the southern California regio primarily because of the recycling and waste diversion mandates of AB 939, are moving rapidly to the utilization of ''Materials Recovery Facility (''MRF'')/ Transfer Stations.'' Because of the increase in waste processing through MRFs and Transfer Stations (which involves the loading of MSW into larger transfer trucks or containers for shipment by rail), the practice necessarily facilities the ability to dispose of MSW at greater and greater distances from the point of generation. Furthermore, with the closures of Los Angeles City's Lopez Canyon Landfill and the BKK Landfill in West Covina, and the prohibition on acceptance of MSW at the Azusa Landfill (the latter two of which are situated in eastern Los Angeles County), almost 25,000 tons of MSW per day is now necessarily moving to outlying landfills in the region. Such closures and the mandates of California law are resulting in a growing dependence on MRFs/Transfer Stations by local jurisdictions. In fact and by way of example, of the eighty-eight (88) cities in Los Angeles County, thirty-eight (38) have now committed, as an official part of their approved Source Reduction and Recycling Plans to meet state recycling mandates, to a MRF/ Transfer Station strategy.[11]

The resulting reality of this growing dependence on MRFs/Transfer Stations is that MSW may be taken—and today is being taken—greater distances from disposal, thus broadening the relevant geographic market for Los Angeles for the purpose of waste disposal analysis.

As a final point, we would note the inconsistency in DOJ's definition of ''relevant area'' contained in the Hold Separate Stipulation and Order (''Order'')[12] as applied to the Los Angeles area. In the Order, ''relevant areas'':

''* * * means the county in which the * * * Relevant Disposal Assets are located and any adjacent city or county * * *''

The Order goes on to state in the portion on ''Objectives'' [13]

''The Final Judgment * * * is meant to ensure defendants' prompt divestiture * ** for the purpose of establishing viable competitors in the waste disposal business * * * in the Relevant Areas * * *''

(emphasis added)

It appears clear that the DOJ used essentially the same standard in defining ''relevant area'' and in delineating the geographic markets for all of the other metropolitan areas. However, with respect to Los Angeles, DOJ used a different and undetermined methodology to define the geographic market. Had DOJ been consistent and taken the same approach it took for the other jurisdictions, the definition of the Los Angeles market would have included Los Angeles County, and the adjacent counties of Ventura, Orange, Riverside, and San Bernardino. Such a definition of Los Angeles would have been precisely what the Rose Institute maintains is consistent with the common understanding of the Los Angeles market area.

(2) The Definition of the Los Angeles Market Is Inconsistent With DOJ's Prior Actions

In 1996, DOJ had occasion to review a transaction between BKK Corporation (a privately-held waste management firm which, as alluded to above, operated a large regional landfill in eastern Los Angeles County) and BFI.[14] The essence of the transaction was the sale of certain assets of BKK in the Los Angeles area to BFI, including BKK's interest in two (2) proposed landfill projects located on sites in Los Angeles and San Bernardino Counties, as well as BKK's waste recycling operations and transfer station in the City of Los Angeles (Wilmington). At the time, BFI was the owner of the Sunshine Canyon Landfill in Granada Hills (in Los Angeles County) and was then seeking

[10] Estimated by use of Geographic Information System capabilities of the Rose Institute.

[11] Countywide Siting Element for Los Angeles County, Los Angeles Country Department of Public Works Environmental Programs Division, June 1997.

[12] 63 Federal Register 51127.

[13] Ibid.

[14] Information concerning this transaction was taken from conversations with involved counsel.

to obtain final permits and approvals to initiate operations. The Sunshine Canyon Landfill, however, was closed to operations at all times relevant to the BKK/BFI transaction.

The original BKK/BFI transaction documents reviewed by DOJ contained a provision that would have pre-conditioned the transaction on the closing of the BKK Landfill in West Covina, even though that landfill was not part of the transaction. Upon review, DOJ objected to the condition and refused to approve the transaction until the condition related to the West Covina landfill had been deleted. The condition was removed and DOJ approval followed. What is interesting about this transaction, and DOJ's approach to it, is that even though BFI did not operate any landfill in the region at the time,[15] but was merely seeking to resume operations at its Sunshine Canyon Landfill, DOJ looked beyond the borders of the City of Los Angeles and, one can reasonably infer, made an implicit—if not explicit—decision that the Los Angeles waste disposal market extended into eastern Los Angeles County.

We think that DOJ was correct in that prior instance. We think its current analysis is clearly inconsistent with its past view of the Los Angeles disposal market and is therefore incorrect.

(3) The Proposed Final Judgment and Competitive Impact Statement Ignore the Effects of Prior Acquisitions by USA Waste in the Region

Over the past two years, USA Waste has made a number of acquisitions of landfill assets in southern California—both outright and by way of merger. For Example, USA Waste acquired the Chiquita Canyon Landfill from the Laidlaw Company; the Azusa Landfill from BFI; and the El Sobrante Landfill and Western Waste Industries' interest in the Mesquite Regional Landfill (a waste-by-rail project in Imperial County) via a merger with Western Waste.

It is important to note that USA Waste and WMI have not been long-time competitors in the region. In fact, USA Waste is a relatively new organization both locally and in the nation generally. However, USA Waste has acquired many firms in the region that were long-time competitors of WMI, such as Western Waste Industries. The potentially significant anti-competitive consequences of USA Waste's recent acquisitions throughout southern California is raised nowhere in the proposed Final Judgment and Competitive Impact Statement. We believe that it should receive serious independent consideration by DOJ. In fact, USA Waste's acquisitions in California during the last three years, might not have secured DOJ approval if they had been effected by WMI acting on its own account.

By ignoring the prior USA Waste acquisitions in its analysis of the current merger, DOJ is sanctioning a situation in which one private landfill operator will have overwhelming control of private waste disposal capacity capable of serving the City and County of Los Angeles and the entire southern California area all the way to the eastern border of the State and extending south to the border of the United States with Mexico! With the merger as approved by DOJ in the Competitive Impact Statement, WMI will own, control, or hold an interest in all but three (3) of the large private landfills and landfill projects serving all of Los Angeles County, the country with the largest population in the United States.[16]

Figure 3 shows the general location of private landfills in southern California and landfills in neighboring states which have been identified by Los Angeles County in the Countrywide Siting Element (discussed above) as potential sites for providing landfill disposal capacity to the area for the next fifteen (15) years. It also lists the current permitted daily tonnage allowed at each facility and the remaining capacity (as indicated in the Siting Element). It reveals the overwhelming number of landfills that are owned and controlled by WMI in the region and that are specifically identified for future potential use by the relevant market of Los Angeles County (and City).

Also important is the information set forth on Figure 4, which displays the relative amounts of MSW currently being disposed in the same southern California region as shown in Figure 3. As Figure 4 makes clear, the amounts of MSW disposed in the region can quite easily be accommodated by WMI facilities in terms of allowable daily capacity for many years to come. While the potential impact of public landfill facilities is not set forth in the Figure, as discussed in The Rose Report, the ability of Los Angeles County to control disposal capacity sufficient for its own needs within its own boundaries is limited. In fact, the County, in its approved Siting Element, specifically relies upon a ''mix'' of public and private disposal options. If it is unable to permit a significant extension of its Puente Hills Landfill in eastern Los Angeles County,[17] its reliance on private disposal options will be dramatically increased. It is precisely for these reasons that the County's own plans look to the utilization of other potential private sites as depicted in the attached maps. Allowed to go unamended, the VMI merger as currently proposed would result in a situation where one private operator—WMI—has essential control over waste disposal capacity for the entire region.

The Rose Institute strongly believes that any analysis of the current merger should also include an analysis of recent acquisitions of disposal assets in southern California by USA Waste, especially the assets acquired in the acquisition of Western Waste Industries.

(4) At a Minimum, the Los Angeles Market Should Have Included all of Los Angeles County. The Proper Market Description Would Have Resulted in Additions to ''Relevant Disposal Assets'' for Los Angeles

For the reasons set forth above, especially those relating to the solid waste management requirements imposed by California law and the realities of current actual waste disposal practices in the City of Los Angeles, we argue that the Los Angeles market should include the entire County of Los Angeles. In turn, the effect of such a definition should substantially change DOJ's view of what are—or are not—''Relevant Disposal Assets'' for the ''true Los Angeles market.'' No secret exists as to what both the City and County view as the specific landfill assets that could be considered for inclusion in the ''Relevant Disposal Assets''; they are enumerated in the Countywide Siting Element.

As discussed extensively in The Rose Report, implementation of a waste-by-rail project for the region is both imminent and necessary for the County

[15] It was the owner/operator of the Azusa Landfill in eastern Los Angeles County, but that landfill was permitted to receive only ''inert'' wastes and was prohibited by court order from receiving any MSW.

[16] The three major private landfills are BFI's Sunshine Canyon Landfill, the Chiquita Canyon Landfill to be purchased by Republic Services, Inc., and the Eagle Mountain Waste-by-Rail project, being developed by Mine Reclamation Corporation in eastern Riverside County. Eagle Mountain has been tied up in environmental litigation for six years. If the litigation is resolved in favor of the project, it may be several more years before all of the necessary operating permits could be obtained. See The Rose Report for a more complete discussion of the waste-by-rail projects.

[17] The County's land use permit for the facility expires in the year 2003. Given the long lead time to permit new or expanded landfills in the region, the County will need to initiate formal environmental review for that effort in the very near future. The Rose Report concludes that this effort, in turn, will likely also include initial implementation of a significant waste-by-rail operation for the region.

of Los Angeles and its 88 cities. Recently, the Los Angeles County Sanitation Districts secured a site for development of a MRF capable of feeding a waste-by-rail system and have held preliminary discussions for the purposes of implementing such a system with officials of the Eagle Mountain, RailCycle, and the Mesquite Regional Landfill projects. In a letter dated September 13, 1996, from Donald Nellor of the Los Angeles Sanitation Districts to David Mares of the Planning Department for Riverside County, Nellor reaffirmed the Sanitation Districts' continuing commitment to developing waste-by-rail:

> There is a clear need for new regional landfills, such as the Eagle Mountain site . . . The Sanitation Districts continue to be committed to implementing a waste-by-rail system as one component of a balanced and multi-faceted approach to effectively manage the Districts' long-term waste disposal needs.

To date, the only waste-by-rail project that has obtained all of its major land use and operational permits is the Mesquite Regional Landfill.

With an expanded view of the market, any consideration of the competitive impacts of the USA Waste/WMI merger on the waste disposal market in the City and County of Los Angeles should also take into account the resulting position of the merged companies throughout all of southern California. As an example, USA Waste's MRF/Transfer Station in Carson. California, just south of the Los Angeles City limits, has been specifically modified to take MSW from the City of Los Angeles to its El Sobrante Landfill in Riverside County, which it does. As noted above, Figure 3 sets forth a map of USA Waste's and WMI's landfills in the region depicting the permitted daily and overall capacities of each facility. That map shows that more than enough capacity exists among these facilities to accommodate all of Los Angeles County's needs for at least the nest 30 years. Furthermore, should the County of Los Angeles decide to dedicate a wastestream for disposal by rail in order to promote the development of remote regional landfills, USA Waste, by virtue of its recent acquisition of Western Waste Industries, has an interest in the Mesquite Regional Landfill, the only currently permitted in-state waste-by-rail project.

Finally, in viewing the realities of the entire region, The Rose Report notes that there is only one jurisdiction outside of Los Angeles County which may offer disposal capacity held and controlled in the public sector—Orange County (see The Rose Report for specific discussion of the history of Orange County's capabilities). Even here, however, WMI maintains a strong position. In 1995, as part of its bankruptcy recovery program, Orange County ''pre-sold'' capacity in their public landfill system. WMI purchased, and still controls, substantial capacity in that system.

(5) Conclusion—WMI Should Be Required To Divest Additional ''Relevant Disposal Assets''

For all of the reasons set forth above and in the supporting analysis contained in The Rose Report, the proposed Final Judgment and Competitive Impact Statement should be revised to reflect Los Angeles Count as the ''relevant geographic market'' for purposes of analyzing the competitive impacts of the USA Waste/WMI merger. The Rose Institute maintains that a revised definition of the Los Angeles market should result in the divestiture of additional landfill disposal operations of the newly-constituted WMI in order to protect the public interest. In addition, we believe that much of the concern over the creation of an anti-competitive environment in waste disposal in southern California could also be lessened by consideration of the divestiture of assets that were acquired recently by USA Waste, before the instant merger—in particular, the El Sobrante Landfill in western Riverside County and the interest of Western Waste, a wholly owned affiliate of USA Waste, in the Mesquite Regional Landfill waste-by-rail project in Imperial County. The remaining company would still have full ownership and developmental rights over the RailCycle waste-by-rail project in San Bernardino, as well as numerous other landfills and landfill capacity in California and in nearby out-of-state locations that will compete in the Los Angeles market.

Finally, we take note of the following. WMI is no ''stranger'' to the Department of Justice, the Attorneys General of numerous states, or the district attorneys of many counties in those states, including the counties in southern California. Its appetite for growth and ability to control aggressively the markets in which it operates are a matter of public record. We submit that that is not a public record which supports granting to the ''new'' WMI an almost exclusive ''franchise'' in waste disposal for southern California for many years to come—a situation that will exist if the instant merger is allowed to be completed without substantial reconsideration of the Los Angeles market. We think the public interest deserves a more relaistic and complete ayalysis for southern California and its millions of residents. We respectfully submit these comments to the public record in this matter.

Exhibit 9

U.S. Department of Justice, Antitrust Division

August 27, 1999.

Joseph Kattan, Esquire
Michael F. Flanagan, Esquire,
Gibson, Dunn & Crutcher, 1050 Connecticut Avenue, NW, Washington, DC 20036–5306.

Re: Comment on Proposed Final Judgment in *United States of Ohio, et al.* v. *USA Waste Services, Inc. Waste Management, Inc., et al.,* Civil No. 98–161 (N.D. Ohio, filed July 16, 1998)

Dear Messrs. Kattan and Flanagan: This letter responds to your letter, submitted on behalf of your client, Gold Fields Mining Corporation (''Gold Fields''), commenting on the proposed Final Judgment in the above case. The Complaint in that case charged, among other things, that USA Waste's acquisition of Waste Management would substantially lessen competition in the disposal of commercial waste from portions of the City of Los Angeles, The proposed Judgment would settle the case by, *inter alia,* requiring the defendants to divest Chiquita Canyon Landfill, a large USA Waste landfill located about 40 miles northeast of the City of Los Angeles. In a transaction approved by the United States in August 1998, under the terms of the decree, the defendants divested that landfill to Republic Services, Inc., which previously did not operate any landfills in the greater Los Angeles area.

Your client, Gold Fields, together with Union Pacific Railroad Company and defendant USA Waste, own Mesquite Regional Landfill. Gold Fields is very concerned that the proposed divestiture of defendants' Chiquita Canyon Landfill does not go far enough to prevent the defendants from exercising market power after the acquisition. Specifically, Gold Fields is concerned that following the merger, the defendants will attempt to reduce the disposal capacity available to the Los Angeles market by using its ownership interest in Mesquite Regional to prevent this large new landfill from aggressively competing for commercial waste from the city.

In our view, the relevant geographic market for analyzing the competitive effects of the USA Waste's acquisition of Waste Management does not include Mesquite Regional Landfill. In defining the relevant geographic market for the disposal of Los Angeles's commercial waste, the United States took into account the extent to which each of the private and public landfills in Southern California could compete for the disposal of commercial waste that originates in the city of Los Angeles. In the course of its competitive analysis, the United States excluded some firms from its relevant geographic market because their landfills were legally prohibited from accepting any

municipal solid waste from the city of Los Angeles (*e.g.*, most of the LA County landfills). The United States excluded other disposal facilities (*e.g.*, Mesquite Regional) because of their distance from, and relative inaccessibility to, the Los Angeles area.

USA Waste's Mesquite Regional Landfill is located 170 miles from the City of Los Angeles. Rail is the only practical way to transport waste from Los Angeles to that landfill. With delivered costs in excess of $45/ton (including transportation and tipping fee costs), it would be nearly twice as expensive to dispose of commercial waste from the City of Los Angeles at Mesquite Regional Landfill as sending such waste to close-in LA area landfills, which have average actual landfill tipping fees of about $23/ton.[1] The four firms that own or operate landfills reasonably close to Los Angeles can profitably increase their tipping fees for disposal of Los Angeles's commercial waste by a small but significant amount without losing significant business to distant landfills such as Mesquite Regional. Thus, is makes sense to exclude Mesquite Regional and similar landfills from the competitive analysis in determining the significance of the defendants' transaction for the disposal of Los Angeles' commercial waste. See U.S. Department of Justice Horizonal Merger Guidelines § § 1.2–1.3 (1997 ed.).

Finally, you implicitly assume that expanding the relevant geographic market to include Mesquite Regional Landfill would make USA Waste's acquisition of Waste Management more, not less, anticompetitive. However, expanding the market to include this distant landfill would sweep into the competitive analysis a number of other large landfills now owned or otherwise controlled by the four firms that own the close-in Los Angeles landfills. Including in the market the disposal capacity of those distant firms would substantially diminish, or even eliminate, the anticompetitive effects of defendants' transaction, and hence, make it questionable whether the defendants should be required to divest any Los Angeles area landfills.

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comment and this response will be published in the **Federal Register** and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

Gibson, Dunn & Crutcher, LLP

November 23, 1998.

Via Hand Delivery

J. Robert Kramer, II, Esq.,

Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530.

