U.S. Department of Justice

Antitrust Division

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

September 13, 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, 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 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 fees 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, it 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's commercial waste. *See U.S. Department of Justice Horizontal 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 not 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,

/s/

J. Robert Kramer II
Chief
Litigation II Section

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[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.