

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

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UNITED STATES OF AMERICA;  
STATE OF OHIO;  
STATE OF ARIZONA;  
STATE OF CALIFORNIA;  
STATE OF COLORADO;  
STATE OF FLORIDA;  
COMMONWEALTH OF KENTUCKY;  
STATE OF MARYLAND;  
STATE OF MICHIGAN;  
STATE OF NEW YORK;  
COMMONWEALTH OF PENNSYLVANIA;  
STATE OF TEXAS;  
STATE OF WASHINGTON; and  
STATE OF WISCONSIN,

Plaintiffs,

v.

USA WASTE SERVICES, INC.;  
DOME MERGER SUBSIDIARY; and  
WASTE MANAGEMENT, INC.,

Defendants.

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Civil Action No.: 1:98CV1616

Filed: July 16, 1998

COMPLAINT FOR INJUNCTIVE RELIEF

The United States of America, acting under the direction of the Attorney General of the United States, and 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, acting under the direction of their respective

Attorneys General, bring this civil antitrust action to enjoin the acquisition by USA Waste Services, Inc. ("USA Waste") of Waste Management, Inc. ("WMI") and to obtain equitable relief and other relief as is appropriate. Plaintiffs complain and allege as follows:

1. USA Waste and WMI are vigorous competitors for commercial waste collection and disposal services in numerous markets throughout the United States. In a large number of these markets, the combination of USA Waste and WMI would eliminate one of only a few competitors or would result in near monopoly. Unless this acquisition is enjoined, the loss of that competition as a consequence of this combination will likely result in consumers paying higher prices and receiving fewer services for waste collection and disposal services.

2. Plaintiffs seek to prevent USA Waste Services, Inc. from acquiring a number of waste collection and disposal assets of WMI, pursuant to an Agreement and Plan of Merger entered into by defendants on March 10, 1998.

#### I.

#### JURISDICTION AND VENUE

3. This action is filed by the United States of America under Section 15 of the Clayton Act, 15 U.S.C. § 25, to prevent and restrain the violation by defendants of Section 7 of the Clayton Act, 15 U.S.C. § 18. The states of Ohio, Arizona, California, Colorado, Florida, Maryland, Michigan, New York, Texas, Washington and Wisconsin, and the commonwealths of Kentucky and Pennsylvania bring this action under Section 16 of the Clayton Act, 15 U.S.C. § 26, to prevent and restrain the violation by defendants of Section 7 of the Clayton Act, 15 U.S.C. § 18.

4. Defendants USA Waste and WMI transact business in the Northern District of Ohio, Eastern Division. Venue is therefore proper in this district under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391(c).

5. Defendants USA Waste and WMI collect municipal solid waste from commercial customers, and they own and operate transfer stations, landfills and incinerators, which process and dispose of municipal solid waste. In their waste collection and waste disposal businesses, defendants make sales and purchases in interstate commerce and engage in activities substantially affecting interstate commerce. The Court has jurisdiction over this action and over the parties pursuant to 15 U.S.C. § 22 and 28 U.S.C. §§ 1331 and 1337.

## II.

### DEFINITIONS

6. "MSW" means municipal solid waste, a term of art used to describe solid putrescible waste generated by households and commercial establishments such as retail stores, offices, restaurants, warehouses and non-manufacturing activities located in industrial facilities. MSW does not include special handling waste (*e.g.*, waste from steel production or electrical power generation, medical waste, sewage sludge), hazardous waste, or construction and demolition debris.

7. "Commercial waste collection" means the collection of MSW generally by the use of front-end loader vehicles from small containers with 1-10 cubic yards of waste storage capacity. Typical customers are commercial businesses such as office and apartment buildings and retail establishments (*e.g.*, stores and restaurants).

8. "Transfer station" means an intermediate disposal site, often used in more densely populated urban areas, for processing and temporary storage of municipal solid waste before transfer, in bulk, to more distant disposal facilities for final disposal.

9. "Akron" means the City of Akron and Summit County, OH.

10. "Allentown" means the City of Allentown and Lehigh County, PA.