Re: *United States* v. *USA Waste Services, Inc.*, Civ. No. 1:98 CV 1616

Dear Mr. Kramer: Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (the ''Tunney Act''), we submit the comments of Gold Fields Mining Corporation (''Gold Fields'') on the proposed consent decree filed by the Justice Department contemporaneously with the filing of its complaint in the above-referenced lawsuit.

In a complaint filed on July 16, 1998, the Department (and a number of individual states) alleged that the proposed acquisition of Waste Management, Inc. (''WMI''), by USA Waste Services, Inc. (''USA Waste''), would violate Section 7 of the Clayton Act, 15 U.S.C. 18.[1] As required by the Tunney Act, the Department published a proposed Final Judgment and a Competitive Impact Statement (''CIS'') in the **Federal Register** on September 24, 1998. 63 FR 51,126. Under the Tunney Act , the court is required to make a determination, prior to approving the proposed consent judgment, that ''the entry of such judgment is the public interest.'' 15 U.S.C. 16(e); see also *United States* v. *Airline Tariff Publ'g Co.*, 836 F. Supp. 9, 11 (D.D.C. 1993).

Although the Department is to be commended for intervening and requiring divestitures to reduce the impact of this anticompetitive acquisition, the remedy mandated by the consent decree with regard to one of the markets alleged in that complaint, the Los Angeles area, is insufficient to cure the competitive harm brought about by the transaction. The Department's remedy is inadequate because it leaves the merged company with ownership of sufficient local and remote disposal assets to harm competition for waste disposal in the market. If the merged company is able to retain such power and control, it also will be able to thwart or delay the entry of cost-effective disposal alternatives for customers in the Los Angeles market, such as the Mesquite Regional Landfill in Imperial County, California, which is owned by Gold Fields.

The public interest requires that the decree be modified to address the competitive harm more effectively. To protect competition in the Los Angeles market, for the reasons set forth below, we ask that the Department reexamine its definition of the Los Angeles market,[2] which is necessary in order to more accurately assess the full impact of the transaction. We further request that the Department require the divestiture of additional waste disposal assets by the merged entity, in order to further reduce the merger's anticompetitive effect. Specifically, we request that the Department require Waste Management, acting through its wholly owned affiliate Western Waste Industries (''WWI''), to give up any claim it may have to an ownership stake in the Mesquite Regional Landfill.

I. Factual Background

A. The Complaint and Competitive Impact Statement

The complaint in this matter alleged that USA Waste and WMI are two of the most significant competitors in the disposal of municipal solid waste (''MSW'') in a number of markets throughout the country. Because of the significant competitive positions of both companies, the complaint alleged that the acquisition would substantially lessen competition in the disposal of MSW in seventeen geographic markets throughout the United States, including Los Angeles, California. Compl. ¶¶ 45–78. The complaint further alleged the existence of significant barriers to entry in the MSW disposal business in the Los Angeles area and other ''difficult-to-enter'' markets, due to a variety of important factors, including various ''federal, state and local safety, environmental, zoning and permit laws and regulations'' that ''dictate critical aspects'' of the disposal of MSW, and make the process of obtaining a permit to construct or expand a disposal site ''an expensive and time-consuming task.'' *Id.* ¶ 76; see also CIS at 8, 10, 63 FR at 51,156 (1998). The Department alleged that the diminution in competition brought about by the acquisition is likely to result in consumers paying higher prices and receiving fewer or lesser quality services for the disposal of MSW. Compl. ¶ 78. Indeed, the complaint alleged that operators of local disposal facilities ''can—and do—price discriminate, *i.e.*, charge higher prices to customers who have fewer local options for waste disposal.'' CIS at 9, 63 FR at 51,156 (1998).

Together with the complaint, the Department filed a proposed consent decree under which USA Waste was able to complete its acquisition of WMI, but which required the divestiture of certain assets in order to preserve competition in the affected markets. As it relates to the Los Angeles area, the proposed consent decree required the divestiture of USA Waste's Chiquita Canyon Landfill, located at 29201 Henry Mayo Drive in Valencia, California. We understand that an agreement for the divestiture of this facility to Republic Services, Inc., has been effectuated.

Although we believe that the complaint correctly identified a number of significant competitive problems created by the proposed combination of these two large competitors, the remedy set forth in the proposed consent decree with respect to the Los Angeles area is insufficient to protect the public interest in preserving present and future competition for the disposal of MSW generated in the Lost Angeles area. In particular, the definition of the Los Angeles market is inconsistent with applicable state law an contrary to the commercial realities of the Los Angeles marketplace. Consequently, the remedy set forth in the decree fails to protect the long term interests of purchasers of MSW disposal capacity in a competitive market, as the combined entity now has an

[1] In your letter, you point out that the ''posted'' rates at Los Angeles's transfer stations and resource recovery facilities are about $45/ton, which would be comparable to the delivered cost of waste disposal at Mesquite Regional Landfill. Many of Los Angeles's large haulers, however, receive contractual discounts for waste disposal at area landfills, and these discounted disposal rates, or ''tipping'' fees, actually average about $23/ton for commercial waste from the city.

[1] The entity resulting from the combination of USA Waste and WMI is referred to herein as ''Waste Management.''

[2] As defined in the complaint, Los Angeles means ''that area of the City of Los Angeles, CA, located east of Interstate 405, the San Diego Freeway.'' Compl. ¶ 19.

incentive to block or significantly delay the development of the Mesquite Regional Landfill. However, even if the market definition set forth in the complaint is correct, the remedy set forth in the decree still falls short of the minimum needed to protect consumers in the market defined by the complaint.

B. The Mesquite Regional Landfill

From October 1991 through November 30, 1997, Gold Fields, Western Waste Industries (''WWI''), which since 1996 has been a subsidiary of USA Waste,[3] and SP Environmental Systems, Inc., an affiliate of Southern Pacific Transportation Company (now known as Union Systems, Inc., an affiliate of Southern Pacific Transportation Company (now known as Union Pacific Railroad Company (''UP'')), were engaged in a venture to explore the feasibility of permitting, developing, and operating the Mesquite Regional Landfill. The landfill was to be developed as a MSW regional facility located in Imperial County, California, 170 miles southeast of Los Angeles. The parties believed that the enterprise, which could serve as a disposal site for MSW transported by rail from Los Angeles County and other parts of Southern California, would lessen the need for, and reliance upon, urban landfills and provide an environmentally safe means of disposing of waste at a competitive price.

Gold Fields or Arid Operations, Inc. (''AOI''), its wholly-owned subsidiary, served as manager of the venture and has undertaken all permitting and land acquisition activities requested for the development of the Mesquite Regional Landfill. Gold Fields and AOI have been actively marketing the project throughout Los Angeles County, which is expected to be the primary source of MSW for the facility. Actual construction of the Mesquite Regional Landfill will begin once a contract is awarded.[4] It is projected that MSW disposal will begin within one year of the commencement of construction.

The Mesquite Regional Landfill project is the largest permitted waste-by-rail facility in the United States. During the initial year of operation, the facility will receive up to 3,400 tons of MSW per day, an amount that will increase to 20,000 tons per day over the 100-year life of the project.

Although public and private landfill operators frequently encounter strong opposition to the construction of new landfills and the expansion of existing facilities in densely populated areas, the permitting of the Mesquite Regional Landfill has encountered relatively few difficulties. This is attributable in large measure to the fact that the site of the Mesquite Regional Landfill is especially well suited for the development of a landfill. The site covers 4,250 acres in a deserted portion of the southeastern portion of Imperial County, California. For the past 13 years, the site has been used by Gold Fields and its successor for gold mining activities and as a gravel quarry. The geography of the site—with a base of dense conglomerate and basement rock—contains no active faults and provides a low-permeability barrier that will supplement the engineered leachate and landfill gas containment systems.

The average annual temperature is 74°F, with average highs during the summer months of 105°F to 110°F, and the mean annual rainfall is only 4 inches. This arid climate greatly reduces the potential for leachate to be developed in the landfill. Because of the desert conditions, only low density populations of plant and animal species exist in the area. In addition, because the majority of the site already has been disturbed by mining and gravel extraction activities, any additional impact on plant and animal life will be limited. Finally, the site is located in an area where there are no bodies of water or permanent surface flows.

In September 1995, after three years of public review and comment, the Environmental Impact Report/Environmental Impact Statement for the project was finalized, and local land use approvals and a conditional use permit were issued by Imperial County. In November 1995, all of the municipalities in Imperial County reviewed and approved the project, and a Waste Discharge Order was issued by the California Regional Water Quality Control Board in December of that year. The California Integrated Waste Management Board issued a Solid Waste Facilities Permit in March 1997, and earlier this month, the Imperial County Air Pollution Control District issued an Authority to Construct permit, which addressed air quality issues for the project. As a result, the Mesquite Regional Landfill became the only permitted waste-by-rail project in California. Throughout the permitting process, Gold Fields and AOI prevailed on all administrative and judicial appeals filed in state and federal courts by environmental groups opposing the project.

On November 30, 1997, the venture agreement terminated by its terms. Since the termination of the venture, Gold Fields has been engaged in discussion with SPES, UP, and WWI attempting to wind up the venture. Concurrently, at their sole cost and expense, Gold Fields and AOI have continued the permitting and marketing programs for the project. USA Waste, one behalf of WWI, expressed an interest in participating in the project, however, Gold Fields and USA Waste have irreconcilable differences over plans for the development of the Mesquite Regional Landfill which preclude the parties from being able to conclude a new agreement.

On March 10, 1998, USA Waste, the nation's third largest waste collection and disposal firm, agreed to acquire WMI, the largest waste collection and disposal firm in the country. USA waste's incentive to compete the wind up of the prior venture and negotiate a new agreement with Gold Fields for the continued development of the Mesquite Regional Landfill has been significantly reduced following this acquisition. As a result of the acquisition, the merged company now controls at least four (4) additional major proposed and existing remote waste disposal sites that have either been actively pursuing contracts or are capable of providing waste disposal services to Los Angeles County by transporting waste to their landfills via rail—the RailCycle (Bolo Station) landfill project in California,[5] and the Butterfield Station, Copper Mountain, and Franconia landfills in Arizona. Thus, the merged company now has an incentive to impede the wind up of the venture and thereby frustrated development of the Mesquite Regional Landfill, which is intended to provide the assurance of long term MSW disposal capacity for the Los Angeles area.

Prior to the transaction, WWI and subsequently, USA Waste were committed to the development of the Mesquite Regional Landfill, and the site was posied to compete with WMI's facilities. A 1995 memorandum by Richard Widrig, a vice president of WWI, set out the Mesquite Regional Landfill's goal is being ''the lowest cost'' MSW disposal facility. See July 28, 1995 memorandum from Richard Widrig, attached hereto as Exhibit A, at 2.[6] Given its acquisition of competing sites that were owned prior to the merger by WMI, it is likely that the combined entity will seek to suprress development of the Mesquite Regional Landfill site in order to thwart a low-cost competitive alternative to those sites.

II. The Development of the Mesquite Regional Landfill Is Essential for Effective Waste Management in the Los Angeles Area

The Mesquite Regional Landfill project will be an essential component of the solid waste management program for the Los Angeles area. The location is also particularly well-suited for the disposal of MSW from that area. The site is a short rail haul away from Los Angeles, and offers very large disposal capacity without many of the environmental problems that frequently plague the development of new sites. The Mesquite Regional Landfill, as a newly constructed facility, will be fully lined to comply with current environmental regulations. By contrast, much of the current capacity in the Los Angeles area is the result of the expansion of older landfills that have

[3] WWI merged with USA Waste in a transaction that closed on May 7, 1996.

[4] Construction of the facility is the least time-consuming aspect of market entry. Thus, while the permitting process for a new MSW disposal facility can last an entire decade, construction of a facility such as the Mesquite Regional Landfill can be accomplished within one year.

[5] WMI's RailCycle project in San Bernardino, California is still in the permitting phase, although WMI is now the subject of a major criminal investigation arising from a dispute with a local property owner.

[6] Although this memorandum referred to ''many competitors for this waste stream,'' most of the privately-owned competitive sites are now owned by Waste Management. Mr. Widrig's memorandum states that ''[o]ur competition is primarily RailCycle and LaPaz and local landfills.'' Ex. A, at 2 (emphasis in original). RailCycle, with a proposed capacity of 430 million tons, is owned by Waste Management. La Paz, with an estimated capacity of 20 million tons, is jointly owned by BFI and La Paz County. With the exception of the Chiquita Canyon facility, which USA Waste was forced to divest, and BFI's Sunshine Canyon Landfill, both of which are located in northwestern Los Angeles County, Waste Management owns all of the other major private landfills in Los Angeles County.

limited or non-existent liner systems. In addition, remote locations eliminate the traffic congestion and other public health and safety risks associated with operating a landfill in a heavily populated area.

Governmental authorities have recognized the need to utilize remote facilities, such as the Mesquite Regional Landfill, to meet the MSW disposal needs of the Los Angeles area. For example, Steve Maguin, the head of the Solid Waste Management Department with the Los Angeles County Sanitation Districts testified in February 1997 that ''as early as the beginning of the next decade,'' or a little over a year from the filing of this comment, Los Angeles County would have to export MSW to other locations. See Eagle Mountain Public Hearing before Riverside County Planning Commission, dated Feb. 5, 1997, attached hereto as Exhibit B, at 1.

Mr. Maguin's testimony is consistent with many other projects over the past ten years. Indeed, these projections played a substantial role in creating the impetus for the development of the Mesquite Regional Landfill. For example, as April 1988 study by the Southern California Association of Governments, titled ''The Feasibility of Hauling Solid Waste by Railroad From the San Gabriel Valley to Remote Disposal Sites'' (the ''1988 Study''), attached hereto as Exhibit C, forecasted a shortfall in the landfill capacity for Los Angeles County by the end of 1998. 1988 Study, at 1–13. The projected shortfall in disposal capacity was the driving force behind the development of the Mesquite Regional Landfill and which makes development of that facility a matter of significant importance to Los Angeles area customers. Similarly, the study's conclusions were not lost on the Los Angeles County Sanitation Districts, and in May 1991, an Ad Hoc committee was convened to guide the development of a waste-by-rail system to diversify the solid waste options available to the metropolitan area. See ''Final Waste-by-Rail Master Plan,'' County Sanitation Districts of Los Angeles County, January 1997, attached hereto as Exhibit D, at 1.

In a January 1998 status report on Regional Solid Waste Management within Los Angeles County, prepared by the County Sanitation Districts of Los Angeles County, Mr. Charles W. Carry, the Chief Engineer and General Manager noted that ''[d]evelopment of a waste-by-rail infrastructure is important to the Sanitation Districts in the effort to achieve more effective and diverse waste management in the County.'' See ''Status Report on Regional Solid Waste Management Within Los Angeles County,'' County Sanitation Districts of Los Angeles, January 1998, attached hereto as Exhibit E. The report noted that, because of the closure of three major solid waste landfills in 1996, which resulted in a net reduction of about 25% of the County's daily permitted capacity, ''out-of-County disposal capacity will be heavily relied upon to provide future needs.'' *Id,* at 2. Two of the nine major landfills permitted to accept solid waste in Los Angeles County are projected to close within the next two years and, without the development of new in-County capacity, Los Angeles will become dependent on waste export.

III. Remedial Action Is Required To Ensure the Development of a Low-Cost Disposal Alternative for Los Angeles Area Customers

The complaint and accompanying competitive impact statement recognized that the proposed combination of USA Waste and WMI would substantially lessen competition in the disposal of MSW in Los Angeles. The Department also has recognized that, because the process of obtaining the permits necessary to construct or expand a disposal site is both time-consuming and expensive, entry into the market for the disposal of solid waste is difficult. Compl. ¶76; CIS at 9, 63 FR at 51,156 (1998). Indeed, the Department contends that ''[s]ignificant new entry into these markets is unlikely to occur in any reasonable period of time, and is not likely to prevent exercise of market power after the acquisition.'' CIS at 10; 63 FR at 51,156 (1998).

Based on the recent landfill permitting activities of Gold Fields and others in Southern California, seven to ten years is now commonly accepted as the lead time needed to obtain the necessary permits to expand an existing facility or to construct a new facility, with costs associated with the permitting process ranging from $20 to more than $75 million. Virtually every project will encounter public and/or political opposition, legal challenges, and appeals of administrative determinations. Of course, recovering any such investment is conditioned upon successfully obtaining all of the required permits. For example, the developer of the Weldon Canyon proposal in Ventura County spent $14 million over the course of eleven years before the project failed in the face of public opposition. See ''Southern California Landfill Capacity Analysis,'' prepared by JBS Associates, dated January 1997, attached hereto as Exhibit F, at 3.

The Mesquite Regional Landfill offers a low-cost alternative that can now enter the Los Angeles market because it has essentially completed the permitting process. This makes the facility a formidable competitor of Waste Management's disposal sites within and outside the Los Angeles market, furthering the goal of diversifying the waste disposal options for Los Angeles.

The remedy proposed by the Department, the divestiture of the Chiquita Canyon landfill, is inadequate to preserve competition in the rapidly evolving market in Los Angeles because it will not affect the merged entity's ability to impede the development of a promising potential low-cost entrant into the market—the Mesquite Regional Landfill. Unless the merged entity is forced to relinquish any claim to the assets of the Mesquite Regional Landfill, the development of the project is likely to be delayed and consumers in Los Angeles will be deprived of a major competitor whose goal, as expressed by WWI's Widrig in 1995, is to make the Mesquite Regional Landfill the ''lowest cost'' major MSW disposal facility. We therefore respectfully request that the consent decree be modified to contain such a remedy.

