

	)	
UNITED STATES OF AMERICA,	)	
STATE OF NEW YORK,	)	
COMMONWEALTH OF PENNSYLVANIA, and	)	Civil No.: 98 CV 7168 (FB)(MDG)
STATE OF FLORIDA,	)	
Plaintiffs,	)	
	)	
v.	)	Filed: May 21, 1999
	)	
WASTE MANAGEMENT, INC.,	)	
OCHO ACQUISITION CORP., and	)	
EASTERN ENVIRONMENTAL SERVICES, INC.,	)	
	)	
Defendants.	)	
	)	

The United States of America hereby certifies that it has complied with the provisions of the Antitrust Procedures and Penalties Act (“APPA”), 15 U.S.C. §§ 16(b)-(h), and states:

1. The Complaint in this case was filed on November 17, 1998, and an Amended Complaint was filed on December 1, 1998. The proposed Final Judgment (“Judgment”) and the Hold Separate Stipulation and Order (“Hold Separate Order”) were filed on December 31, 1998. The government’s Competitive Impact Statement was filed on February 2, 1999.

2. Pursuant to 15 U.S.C. § 16(b), the Judgment, Hold Separate Order, and Competitive Impact Statement were published in the *Federal Register* on February 26, 1999 (64 Fed. Reg. 9527). A copy of that *Federal Register* notice is attached as Exhibit 1.

3. Pursuant to 15 U.S.C. §16 (d), the United States furnished copies of the Amended Complaint, Hold Separate Order, proposed Final Judgment and Competitive Impact Statement to anyone requesting them.

4. Pursuant to 15 U.S.C. § 16(c), a summary of the terms of the proposed Judgment and the Competitive Impact Statement were published in *The New York Times*, a newspaper of general circulation in New York, NY, and in *The Washington Post*, a newspaper of general circulation in the District of Columbia. Copies of the certificates of publication from *The New York Times* and *The Washington Post* appear in Exhibit 2.

5. On January 11, 1999, the defendants -- Waste Management, Inc., Eastern Environmental Services, Inc., and Ocho Acquisition Corporation -- filed with the Court a joint statement describing their communications with employees of the United States Department of Justice concerning the proposed Final Judgment, as required by 15 U.S.C. § 16(g).

6. During the 60-day comment period after publication of notice in the *Federal Register*, *The New York Times* and *The Washington Post*, the United States received five written comments on the proposed settlement. These comments were from: (a) the Pulaski County, Kentucky Solid Waste Management District; (b) the Environmental Committee of the Pocono Mountains Chamber of Commerce in Stroudsburg, Pennsylvania; (c) the Schuylkill County, Pennsylvania Office of Solid Waste and Resource Management; (d) the Monroe County, Pennsylvania Municipal Waste Management Authority; and (e) RecycleWorlds Consulting Corporation of Madison, Wisconsin.

7. The United States evaluated and responded to each of the comments it received. The comments did not convince the United States that it should withdraw its consent to the proposed settlement. The complete text of the comments and the responses appear in Exhibits 3-7; they are summarized below.

. The Pulaski County, KY Comment

The Pulaski County Solid Waste Management District complained that a combination of Waste Management and Eastern would substantially eliminate competition in the collection and disposal of the county's residential waste. In our response, we point out that Pulaski County has entered into a long-term contract for collection and disposal of its waste, which does not expire until sometime in the year 2002. Under these circumstances, we note, it is highly unlikely that the merger had eliminated any existing competition between the defendants in waste collection or disposal services. In our view, it is simply too early to predict whether the merger would eliminate any significant potential competition that may occur after the contract expires in 2002.