11. "Baltimore" means the City of Baltimore and Howard, Baltimore, Carroll and Anne Arundel Counties, MD.

12. "Cleveland" means the City of Cleveland and Cuyahoga County, OH.

13. "Columbus" means the City of Columbus and Franklin County, OH.

14. "Denver" means the City of Denver, and Denver and Arapahoe Counties, CO.

15. "Detroit" means the City of Detroit and Wayne County, MI.

16. "Flint" means the City of Flint and Genesee and Shiawassee Counties, MI.

17. "Gainesville" means the City of Gainesville and Alachua County, FL.

18. "Houston" means the City of Houston, the Dickinson area and Harris County, TX.

19. "Los Angeles" means that area of the City of Los Angeles, CA, located east of Interstate 405, the San Diego Freeway.

20. "Louisville" means the City of Louisville and Jefferson County, KY.

21. "Miami" means the City of Miami and Broward, Dade, and Monroe Counties, FL.

22. "Milwaukee" means the City of Milwaukee, and Milwaukee, Waukesha, Racine and Kenosha Counties, WI.

23. "New York" means New York, Bronx, Kings, Queens and Richmond Counties, NY.

24. "Northeast Michigan" means Alcona, Alpena, Arenac, Bay, Cheboygan, Emmet, Gladwin, Iosco, Montmorency, Ogemaw, Oscoda, Presque Isle, and Roscommon Counties, MI.

25. "Philadelphia market" means the City of Philadelphia and Montgomery, Bucks, and Delaware Counties, PA.

26. "Pittsburgh market" means the City of Pittsburgh, and Allegheny and Westmoreland Counties, PA.

27. "Portland market" means the City of Portland and Washington County, OR, and Cowlitz and Clark Counties, WA.

28. "Tucson market" means the City of Tucson and Pima County, AZ.

### III.

#### DEFENDANTS

29. USA Waste is a Delaware corporation with its principal office in Houston, Texas. USA Waste is engaged in providing waste collection and disposal services throughout the United States. In 1997, USA Waste had total revenues of \$2.6 billion.

30. WMI is a Delaware corporation with its principal office in Oak Brook, Illinois. WMI is the leading international and national provider of comprehensive waste management services, including waste collection and disposal services throughout the United States.

31. Dome Merger Subsidiary ("Dome") is incorporated in Delaware and is a wholly owned subsidiary of USA Waste. Pursuant to the March 10, 1998 Agreement and Plan of Merger, Dome will be merged with and into WMI, with the surviving corporation, WMI, a wholly owned subsidiary of USA Waste.

## IV.

### TRADE AND COMMERCE

#### A. The Relevant Service Markets

##### *Commercial Waste Collection*

32. Waste collection firms, or “haulers,” collect MSW from residential, commercial and industrial establishments, and transport the waste to a disposal site, such as a transfer station, sanitary landfill or incinerator, for processing and disposal. Private waste haulers typically contract directly with customers for the collection of MSW generated by commercial accounts. MSW generated by residential customers, on the other hand, is often collected by either local governments or by private haulers pursuant to contracts bid by, or franchises granted by, municipal authorities.

33. Commercial waste collection differs in many important respects from collection of residential or other types of waste. An individual commercial customer typically generates substantially more MSW than a residential customer. To efficiently handle this high volume of MSW, haulers provide commercial customers with small containers (1-10 cubic yards) for the storage of waste. Haulers organize commercial accounts into routes, and collect and generally transport MSW using vehicles (front-end loader “FEL” trucks) uniquely well suited for commercial waste collection.

34. On a typical commercial waste collection route, an operator drives an FEL vehicle to the customer’s container, engages a mechanism that grasps and lifts the container over the front of the truck, and empties the container into the vehicle’s storage section, where the waste is compacted and stored. The operator continues along the route, collecting waste until the vehicle

is full. The FEL truck is then driven to a disposal facility, usually a transfer station, landfill or incinerator, where the contents of the vehicle are emptied.