The inadequate nature of the existing remedy may have resulted from a failure to appreciate the truly regional nature of waste disposal in the Los Angeles area, and a corresponding failure to identify the appropriate market, thereby eliminating from the Department's analysis the important role of remote sites in providing disposal services for the Los Angeles metropolitan area. That market is today regional in scope, owing to changes in the relative costs of local and remote sites based on a change in the regulatory regime governing waste disposal. Specifically, in 1989, California enacted the California Integrated Waste Management Act (A.B. 939), as amended.[7] A.B. 939 requires each county, as part of its Integrated Waste Management Plan, to prepare a Siting Element demonstrating a minimum of fifteen years of environmentally safe and technically feasible solid waste disposal capacity. In the Countywide Siting Element for the Los Angeles area, published in June 1997 (''County Siting Element''), the Los Angeles County Department of Public Works' Environmental Programs Division stated that:

> It is important to incorporate into the planning process a number of alternatives to ensure that solid waste disposal, an essential public service, continues to be provided to all residents and businesses in Los Angeles County without interruption during the planning period and the long term. One of these alternatives is the development of out-of-County solid waste disposal facilities, together with the infrastructure necessary to provide access to these facilities.

Id. at 9–1, attached hereto as Exhibit G. Thus, solid waste management in Southern California has evolved into a regional system in which local governments are forced to rely on resources outside their boundaries to fulfill the mandates of A.B. 939.

A.B. 939 also imposes stringent diversion and recycling requirements on cities and counties. In order to meet A.B. 939's diversion mandates, MSW is increasingly processed through Materials Recovery Facilities (''MRF'')/transfer stations making railhaul facilities, such as the Mesquite Regional Landfill (which requires transfer stations for loading intermodal containers), viable full-fledged competitors with local firms.

Although the cost of transporting MSW by rail to sites such as Mesquite is somewhat higher than the transportation cost associated with local disposal, the Mesquite site enjoys a number of significant cost advantages that ameliorate and overcome this disadvantage. Labor costs, air emissions reduction credits, and host fees all are expected to be lower at a remote facility. Indeed, at the time of projected operation of the facility, these cost advantages are expected to be decisive. One reason for this is that the diversion and recycling requirements of A.B. 939 has diminished some of the cost advantages associated with local MSW disposal. Because the Act has imposed higher costs on local disposal without affecting the cost of disposing of MSW at sites such as the Mesquite Regional Landfill, it has narrowed and in some cases eliminated altogether the cost advantage associated with local disposal.

Under A.B. 939, 25% of all solid waste generated in California must be diverted from

[7] Cal. Pub. Res. Code §§ 40,000 *et seq.*

landfill disposal by January 1, 1995, and 50% of all solid waste must be diverted by January 1, 2000.[8] Cal. Pub. Res. Code § 41,850. This diversion requirement imposes significant increased treatment costs and has resulted in a substantial and continuing increase in the use of transfer stations and MFRs throughout Los Angeles County and the surrounding area.[9] The services provided by these facilities generally include handling, processing and loading in transfer trucks or intermodal containers; transportation from the facility to the landfill; and all landfill disposal costs.

With these increased handling costs now being imposed on an increasingly large percentage of the waste stream, the geographic area within which waste is transported for disposal has broadened considerably, and the incremental transportation cost of longer hauls to regional facilities has become much less significant as a proportion of the overall cost. Posted tip fees at large volume transfer stations and MRFs in Los Angeles currently average $41 per ton and range up to $56.65 per ton. Consequently, as the cost advantages of local disposal dissipate, regional facilities, which enjoy certain cost advantages of their own, become more competitive. By means of comparison to the transfer station costs cited above, the projected total disposal costs at the Mesquite Regional Landfill are $40–$45 per ton.

Thus, even today, before the depletion of capacity at some of the major disposal facilities in the Los Angeles area, the Mesquite Regional Landfill would be cost competitive with in-county facilities handling waste processed through a MFR or transfer station. The cost equation will continue to tilt over time in favor of the Mesquite Regional Landfill if the facility goes forward.

Over the course of the next few years, the difference in the prince of local and regional disposal will narrow as efforts to meet the 50% diversion rate by the year 2000 will subject a higher percentage of the waste flow to additional costs. As Mr. Maguin, the head of the Los Angeles County Solid Waste Management Department, recently noted, the County's needs for remote disposal could be greater still if the County were unsuccessful in meeting its diversion mandate of 50%. Ex. B, at 2. Although the estimated statewise diversion rate for 1997 was 32%, data compiled by the CIWMB's Solid Waste Information System reports that approximately 25% of the daily waste stream for Los Angeles County flows through transfer/processing facilities in the county. Unless the present diversion rate improves dramatically, the exhaustion of local landfill capacity will be accelerated, and the resulting need to export MSW will be exacerbated in the near future. And, whether or not the diversion rate improves to the mandated 50% level, the cost advantage of local disposal will continue to dissipate.

Requiring Waste Management to relinquish any claim to an interest in the Mesquite Regional Landfill will protect the public interest for the long term and will effectively constrain Waste Management's ability to increase disposal costs and lower the quality of service to the citizens of Los Angeles.

IV. The Harm to Competition Caused by Waste Management's Efforts To Block Development of the Mesquite Regional Landfill Require Modification of the Proposed Remedy

Under the Tunney Act, a district court has both the power and the duty to review antitrust consent decrees and, in an appropriate case, to exercise its powers to require modification of a decree. ''In order to prevent 'judicial rubber stamping,' district courts are required to make an independent evaluation of proposed decrees: 'Before entering any consent judgment * * * the court shall determine that the entry of such judgment is in the public interest.' 15 U.S.C. § 16(e).'' *United States* v. *BNS Inc.*, 858 F. 2d 456, 459 (9th Cir. 1988) (quoting H.R. Rep. No. 1463, 93d Cong., 2d Sess. 6 (1974), reprinted in 1974 U.S.C.C.A.N. 6535, 6536) (internal citation removed). As the Ninth Circuit noted in BNS, although ''Congress may specifically limit available remedies in defining the jurisdiction of a federal court * * * [i]n this case, however, it has not chosen to do so.'' *Id.* at 462.

In making its independent public interest review, the independent analysis mandated by the Tunney Act is quite broad:

> [T]he statute clearly indicates that the court may consider the impact of the consent judgment on the public interest, even though that effect may be on an unrelated sphere of economic activity. For example, the government's complaint might allege a substantial lessening of competition in the marketing of grain in a specified area. It would be permissible for the court to consider the resulting increase in the price of bread in related areas.

Id. at 463. Thus, even though a court may not ''base its public interest determination on antitrust concerns in markets other than those alleged in the government's complaint,'' *id.* at 462–63, the court may consider broader potentially adverse effects of a decree, *id.* at 464.

Here, the proposed remedy is not in the public interest because, despite the divestiture of the Chiquita Canyon facility, Waste Management will dominate the market for MSW disposal in the Los Angeles area as a result of the transaction. There are nine major landfills permitted to accept solid waste in Los Angeles County. Five of the nine, with a combined daily permitted capacity of 22,800 tons, are owned by the county, a city, or other government agency. Two other facilities, with a combined daily permitted capacity of 11,000 tons are owned by Waste Management and the remaining two facilities, with a daily permitted capacity of 11,000 tons are owned by other private companies.

In addition to facilities within the county, the Los Angeles County Department of Public Works Environmental Programs Division recently identified 14 existing and four proposed landfills located outside Los Angeles County (including the Mesquite Regional Landfill) that had the capability of accepting MSW transported by rail and/or truck from Los Angeles County. See County Siting Element, Ex. G, at 9–8. The merged entity owns, controls, or claims an interest in eight out of the 18 facilities outside the county—six existing landfills and two proposed sites, including the Mesquite Regional Landfill. The merged entity's disposal capacity in these 18 existing and proposed sites exceeds 50% of the total of the sites.

As a result of the transaction, the merged entity will control more than half of the capacity that can serve the Los Angeles area in the near term, when in-County capacity is exhausted. Such control will give Waste Management an ability to exercise market power that will not be remedied by the decree. For example, the merged entity is likely to interfere with the rapid development of the low-cost Mesquite Regional Landfill.

Given the diminishing supply of MSW disposal capacity within Los Angeles County, the key to Waste Management ability to exercise market power is whether other firms will be able to meet the requirements of customers in the marketplace. See *United States* v. *E.I. du Pont de Nemours & Co.*, 351 U.S. 377, 391–92 (1956) (defining market power as the ''power to control prices or exclude competition''). This is particularly critical in a market that is characterized by very significant barriers to entry. ''If entry barriers are substantial, a market participant may be able to achieve or maintain market or monopoly power and use that power anticompetitively because its actions can go unchecked by new competitors.'' *Reazin* v. *Blue Cross and Blue Shield of Kansas*, 899 F.2d 951, 974 (10th Cir. 1990). The ability of an incumbent supplier to frustrate the entry by competitors into the market entrenches its dominance by preventing the addition of capacity that would compete with the incumbent's facilities and restrain its ability to charge prices above the competitive level. Here, the transaction creates an incentive for the merged entity to prevent the entry of the low-cost Mesquite facility.

Prior to the transaction, USA Waste had an interest in only three of the 18 sites outside Los Angeles County that may be suitable to serving the County's needs. These are the El Sobrante facility in Riverside County, the Mesquite Regional Landfill in Imperial County, and the Copper Mountain facility in Arizona. The incentives of the merged entity have changed dramatically because of its

[8] The estimated statewide division rate for 1997 was 32%. See Integrated Waste Management Board News Release, titled ''State Recognizes Communities' Recycling Success on 2nd America Recycles Day,'' dated Nov. 15, 1998, attached hereto as Exhibit H. More than 100 million tons of solid waste have been diverted from landfills since 1990. *Id.*

[9] For example, based on data submitted in annual reports filed by local jurisdictions with the California Integrated Waste Management Board (''CIWMB''), 38 of the 45 jurisdictions within Los Angeles County for which data was available opted for a strategy of utilizing MFRs, in addition to transfer stations, to meet the diversion mandates of A.B. 939. Data compiled by the CIWMB's Solid Waste Information System indicates that approximately 10,000 tons of waste per day (approximately 25% of the daily waste stream for the county) flow through transfer/processing facilities in Los Angeles County.

newly-acquired control of more than 50% of the capacity of suitable out-of-county sites. Unless the Mesquite Regional Landfill is allowed to proceed without the interference of the merged entity, consumers in Los Angeles will be deprived of an entrant that will be able to constrain the ability of Waste Management to dominate the market once local capacity is depleted.

The Los Angeles market plainly encompasses out-of-county facilities, including the Mesquite Regional Landfill. As noted earlier, Los Angeles County will soon run out of disposal capacity and will be forced to transfer its MSW to out-of-county facilities. These facilities are already becoming cost-competitive with within-county sites and are likely to become more competitive over time as the diversion requirements of A.B. 939 are implemented. The relevant geographic market is the geographic area in which sellers of the particular product operate and to which purchasers can practicably turn for the product. *Tampa Electric Co.* v. *Nashville Coal Co.,* 365 U.S. 320, 327 (1961); *Standard Oil Co.* v. *United States,* 337 U.S. 293, 299 n.5 (1949). This market necessarily includes the area within which facilities to which customers will turn for MSW disposal are located. See *United States* v. *Philadelphia Nat'l Bank,* 374 U.S. 321, 359 (1963) (geographic market is ''the 'area of effective competition * * * in which the seller operates, and to which the purchaser can practicably turn for supplies' ''). The cost relationship between local and out-of-county locations is such that customers will be forced to use the out-of-county disposal sites within the very near future because of the practical depletion of Los Angeles County facilities. In these circumstances, the area of effective competition includes out-of-county locations that are practical alternatives to within-county disposal, an area in which the merged entity is dominant. In this area, the Mesquite Regional Landfill is likely to be an important low-cost supplier if its entry into the market is not frustrated by the USA Waste-WMI transaction.

Gold Fields requests that the Department require Waste Management to relinquish any claim it may have to the assets of the Mesquite Regional Landfill venture. Remedies requiring the forbearance of legal claims, such as that sought there, have been used by the Department in other consent decrees. In *United States* v. *Thomson Corp.,* 1997–1 Trade Cas. (CCH) ¶ 71,754 (D.D.C. Mar. 7, 1997), the complaint alleged, *inter alia,* that Thomson Corp.'s acquisition of West Publishing Co. would likely lessen competition in the markets for primary and secondary law products because West's assertion that other legal publishers needed a license in order to ''star paginate'' its publications constituted an important barrier to entry. At the time, West was involved in litigation over the validity of its copyright claim. In order to eliminate this barrier to entry, the consent decree required West to grant other legal publishers a license to star paginate its publications on specified terms, effectively forcing West to renounce its claim.

The Department has required a merged entity to relinquish legal claims as a condition of allowing a transaction to go forward in at least one prior case. In the consent decree entered into in connection with the complaint filed in *United States* v. *Borland Int'l, Inc.,* Civ. Action No. C91 3666 (MHP) (N.D. Cal. 1992) the Department challenged the acquisition of Ashton-Tate Corporation by Borland International, Inc. (''Borland''), the complaint alleged that the effect of the acquisition would be to substantially lessen competition in the sale of certain software for IBM and IBM-compatible personal computers. As set forth in the accompanying competitive impact statement, ''the United States sought to assure the continued availability of competitive alternatives by requiring Borland to relinquish certain copyright claims''. The purpose of the remedy was ''to protect against the possible exercise of market power by Borland after the acquisition.'' Thus, the proposed final judgment enjoined Borland from asserting legal claims, and directed Borland to dismiss with prejudice a copyright infringement suit that Ashton-Tate had initiated against another company. See 57 FR 8359 (1992).

The similar remedy sought by Gold Fields here would protect against the possible exercise of market power by Waste Management after the acquisition, as local disposal options in the Los Angeles area are depleted. Such a remedy is necessary to protect the public interest of consumers in the fast-evolving Los Angeles market.

Sincerely,

Joseph Kattan

Michael F. Flanagan

Appendix of Exhibits to Letter Commenting on Proposed Consent Decree in United States v. USA Waste Services, Inc., Civ. No. 1:98 CV 1616

Dated: November 23, 1998.

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Note: Exhibits A through H were unable to be published in the **Federal Register**. A copy can be obtained from the U.S. Department of Justice, Documents office, 325 7th St., Room 215, Washington, DC or (202) 514–2481.

Exhibit 10

U.S. Department of Justice Antitrust Division

August 27, 1999.

Kirk S. Rimmer, Esquire,

Offices of Arthur M. Traugh, The Pacific Stables Building, 1126 Second Street, Old Sacramento, California 95814.

Re: Comments on Proposed Final Judgment in *United States, State of Ohio, et al.* v. *USA Waste Services, Inc., Waste Management, Inc., et al.,* Civil No. 98–1616 (N.D. Ohio, filed July 16, 1998)

Dear Mr. Rimmer: This letter responds to your comment on the proposed Final Judgment, submitted on behalf of Coastal Waste Management (''Coastal''), a small waste hauler in Sacramento, CA. The Complaint in this case charged, among other things, that USA Waste's acquisition of Waste Management would substantially lessen competition in the collection or disposal of municipal solid waste in a number of markets throughout the country. In California, the Complaint alleged, the merger would substantially reduce competition in commercial waste disposal in the City of Los Angeles. The proposed Judgment, now pending in federal district court in Cleveland, Ohio, would settle the case with respect to the Los Angeles market by, *inter alia,* requiring that the defendants divest Chiquita Canyon Landfill, a large facility located about 40 miles north of Los Angeles, CA. In a transaction approved by the United States in August 1998, under the terms of the decree, the defendants divested Chiquita Canyon Landfill to Republic Services, Inc., which prior to the sale did not operate any waste disposal facilities in the Los Angeles area.

In your letter, you expressed concern that USA Waste's acquisition of Waste

Management would also substantially reduce competition in the collection of commercial waste in the Sacramento area, with the combined firm controlling 65–80 percent of commercial waste collection after the merger. To eliminate the alleged adverse effects of the merger in this market, you suggest that we revise the proposed Judgment by adding provision that would, among other things, limit the duration of defendant's commercial waste collection contracts to no more than two years, with perhaps a single one-year renewal period.

We believe that the defendants' divestiture of Chiquita Canyon Landfill to an acceptable purchaser, Republic, alleviated by competitive concerns created by the defendant's merger in the Los Angeles, CA market alleged in the Complaint. As to your statement that additional injunctive relief is necessary to eliminate competitive problems the merger would create in the Sacramento area, we note that at the time of the government's Complaint, we had seen no evidence that the defendant's merger would raise competitive problems warranting the imposition of the relief that you propose. Of course, should we find in a subsequent investigation that the defendant's activities have unreasonably restrained competition in Sacramento, CA or any other waste collection or disposal market, the United States will take appropriate legal action, including requesting that a court impose injunctive relief. Depending on the nature of the violation, that relief may perhaps be similar to that which you have outlined in your comment on this decree. In the meantime, if you believe that your operations have been injured as a result of the proposed merger, you are certainly free to institute a private antitrust action for damages or injunctive relief in federal district court.

Thank you for brining your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(d), a copy of your comment and this response will be published in the **Federal Register** and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

Arthur M. Traugh

September 22, 1998.

United States Department of Justice,
New Case Unit, Attn: Dania Gorriz, 1401 H Street N.W., #3000, Washington, D.C. 20530.

