U.S. Department of Justice

Antitrust Division

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

May 20, 1999

Mr. Wayne Bowen
Environmental Coordinator
Office of Solid Waste and Resource Management
Schuylkill County Courthouse
401 North Second Street
Pottsville, Pennsylvania 17901-2528

Re: *Comment on Proposed Final Judgment in United States, State of New York, et al. v. Waste Management, Inc., Eastern Environmental Services, Inc., No. 98 CV 7168 (JB) (E.D.N.Y., December 31, 1998)*

Dear Mr. Bowen:

This letter responds to your letter of April 26, 1999 commenting on the Final Judgment in the above case. The Amended Complaint in the case charged, among other things, that Waste Management's acquisition of Eastern Environmental would substantially lessen competition in collection or disposal of waste in a number of markets throughout the Northeast and in Florida. In south central Pennsylvania, the Amended Complaint alleged, the merger would substantially reduce competition in the collection of commercial waste in the Scranton/Wilkes-Barre market. The proposed Final Judgment now pending in federal district court in Brooklyn, New York would settle the case with respect to the Scranton/Wilkes-Barre market by, *inter alia*, requiring Waste Management to divest its front-end loader commercial waste collection routes that service Luzerne and Lackawanna counties, which comprise much of the greater metropolitan Scranton/Wilkes-Barre, PA area. This divestiture, if approved by the Court, would establish an independent competitor in the market for which relief was sought, and replace the competitive rivalry lost when Waste Management acquired Eastern Environmental.

In your letter, you express concern that neither the Complaint in this case nor the proposed Judgment address the competitive effects of the merger in Schuylkill County, PA, in which a combination of Waste Management and Eastern Environmental would dominate municipal and commercial waste collection services, controlling over eighty percent of all waste collected. The combined firm has already substantially increased its prices for collection of municipal waste. We believe that the proposed Judgment, and the pending decree in the earlier USA Waste/Waste Management case,[1] may address the competitive issues you have raised.

[1] *United States v. USA Waste Services, Inc., Waste Management, Inc., et al.,* No. 1:98 CV 1616 (N.D. Ohio, filed July 17, 1998). The consent decree in the USA Waste case ordered Waste

Schuylkill County is a thinly populated area that abuts and lies directly southwest of the Scranton/Wilkes-Barre area. Though the county's business and population center, Pottsville, is about 40 miles from the Scranton/Wilkes-Barre area, it is only about 25 miles west of the city of Allentown and Northampton and Lehigh counties in Pennsylvania.

As you point out, the Final Judgment does not require Waste Management to divest any of the commercial route operations that it acquired from Eastern in Schuylkill County. The Division did not seek divestiture relief with respect to that market for several reasons. First, the total amount of commercial waste collection business that Waste Management assumed through acquiring Eastern was small, less than $1 million in annual revenues. Second, Schuylkill County abuts several counties in which the Judgment required Waste Management to divest route operations. The divestitures of commercial waste collection routes mandated by this Judgment and the decree in the USA Waste case, once implemented, would establish relatively large independent commercial waste haulers in both the Scranton/Wilkes-Barre and Allentown areas. Given the proximity of these markets to Schuylkill County, rivalry offered by the new competitors may be sufficient to discipline any exercise of market power in commercial waste collection by the combined Waste Management and Eastern. Also, the new commercial waste hauling competitors established by these judgments may be capable of offering vigorous competition in the collection of the county's residential waste, a market not addressed in our complaint or the consent decree.[2]

Finally, I should point out that the Judgment and the decree in the USA Waste case mandate that Waste Management divest two large landfills, Modern and Bethlehem, that you indicate also service the Schuylkill County market. The divestitures of these landfills will introduce additional competition in the disposal of waste from the Schuylkill County area.

Management to divest its commercial waste collection routes that service the City of Allentown, and Lehigh and Northampton counties. Those routes were divested to Republic Services, Inc., which installed a very large independent competitor into the commercial waste collection market in the Allentown, PA area.

[2]In general, barriers to entry into the collection of residential waste are not as formidable as those that impede entry into the collection of commercial waste. For this reason, the Division did not challenge the combination's effect on the market for collecting the county's residential waste. Of course, entry into collection of residential waste could be very difficult in those situations in which the area's disposal facilities are controlled by a waste collection rival. That is not the case here.

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