35. A residential waste collection route is usually a more labor intensive operation. The customer's MSW is stored in much smaller containers (*e.g.*, garbage bags or trash cans) and instead of FEL vehicles, collection firms generally use rear-end load or sideload trucks, manned by larger crews (usually, two- to three-man teams). On residential routes, the crews "hand-load" the customer's MSW, typically by tossing garbage bags and emptying trash cans into the vehicle's storage section. Because of the differences in the collection process, as a rule, residential customers and commercial customers are organized into separate routes. For a variety of reasons, other types of collection activities, such as roll-off containers (typically used for construction debris) and collection of liquid or hazardous waste, are also rarely combined with commercial waste collection activities.

36. The differences in the types and volume of waste collected and in equipment used in their collection activities distinguish commercial waste collection from all other types of waste collection activities. For this reason, commercial waste collection firms can profitably increase their charges for commercial waste collection services without losing sales to firms that collect other types of waste. Commercial waste collection is a line of commerce, or relevant service, for purposes of analyzing the effects of the acquisition under Section 7 of the Clayton Act.

#### *Disposal of MSW*

37. MSW has physical characteristics that readily distinguish it from other liquid and solid waste. Federal, state and local safety, environmental, zoning, and permit laws and regulations dictate critical aspects of storage, handling, transportation, processing and disposal of

MSW. An MSW sanitary landfill, incinerator or transfer station must be located on approved types of land and operated under prescribed procedures. For instance, most MSW is disposed at sanitary landfills, which are permitted under and regulated by the states and municipalities in which they are located. Local ordinances and permit restrictions often impose severe limitations on the type (nonhazardous waste), origin (*e.g.*, no out-of-area waste), and total and daily amount of waste that can be disposed of at sanitary landfills. Anyone who fails to dispose of MSW in an approved facility can be subject to severe civil and criminal penalties. Firms that compete in the disposal of MSW can profitably increase their charges to haulers for MSW disposal without losing significant sales to any other firms.

38. For these reasons, there are no good substitutes for disposal of MSW. Disposal of MSW is a line of commerce, or relevant service market, for purposes of analyzing the effects of the acquisition under Section 7 of the Clayton Act.

## **B. Relevant Geographic Markets**

### *Commercial Waste Collection*

39. Commercial waste collection services are generally provided in very localized areas. To operate efficiently and profitably, a hauler must have sufficient density in its commercial waste collection operations, *i.e.*, a large number of commercial accounts that are reasonably close together. In addition, it is not economically efficient for front-end loader vehicles to travel long distances without collecting significant amounts of waste, making it impractical for a hauler to serve major metropolitan areas from a distant base.

40. MSW generated in a given area is transported by collection vehicles to sanitary landfills, transfer stations, or other disposal sites for processing and disposal. Because the costs

of transporting MSW to a disposal site are a substantial component of the overall costs of collection services, the proximity of disposal sites to a hauler's MSW routes is a major determinant of the hauler's competitiveness and profitability. Generally, for waste hauled over 50 miles, it is more economical to use a transfer station to combine the waste and ship larger loads on a single transfer trailer truck rather than using several individual garbage trucks. Although this reduces transportation costs, it adds additional processing costs. Therefore, the area where MSW can be economically transported and disposed by haulers is limited.

41. Local commercial waste collection firms in Akron, Cleveland and Columbus, OH; Pittsburgh and Allentown, PA; Denver, CO; Detroit, MI; Gainesville, FL; Houston, TX; Louisville, KY; Portland, OR; and Tucson, AZ, can profitably increase charges to local customers without losing significant sales to more distant competitors. Each of these areas is a relevant market for the purpose of analyzing the effects of the acquisition under Section 7 of the Clayton Act.

#### *Disposal of MSW*

42. Hauling companies that dispose of their waste at landfill sites must pay gate rates or tipping fees. These fees and other disposal costs account for a large percentage of revenues for waste collection or hauling services. Therefore, access to a suitable all-purpose MSW landfill at a competitive price is essential. Haulers are often limited to landfills located in close proximity to the areas from which they collect waste because of the high transportation costs. Moreover, natural barriers and congested highways contribute to substantial travel time in getting to more distant landfills.