Dear Ms. Gorriz: I represent Coastal Waste Management, a small waste hauling company headquartered in Sacramento, California. For the reasons stated below, I am writing this letter to urge you to stop the proposed merger of USA Waste and Waste Management Incorporated (''WMI''), or, in the alternative, if the merger is allowed to occur, to impose certain operating restrictions on the merged companies. If the merger is approved without restrictions, the newly formed waste hauling duopoly will be ripe for a continuation of predatory business practices.

Summary of The Waste Hauling Business

By way of introduction to waste hauling industry practices, we submit the following summary.

There are primarily two types of waste hauling:

(1) Small containerized bins range from two to eight cubic yards in size. They are predominately used to service multifamily apartments or industrial, retail and commercial businesses on a weekly or semi-weekly basis, and a customer has typically executed a contract or service agreement for the servicing of these bins. We estimate that if the merger is allowed to occur, USA Waste will control 65–70% of the front-loader small containerized bins in the Sacramento marketplace, including the only available collection route not run by the City or County of Sacramento.

(2) Large drop boxes vary in size from fifteen to forty cubic yards. This service does not typically have a service contract.

Some landfill operations are controlled by a company that is also a waste hauler, thereby creating a vertically integrated monopoly. The purchase of a landfill by a small waste hauler is not economically feasible. The problem of vertically integrated landfill operations and waste hauling will only be exacerbated by the recent passage of California Assembly Bill 939, which requires all California counties to recycle 50% of all accepted waste. A recycling center controlled by a dominant company that is also a waste hauler will enable the waste hauler to set monopolistic pricing against a small independent waste hauler.

Antitrust Problems

Several problems currently exist that reduce competition and thwart the entrance of new waste haulers into the marketplace. These problems will be aggravated by the proposed merger. Notably, the Antitrust Division of the U.S. Department of Justice filed a complaint against WMI based on the Antitrust Procedures and Penalties Act (''APPA''), 5 U.S.C. 16(b)–(h), in United States District Court for the Southern Division of Georgia, Savannah Division (''Justice Complaint against WMI''). A copy of the final judgment in that action is enclosed for your ease of reference.

The prohibited conduct set forth in the enclosed judgment has allegedly occurred, and is continuing to occur, in the Sacramento marketplace. The trio of predominant waste haulers in Sacramento—BFI, WMI and USA Waste (collectively the ''Sacramento Controlling Companies'')—that control more than eighty percent of the front load marketplace have contracts which mirror the contracts subject to the judgment in the Justice complaint against WMI. For example, but without limitation, the prolix fine print contracts of the Sacramento Controlling Companies have automatic three-year ''rollover'' provisions, no requirement of notice of the expiration of the contract prior to the automatic three-year renewal, and a provision for unilateral price increases. The use of the three-year automatic rollover provision in the contracts of the Sacramento Controlling Companies has made it nearly impossible for new waste hauling companies to enter the marketplace, since virtually every customer is locked into a contract with the Sacramento Controlling Companies. We can provide written verification that the following tactics have allegedly been employed by Sacramento Controlling Companies when other companies have attempted to enter into service contracts with customers who had a presently existing rollover contract with the Sacramento Controlling Companies:

(1) Allegedly slandering the new hauler as to capacity, service, quality of equipment and adequacy of insurance; (2) Keeping service in place by the predominant hauler after notice was given by the customer to remove the bins; [1] (3) Sending invoices to customers after cancellation of service; (4) Sending accounts to collection agencies and threatening legal recourse and liquidated damages under the rollover contracts, thereby chilling the resolve of customers to use new waste haulers; (5) Repeatedly calling and harassing customers who terminated their contracts, even though the customers continually requested that they cease calling; and (6) Reducing their services to below cost after a new waste hauler has submitted an offer for services.

When a customer requests a change in service, he or she is sent a seemingly benign letter or revised agreement which contains the same egregious terms stated above. Customers have repeatedly informed my client that they were not aware they were signing contracts which bound them to automatic three-year rollovers and unilateral price increases.

Suggestions for Enforcement Policies

We suggest the following policies be imposed on the proposed merged companies:

1. The same injunction and restraints that are set forth commencing at page four of the enclosed judgment in the Justice Complaint against WMI.

2. That enforceability of any contract that is beyond a two-year period and that previously contained a three-year rollover period be eliminated.

3. That options for three-year contracts be eliminated unless a separate document in highlighted bold print plainly states the three-year term, and the customer separately initials the yearly term.

4. That rollover contracts beyond one year be eliminated. The contracts should become month-to-month after the expiration of the written term.

5. That a selloff of routes in the front loader business be required to reduce the concentration to below fifty percent in the Sacramento marketplace.

6. That ownership of landfills by waste haulers be prohibited in the marketplace where there is greater than fifty percent domination and no municipal alternative dump location.

My client indicates that there are several other independent waster hauling companies in Sacramento who share my client's concerns as set forth in this letter, and I can

[1] This occurs even when the rollover contracts have been cancelled according to the terms of the contract.

supply you with those names if you so desire. We are attempting to determine through your office the effect of the previous consent decrees.

We appreciate your attention to this matter. If you have any questions please do not hesitate to contact the undersigned.

Kirk S. Rimmer,

Attorney for Coastal Waste and Recycling.

Note: Attachment to the letter from Arthur M. Traugh of the Pacific Stables Building was unable to be published in the **Federal Register.** A copy can be obtained from the U.S. Department of Justice, Documents Office, 325 7th St., Room 215, Washington, DC or (202) 514–2481.

U.S. Department of Justice Antitrust Division

August 27, 1999.

Mr. William A. Ehrman,

Executive Director, York County Solid Waste and, Refuse Authority, 2700 Blackridge Road, York, PA 17402.

Re: Comment on Proposed Final Judgment in *United States, State of Ohio, et al.* v. *USA Waste Services, Inc., Waste Management, Inc., et al.,* Civil No. 98–1616 (N.D. Ohio, filed July 16, 1998)

Dear Mr. Ehrman: This letter responds to your letter, submitted on behalf of the York County Solid Waste and Refuse Authority (''Solid Waste Authority''), commenting on the proposed Final Judgment pending in federal district court in Cleveland, Ohio. The Complaint in the case charged, among other things, that USA Waste's acquisition of Waste Management would substantially lessen competition in the disposal of municipal solid waste from the New York, NY and Philadelphia, PA areas. The proposed Judgment would settle the case with respect to these markets by, *inter alia,* requiring that the defendants divest Waste Management's Modern Landfill, a large facility located in York County, Pennsylvania. See Judgment, §§ II(C)(1)(k) and IV(A). In a transaction approved by the United States in August 1998, under the terms of the decree, the defendants divested Modern Landfill to Republic Services, Inc., which prior to the sale did not operate any waste disposal facilities in the Philadelphia or New York areas.

In your letter, you expressed concern that the defendants' divestiture of Modern Landfill may interfere with defendant Waste Management's contractual commitment to deliver waste to the Solid Waste Authority's incinerator and dispose of noncombustible material and ash from the incinerator. You also question whether the defendants' divestiture of this landfill would promote competition in the Philadelphia market.

The proposed Judgment does not in any way affect the defendants' commitment to deliver waste to the Solid Waste Authority. Nor does it affect in any way their commitment to dispose of material at Modern Landfill. Under the terms of the proposed Judgment, Waste Management must divest Modern Landfill subject to any contractual commitments it has with the Solid Waste Authority to accept noncombustible material or ash for disposal. See Judgment, §§ II(C) and (C)(1)(k), and IV(A) (defining landfill-related contracts and accounts as among the intangible assets that must be divested along with Modern Landfill).

As to your concern that divesting Modern Landfill is unnecessary to alleviate any competitive problems created by the proposed merger, it suffices to say that Modern would be one of only a handful of landfills capable of accepting municipal solid waste from the Philadelphia or New York City area that is not currently owned or controlled by the defendants. Divesting Modern Landfill to a capable new competitor such as Republic will surely enhance competition for the disposal of waste from both of these major metropolitan areas.

Thank you for bringing your concerns to our attention; we hoe this information will help alleviate them. Pursuant to the Antitrust Procedure and Penalties Act, 15 U.S.C. 16(b), a copy of your comment and this response will be published in the **Federal Register** and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

York County Solid Waste and Refuse Authority

July 24, 1998.

J. Robert Kramer II, Esq.,

Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 140 H Street, NW, Suite 3000, Washington, D.C. 20008.

Re: USA Waste Acquisition of Waste Management Inc.

Dear Mr. Kramer: On behalf of the York County Solid Waste and Refuse Authority (''Authority''), the following is submitted in response to the solicitation for written comments concerning the proposed acquisition of Waste Management Inc. by USA Waste Services Inc., as reflected in the press release issued by the Pennsylvania Office of Attorney General on July 16, 1998. As set forth in said release, Waste Management's Modern Landfill, located in York County, Pennsylvania, is to be sold pursuant to a proposed settlement presented to the U.S. District Court for the Northern District of Ohio in conjunction with a lawsuit filed by the Department of Justice and various state attorneys general in connection with the proposed acquisition.

The Authority is a public entity, created under Commonwealth law, which is responsible for the management of municipal solid waste generated within the County pursuant to the County-wide Solid Waste Management Plan, adopted in accordance with Commonwealth law. In such capacity, the Authority has issued bonds for the construction of solid waste management facilities, and has entered into long-term management and disposal services agreements in furtherance of its responsibilities under the Plan. Among those agreements, the Authority is party to an agreement executed by Waste Management of Pennsylvania Inc. and Modern Trash Removal of York, Inc. This agreement was originally executed in 1990, and subsequently amended in 1995, and provides for the delivery of waste to the Authority's Resource Recovery Center and for the disposal of noncombustible material and ash residue material at the Modern Landfill until the year 2010 and through mutual agreement, until 2020. The disposal services contemplated by the agreement are essential to the implementation of the Plan, which provides for long-term assurance of solid waste management for the citizens of York County.

The Authority is, by submittal of these written comments, requesting that the following major concerns be taken into account by the Department of Justice and the District Court when considering the proposed settlement as described in the public release discussed above:

1. The Authority is concerned that divestiture of Modern Landfill under the terms of the proposed settlement could adversely impact the ability of Waste Management and Modern Trash Removal of York to continue waste deliveries to the Resource Recovery Center and disposal services at the Modern Landfill under the Authority's existing agreement with those companies;

2. The Authority questions whether divestiture of the Modern Landfill would enhance competition in the Philadelphia area, which is more than ninety miles to the east of the Modern Landfill.

Thanking you in advance for your careful consideration of the comments raised herein, I remain.

Very truly yours,

William A. Ehrman,

Executive Director.

WAE/mc

cc: The Honorable Michael Fisher, Attorney General, Waste Management of PA, Inc., Modern Trash Removal of York, Inc.

Exhibit 12

U.S. Department of Justice Antitrust Division

August 27, 1999.

Mr. Gregory G. Strott,

President, Calvert Trash Systems, Inc., P.O. Box 9, Owings, Maryland 20736–0009.

Re: Comment on Proposed Final Judgment in *United States, State of Ohio, et al.* v. *USA Waste Services, Inc., Waste Management, Inc., et al.,* Civil No. 98–1616 (N.D. Ohio, filed July 16, 1998)

Dear Mr. Strott: This letter responds to your two letters commenting on the proposed Final Judgment, currently pending in federal district court in Cleveland, Ohio. The Complaint in this case charged, among other things, that USA Waste's acquisition of Waste Management would substantially lessen competition in the disposal of commercial waste from the Baltimore, Maryland area. The proposed Judgment would settle the case by, *inter alia,* requiring that the defendants divest disposal capacity at three Baltimore area transfer stations owned by USA Waste and Waste Management. In a transaction approved by the United States in early January 1999, under the terms of the decree, the defendants divested that disposal capacity to Browning-Ferris Industries, Inc. (''BFT''), which previously did not own or

operate any waste transfer stations in the greater Baltimore area.

In your letters, you expressed concern that the proposed Judgment did not eliminate the effects of USA Waste's acquisition of Waste Management in several markets that were not alleged in the governments' Complaint. Specifically, you charged that the defendants should be: (a) enjoined from entering into any small container commercial waste hauling agreements that exceed a year with Baltimore area customers; (b) required to divest their small container commercial waste hauling operations in southern Maryland; (c) enjoined from raising their waste disposal prices, presumably at any of their Maryland facilities; and finally, (d) required to provide their competitors access to a transfer station on the Eastern Shore of Maryland on the same terms on conditions as the defendants enjoy at that facility.

The United States strongly believes that the ordered divestiture of Baltimore area disposal capacity and other injunctive relief contained in the proposed Judgment [see §§ II(C)(2)(b) IV(A), VII(A)] will alleviate the competitive concerns alleged in the Complaint by introducing a major new competitor into the waste disposal market, capable of providing a competitive alternative to the defendants' own Baltimore area waste disposal facilities.

As to your statement that additional injunctive relief is necessary to eliminate competitive problems the merger would create in Baltimore, and the southern and Eastern Shore areas of Maryland, we note that at the time of the governments' Complaint, we had seen no evidence that the defendants' merger would raise competitive problems warranting the imposition of the relief that you propose. Of course, should we find in a subsequent investigation that the defendants' activities have unreasonably restrained competition in these or any other waste collection or disposal markets, the United States will take appropriate legal action, including requesting that a court impose injunctive relief. Depending on the nature of the violation, that relief may perhaps be similar to that you outlined in your comments on this proposed Judgment. In the meantime, if you believe that your operations have been injured as a result of the proposed merger, you are certainly free to institute a private antitrust action for damages or injunctive relief in federal district court.

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comment and this response will be published in the **Federal Register** and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

Calvert Trash—Systems Inc.

July 28, 1998.

John R. Tennis,

Assistant Attorney General, State of Maryland, Office of the Attorney General, Antitrust Division, 200 Saint Paul Place, Baltimore, Maryland 21202–2021.

Re: USA Waste Acquisition of Waste Management

Dear Mr. Tennis: After reading the Final Judgement etc. I find several things missing:

1. One Year Service Agreements—Why would you include this provision in BFI/Attwoods merger but not in USA/Waste Management?

2. Southern Maryland Divestiture—With the merger USA/Waste Management controls approximately 85% of the customer base. Why is this not part of the Final Judgement?

3. Eastern Shore of Maryland—Waste Management has a possible preferred deal with Maryland Environment Service for a transfer facility at the Tri-County Landfill in Easton. All haulers in this area should have the same ''preferred Deal''.

Please provide answers to my questions, better yet change the Final Judgement to include One Year Contracts, Southern Maryland Divestiture and equal disposal rates on Maryland Eastern Shore.

I eagerly await your reply.

Sincerely yours, Calvert Trash Systems, Inc.

Gregory G. Strott,

President.

GGS/jw

cc: Anthony E. Harris Esquire, U.S. Department of Justice, Antitrust Division, Litigation II Section, Suite 3000, Washington, DC 20005

Calvert Trash Systems

September 15, 1998.

Robert Kramer II,

Chief, Litigation II Section, Antitrust Division, United States Dept. of Justice, 1401 4th Street, N.W., Washington, D.C. 20530.

Dear Mr. Kramer: The USA/Waste Management merger reminds me of a song. Is That All There Is?

Is that all the Justice Department is going to do? The department has really dropped the ball on this deal. My company is facing disposal fee increase of 14% at Waste Management controlled facility effective October 1, 1998. Waste Management is also increasing the rates to their customers by 8%.

Please review your decision and include:

1. One year service agreements.

2. A limit on disposal fee increases.

3. Greater than 50% market share—divest asset. (Southern Maryland, Eastern Shore Maryland)

Please review and comment.

Sincerely,

P.S. I am waiting for a reply to the first letter I sent to you. (Copy enclosed.)

Gregory C. Strott,

President, Calvert Trash Systems, Inc.

GGS:jw

cc: John Tennis, Assistant Attorney General, State of Maryland, Office of Attorney General, Antitrust Division, 200 St. Paul Place, Baltimore, Maryland 21202–2021

Anthony E. Harris, Esquire, U.S. Department of Justice, Antitrust Division, Litigation II Section, Suite 3000, Washington, DC 20005

Exhibit 13

U.S. Department of Justice Antitrust Division

August 27, 1999.

Mr. Darry A. Ferguson,

Director, La Plata Recycling Center and Depository, 357 North Mountain View Drive, P.O. Box 1430, Bayfield, Colorado 81122.

Re: Comment on Proposed Final Judgment in *United States, State of Ohio, et al.* v. *USA Waste Services, Inc., Waste Management, Inc., et al.,* Civil No. 98–1616 (N.D. Ohio, Filed July 16, 1998).

Dear Mr. Ferguson: This letter responds to your letter commenting on the proposed Final Judgment currently pending in federal district court in Cleveland, Ohio. The Compliant in the case charged, among other things, that USA Waste's acquisition of Waste Management would substantially lessen competition in the collection or disposal of municipal solid waste in many markets throughout the country. The Complaint alleges that in Colorado, the proposed merger would substantially lessen competition in collection and disposal of commercial waste in the Denver area. The proposed Judgment would settle the case by, *inter alia,* requiring that the defendants divest commercial waste collection operations and landfill disposal operations in the Denver area. *See* Judgment, §§ II (C)(1)(c) and (D)(5), and IV(A). In a transaction approved by the United States in August 1998, under the terms of the decree, the defendants divested the Denver area collection and disposal assets to Republic Services, Inc., which prior to the sale did not operate any waste collection or disposal facilities in that market.

