

City Center Building

1401 H Street, NW

Washington, DC 20530

May 20, 1999

Mr. Peter Anderson

President

RecycleWorlds Consulting Corp.

4513 Vernon Blvd.

Suite 15

Madison, Wisconsin 53705-4964

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. Anderson:

This letter responds to your April 27, 1999 comment on the proposed Final Judgment in the above case. The Amended Complaint charged, among other things, that Waste Management's acquisition of Eastern Environmental would substantially lessen competition in collection or disposal of municipal solid waste in 12 markets in New York, Pennsylvania, and Florida. The proposed consent decree, now pending in federal district court in Brooklyn, New York, would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the markets alleged in the Complaint.⁽¹⁾ This relief, if approved by the Court, would establish one or more new competitors in each of the markets for which relief was sought, replacing the competitive rivalry lost when Waste Management acquired Eastern Environmental.

In a transaction approved by the United States and the State of New York, Waste Management divested to Republic Services, Inc. the rights to Eastern's proposal to dispose of New York City's residential waste in early January 1999. See Judgment §IV(B). On April 20, 1999, the United States, however, rejected Waste Management's proposal to sell the other waste collection and disposal assets under this decree to Allied Waste Industries, Inc. ("Allied"). Such a sale, we concluded, would raise serious competitive concerns in waste collection or disposal, or both, in virtually all of the markets for which the Judgment has ordered relief.⁽²⁾ Of course, if Waste Management has not divested these assets to an

acceptable purchaser within five days after entry of the Judgment, the United States will promptly seek, and the Court will likely appoint, a trustee to complete the sale. See Judgment, §§ V(A) and (B) *and* Hold Separate Stipulation and Order, §IV(F).

In your comment, you assert that the divestitures ordered by this Judgment do not go far enough to eliminate the competitive problems in the nation's waste industry. To be sure, the decree in this case and in other recent government antitrust cases (*e.g.*, *United States v. USA Waste, Inc.*, *Waste Management, Inc.*, No. 1:98 CV 1616 (N.D. Ohio, filed July 21, 1998)) have not prevented the wave of consolidations currently sweeping through this industry. Indeed, several recent mega mergers have significantly reduced the number of major competitors, and that has perhaps made several waste markets and more susceptible to collusive post-merger price increases. To cure these competitive problems, you propose a fairly "dramatic remedy," *i.e.*, require that Waste Management divest all of its waste disposal or collection operations in markets where there are substantial competitive overlaps between its operations and those of Eastern. If this is not done, then you propose that we ensure that the assets divested under the Judgment are not sold to a large integrated national waste firm, but to a municipal agency or a small stand-alone independent -- entities that, in your view, may have a greater incentive to vigorously compete against defendants' operations.

We do not believe that requiring Waste Management to divest all of its waste collection or disposal operations in any market in which its operations overlap with Eastern's would produce a more procompetitive result than the relief currently in the Judgment. Indeed, pursuing your proposal would permit Waste Management to acquire the lion's share of any number of waste collection or disposal markets, since, in effect, you propose that if Waste Management agrees to abandon one line of business, it would be free to monopolize the other.

We do, however, agree with your conclusion that Waste Management's divestiture of the decree assets to a firm such as Allied/BFI is undesirable because it would significantly reduce competition and enhance opportunities for cooperative post-merger price increases. We have so informed Waste Management, and we are prepared to have management and sale of these crucial waste assets transferred to a trustee, if Waste Management does not promptly divest these operations to a purchaser acceptable to the United States.

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

1. The markets alleged in the Amended Complaint, and for which divestiture relief was obtained in the Final Judgment, include the disposal of municipal solid waste in the Pittsburgh, Carlisle-Chambersburg, and Bethlehem, PA areas, and in New York City, NY (commercial and residential); and collection of commercial waste in the Carlisle-Chambersburg, Bethlehem, and Scranton, PA; suburban Tampa (Hillsborough Co.) and Miami/Ft. Lauderdale, FL (Dade and Broward counties) areas.

2. In early March 1999, Allied announced that it had agreed to acquire Browning-Ferris Industries, Inc., for \$7.5 billion. Allied is the nation's fourth largest waste collection and disposal firm; BFI is the nation's second largest waste firm. That combination would, by itself, raise serious competitive concerns in a number of waste disposal and collection markets throughout the country. Selling the assets under the decree to a combination of Allied/BFI would result in a significant reduction in actual and potential competition in waste disposal services throughout the Northeast -- a regional market including major cities along the Eastern seaboard, such as New York, Boston, Philadelphia, Baltimore and Washington -- as well as a reduction in localized competition for waste disposal services in the Pittsburgh, PA area, and for commercial waste collection services in the Miami/Ft. Lauderdale, FL area, and potentially in the Carlisle-Chambersburg, PA area.