43. Firms that compete in disposal of MSW in Akron, Cleveland and Columbus, Ohio; Baltimore, Maryland; Denver, Colorado; Detroit, Flint and Northeast Michigan; Houston, Texas; Los Angeles, California; Louisville, Kentucky; Miami, Florida; Milwaukee, Wisconsin; New York, New York; Philadelphia and Pittsburgh, Pennsylvania; and Portland, Oregon can profitably increase their charges for disposal of MSW without losing significant sales to more distant disposal sites. Disposal of MSW from each of these areas is a relevant geographic market for assessing the competitive effects of the acquisition under Section 7 of the Clayton Act.

**C. Reduction in Competition As a Consequence of the Merger**

44. USA Waste and WMI directly compete in commercial waste collection in a number of markets nationwide, including Akron, Cleveland and Columbus, Ohio; Pittsburgh and Allentown, Pennsylvania; Denver, Colorado; Detroit, Michigan; Gainesville, Florida; Houston, Texas; Louisville, Kentucky; Portland, Oregon; and Tucson, Arizona. In these markets, USA Waste and WMI each account for a substantial share of total revenues from commercial waste collection services.

45. USA Waste and WMI directly compete in disposal of MSW in a number of markets nationwide, including Akron, Cleveland and Columbus, Ohio; Baltimore, Maryland; Denver, Colorado; Detroit, Flint and Northeast Michigan; Houston, Texas; Los Angeles, California; Louisville, Kentucky; Miami, Florida; Milwaukee, Wisconsin; New York, New York; Philadelphia and Pittsburgh, Pennsylvania; and Portland, Oregon. In these markets, USA Waste and WMI each account for a substantial share of disposal capacity.

*Akron, Ohio*

46. In Akron, the combination of USA Waste and WMI would reduce from three to two the number of firms that compete in the disposal of MSW. Following the merger, USA Waste would command in excess of 85 percent of disposal capacity in the Akron market. Using a measure of market concentration called the Herfindahl-Hirschman Index ("HHI") (defined and explained in Appendix A) the post-merger HHI would be over 7900, with an increase of over 3500 points. Total revenues from disposal of MSW in the Akron market exceed \$50 million annually.

47. The proposed merger also would reduce from four to three the number of significant firms that compete in commercial waste collection. After the merger, USA Waste would control a 70 percent share of total market revenues, which exceed \$10 million annually.

*Allentown, Pennsylvania*

48. In the Allentown market, the proposed merger would reduce from five to four the number of commercial waste collection firms. USA Waste would command at least 75 percent of total market revenues, which exceed \$15 million annually.

*Baltimore, Maryland*

49. In the Baltimore market, the proposed merger would reduce from two to one the number of firms that compete in the disposal of commercial MSW, making USA Waste, by its control of all area transfer stations and the incinerator, a virtual monopolist. Municipal landfills in this market are not good substitutes for the disposal of MSW generated by commercial accounts since the municipal landfills are largely reserved for disposal of residential waste. Total revenues from the disposal of commercial MSW in the Baltimore market are about \$60 million annually.

*Cleveland, Ohio*

50. In Cleveland, the proposed merger would reduce from four to three the number of firms that compete in disposal of MSW. USA Waste alone would control 46 percent -- and it and its next largest competitor would command nearly 90 percent -- of all disposal capacity. The post-merger HHI would exceed 4000, an increase of over 900 points. Total revenues from disposal of MSW in the Cleveland market exceed \$60 million annually.

51. The merger also would reduce from five to four the number of significant firms that compete in commercial waste collection, with USA Waste controlling at least 60 percent of total market revenues of about \$25 million annually.

*Columbus, Ohio*

52. In Columbus, the proposed merger would reduce from four to three the number of firms competing in the disposal of MSW, with USA Waste in control of 60 percent of disposal capacity. The post-merger HHI would be over 4000, an increase in excess of 1,500 points. Total revenues from disposal of MSW in Columbus exceed \$80 million annually.

53. The merger also would reduce from four to three the number of significant firms that compete in commercial waste collection in Columbus, with USA Waste controlling more than 65 percent of total market revenues of over \$25 million annually.