In your letter, you expressed concern that the United States have alleged a competitive problem in, and obtained relief that would alleviate the competitive effects of, the combination of the defendant's commercial and residential waste collection operations in the Bayfield, CO area, a small region of Colorado approximately 150 miles southwest of the Denver metropolitan area.

The United States strongly believes that the ordered divestiture of defendants' Denver area collection and disposal operations will alleviate the competitive concerns alleged in the government's Complaint by introducing a new competitor, Republic, that should provide a significant competitive alternative to defendants' waste collection and disposal services in the Denver market.

As to your statement that additional injunctive relief is necessary to eliminate competitive problems the merger would create in the Bayfield, CO area, we note that at the time of the governments' Complaint, we had seen no evidence that the defendants' merger would create competitive problems warranting the imposition of the relief that you propose. Of course, should we find in a subsequent investigation that the defendants' activities have unreasonably restrained competition in the Bayfield, CO market or any other waste collection or disposal market, the United States will take appropriate legal action, including requesting that a court impose injunctive relief. Depending on the nature of the violation, that relief may perhaps be similar to that which

you have outlined in your comment on this decree. In the meantime, if you believe that your operations have been injured as a result of the proposed merger, you are certainly free to institute a private antitrust action for damages or injunctive relief in federal district court.

Thank you for bringing you concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comment and this response will be published in the **Federal Register** and filed with the Court.

Sincerely yours.

J. Robert Kramer II,

Chief, Litigation II Section.

Plata Recycling Center and Depository

June 26, 1998.

Mr. Fred H. Parmenter, Esq.,
U.S. Department of Justice, Anti-Trust Division, City Center Building, 1401 H. St, NW., Washington, DC 20530.

Re: Retail Waste Monopoly, Waste Management & USA Waste Services, Inc Merger, La Plata, Montezuma, and Archuleta, Counties, Colorado

Dear Mr. Parmenter: We are writing you this letter to acquaint you with the local effect of the pending merger between Waste Management and USA Waste Services, Inc., the $20 billion merger between the number 1 and number 4 waste companies in the U.S. Locally these companies compete under the names of Waste Management and Baker Sanitation. Prior to this merger the two companies have competed against each other in the commercial and residential waste collection markets in our local region.

The LaPlata Recycling Center and Depository is a privately-owned landfill, recently permitted and constructed under the Subtitle D requirements of the Resource Conservation Recovery Act. It was opened in July, 1997 and provided the opportunity for retail waste collection competition to southwest Colorado. Since opening, our biggest customer has been Baker Sanitation, a subsidiary of USA Waste Services, Inc. It should be noted that Waste Management has not used our landfill even though their landfill is located some 40 miles further south in New Mexico. As a competitor landfill to Waste Management, Waste Management has elected to burden the consumer with higher prices rather that use our disposal facility, which meets the same regulatory stringency as their landfill located some 40 miles away. Some of these higher prices were mitigated by the competition created by Baker Sanitation, using our landfill as a disposal site.

Over the last year, the results of their competition can be seen across the area by a lowering of consumer costs from 20% to 40% for each category of customer. Examples of the lowering of prices from competition between the two companies are as follows:

- Fort Lewis College had their annual waste cost for 1998 reduced by some 42% (from $68,000 to $39,500) when USA Waste competitive bidding brought an alternative to the college for Waste Management.
- The town of Bayfield, Colorado had the residential collection cost for 1998 and future years reduced from $11.80 per month to $8.90 per month (25% reduction in price) when competitive bidders to Waste Management came to the area.
- The average rural residential consumer had their price brought down 18%, from $19.25 per month to an average of $16.00 per month, when the two companies bid for the business.

Now that these two industry giants are merging, the citizens of the southwest Colorado counties will have no competitive alternatives and they will again face unregulated price gouging from the combined entity.

With this letter we are seeking your intervention to have one of the companies divest their retail operations in the above counties to maintain the competitive nature of waste collection. As you know, the merger is proposed to be closed in the next few weeks, so your attention in the near-term would be greatly appreciated.

Additionally, I will be most happy to visit with you or your staff concerning this very important issue and the details of our local needs. I hope your schedule will permit your attention to this matter, for it is the average resident and each commercial business who will suffer from the price abuse from the monopoly created by this merger.

Thank you for the opportunity to discuss this matter with you.

Sincerely,

Darry A. Ferguson,

Director.

Exhibit 14

U.S. Department of Justice Antitrust Division

August 27, 1999.

Mr. Conrad S. Magnuson,
261 Route 125, Kingston, NH 03848.

Re: Comment on Proposed Final Judgment in *United States, State of Ohio, et al.,* v. *USA Waste Services, Inc., Waste Management, Inc., et al.,* Civil No. 98–1616 (N.D. Ohio filed July 16, 1998)

Dear Mr. Magnuson: Thank you for your letter commenting on the proposed Final Judgment submitted for entry in the above case. Your letter indicates that you are a caretaker for a city landfill in Kingston, NH, and that Waste Management, Inc. recently acquired two local haulers, SDW and Astro, who account for much of the volume of waste delivered to the city landfill. Waste Management, however, has assured you that its acquisitions will not affect the amount of waste it delivers to the Kingston landfill since the company's own landfill in Rochester, NH, is full. (You have promised to let us know whether Waste Management later reneges on this commitment.)

In deciding whether entry of the proposed Final Judgment would be in the public interest, the Court's principal task is to determine whether the relief contained in the proposed decree adequately addresses the competitive concerns alleged in the governments' Complaint. By this standard, we find it very difficult to see how your private contractual dispute with the defendants bears on the competitive merits of the proposed Judgment. The governments' Complaint does not allege that the proposed merger would create any competitive problems in the Manchester, NH area, nor does the proposed Judgment contain any relief concerning the Manchester area. If you believe that the merger would create significant competitive problems in that area, then you are free to file a private action against the proposed merger.

Thank you for bringing your concerns to our attention. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(d), a copy of your comment and this response will be published in the **Federal Register** and filed with the decree court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

Note: Letter dated October 14, 1998 from Conrad L. Magnusson was not able to be published in the **Federal Register**. A copy can be obtained from the U.S. Department of Justice, Documents office, 325 7th St., Room 215, Washington, DC or (202) 514–2481.

Exhibit 15

U.S. Department of Justice, Antitrust Division

August 27, 1999.

Daniel J. Roth, Esquire,
Kommers & Roth,
Bridger Professional Center,
517 South 22nd Avenue, Suite 5,
Bozeman, Montana 50718–6842.

Re: Comment on Proposed Final Judgment in *United States, State of Ohio, et al.* v. *USA Waste Services, Inc., Waste Management, Inc., et al.,* Civil No. 98–1616 (N.D. Ohio, filed July 16, 1998)

Dear Mr. Roth: Thank you for your letter commenting on the proposed Final Judgment submitted for entry in the above case. Your submission largely consists of copies of a complaint and other pleadings filed by your client, Three Rivers Disposal Co., in a lawsuit against defendants USA Waste Services, Inc. and Waste Management, Inc. in Montana state court. In that suit, Three Rivers contends that USA Waste's acquisition of Waste Management would violate Waste Management's agreement not to compete with Three Rivers in hauling waste in the Bozeman, Montana area.

In deciding whether entry of the Final Judgment would be in the public interest, the Court's principal task is to determine whether the relief contained in the proposed decree adequately addresses the competitive problems that the United States has alleged in its Complaint. By this standard, it is difficult to see how Three Rivers Disposal's private contractual dispute bears on the competitive merits of the proposed Final Judgment in this case. The Complaint in the case does not allege that the defendants' proposed merger would create a competitive problem in the Bozeman area, and for that reason, the proposed Judgment contains no relief relating to the Bozeman market. Of course, if you believe that the merger would create significant competitive problems in that area, then you are free to file a private action against the defendants' proposed merger, as it appears you have, in fact, done.

Thank you for bringing your concerns to our attention. Pursuant to the Antitrust

Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comment and this response will be published in the **Federal Register** and filed with the decree court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

Kommers & Roth

September 9, 1998.

Anthony E. Harris,
U.S. Department of Justice,
Antitrust Division—Litigation II Section,
Suite 3000,
Washington, DC 20005.

Re: *Three Rivers Disposal, Inc.* v. *Waste Management, Inc., et al.* Eighteenth Judicial District Court—Gallatin County, Montana Cause No: DV 98–266

Dear Mr. Harris: Enclosed for your information, and as a comment to the proposed acquisition of Waste Management, Inc. by USA Waste Services, Inc., referencing that proposed Consent Decree entered in the United States District Court, Northern District of Ohio, Eastern Division, captioned *United States of America, et al* v. *USA Waste Services, Inc.;* Dome Merger Subsidiary; and Waste Management, Inc., Cause No: 1:98CV–1616, please find the following pleadings filed in the Montana Eighteenth Judicial District Court, Gallatin County, Cause No: DV 98–266:

1. Summons;
2. Verified complaint;
3. Motion For Preliminary Injunction;
4. Brief In Support Of Motion For Preliminary Injunction;
5. Order To Show Cause.

This matter is scheduled for hearing on October 2, 1998, before the Honorable Mike Salvagni, State of Montana, Eighteenth Judicial District Court Judge, upon plaintiffs application to enjoin the waste hauling activities of USA Waste Services, Inc., d/b/a Customized Services of Bozeman, Montana and Waste Management, all of which are alleged to be in violation of a non-competition agreement contained within that certain asset purchase agreement attached to plaintiffs' Verified Complaint.

Should you wish to discuss any of this, please do not hesitate to contact the undersigned.

Sincerely yours,

Daniel J. Roth.

DJR/rss
Enclosures
cc: Jerrold E. Arbini

Montana Eighteenth Judicial District Court, Gallatin County

[Cause No. DV 98–266]

Three Rivers Disposal, Inc., a Montana corporation and Jerrold E. Arbini, Individually, Plaintiffs, v. Waste Management Partners, Inc., a Delaware corporation, Waste Management Partners of Bozeman, Ltd., an Illinois Limited partnership, a/k/a JVCo., Waste Management of Colorado Inc., a Colorado corporation; U.S.A. Waste Services, Inc., d/b/a Customized Services of Bozeman, Montana, Harry Ellis, and WMX Technologies, Inc., a/k/a Waste Management, Inc., Defendants.

Order To Show Cause

Pursuant to Motion for Preliminary Injunction of Plaintiffs and good cause appearing, it is hereby ordered:

That the parties shall appear before this Court on the 2nd day of October 1998, at 9:30*a.m. at which time Defendants must show cause, if any they have, why the injunctive relief sought by Plaintiffs should not be granted.

Dated this 4th day of September, 1998.

Hon. Mike Salvagni,

District Judge.

*Case #2 on the Court's calendar.

Lorraine Van Ausdol,

Clerk of District Court in and for Gallatin County, State of Montana.

By:

Kim Bladeau,

Deputy.

James M. Kommers
Daniel J. Roth
Ralph W. Steele,
Kommers & Roth, Bridger Professional Center, 517 So. 22nd Avenue, Suite 5, Bozeman, MT 59718, (406) 587–7717

Attorneys for Plaintiffs

Montana Eighteenth Judicial District Court, Gallatin County

[Cause No: DV98–266]

Three Rivers Disposal, Inc., a Montana corporation and Jerrold E. Arbini, Individually, Plaintiffs, v. Waste Management Partners, Inc., a Delaware corporation, Waste Management Partners of Bozeman, Ltd., an Illinois Limited Partnership, a/k/a JVCo., Waste Management of Colorado, Inc., a Colorado corporation; U.S.A. Waste Services, Inc., d/b/a Customized Services of Bozeman, Montana, Harry Ellis, and WMX Technologies, Inc., a/k/a Waste Management, Inc., Defendants.

Summons

The State of Montana Sends Greetings to the Above-Named Defendant:

U.S.A. Waste Services, Inc., d/b/a Customized Services of Bozeman, Montana

You are hereby summoned to answer the Complaint in this action, which is filed in the office of the Clerk of Court, a copy of which is herewith served upon you, and to file your answer and serve a copy thereof upon the Plaintiffs' attorney within twenty days after the service of this Summons, exclusive of the day of service; in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Witness my hand and the seal of said Court this 24th day of August 1998.

Lorraine Van Ausdol,

Clerk of Court.

By: Mary Ann Hostetler,

Deputy Clerk.

James M. Kommers
Daniel J. Roth
Ralph W. Steele,
Kommers & Roth, Bridger Professional Center, 517 So. 22nd Avenue, Suite 5, Bozeman, MT 59718, (406) 587–7717

Attorneys for Plaintiffs

Montana Eighteenth Judicial District Court, Gallatin County

[Cause No. DV98–266]

Three Rivers Disposal, Inc., a Montana corporation and Jerrold E. Arbini, Individually, Plaintiffs, v. Waste Management Partners, Inc., a Delaware corporation, Waste, Management Partners of Bozeman, Ltd., an Illinois Limited Partnership, a/k/a JVCo., Waste Management of Colorado, Inc., a Colorado corporation; U.S.A. Waste Services, Inc., d/b/a Customized Services of Bozeman, Montana, Harry Ellis, and WMX Technologies, Inc. a/k/a Waste Management, Inc., Defendants.

The State of Montana Sends Greetings to the Above-Named Defendant:

WMX Technologies, Inc., a/k/a Waste Management, Inc.

You are hereby summoned to answer the Complaint in this action, which is filed in the office of the Clerk of Court, a copy of which is herewith served upon you, and to file your answer and serve a copy thereof upon the Plaintiffs' attorney within twenty days after the service of this Summons, exclusive of the day of service; in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

WITNESS my hand and the seal of said Court this 24th day of August, 1998.

Lorraine Van Ausdol,

Clerk of Court.

By:

Mary Ann Hostetler,

Deputy Clerk.

James M. Kommers
Daniel J. Roth
Ralph W. Steele,
Kommers & Roth, Bridger Professional Center, 517 South 22nd Avenue, Suite 5, Bozeman, MT 59718, (406) 587–7717

Attorneys for Plaintiffs

Montana Eighteenth Judicial District Court, Gallatin County

[Cause No. DV98–266]

Three Rivers Disposal, Inc., a Montana corporation and Jerrold E. Arbini, individually, Plaintiffs, v. Waste Management Partners, Inc., a Delaware corporation, Waste Management Partners of Bozeman, Ltd., an Illinois Limited Partnership, a/k/a JVCo., Waste Management

of Colorado, Inc., a Colorado corporation; U.S.A. Waste Service, Inc., d/b/a Customized Services of Bozeman, Montana, Harry Ellis, and WMX Technologies, Inc., a/k/a Waste Management, Inc., Defendants.

Verified Complaint

The Plaintiffs, hereinafter for convenience may be collectively referred to as ''Three Rivers'', for their claim against the Defendants, states:

1. Three Rivers Disposal, Inc., is a Montana corporation with its principal place of business in Bozeman, Montana. Jerrold E. Arbini is a sole shareholder of Three Rivers Disposal, Inc. and is a resident of Bozeman, Gallatin County, Montana. Three Rivers Disposal is a common carrier holding a certificate from the Montana Public Service Commission to provide waste collection within Montana.

Count I of this action is brought to enforce the terms of a written contract between Three Rivers and the Defendants, that contains a covenant not to compete in Section 6.7 which is to be performed in Gallatin, Madison and other counties within Montana. This is the operating area within which Three Rivers obtains almost all of its revenues.

Count II of this action claims damages by Three Rivers against defendants for violation of the Montana Unfair Trade Practices and Consumer Protection Act of 1973, which may for convenience be referred to as ''UTPA''.

Count III of this action alleges actions by defendants constituting international interference with contractual relations.

Count I

2. On or about March 1, 1996, Waste Management of Colorado, Inc., a Colorado corporation; Waste Management Partners, Inc., a Delaware corporation; Waste Management Partners of Bozeman, Ltd., an Illinois Limited Partnership therein referred to as ''JVCo.'', or as sellers, and Three Rivers Disposal, Inc., a Montana corporation and Jerrold E. Arbini, purchasers, entered into a buy-back transaction in the form of an Asset Purchase Agreement through which Three Rivers re-acquired from the sellers all their right, title, and interest in its refuse collection business as well as equipment and other assets. The sellers themselves, as well as acting on behalf of WMX Technologies, Inc., a/k/a Waste Management, Inc., covenanted they would not have any interest, direct or indirect, in any business in competition with Three Rivers Disposal, Inc. WMX Technologies, Inc., a/k/a Waste Management, Inc., is a necessary party to this action because of the contractual obligations imposed by its agents or representatives. Additionally, Waste Management, Inc. owns or controls all of the other defendant corporations which were signatories to the Asset Purchase Agreement. Even though Waste Management, Inc. was not a signatory to the Asset Purchase Agreement, because of its corporate relationship to the sellers, it is bound by the provisions of the restrictive covenant.

3. Waste Management of Colorado, Inc., Waste Management Partners, Inc., and Waste Management Partners of Bozeman, Ltd., contracted as parties to the agreement, neither they nor WMX Technologies, Inc., or any successors in interest would engage in any business, directly or indirectly, in competition with Three Rivers in Gallatin County, Madison County, Park County, Broadwater County and Sweetgrass County, Montana.

The Asset Purchase Agreement dated March 1, 1996, is attached hereto as Exhibit ''A'' and incorporated herein by reference.

4. The covenant not to compete specially provides in part:

> In the event of a breach of any covenant contained in this Section 6.7, Three Rivers shall be entitled to an injunction restraining such breach in addition to any other remedies provided by law or equity.