B. The Monroe County, PA Comments

The Monroe County Municipal Solid Waste Authority and the Pocono Mountains Chamber of Commerce, both based in Stroudsburg, PA, asserted that the governments should have sought and obtained divestiture relief that would eliminate the anticompetitive effects of the defendants' merger in Monroe County, Pennsylvania. In that market, these commentators point out, a combination of Waste Management and Eastern would control eighty percent or more of the collection and disposal of the county's municipal waste. In its response, the United States pointed out that the proposed Final Judgment requires the defendants to divest the Waste Management commercial hauling routes in the Scranton/Wilkes-Barre, PA area, which is about 30

miles from the major population center of Monroe County, and that the earlier Final Judgment in *United States v. USA Waste Services, Inc. and Waste Management, Inc.*, No. 1:98 CV 1616 (N.D. Ohio, filed July 17, 1998), requires Waste Management to divest commercial waste hauling routes in the Allentown, PA area, which is only about 20 miles south of Monroe County. These divestitures, once approved by the courts, would install in each of these areas one or more new competitors whose operations would be sufficiently close to provide a serious competitive check on the combination's ability to raise prices after consummating their merger.

. **The Schuylkill County Comment**

The Schuylkill County Office of Solid Waste and Resource Management ("OSWRM"), based in Pottsville, PA, similarly complained that the governments should have sought and obtained divestiture relief that would eliminate the anticompetitive effects of the merger in Schuylkill County, PA. OSWRM alleged that the merger would leave Waste Management as the dominant commercial waste hauler in Schuylkill County.

In our response, we pointed out that the United States did not seek relief with respect to commercial hauling in Schuylkill County because the amount of commerce was relatively small (Eastern's operations had less than \$1 million in annual revenue), and Schuylkill County, like Monroe County, is reasonably close to two areas in which divestitures mandated by the pending Final Judgment and the consent decree in USA Waste case would establish independent competitors fully capable of disciplining an exercise of market power by Waste Management after it merges with Eastern.

D. The RecycleWorlds Consulting Corp. Comment

RecycleWorlds, a private waste industry consultant, expressed concern that the Final Judgment would not halt the wave of mega-mergers currently sweeping through the nation's waste industry. In this rapidly consolidating industry, some markets, RecycleWorlds explained, may become dominated by a handful of large integrated waste collection and disposal firms, and more prone to collusive price increases by the few remaining competitors. To prevent Waste Management from squeezing waste collection competitors by increasing the prices at landfill sites at which they dispose their waste, RecycleWorlds would require Waste Management to divest its waste collection operations or its waste disposal operations in any market in which it competes with Eastern. Failing that, RecycleWorlds urged the government not to approve any asset divestiture under the Judgment to any of the handful of major integrated waste firms, such as Republic, Allied or BFI. These firms may be more inclined to cooperate with Waste Management in raising prices in some markets in order to avoid potential price wars with Waste Management elsewhere.

In its response, the United States noted that it does not believe that requiring Waste Management to divest all collection or disposal operations in any overlap market would be more procompetitive than the divestitures ordered by the pending Judgment. Indeed, pursuing RecycleWorlds's alternative may result in Waste Management obtaining vast market power in waste collection or in waste disposal services since, in effect, if Waste Management agrees to divest one line of business it can obtain an overwhelming market share in the other line. As to RecycleWorlds's second point, the United States will not approve any proposed divestiture under the Judgment that may substantially lessen competition in any market. To that end, the Antitrust

Division recently rejected Waste Management's proposal to divest these assets under the decree to Allied Waste Services, Inc. Allied, the nation's third largest waste industry firm, had agreed to acquire Browning-Ferris Industries, Inc., the industry's second firm. The pervasive competitive overlaps between the Allied/BFI operations and the disposal and collection operations ordered divested under the Judgment convinced the United States that the proposed divestiture would not advance competition in any market.

8. Pursuant to 15 U.S.C. §§ 16(b)-(h), the United States has arranged to publish in the *Federal Register* by May 29, 1999, a copy of the comments and the United States's responses.

9. With these steps having been taken, the parties have fulfilled their obligations under the APPA. Pursuant to the Hold Separate Order that the Court entered on December 31, 1998, the Court may now enter the proposed Judgment, if it determines that the entry of the Judgment is in the public interest. For the reasons set forth in the Competitive Impact Statement, and in its responses to the public comments, the United States strongly believes that the Judgment is in the public interest and that the Court therefore promptly should enter it.

Dated: May 20, 1999.

Respectfully submitted,

_____/s/_____
Anthony E. Harris, Esquire (AH 5876)
U.S. Department of Justice
Antitrust Division
1401 H Street, NW, Suite 3000
Washington, DC 20530
(202) 307-6583