*Denver, Colorado*

54. The merger would reduce from four to three the number of firms competing in disposal of MSW in the Denver market, with USA Waste accounting for more than 70 percent of disposal capacity. The post-merger HHI would be over 5700, an increase of over 1,600 points. Total revenues from disposal of MSW in the Denver market exceed \$50 million annually.

55. The merger also would reduce from four to three the number of significant firms that compete in commercial waste collection in Denver. After the merger, USA Waste would control 65 percent of total market revenues that exceed \$40 million annually.

*Detroit, Michigan*

56. The merger would reduce from five to four the number of firms competing in the disposal of MSW in the Detroit market, with USA Waste in control of over 65 percent of landfill disposal capacity. Municipal incinerators, though present in this market, are not good substitutes for landfill disposal of commercial MSW, because of their significant capacity constraints. The post-merger HHI would exceed 4500, an increase of over 1,500 points. Total revenues from disposal of MSW in the Detroit market exceed \$60 million annually.

57. The merger also would reduce from four to three the number of significant firms that compete in commercial waste collection in Detroit. USA Waste would control more than 75 percent of total market revenues, which exceed \$45 million annually.

*Flint, Michigan*

58. The merger would reduce from three to two the number of firms competing in the disposal of MSW in the Flint market, with USA Waste commanding over 80 percent of disposal capacity. The post-merger HHI would be over 7500, an increase of over 3,500 points. Total revenues from the disposal of MSW in the Flint market exceed \$20 million annually.

*Gainesville, Florida*

59. The merger would reduce from three to two the number of significant firms competing in commercial waste collection. USA Waste would command nearly 90 percent of total annual market revenues of \$2 million.

*Houston, Texas*

60. The merger will reduce from three to two the number of firms competing in the disposal of MSW in the Houston market, with USA Waste controlling nearly 55 percent of disposal capacity. The post merger HHI would be 5400, an increase of approximately 2,000 points. Total revenues from disposal of MSW in the Houston market exceed \$70 million annually.

61. The merger also would reduce from four to three the number of significant firms that compete in commercial waste collection in Houston. After the merger, USA Waste would control 65 percent of total market revenues, which exceed \$35 million annually.

*Los Angeles, California*

62. In Los Angeles, the proposed merger would reduce from four to three the number of firms that compete in the disposal of MSW. USA Waste would control over 60 percent of disposal capacity for MSW generated by the City of Los Angeles, and it and its next largest competitor would command nearly 85 percent of the market. The post-merger HHI would be at least 5000, an increase in excess of 1,200 points. Total revenues from disposal of MSW in Los Angeles exceed \$90 million annually.

*Louisville, Kentucky*

63. In Louisville, the merger would reduce from two to one the number of significant firms that compete in the disposal of MSW, with USA Waste controlling over 90 percent of disposal capacity. The post-merger HHI would exceed 8000, an increase of over 2,000 points. Total revenues from the disposal of MSW in the Louisville market exceed \$30 million annually.

64. The merger also would reduce from four to three the number of significant firms competing in commercial waste collection in Louisville. After the merger, USA Waste would control 65 percent of total annual market revenues of over \$15 million.

*Miami, Florida*

65. In Miami, the merger would reduce from two to one the number of significant firms that compete in the disposal of "spot market" MSW, *i.e.*, waste that for a variety of reasons is not legally required to be sent to one of the areas's municipal landfills or incinerators for disposal. USA Waste, following the merger, would control well over 90 percent of disposal capacity for such waste. Total revenues from the disposal of spot market MSW from the Miami market exceed \$15 million annually.

*Milwaukee, Wisconsin*

66. In Milwaukee, the merger would reduce from three to two the number of competitors in disposal of MSW. USA Waste would command more than 80 percent of disposal capacity in the Milwaukee market. The post merger HHI would exceed 6400, an increase of over 2,500 points. Total revenues from disposal of MSW in Milwaukee exceed \$40 million annually.