Prior to July 16, 1998, U.S.A. Waste Services, Inc. acquired Customized Services, a business already in direct competition with Three Rivers.

5. On or about July 16, 1998, U.S.A. Waste Services, Inc., acquired WMX Technologies, Inc., a/k/a Waste Management, Inc. as well as all of the sellers' interest in the March 1, 1996 Asset Purchase Agreement, these sellers being Waste Management Partners, Inc., a Delaware corporation, Waste Management Partners of Bozeman, Ltd., an Illinois Limited Partnership, a/k/a JV Co., Waste Management of Colorado, Inc., a Colorado corporation, and are now bound by its terms.

6. Defendants, as successors in interest, are now in violation of the terms of the Asset Purchase Agreement because Customized Services is in direct competition with Plaintiffs within almost the entire operating area served by the Plaintiffs' refuse collection business. U.S.A. Waste Services, Inc. and Defendants operate their business in competition with Plaintiffs pursuant to a certificate issued by the Montana Public Service Commission which overlaps and duplicates almost all of the operating rights set forth in the Plaintiffs' certificate of public convenience and necessity.

7. Three Rivers tendered written demand to Defendants to cease and desist any and all competition in violation of Section 6.7 of the Asset Purchase Agreement by letter dated July 28, 1998.

8. The full nature and extent of Plaintiffs' damages associated with the Defendants' breach of the contract cannot be ascertained. Pecuniary compensation would not afford adequate relief because the Defendants have and will continue to be capable of accessing confidential and proprietary information such as pricing policies, customer lists and even the rates charged by Three Rivers, all to the detriment of Three Rivers. Three Rivers, because of the breach of this restrictive covenant, will lose their customer base which cannot be restored, rendering Three Rivers unable to service their debts to Defendants which results in a double punishment to Three Rivers and provides a double benefit to Defendants. Plaintiffs have incurred court costs and attorney fees and other damages for which they are entitled to indemnification from defendants pursuant to Section 6.2 of the Agreement well as specific Performance in the form of injunctive relief pursuant to Section 6.2 of the Agreement as well as Section 6.7 of the Agreement.

9. Plaintiffs are entitled to an order of specific performance of the covenant not to compete since both parties anticipated this being the only equitable remedy when they agreed to injunctive relief in Section 6.7 in the Asset Purchase Agreement.

Count II

10. Plaintiffs reallege and incorporate by reference all preceding paragraphs herein.

11. Defendants have violated the Unfair Trade Practices and Consumer Protection Act, MCA § 30–14–101, *et seq*. Defendants have and are now engaged in a wilful, deliberate and intentional course of conduct which constitutes unfair and discriminatory practices by which fair and honest competition is destroyed or prevented.

12. The anti-competitive, unfair and discriminatory practices by defendants include engaging in:

(a) Unfair competition in sales (MCA § 30–14–207), including but not limited to, submitting and performing exceedingly low bids for refuse collection services at price levels which are far lower than any reasonable, competitive price, with the intent to destroy competition by plaintiffs, a regular established dealer of the same article of commerce.

(b) Anti-competitive conduct by wrongfully soliciting and taking over plaintiff's existing customers.

(c) Price discrimination in violation of § 30–14–901, making it unlawful for any business to discriminate, directly or indirectly, the price charged to different purchasers of commodities of like grade and quality with the affect of substantially lessening, injuring, destroying or preventing competition with another business.

(d) Purposely and intentionally, with the intent of destroying or eliminating competition, undercutting pricing and services charged for refuse collection to purchasers of commodities of like grade and quality.

13. Some or all of the defendants have engaged in unfair competition in sales and price discrimination alleged herein because defendants have possession of and access to confidential and proprietary information about Three Rivers' collection operation including Three Rivers' customer base, customer list, rates and pricing policies.

14. As a result of defendants' violations of the UTPA plaintiffs, in addition to injunctive relief, are entitled to three (3) times the amount of actual sustained plus attorney fees and costs provided in MCA § 30–14–906.

Count III

15. Plaintiffs reallege and incorporate by reference all preceding allegations contained herein.

16. Defendants and their agents have engaged in a systematic, intentional course of conduct which has included making false, misleading and defamatory statements concerning Three River's business practices and policies to existing customers of Three Rivers in order to illegally eliminate competition in the relevant service area in which only the defendants and Three Rivers can service under their certificates.

17. As a direct and proximate result of defendants' actions, defendants have caused substantial economic impairment and damage to Three River in an amount to be determined at trial.

Wherefore, for its claims against Defendants, Plaintiffs demand judgment as follows:

A. For injunctive relief and specific performance, on an expedited hearing basis, by preliminary and permanent injunction of this court to prohibit the Defendants or any of their associated or affiliated corporations, partnerships, businesses or sole proprietorships from operating directly or indirectly in violation of the covenant not to compete within the entire area set forth in Section 6.7 of the Agreement;

B. For all monetary damages arising from Section 6.7 of the Asset Purchase Agreement in an amount to be determined;

C. For all monetary damages arising from Section 6.2 for indemnification for all damages for which Defendants agreed to be responsible;

D. For all monetary damages arising from the Montana Unfair Trade Practices and Consumer Protection Act including three (3) times actual damages plus attorney fees and costs of suit;

E. For all monetary damages arising from defendants interference with contractual relations in an amount to be determined;

F. For plaintiffs' costs and reasonable attorney fees associated with prosecuting this action;

G. For such other remedies provided by law or equity contemplated by the contract terms which may be identified during the course of this action; and,

H. For such other and further relief deemed just and proper by the Court.

Dated this 24th day of August, 1998.

Kommers & Roth, 517 S. 22nd Ave., Suite 5, Bozeman, MT 59718–6842, (406) 587–7717

By:

James M. Kommers

Daniel J. Roth

Ralph W. Steele,

Demand for Jury Trial

Plaintiffs demand that all issues of fact be tried by a jury of twelve.

Kommers & Roth, 517 S. 22nd Ave., Suite 5, Bozeman, MT 59718–6842, (406) 587–7717

By:

James M. Kommers

Daniel J. Roth

Ralph W. Steele

Verification

State of Montana, County of Gallatin

Jerrold E. Arbini, being first duly sworn upon oath, deposes and says as follows:

1. That he is the individual Plaintiff and sole shareholder of Three Rivers Disposal, Inc. herein; and

2. That he has read the foregoing Complaint, and the information contained therein is true and accurate to the best of his knowledge and belief.

Jerrold E. Arbini

Subscribed and Sworn to before me this 24th day of August, 1998.

Daniel J. Roth,

Notary Public, State of Montana, Residing at: Bozeman. May commission expires: 2/27/99.

Asset Purchase Agreement

This Asset Purchase Agreement (the ''Agreement'') is made this first day of March, 1996, by and among the following persons and entities.

(a) WASTE MANAGEMENT OF COLORADO, INC., a Colorado corporation, referred to as ''WMI Colorado'', herein;

(b) WASTE MANAGEMENT PARTNERS, INC., a Delaware corporation referred to as ''Partners'' herein; and together with WMI Colorado, the ''Sellers'';

(c) WASTE MANAGEMENT PARTNERS OF BOZEMAN, LTD., an Illinois limited partnership referred to as ''JVCo.'' herein;

(d) THREE RIVERS DISPOSAL, INC., a Montana corporation referred to as ''Three Rivers'' herein. Three Rivers is the successor to Three Rivers Disposal, a Montana general partnership;

(e) JERROLD E. ARBINI, the sole shareholder of Three Rivers, who is referred to as the ''Owner'' herein.

Recitals

A. On April 5, 1984, Waste Management Inc. (''Partners''), Waste Management Partners of Bozeman, Ltd. (''JVCo.''), Three Rivers Disposal (''Company'' or ''Operator'') and Jerrold Arbini (along with individuals Gross and Nicoletti who no longer have any interest in any asset dealt with herein) entered into an agreement represented by the following documents: (i) Limited Partnership Agreement dated April 5, 1984, between Three Rivers Disposal and Sellers (the ''Partnership Agreement''); (ii) Account Purchase Agreement dated April 5, 1984, by and among Partners, JVCo., Three Rivers Disposal, Owner and Richard A. Gross and John Nicoletti; (ii) Operating Agreement dated April 5, 1984, by and among Partners, JVCo., Owner and Richard A. Gross and John Nicoletti (and amendment thereto); (iv) Services Agreement dated April 5, 1984, between Partners and Three Rivers Disposal; (v) Cross-Purchase Agreement dated April 5, 1984, and among Three Rivers, Partners, JVCo., Owners and Richard A. Gross and John Nicoletti; (vi) an Acquisition Participation Agreement No. 1; and (vii) a Lease Agreement (by which the company leased its permits to JVCo.). These agreements, excluding the Partnership Agreement, are hereinafter collectively referred to as the ''Other Agreements''.

B. Partners desire to sell, transfer and assign to Three Rivers and Three Rivers desires to purchase from Partners all of its right, title and interest in JVCo. WMI Colorado desires to sell, transfer and assign to Three Rivers and Three Rivers desires to purchase from WMI Colorado certain equipment. The parties also desire to restructure certain obligations among themselves and to settle conflicting claims between themselves.

Agreements

In consideration of the premises and the mutual representations, warranties and covenants and subject to the conditions herein contained, the parties agree as follows:

1. Purchase and Sale: Closing

Section 1.1 A Summary of Payments: The following is a summary of the payments agreed to be made for the consideration stated, all as more particularly described in this Part 1.

$1,156,000.00—JVCo. Consideration (See Section 1.2)
$151,344.00—Equipment purchased (See Section 1.3)
$254,153.68—Back lease payments (See Section 1.4)
$75,000.00—Equipment credit (See Section 1.5)
$1,486,497.68—Total consideration from Three Rivers to Sellers

Section 1.2 JVCo. Interest: Partners agrees to and hereby does sell, transfer, assign and deliver to Three Rivers at the Closing (as hereinafter defined) free and clear of all liens, claims and encumbrances, except for the security interest granted to WMI Colorado pursuant to Section 6.3 hereof, all of its right, title and interest in and to JVCo., such general partner interest and limited partner interest being hereinafter collectively referred to as the ''JVCo. Interest'', and including without limitation the following: its share of the capital, profits, losses and distributions of JVCo., its interest in the accounts receivable of JVCo. and any interest in JVCo. litigation and/or causes of action which are accrued or unaccrued, filed or as yet unfiled. Pending litigation includes but is not limited to litigation against Montana Bank of Bozeman/ Norwest Bank. Partners shall execute and deliver at Closing a Transfer and Assignment in the form set out on Exhibit 1.2 hereto. Three Rivers shall pay to Partners the sum of $1,156,000.00 in consideration of said transfer.

Section 1.3 Equipment: WMI Colorado agrees and hereby does (effective at Closing) sell, transfer, assign and deliver to Three Rivers free and clear of all liens, claims and encumbrances, except for the security interest granted to WMI Colorado pursuant to Section 6.3 hereof, the trucks and containers referred to as the ''Equipment'' and described as follows:

1987 White with Heil SL
2960—96 gallon carts
80 300/400 gallon carts
208—64 gallon carts

Three Rivers shall pay as set out herein a purchase price of $151,344.00 subject to the credit described at section 1.5 herein. WMI Colorado shall execute and deliver at Closing an Assignment and Bill of Sale in the form set out in EXHIBIT 1.3 attached hereto. Sellers shall obtain and deliver to Three Rivers at closing a document which extends to Three Rivers the warranty provided by the original manufacturer of the carts to its first purchaser.

Section 1.4 Accrued and Unpaid Lease Payments: As of October 31, 1995, Three Rivers owes to WMI Colorado the sum of $254,153.68, representing accrued but unpaid payments for the equipment presently rented to Three Rivers by WMI Colorado. Three Rivers agrees to repay such amount at the Time of Closing by delivery of a guaranteed promissory note in the aggregate principal amount of $254,153.68 payable in thirty-six (36) consecutive monthly installments of principal together with interest computed at an annual rate equal to 6%. WMI Colorado hereby waives any other rental payments due through February of 1996. Three Rivers shall pay lease payments under the Lease Agreement in a timely fashion from and after March 1, 1996, and from March 1, 1996, the 13.6% of gross paid to Sellers under the original agreement is suspended.

Section 1.5 Credit of $75,000: As partial consideration for the agreement to lease set out in Section 1.8, WMI Colorado agrees to accept and Three Rivers shall transfer to WMI Colorado at Closing the following equipment:

3 Front End Loader Trucks
60 Front End Loader Containers 6 cy and 8 cy

The three FEL Trucks are identified as follows:

#	Vin	Year	Model	Body	Size (yd)	License
1. 211	3770	1989	Peterbuilt	Amrep	42	3U63109
2. 76	6096	1983	White	Amrep	32	648QXJ
3. 77	8812	1979	International	Dempster	28	1N29020

This equipment shall be free and clear of all liens, claims and encumbrances and shall have an agreed value of $75,000, which sum is a credit as indicated in Section 1.1.

$220,000.00—Cash Payment [See 1.6(a)]
$11,000.00—Cash Payment [See 1.6(b)]
$936,000.00—Promissory Note [See 1.6(c)]
$65,344.00—Promissory Note [See 1.6(d)]
$254,153.68—Promissory Note [See 1.6(e)]
$1,486,497.68—Total Consideration

(a) At Closing Three Rivers shall pay to Partners the sum of $220,000 as partial payment of the JVCo. consideration described in Section 1.2.

(b) At Closing Three Rivers shall pay to WMI Colorado the sum of $11,000 partial payment of the Section 1.3 equipment purchase.

(c) At Closing Three Rivers shall deliver to Partners a guaranteed note in the face amount of $936,000 which note is the balance of the JVCo. consideration described in Section 1.1 and 1.2. The terms of this note shall be as follows: (a) Interest shall be 6% per annum; (b) Payments shall commence on the first day of the month next following Closing; (c) Payments shall be in an amount which will retire principal and interest over ten years in 120 equal, monthly payments; (d) Payment shall be due on the first of each and every month over the ten-year period; The form of the note shall be as in EXHIBIT 1.6(c) attached hereto.

(d) At Closing Three Rivers shall deliver to WMI Colorado a guaranteed note in the face amount of $65,344.00 which note is the balance of the Section 1.3 equipment purchase consideration ($151,344 less the $11,000 in cash, less the $75,000 credit). The form and terms of this note shall be as set out on EXHIBIT 1.6(d) which is attached hereto.

(e) At Closing Three Rivers shall deliver to WMI Colorado a guaranteed note in the face amount of $254,153.68 which note reflects the accrued payment consideration described in Section 1.4. The format and terms of this note shall be as set forth in EXHIBIT 1.6(e) attached hereto.

Section 1.7 Returned Vehicles: Three Rivers has returned two 1993 White FEL vehicles and a 1992 Ford Service Truck which were subject to an oral agreement that is now terminated.

Section 1.8 Lease of Vehicles to Three Rivers: At Closing Three Rivers shall execute a separate lease agreement with respect to two 1993 White side

load vehicles, which lease shall be effective from and after March 2, 1996. Said lease shall remain in effect for the shorter of the following periods: (a) Until June 30, 1996, or (b) until replacement vehicles (Witkie, automated side loader trucks) purchased by Three Rivers are delivered. Upon termination of the written lease by the occurrence of one of the stated conditions, Three Rivers shall return the leased vehicles to WMI Colorado. The monthly rental payment for said vehicles shall be $3,949 which sum shall be paid as a monthly lease payment from Three Rivers to WMI Colorado until return of the vehicles. Where inconsistent, the lease shall control over the terms of this paragraph.

Section 1.9 This Section Is Deleted.

Section 1.10 Time of Closing: The Closing of the sale of the JVCo. Interest (the ''Closing'') shall take place on the date all of the conditions precedent contemplated by Section 1.11 have been satisfied or waived and the contents of the escrow contemplated thereby have been released (the ''Time of Closing''); provided that, if the Closing shall not have taken place on or before May 30, 1996, any party to this Agreement shall have the right to terminate this Agreement upon 10 days written notice to the other parties.

Section 1.11 Escrow: Closing Procedure:

(a) This Agreement shall be executed and delivered on or before March 1, 1996. Within seven days of such execution and delivery, the parties shall execute and deliver to counsel for the Sellers the following documents, to be held in escrow pending their release as contemplated by paragraph *(b)* below:

(i) The Sellers shall execute and deliver to counsel such bills of sale and other instruments in such form as is reasonably satisfactory to Three Rivers and as shall be sufficient to vest in Three Rivers good and marketable title to the JVCo. Interest and the Equipment, free and clear of all liens, claims and encumbrances, except as contemplated by Section 6.3 hereof;

(ii) Three Rivers shall deliver to Sellers' counsel $220,000 in cash [see 1.6(a)], the guaranteed promissory note [see 1.6(c)] in the aggregate principal amount of $936,000, an Amendment to the Partnership Agreement (prepared by Sellers), and such other documents and agreements as Sellers may reasonably request; and

(iii) Three Rivers shall deliver to Sellers' counsel such bills of sale, titles and other instruments as are sufficient to vest in WMI Colorado good and marketable title, free and clear of all liens, claims and encumbrances, to the Equipment contemplated by Section 1.5, $11,000 in cash as contemplated by Section 1.6(b) and the guaranteed promissory notes contemplated by Sections 1.6(d) and 1.6(e) in the amounts of $65,344 and $254,153.68, respectively.

