



U.S. Department of Justice

Antitrust Division

City Center Building
1401 H Street, NW
Washington, DC 20530

September 13, 1999

Mr. Darryl 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 Complaint 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 should have alleged a competitive problem in, and obtained relief that would alleviate the competitive effects of, the combination of the defendants' 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 governments' 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 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,

/s/

J. Robert Kramer II
Chief
Litigation II Section