*New York, New York*

67. New York is a densely populated urban area in which transfer stations provide the only source of disposal capacity for commercial MSW. The transfer stations collect and store waste, which is then shipped by rail, truck and barge to distant landfills for processing and final disposal. The merger would reduce from two to one the number of significant firms that compete in disposal of commercial MSW. (Disposal of commercial MSW is not permitted at the city's only landfill, Fresh Kills.) After the merger, USA Waste would command more than 70 percent of disposal capacity for commercial MSW in Brooklyn and Bronx, NY, the sites of major transfer station facilities that handle New York City's commercial MSW. Total revenues from the disposal of commercial MSW in the New York market exceed \$200 million annually.

*Northeast Michigan*

68. In Northeast Michigan, the merger would reduce from two to one the number of significant firms that compete in disposal of MSW. After the merger, USA Waste would dominate this market, controlling well over 85 percent of disposal capacity. The post merger HHI would be over 8000, an increase of over 3,000 points. Total revenues from disposal of MSW in the Northeast Michigan market exceed \$10 million annually.

*Philadelphia, Pennsylvania*

69. In Philadelphia, as in New York, transfer stations provide the most important disposal capacity for commercial MSW. In this market, a combination of USA Waste and WMI would reduce from three to two the number of significant firms that compete in the disposal of MSW, with USA Waste controlling 55 percent of disposal capacity. The post merger HHI

would exceed 4500, an increase of nearly 1,400 points. Total revenues from the disposal of MSW in the Philadelphia market exceed \$50 million annually.

*Pittsburgh, Pennsylvania*

70. In Pittsburgh, the merger would reduce from five to four the number of significant firms that compete in the disposal of MSW, with USA Waste in control of well over 60 percent of disposal capacity. The post merger HHI would exceed 5400, an increase in excess of 1,600 points. Total revenues from disposal of MSW in Pittsburgh exceed \$30 million annually.

71. The merger would also combine the first and second largest firms that compete in commercial waste collection. After the merger, USA Waste would command over 80 percent of total market revenues, which exceed \$30 million annually.

*Portland, Oregon*

72. In Portland, the merger would reduce from five to four the number of firms that compete for the disposal of MSW in Portland. USA Waste would control over 50 percent of such disposal capacity. Total revenues from disposal of MSW exceed \$90 million annually.

73. The merger would also reduce from seven to six the number of firms that compete in the collection of commercial waste in Portland. USA Waste would control over 65 percent of total market revenues of \$30 million annually.

*Tucson, Arizona*

74. Finally, in Tucson, the merger would reduce from three to two -- and in the rest of Pima County, from two to one -- the number of firms that compete in commercial waste collection. After the merger, USA Waste would command over 70 percent of total market revenues, which exceed \$15 million annually.

#### **D. Entry Into Commercial Waste Collection and Disposal of MSW**

75. Significant new entry into commercial waste collection is difficult and time-consuming in the Akron, Allentown, Cleveland, Denver, Detroit, Houston, Pittsburgh, Portland and Tucson markets. A new entrant into commercial waste collection cannot provide a significant competitive constraint on the prices charged by market incumbents until it achieves minimum efficient scale and operating efficiencies comparable to existing firms. In order to obtain comparable operating efficiency, a new firm must achieve route density comparable to existing firms. However, the incumbents' use of price discrimination and long term contracts prevents new entrants from winning a large enough base of customers to achieve efficient routes in a short period of time or at pre-entry prices.

76. Significant new entry into disposal of MSW in the Akron, Denver, Detroit, Flint, Cleveland, Columbus, Houston, Los Angeles, Louisville, Miami, Milwaukee, New York, Philadelphia, Baltimore, Pittsburgh, Portland and Northern Michigan markets listed is difficult and time-consuming. As a rule, landfills are subject to stringent regulation by state and local government agencies. Obtaining a permit to construct a new landfill or to expand an existing landfill is a costly and time-consuming process, which typically takes many years to conclude. Local public opposition often makes it more difficult and costly, and increases the time and uncertainty of successfully permitting a facility. MSW sanitary landfills can only accept waste up to their permitted daily capacity and have a finite life span. Suitable sanitary landfills are difficult and time-consuming to obtain, and sometimes difficult to expand, because of the scarcity of suitable land, local resident opposition, environmental concerns, and government regulation. In the listed markets, entry by any new landfill or incinerator would be an extremely costly and time-

consuming process, and unlikely to prevent market incumbents from significantly raising prices for disposal services following a merger of USA Waste and WMI.