(b) On the date that the State of Montana approves the transfer to Three Rivers of the permits presently held by JVCo. or issues new permits in Three Rivers' name sufficient to permit Three Rivers to service JVCo.'s customers, counsel for Sellers shall deliver to Sellers and Three Rivers all of the materials held in escrow by such counsel. It is the intent of the parties that the permits transferred to Three Rivers shall not be subject to more onerous conditions than attain to the current permits, and such permits shall be in form and substance reasonably acceptable to Three Rivers. If the closing shall not have occurred on or before May 30, 1996, and any party hereto shall have terminated this Agreement, counsel for Sellers shall return the cash, promissory notes and other documents to the parties that delivered such cash, promissory notes and other agreements to such counsel and the parties shall have no further rights under this Agreement.

Section 1.12 Rights in Underlying Partners Agreements:

The parties hereby agree and acknowledge that Sellers have no rights of purchase or repurchase under the Partnership Agreement and/or under the Other Agreements as the same are referenced in the Recitals hereto and that Sellers shall cooperate with Three Rivers to obtain all interest (ownership, leasehold or other interest) in permits, licenses or other rights issued by the State of Montana or any political subdivision thereof to JVCo. and which permits, licenses or rights relate to the business of JVCo.

Section 1.13 Permit Transfer Contingency:

The parties acknowledge that the transfer of the JVCo. interest to Three Rivers as set out herein is without substantial value to Three Rivers unless the permits presently held by JVCo. are successfully transferred to Three Rivers. Immediately upon closing or before, JVCo. shall apply for approval of said transfer, and the parties shall do all acts required to successfully transfer said permits. If, for any reason, the permits are not transferred to Three Rivers on or before May 30, 1996, then this agreement is null and void. Any consideration exchanged shall in such event be forthwith returned by transferee to the transferor. The escrow shall in such event immediately return all cash and documents to the party who deposited same to escrow.

2. Representations and Warranties of the Sellers

Sellers make the following representations, warranties and covenants:

Section 2.1 Organization, Power and Authority: Partners is a corporation duly organized and validly existing under the laws of the State of Delaware and has full corporate power and authority to enter into this Agreement and to sell, convey, assign, transfer and deliver the JVCo. Interest to Three Rivers. WMI Colorado is a corporation duly organized and validly existing under the laws of the State of Colorado and has full corporate power and authority to enter into this Agreement and to sell, convey, assign, transfer and deliver the Equipment to Three Rivers.

Section 2.2 Title: Partners has good and marketable title to the JVCo. interest, free and clear of all liens, claims or other encumbrances of any kind or character. WMI Colorado has good and marketable title to the Equipment, free and clear of all liens, claims or other encumbrances of any kind of character.

Section 2.3 Due Authorization: Binding Obligation: The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action of each Seller. This Agreement has been duly executed and delivered by each Seller and is a valid and binding obligation of each Seller, enforceable in accordance with its terms.

Section 2.4 Obligations as General Partner: Partners has not, during the existence of JVCo., incurred any material obligation on behalf of JVCo. of which Three Rivers was not made aware.

3. Representations and Warranties of Three Rivers

Three Rivers makes the following representation and warranties:

Section 3.1 Organization, Power and Authority: Three Rivers is a corporation duly organized and validly existing under the laws of the State of Montana and has full corporate power and authority to enter into this Agreement and perform its obligations hereunder. Three Rivers is the successor to Three Rivers Disposal, a Montana general partnership, and has all rights and obligations of such partnership under the Partnership Agreement and the Other Agreements.

Section 3.2 Title: Three Rivers has or by Closing will have good and marketable title to the equipment listed on Section 1.5, free and clear of all liens, claims or other encumbrances of any kind or character.

Section 3.3 Due Authorization/ Binding Obligation: The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action of Three Rivers. This Agreement has been duly executed and delivered by Three Rivers and is a valid and binding obligation of Three Rivers, enforceable in accordance with its terms.

Section 3.4 Obligations as Limited Partner: Sellers have not, during the existence of JVCo., incurred any material obligation on behalf of JVCo. of which Three Rivers was not made aware.

4. Conditions to the Obligations of Three Rivers

The obligation of Three Rivers to purchase the JVCo. interest and the Equipment and to consummate the transactions contemplated hereby shall be subject tot he fulfillment at or prior to the Time of Closing of each of the following conditions:

Section 4.1 Certified Resolutions: Each Seller shall have delivered to Three Rivers copies of resolutions adopted by the board of directors of the Sellers authorizing the transactions contemplated by this Agreement, certified in each case as of the Time of Closing by the Secretary or Assistant Secretary of the Sellers.

Section 4.2 Releae: WASTE MANAGEMENT OF COLORADO, INC., a Colorado corporation, and WASTE MANAGEMENT PARTNERS, INC., a Delaware corporation shall have executed and delivered to Owner and to Three Rivers a General Release in the form set out at Section 5.2

5. Conditions to Obligations of the Sellers

The obligations of the Sellers to sell the JVCo. Interest and the Equipment and to consummate the transactions contemplated hereby shall be subject to the fulfillment at or prior to the Time of Closing of each of the following conditions:

Section 5.1 Certified Resolutions: Three Rivers shall have delivered to the Sellers copies of resolutions adopted by the board of directors of Three Rivers authorizing the transactions contemplated by this Agreement, certified in each case as of the Time of Closing by the Secretary or Assistant Secretary of Three Rivers.

Section 5.2 Release: Three Rivers, Owner and JVCo. shall have executed and delivered each to the Sellers a General Release in the form set out below:

General Release

In consideration of the execution of that certain Asset Purchase Agreement, executed and delivered to each releasee herein, and for other good and valuable consideration Sellers release Buyers and Buyers release Sellers as set out herein.

For the purpose of this release, ''Sellers'' is defined as the following entities: Waste Management of Colorado, Inc., a Colorado corporation, and Waste Management Partners, Inc., a Delaware corporation.

For the purpose of this release, ''Buyer'' is defined as the following persons and entities: Jerrold Arbini; Three Rivers Disposal, a Montana corporation and successor to Three Rivers Disposal, a Montana general partnership; and Waste Management of Bozeman, an Illinois limited partnership (referred to as JVCo.).

A release by or in favor of a party herein is a release by or in favor of that party and by or in favor of that party's predecessors or affiliates, corporations or entities, and its successors, assigns, heirs, personal representatives, executors, administrators, attorneys, employees, agents, servants, and shareholders.

Seller by execution of this Release does release, remise, and forever discharge Buyer from all actions, causes of action, suits, debt, controversies, bonds, bills, covenants, agreements, damages, judgment, claims and demands whatsoever, as such may relate to the relationship of Seller and Buyer prior to the date hereof or to any of the assets sold or conveyed pursuant to the Asset Purchase Agreement, or to any rights or obligations under the Partnership Agreement or any of the Other Agreements (as those terms are defined in the Asset Purchase Agreement), which Seller now has, ever had or hereafter may have against the Buyer; provided, however, that this General Release shall not release any party from its obligations under or contemplated by the Asset Purchase Agreement or from documents required by said agreement and exchanged at Closing of said purchase, including but not limited to Section 1.9 and Section 6.1(c).

Buyer by execution of this Release does release, remise, and forever discharge Seller from all actions, causes of action, suits, debt, controversies, bonds, bills, covenants, agreements, damages, judgments, claims and demands whatsoever, as such may relate to the relationship of Seller and Buyer prior to the date hereof or to any of the assets sold or conveyed pursuant to the Asset Purchase Agreement, or to any rights or obligations under the Partnership Agreement or any of the Other Agreements (as those terms are defined in the Asset Purchase Agreement), which Buyer now has, ever had or hereafter may have against the Seller; provided, however, that this General Release shall not release any party from its obligations under or contemplated by the Asset Purchase Agreement or from documents required by said agreement and exchanged at Closing of said purchase, including but not limited to Section 1.9 and Section 6.1(c).

The parties exclude from this release the following: any liability and/or damages which arise out of or which are alleged to arise out of the transportation and deposit of refuse to landfills within the areas serviced by Three Rivers Disposal, Inc., during the course of the underlying agreements. Should any such claim arise, liability and apportionment thereof (if any) shall be determined by state and federal law pertaining to liability arising from the transportation of refuse and by the underlying documents referenced in the Recitals hereto.

In executing this General Release, each Releasor acknowledges that he/she/they have relief on their own judgment and that of their counsel and have in no way relied on or been induced by any representation, statement, act of omission to act by any Releasee.

Each Releasor acknowledges he has read and understand that this is a General Release and intend to be legally bound by it.

Witness the execution hereof this General Release as of the _____ day of _____, 1996.

(Signature Blocks to be inserted for each party indicating name of party, execution ''by'', and the name and title of the person signing)

6. Additional Agreement of the Parties

Section 6.1 Amendment of Partnership Agreement:

(a) Partners and Three Rivers shall execute and deliver the Amendment to the Partnership Agreement in the form attached hereto as EXHIBIT 6.1, removing Partners as general and a limited partner and admitting Three Rivers as general and a limited partner. Promptly after the Time of Closing, Partners and Three Rivers shall cause the Certificate of Amendment to the Certificate of Limited Partnership to be filed with the Secretary of State of the State of Illinois. Effective as of March 1, 1996, the rights of Partners to share in the revenues of JVCo. with respect to solid waste collection, transportation and disposal services rendered to the Customer Accounts of JVCo. (the ''Customer Accounts'') shall terminate.

(b) Effective as of the Time of Closing, the Other Agreements and the relationship of the parties thereunder (except as specifically set forth in this Agreement) are hereby terminated.

(c) The parties agree that nothing in this Agreement shall affect or impair the rights or obligations of any party to the Operating Agreement which were intended by the parties thereto to survive the termination of such agreement, specifically the rights and obligations arising under Sections 6.1 and 6.2 of the Operating Agreement.

Section 6.2 Indemnification:

(a) Three Rivers and Owner, jointly and severally, agree that they will defend, indemnify and hold Sellers and their affiliates harmless from and against any and all indemnifiable damages of the Sellers. For this purpose, ''indemnifiable damages'' of the Sellers means the aggregate of all expenses, losses, costs, deficiencies, liabilities and damages (including attorneys' fees and court costs) incurred or suffered by the Sellers or any of their directors, agents, employees or affiliates or their affiliates' directors, agents or employees, as a result of or in connection with: (i) any inaccurate representation or warranty made by Three Rivers or Owner in or pursuant to this Agreement, (ii) any default in the performance of any of the covenants or agreements made by Three Rivers or Owner in or pursuant to this Agreement, or (iii) any occurrence, act or omission of Three Rivers or any shareholder, director, officer, employee, consultant or agent of Three Rivers or the Owner relating to the provision of services to the Customer Accounts which occurred prior to or after the Time of Closing, and causes damage to the Sellers or its affiliates.

(b) Sellers agree that they will defend, indemnify and hold Three Rivers, Owner, and their affiliates harmless from and against any and all indemnifiable damages of Three Rivers or Owner. For this purpose, ''indemnifiable damages'' of Three Rivers and Owner means the aggregate of all expenses, losses, costs, deficiencies, liabilities and damages (including attorneys' fees and court costs) incurred or suffered by Three Rivers, Owner, or any of their directors, agents, employees or affiliates or their affiliates' directors, agents or employees, as a result of or in connection with: (i) any inaccurate representation or warranty made by the Sellers in or pursuant to this Agreement, or (ii) any default in the performance of any of the covenants or agreements made by the Sellers in or pursuant to this Agreement.

Section 6.3 Security Interest: Three Rivers hereby grants to Sellers a security interest in the Customer Accounts and the Equipment. Three Rivers agrees to deliver to Sellers a security agreement (in the form attached as EXHIBIT 6.3) to secure Three Rivers obligations under the three guaranteed promissory notes delivered pursuant to Section 1.6(c), 1.6(d) and 1.6(e) hereof. Three Rivers shall further execute and deliver any documents reasonably requested by Sellers to create and/or to perfect said security interest.

Section 6.4 Execution of Further Documents: From and after the Time of Closing, upon the reasonable request of Three Rivers, the Sellers shall execute, acknowledge and deliver all such further documents as may be required to convey and transfer to and vest in Three Rivers the right, title and interest in the JVCo. Interest, and as may be appropriate otherwise to carry out the transactions contemplated by this Agreement.

Section 6.5 CIMS Billing System: Sellers will make the CIMS billing system available to Three Rivers at current pricing until Three Rivers is able to replace such billing system, which replacement shall be no later than June 30, 1996. If Three Rivers is unable to replace the system by that time, a reasonable extension of the use of the system shall be granted by Sellers at current pricing. All computer equipment utilized in connection therewith will be returned to Sellers at such time as the replacement system is operational. Billings shall be mailed in a timely fashion as measured by the history of Three Rivers' billing.

Section 6.6 This Section is Deleted.

Section 6.7 Covenant-Not-to-Compete: The Sellers, jointly and severally, agree and warrant as set out below. As further consideration for this agreement Sellers have obtained the signature to this covenant not to compete of Waste Management of Montana, Inc., which corporation, by its signature hereto, warrants that it has received good and sufficient consideration for the execution of this covenant not to compete. For purposes of this Section 6.7 and no other, ''Waste Management'' shall refer to Waste Management of Colorado, Inc., Waste Management of Montana, Inc., and Waste Management Partners, Inc.

Waste Management, as defined above, agree that for a period ending the earlier of (i) ten years from and after the Time of Closing and (ii) two years after any sale of the assets of or Three Rivers' interest in the business of JVCo., Waste Management, neither WMX Technologies, Inc., (which corporation is not a party to this agreement) nor Waste Management as defined in this paragraph will engage in (as an individual or as a stockholder, trustee, partner, financier, agent, employee or representative of any person, firm, corporation or association), or have any interest, direct or indirect, in any business in competition with the business of JVCo. and/or Three Rivers, as that business is constituted at the Time of Closing (whether or not such business is subsequently carried on by Three Rivers or by any successor or subsequent purchaser of such business), in any area within the following Montana counties: Galatin County, Madison County, Park County, Broadwater County, and Sweetgrass County; provided that this Covenant-Not-to-Compete shall not prevent the Sellers from acquiring and holding not to exceed two percent (2%) of the outstanding shares of any corporation engaged in such a competitive business, if such shares are available to the general public on a national securities exchange. In the event of a breach of any covenant contained in this Section 6.7, Three Rivers shall be entitled to an injunction restraining such breach in addition to any other remedies provided by law or equity.

Section 6.8 Right of First Refusal: Three Rivers and Owner hereby grant to the Sellers a right of first refusal on the business or shares of Three Rivers as follows:

(a) If Three rivers or Owner desires within ten years from the date of this agreement to accept an offer to purchase either all or a majority of the outstanding capital stock of Three Rivers or substantially all of the assets of Three Rivers or the Purchased Assets, Sellers shall have a first right of refusal as follows: First, Three Rivers shall deliver to Sellers a copy of the offer to sell to Sellers on the same terms and conditions; Second Sellers shall have thirty days in which to accept said offer upon terms equivalent to those in the said offer; Third, providing only that Sellers have properly exercised their right of first refusal as set out herein, Three Rivers shall sell to Sellers on the terms as defined in this paragraph. Upon any merger of Three Rivers with or into another entity, the surviving entity shall be bound by the provisions hereof. Delivery of an offer to Sellers shall be satisfied by certified mail, return receipt requested, to the address for Sellers set out in section 8.6.

(b) If the Sellers exercise their right of first refusal within thirty days after the delivery of such offer, payment shall be made at the time and in the manner provided for in the offer. If the Sellers do not accept the offer within thirty days after delivery of the offer to the Sellers, the Sellers shall be deemed to have rejected the offer and Three Rivers may then enter into the transaction described in the offer with the person or persons making such offer during the period of one hundred twenty days after the receipt thereof upon the terms and conditions stated therein. If Three Rivers does not enter into the transaction described in the Offer within such one hundred twenty day period, the foregoing right of first refusal shall be reinstated.

7. Miscellaneous Agreements

Section 7.1 The Belgrade Bond: There is presently a performance bond for the Belgrade contract, which bond has been obtained through Waste Management and which was obtained at a discounted price available to and obtained by Waste Management and Sellers. Sellers agree that said bond or renewal thereof shall continue for a period of five years from Closing. Actual cost of the bond shall be paid by Three Rivers.

Section 7.2 Manhattan and Three Forks Performance Bonds: For a period not to exceed five years, Sellers and Waste Management shall cooperate in obtaining a discounted price for performance bonds obtained for the Manhattan and Three Forks contracts and shall do so in the same manner that renewal cooperation is described in Section 7.1.

Section 7.3 National Accounts: Three Rivers has serviced certain national account customers of Sellers and Sellers' affiliates with locations in the Montana counties contemplated by Section 6.7. WMI Colorado agrees to notify such national account customers that Sellers are no longer able to provide service in those counties and to suggest that such national account customers contract directly with Three Rivers. Immediately upon execution of this agreement, Sellers shall make said notification in writing with a copy thereof to Three Rivers.

Section 7.4 Indemnity: Owner and Three Rivers shall indemnify and hold Sellers harmless from all costs and expenses of obtaining bonds under this Part 7.

Owner and Three Rivers shall further indemnify and hold Sellers harmless from all liability, costs and damages which arise out of the existence of said bonds; said duty of indemnity shall include but shall not be limited to providing a defense for Sellers in any litigation on said bonds and paying all of the following: court costs, attorney fees and any damages awarded against Sellers in such litigation.

8. General Provisions

Section 8.1 Survival of Representations and Warranties: All of the representations and warranties of the parties to this Agreement shall survive the consummation of the transactions contemplated hereby.