77. For similar reasons, entry by a new transfer station, or significant expansion by an existing transfer station, would also be difficult in the Baltimore, New York, Philadelphia, Cleveland, Akron, and Louisville markets. Unavailability of suitable, close-in sites and substantial local opposition to new (or larger) transfer stations would significantly increase the time, and substantially decrease the likelihood, of anyone successfully permitting such a disposal site. For these reasons, it is highly unlikely that a competitively viable new transfer station could be permitted in these markets any time within the next two years. Therefore, entry by any new transfer station is unlikely to prevent market incumbents from significantly raising prices for disposal services following a merger of USA Waste and WMI.

**E. Harm to Competition**

78. In each of the markets listed above, USA Waste's acquisition of WMI would remove a significant competitor in disposal of MSW or commercial waste collection, or both, in already highly concentrated and difficult-to-enter markets. In each of these markets, the resulting substantial increase in concentration, loss of competition, and absence of reasonable prospect of significant new entry or expansion by market incumbents ensure that consumers will pay substantially higher prices for disposal of MSW, collection of commercial waste, or both, following the acquisition.

V.

VIOLATION ALLEGED

79. On or about March 10, 1998, defendants entered into a letter of intent pursuant to which USA Waste would acquire all of the outstanding voting securities of WMI. The purchase price is approximately \$13.7 billion. The transaction is set to be approved at a meeting of shareholders of USA Waste and WMI, currently scheduled for July 15, 1998. The likely effect of the acquisition is to substantially lessen competition -- and in some markets, to tend to create a monopoly -- in interstate trade and commerce in violation of Section 7 of the Clayton Act.

80. The transaction likely will have the following effects, among others:

- a. competition generally in commercial waste collection in Akron, Ohio; Allentown, Pennsylvania; Cleveland, Ohio; Columbus, Ohio; Denver, Colorado; Detroit, Michigan; Gainesville, Florida; Houston, Texas; Louisville, Kentucky; Pittsburgh, Pennsylvania; Portland, Oregon; and Tucson, Arizona will be lessened substantially;
- b. actual and potential competition between USA Waste and WMI in commercial waste collection in the Akron, Ohio; Allentown, Pennsylvania; Cleveland, Ohio; Columbus, Ohio; Denver, Colorado; Detroit, Michigan; Gainesville, Florida; Houston, Texas; Louisville, Kentucky; Pittsburgh, Pennsylvania; Portland, Oregon; and Tucson, Arizona markets will be eliminated;
- c. prices charged by commercial waste collection firms in the Akron, Ohio; Allentown, Pennsylvania; Cleveland, Ohio; Columbus, Ohio; Denver, Colorado; Detroit, Michigan; Gainesville, Florida; Houston, Texas; Louisville, Kentucky; Pittsburgh, Pennsylvania; Portland, Oregon; and Tucson, Arizona markets will likely increase;

d. competition generally in disposal of MSW in the Akron, Ohio; Baltimore, Maryland; Cleveland, Ohio; Columbus, Ohio; Denver, Colorado; Detroit, Flint, and Northeast Michigan; Houston, Texas; Los Angeles, California; Louisville, Kentucky; Miami, Florida; Milwaukee, Wisconsin; New York, New York; Northeast Michigan, Philadelphia, Pennsylvania; Pittsburgh, Pennsylvania; and Portland, Oregon markets will be lessened substantially;

e. actual and potential competition between USA Waste and WMI in disposal of MSW in the Akron, Ohio; Baltimore, Maryland; Cleveland, Ohio; Columbus, Ohio; Denver, Colorado; Detroit, Flint, and Northeast Michigan; Houston, Texas; Los Angeles, California; Louisville, Kentucky; Miami, Florida; Milwaukee, Wisconsin; New York, New York; Philadelphia, Pennsylvania; Pittsburgh, Pennsylvania; and Portland, Oregon markets will be eliminated; and

f. prices for disposal of MSW in Akron, Ohio; Baltimore, Maryland; Cleveland, Ohio; Columbus, Ohio; Denver, Colorado; Detroit, Flint, and Northeast Michigan; Houston, Texas; Los Angeles, California; Louisville, Kentucky; Miami, Florida; Milwaukee, Wisconsin; New York, New York; Philadelphia, Pennsylvania; Pittsburgh, Pennsylvania; and Portland, Oregon markets likely will increase;

VI.

REQUESTED RELIEF

Plaintiffs request:

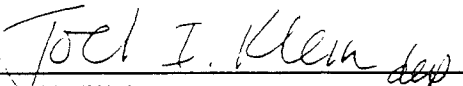
1. That USA Waste's proposed acquisition of WMI be adjudged and decreed to be unlawful and in violation of Section 7 of the Clayton Act;
2. That defendants be permanently enjoined from carrying out their Agreement and Plan of Merger dated March 10, 1998, or from entering into or carrying out any agreement, understanding or plan, the effect of which would be to combine the businesses or assets of defendants;
3. That plaintiffs have such other and further relief as the case requires and the Court deems proper; and
4. That plaintiffs recover the costs of this action.


Dated: July 16, 1998.

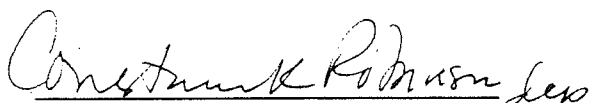
Respectfully submitted,

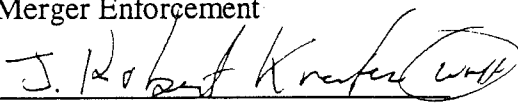
FOR PLAINTIFF UNITED STATES:

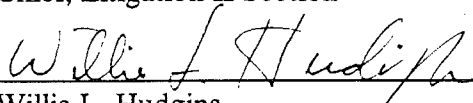
Emily M. Sweeney  
U.S. Attorney, Northern District of Ohio  
Ohio Bar No. 0025390

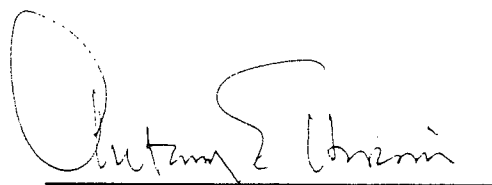
  
Joel I. Klein  
Assistant Attorney General

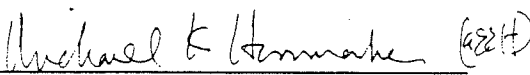
  
Donna E. Patterson  
Deputy Assistant Attorney General

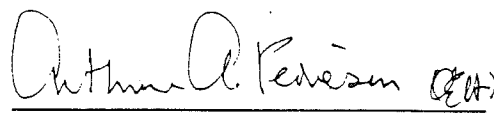
  
Constance K. Robinson  
Director of Operations and  
Merger Enforcement


  
J. Robert Kramer II  
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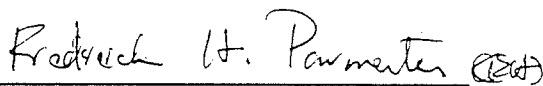
  
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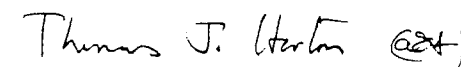
  
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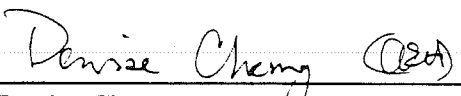
  
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## APPENDIX A

### HERFINDAHL-HIRSCHMAN INDEX CALCULATIONS

"HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty, and twenty percent, the HHI is 2600 ( $30^2 + 30^2 + 20^2 + 20^2 = 2600$ ). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be concentrated. Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the Horizontal Merger Guidelines issued by the U.S. Department of Justice and the Federal Trade Commission. See *Merger Guidelines* §1.51.