Section 8.2 Binding Effect: This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

Section 8.3 Entire Agreement: This agreement supersedes any and all other agreements, oral or in writing, between the parties with respect to the subject of this agreement. This agreement contains all of the covenants and agreements between the parties with reference to its subject, and each party acknowledges that no representations, inducement, promises or agreements have been made by or on behalf of any party except those covenants and agreements embodied in writing herein. No agreement, statement or promise not contained herein shall be binding or valid.

Section 8.4 Headings: The descriptive headings in this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

Section 8.5 Execution in Counterparts: This Agreement may be executed in any number of counterparts, each of which shall be deemed an original.

Section 8.6 Notices: Any notice, request, information or other document to be given hereunder to any of the parties by any other party shall be in writing and hand delivered, sent by certified mail, postage prepaid, or by overnight courier service as follows:

(a) If to the Sellers, addressed to both:

Waste Management Partners, Inc., 3003 Butterfield Road, Oak Brook, Illinois 60521, Attn: General Counsel

Waste Management of Colorado, 3900 S. Wadsworth Blvd., Suite 800, Lakewood, Colorado 80235, Attn: General Counsel

(b) If to Three Rivers or Owner, addressed to both:

Mr. Jerrold E. Arbini, Three Rivers Disposal, Inc., 8600 Huffine Lane, P.O. Box 3588, Bozeman, MT 59772

Richard Scheuler, Counsel for Three Rivers, 437 Washington Street, P.O. Box 8548, Red Bluff, CA 96080

Any party may change the address to which notices hereunder are to be sent to it by giving written notice of such change of address.

Section 8.7 Severability: If any provision of this Agreement is determined to be illegal or unenforceable, such provision will be deemed amended to the extent necessary to conform to applicable law or, if it cannot be so amended without materially altering the intention of the parties, it will be deemed stricken and the remainder of the Agreement will remain in full force and effect.

Section 8.8 Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois applicable to contracts made and to be performed therein.

In Witness Whereof, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

Waste Management Partners, Inc.

By: _____
Name: _____
Title: _____

Waste Management of Montana, Inc.

By: Waste Management of Montana, Inc.
Name: _____
Vice President

Waste Management Partners of Bozeman, Ltd.

By: Waste Management Partners, Inc.
Name: _____
Vice President

Waste Management of Colorado, Inc.

By: _____
Name: _____
Title: _____

Three Rivers Disposal, Inc., of Bozeman, Ltd.

By: Jerrold Arbini
Name: Jerrold Arbini
Title: President
Jerrold- Arbini—Owner

Section 8.8 Governing Law: This Agreement shall be governed by and construed in-accordance with the laws of the State of Illinois applicable to contracts made and to be performed therein.

In Witness Whereof, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

Waste Management Partners, Inc.

By:

Name: Robert P. Damico
Title: Authorized Signatory

Waste Management of Montana, Inc.

By: Waste Management of Montana, Inc.

Name: Robert P. Damico, President

Waste Management Partners of Bozeman, Ltd.

By:

Waste Management Partners, Inc. General Partner
Name: Robert P. Damico, Authorized Signatory

Waste Management of Colorado, Inc.

By:

Name: Robert P. Damico
Title: President

Three Rivers Disposal, Inc., of Bozeman, Ltd.

By: Jerrold Arbini

Name: Jerrold Arbini
Title: President
Jerrold Arbini—Owner

James M. Kommers
Daniel J. Roth
Ralph W. Steele
Kommers & Roth, Bridger Professional Center, 517 South 22nd Avenue, Suite 5, Bozeman, MT 59718, (406) 587–7717

Attorneys for Plaintiffs

Montana Eighteenth Judicial District Court, Gallatin County

[Cause No. DV98–266]

Three Rivers Disposal, Inc., a Montana corporation and Jerrold E. Arbini, individually, Plaintiffs, v. Waste Management Partners, Inc., a Delaware corporation, Waste Management Partners of Bozeman, Ltd., an Illinois Limited Partnership, a/k/a JVCo., Waste Management of Colorado, Inc., a Colorado corporation; U.S.A. Waste Services, Inc., d/b/a Customized Services of Bozeman, Montana, Harry Ellis, and WMX Technologies, Inc., a/k/a Waste Management, Inc., Defendants.

Motion for Preliminary Injunction

Plaintiffs, Three Rivers Disposal, Inc. and Jerrold E. Arbini (hereinafter ''Three Rivers''), moved, on an expedited basis, for a preliminary injunction pursuant to MCA §§ 27–19–201(1) and (2). The applicants are entitled to equitable relief they seek to enforce a restrictive covenant not to compete under the terms of the Asset Purchase Agreement dated March 1, 1996. Three Rivers' request for equitable relief is appropriate because the agreed terms of the Asset Purchase Agreement, Section 6.7, specifically permits the applicant to seek specific performance in the form of an injunction restraining breach of the restrictive covenants in the agreement. No other remedy would be adequate at law except the injunctive relief agreed to by the parties and sought by Three Rivers herein.

Direct competition from U.S.A. Waste Services, Inc., a publicly owned corporation listed on the New York Stock Exchange, d/b/a Customized Services, Inc., will and has irreparably damaged Three Rivers through the permanent loss of its customer base within its entire operating area. Sellers and their successors in interest, because of the violation of the agreement, have, and will continue to have, the capacity to access proprietary and confidential information regarding Three River Disposal, Inc.'s customer lists, rates, and pricing policies.

The restrictive covenant was obviously intended to prevent the sellers and any successors in interest from accessing confidential information such as the rates and customers being served by Three Rivers. It is irrefutable that substantial economic impairment will result to Three Rivers because Defendants are systematically sabotaging Three Rivers' customer base and simultaneously Three Rivers must service its debt to Defendants under the Asset Purchase Agreement. The court's failure to grant specific performance in the form of injunctive relief will result in doubly punishing Three Rivers and doubly rewarding the Defendants in their breach of the restrictive covenants.

The Plaintiffs have fully and fairly performed all conditions precedent under their obligation to Defendant, MCA § 27–1–416. There is no other adequate remedy but injunctive relief to stop the substantial economic impairment to Three Rivers' business which has and will continue as a result of Defendants' breach of the restrictive covenant.

The basis for this motion is stated in the Verified Complaint concomitantly filed in support of this request for specific performance, which Plaintiffs incorporate herein by reference.

Venue is proper because the contract as well as the covenant not to complete is to be performed in Gallatin County and other counties in the State of Montana. MCA § 25–2–121(1)(b).

The relief sought by this motion is a preliminary injunction of this court which prohibits Defendants from doing business as Customized Services or under any assumed business name or through any other kind or type of affiliation by which they continue to control or operate as a business in violation of the restrictive covenant. Violation of the covenant not to compete commenced on or about July 16, 1998, and the aforementioned irreparable economic damage will continue until an order of this court prohibits the violation of the restrictive covenant within the area set forth in the covenant. If there was an adequate remedy at law, the parties would never have agreed to injunctive relief in the Asset Purchase Agreement.

Three Rivers must seek injunctive relief to prohibit breach of the restrictive covenant for the reasons set forth in the Verified Complaint and this motion. The Verified Complaint seeks relief for entry of a permanent order enforcing the restrictive covenant within the area set forth in Section 6.7 of the Asset Purchase Agreement.

Pecuniary compensation will not afford adequate relief because continued competition will not only result in the substantial economic impairment to Three Rivers' business but also will significantly affect their ability to service their debt obligation owed to these very Defendants arising out of the Asset Purchase Agreement. Three Rivers has in the past and will presently and in the future be able to service all of the customers of U.S.A. Waste, Inc., d/b/a Customized Services if this court grants the injunctive relief sought by Plaintiffs under authority of MCA §§ 27–19–102 (1) and (2).

Dated this 26th day of August, 1998.

Kommers & Roth, 517 S. 22nd Ave., Suite 5, Bozeman, MT 59718–6842, (406) 587–7717

By: Daniel J. Roth

James M. Kommers

Ralph W. Steele

James M. Kommers
Daniel J. Roth
Ralph W. Steele
Kommers & Roth, Bridger Professional Center, 517 South 22nd Avenue, Suite 5, Bozeman, MT 5718, (406) 587–57717

Attorneys for Plaintiffs

Montana Eighteenth Judicial District Court, Gallatin County

[Cause No. DV98–266]

Three Rivers Disposal, Inc., a Montana corporation and Jerrold E. Arbini, individually, Plaintiffs, v. Waste Management Partners, Inc., a Delaware corporation, Waste Management Partners of Bozeman, Ltd., an Illinois Limited Partnership, a/k/a JVCo., Waste Management of Colorado, Inc., a Colorado corporation; U.S.A. Waste Services, Inc., d/b/a Customized Services of Bozeman, Montana, Harry Ellis, and WMX Technologies, Inc., a/k/a Waste Management, Inc., Defendants.

Brief in Support of Motion for Preliminary Injunction

The Motion for Preliminary Injunction is seeking equitable relief based on a breach of a restrictive covenant which involves the sale of assets of a refuse collection business in southwest Montana, including Gallatin County. The Asset Purchase Agreement of March 1, 1996, contains a covenant not to compete which is in the contract attached to the Complaint at Section 6.7, pages 16 and 17. The covenant not to compete states:

Section 6.7 Covenant-Not-to-Compete: The Sellers, jointly and severally, agree and warrant as set out below. As further consideration for this agreement Sellers have obtained the signature to this covenant not to compete of Waste Management of Montana, Inc., which corporation by its signature hereto, warrants that it has received good and sufficient consideration for the execution of this covenant not to compete. For purposes of this Section 6.7 and no other. 'Waste Management' shall refer to Waste Management of Colorado, Inc., Waste Management of Montana, Inc., and Waste Management Partners, Inc.

Waste Management, as defined above, agree that for a period ending the earlier of (I) ten years from and after the Time of Closing and (ii) two years after any sale of the assets of or Three Rivers' interest in the business JVCo., Waste Management, neither WMX Technologies, Inc. (which corporation is not a party to this agreement) nor Waste Management as defined in this paragraph will engage in (as an individual or as a stockholder, trustee, partner, financier, agent, employee or representative of any person, firm, corporation or association), or have any

interest, direct or indirect, in any business in competition with the business of JVCo. and/or Three Rivers, as that business is constituted at the Time of Closing (whether or not such business is subsequently carried on by Three Rivers or by any successor or subsequent purchaser of such business), in any area within the following Montana counties: Gallatin County, Madison County, Park County, Broadwater County, and Sweetgrass County; provided that this Covenant-Not-to-Compete shall not prevent the Sellers from acquiring and holding not to exceed two percent (2%) of the outstanding shares of any corporation engaged in such a competitive business, if such shares are available to the general public on a national securities exchange. In the event of a breach of any covenant contained in this Section 6.7, Three Rivers shall be entitled to an injunction restraining such breach in addition to any other remedies provided by law or equity.

A preliminary injunction is appropriate under the facts of this case because the terms of the contract satisfies the statutory requirements for specific performance. MCA § 27–19–103(5) prescribes certain injunctive actions involving breach of contract except when ''*the performance of which would not be specifically enforced.*'' [emphasis added] Further, all parties to the agreement anticipated injunctive relief because the contract states:

In the event of a breach of any covenant contained in this Section 6.7, Three Rivers shall be entitled to an injunction restraining such breach in addition to any other remedies provided by law or equity.

This case arises out of a violation of Section 6.7 concerning the restrictive covenant not to compete contained in the Asset Purchase Agreement. The Montana Public Service Commission regulates entry of carriers into the collection of solid waste but its jurisdictional authority does not encompass the rates charged by refuse removal companies. See, *Rozel Corporation* v. *Department of Public Service Regulation, Public Service Commission,* 226 Mont. 237, 735 .2d 282, 285 (1987).

This case involves two refuse collection businesses which hold a common carrier certificate issued by the Montana Public Service Commission. MCA § 27–19–203 permits entry of a restraining order even though a matter be subject to Public Service Commission proceedings.

The Defendants are operating contrary to the restrictive covenants of the Asset Purchase Agreement as a result of the acquisition by U.S.A. Waste Services, Inc. of all of the remaining Defendants on or after July 16, 1998. This acquisition by U.S.A. Waste Services, Inc. resulted in retaining the corporate name of Waste Management, Inc. The acquisition by U.S.A. Waste Services, Inc. of Customized Services, which is and will be in direct competition with Three Rivers, occurred prior to July 16, 1998.

The applicable portions of MCA §§ 27–19–201(1) and (2) empowering the court to enter a preliminary injunction are as follows:

27–19–201. When preliminary injunction may be granted. An injunction order may be granted in the following cases:

(1) When it appears that the applicant is entitled to the relief demanded and the relief of any part of the relief consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually;

(2) When it appears that the commission or continuance of some act during the litigation would produce a great or irreparable injury to the applicant;

Plaintiffs are clearly entitled to the relief demanded because the parties agreed in writing, in Section 6.7 of the agreement, to specific performance and injunctive relief. In addition, Defendants have failed to refuse to acknowledge the cease and desist letter served upon them weeks ago. More importantly, the Defendants' have and will continue to have illegal access to confidential and proprietary information about Three Rivers' collection operation. This permits defendants to continue to economically ravage Plaintiffs' disposal business. Defendants continued operation in violation of the restrictive covenant not only substantially diminishes gross revenues, but it is from these very revenues Three Rivers is required to make significant monthly payments to service the substantial debt owed to Defendants as a result of the Buy-Back Agreement. Three Rivers has no adequate remedy at law other than the immediate remedy of injunctive relief.

The injunctive relief sought herein is particularly appropriate under the doctrine of specific performance. Although this relief is not allowed under some circumstances, (see, MCA § 27–19–103), the present case falls squarely under the statutory provision permitting specific performance as a remedy because the parties anticipated and agreed to this remedy as part of the consideration in their agreement. MCA § 27–1–411(4) provides in part:

Specific performance of an obligation may be compelled when:

* * * * *

(4) it has been expressly agreed in writing, between the parties to the contract, that specific performance thereof may be required by either party or that damages shall not be considered adequate relief.

The Montana Supreme Court in *Halcro* v. *Moon,* 226 Mont. 121, 733 P.2d 1305 (1987), held 027–1–411(4) MCA provides that ''specific performance may be compelled when the parties to a contract have expressly agreed in writing that specific performance shall be an available remedy.'' *Id.* 733 P.2d 1307.

Additionally authority for the entry of injunctive relief in this case is found in *Marco and Company LLC.* v. *Deaconess/Billings Clinic Health System,* 55 St. Rep. 91, 1998 WL 67544, _____Mont._____, _____P.2d_____, (February 12, 1998) (opinion not published, copy attached). The supreme court found the district court in error for failure to follow the agreement of the parties providing for injunctive relief. The Montana Supreme Court affirmed and followed *Maxted* v. *Barrett,* 198 Mont. 81, 86,643 P.2d 1161, (1982), in the *Marco* case affirming that the Montana court will enforce specific enforcement of remedies agreed upon by parties in written agreements, including, the remedy of injunction.

This court should therefore enter the injunctive relief requested at the conclusion of the hearing on the Order to Show Cause why the Motion for Preliminary Injunction should not be granted.

The Defendants are entitled to received reasonable notice of the time and place of the making of the application for this order requesting specific performance. MCA § 27–19–301. Plaintiffs request the matter be set before this Court on an expedited basis. In support of its Motion for Preliminary Injunction, the Plaintiffs will offer proof that Defendants are and will be competing in direct violation of the restrictive covenant set forth in Section 6.7 of the Asset Purchase Agreement.

Respectfully submitted this 24th day of August, 1998.

Kommers & Roth, 517 S. 22nd Ave., Suite 5, Bozeman, MT 59718–6842, (406) 587–7717

By:

James M. Kommers

Daniel J. Roth

Ralph W. Steele

Certificate of Service

I, Anthony E. Harris, hereby certify that on August 27, 1999, I caused copies of the foregoing United States's Certificate of Compliance with Provisions of the Antitrust Procedures and Penalties Act to be served on plaintiffs—the states of Ohio, Arizona, California, Colorado, Florida, Maryland, Michigan, New York, Texas, Washington and Wisconsin, and the commonwealths of Kentucky and

Pennsylvania—and defendants USA Waste Services, Inc., Dome Merger Subsidiary, and Waste Management, Inc., by mailing a copy of the pleading first-class, postage prepaid, to a duly authorized legal representative of those parties as follows:

James R. Weiss, Esquire, Preston Gates Ellis & Rouvelas Meeds LLP, 1735 New York Avenue, NW, Washington, DC 20006–8425

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Neal R. Stoll, Esquire, Skadden, Arps, Slate, Meagher & Flom, 919 Third Avenue, New York, NY 10022–3897

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Counsel for Plaintiff State of Wisconsin

Anthony E. Harris, Esquire,

Illinois Bar No. 1133713, U.S. Department of Justice, Antitrust Division, 1401 H Street, NW, Suite 3000, Washington, DC 20530, (202) 307–0924.

[FR Doc. 99–24882 Filed 10–1–99; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review: Application to Replace Alien Registration Card.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1955. The information collection was previously published in the **Federal Register** on June 23, 1999 at 64 FR 33519, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 3, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of currently approved collection.

(2) *Title of the Form/Collection:* Application to Replace Alien Registration Card.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–90. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Not-for-profit institutions. The information collected will be used by the INS to determine eligibility for an initial Alien Registration Card, or to replace a previously issued card.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 410,799 responses at 55 minutes (.916) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the*