

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
WASTE MANAGEMENT, INC. and )  
WM ACQUIRING CORP., )  
 )  
Defendants. )

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Civil Action No. *84-2832*  
Filed: *September 12, 1984*

COMPLAINT FOR INJUNCTIVE RELIEF

The United States of America, plaintiff, by its attorneys, acting under the direction of the Acting Assistant Attorney General of the United States, brings this civil action to obtain equitable relief against the above-named defendants and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 15 of the Clayton Act, as amended, 15 U.S.C. §25, in order to prevent and restrain the violation by the defendants, as hereinafter alleged, of Section 7 of the Clayton Act, as amended, 15 U.S.C. §18.

2. Waste Management, Inc. transacts business and is found within the District of Columbia.

## II

### DEFINITIONS

#### 3. As used herein:

(a) "HHI" means the Herfindahl-Hirschman Index, a measure of market concentration calculated by squaring the market share of each firm in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 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. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

(b) "Akron, Ohio market" means Summit County and those portions of Portage County within approximately ten miles of the boundaries of Summit County;

(c) "Atlanta, Georgia market" means the city of Atlanta and those portions of Fulton, DeKalb, Cobb, Douglas, Clayton and Gwinnett counties within approximately twenty miles of the boundaries of the City of Atlanta;

(d) "Boston, Massachusetts market" means Suffolk County, Norfolk County, and Middlesex County;

(e) "Camden, New Jersey market" means Mercer County, Burlington County, Camden County and Gloucester County;

(f) "Dallas, Texas market" means Dallas County and those portions of Ellis, Kaufman, Rockwall, Collin and Denton counties within approximately ten miles of the boundary of Dallas County;

(g) "Dayton, Ohio market" means Montgomery County;

(h) "Denver, Colorado market" means the City of Denver and those portions of Jefferson, Arapahoe and Adams counties within approximately ten miles of the boundaries of the City of Denver;

(i) "Detroit, Michigan market" means Wayne County, Oakland County and Macomb County;

(j) "Fort Worth, Texas market" means Tarrant County and those portions of Denton, Wise, Parker, Johnson and Ellis counties within approximately ten miles of the boundary of Tarrant County, excluding those portions of Denton and Ellis counties within the Dallas, Texas market;

(k) "Grand Rapids, Michigan market" means Kent County and Ottawa County;

(l) "Los Angeles, California market" means Los Angeles County, Orange County and those portions of San Bernardino and Riverside counties within approximately twenty-five miles of the boundaries of Los Angeles County and Orange County;

(m) "Louisville, Kentucky market" means Jefferson County, Bullitt County, Oldham County, Trimble County, Clark County and Floyd County;

(n) "Muskegon, Michigan market" means Muskegon County;

(o) "North Shore, Massachusetts market" means Essex County;

(p) "Phoenix, Arizona market" means the City of Phoenix and those portions of Maricopa County and Pinal County within approximately twenty-five miles of the boundaries of the City of Phoenix;

(q) "San Diego, California market" means those portions of San Diego County within approximately twenty miles of the boundaries of the City of San Diego;

(r) "St. Louis, Missouri market" means St. Louis County, St. Clair County, and those portions of Jefferson and St. Charles counties within approximately ten miles of the boundaries of St. Louis County;

(s) "Tampa, Florida market" means Hillsborough County;

(t) "Washington, D.C. market" means the District of Columbia, Montgomery County, Prince George's County, Arlington County, Fairfax County and the City of Alexandria;

(u) "West Palm Beach, Florida market" means Palm Beach County;

(v) "Hazardous waste" means those waste products which exhibit the characteristics identified in 40 C.F.R. §§261.21, 261.22, 261.23, 261.24 or which are listed in 40 C.F.R. §§261.31, 261.32, 261.33, and revisions thereof, or those waste products which contain polychlorinated biphenyls ("PCB").

(w) "Hazardous waste management service" means the collection, transportation, treatment, storage or disposal of hazardous waste products or the clean-up of hazardous waste from contaminated areas.

### III

#### PARTIES TO THE TRANSACTION

4. Waste Management, Inc. (hereinafter "WMI") is made a defendant herein. WMI is a corporation organized and existing under the laws of the State of Delaware, and maintains its principal place of business at Oak Brook, Illinois. WMI is the world's largest company engaged in the waste management business. It provides integrated solid and chemical waste management services, consisting of storage and collection, transfer, interim processing and disposal, to commercial and industrial, residential and municipal customers, as well as to other waste management companies. WMI is also engaged in the treatment, packaging, transportation and disposal of low-level radioactive wastes and in resource recovery. In 1983, WMI had total assets exceeding \$1.33 billion, total revenues exceeding \$1.03 billion and net income of approximately \$120 million. In the United States, WMI operates through approximately 160 divisions or wholly-owned subsidiaries in at least 33 states.

5. WM Acquiring Corp. (hereinafter "WMAC") is made a defendant herein. WMAC is a corporation organized and existing under the laws of the State of Delaware, and maintains its principal offices in Oak Brook, Illinois. WMAC was formed for the purpose of acquiring SCA. WMAC has not conducted any other business.

6. SCA Services, Inc. (hereinafter "SCA") is a corporation organized and existing under the laws of the State

of Delaware, and maintains its principal place of business at Boston, Massachusetts. SCA is the third largest company in the United States engaged in the waste management business. It provides integrated solid and chemical waste management services, consisting of storage and collection, transfer, interim processing and disposal, to commercial and industrial, residential and municipal customers, as well as to other waste management companies. In fiscal year 1984, SCA had total assets exceeding \$339.6 million, total revenues exceeding \$391 million, and a net loss of approximately \$12.4 million. SCA operates through approximately 123 divisions or wholly-owned subsidiaries in at least 28 states.

#### IV

#### TRADE AND COMMERCE

7. Solid waste collection is the collection of paper, food, construction material and other solid wastes from residential, commercial and industrial customers. The most common method of solid waste disposal is burial in a sanitary landfill. Landfills may be owned or operated by a municipality, but many are owned or operated by private solid waste collection firms. Increased concerns about the environment have resulted in a demand for more sophisticated methods of collection and disposal of all wastes, including solid wastes. Several well-financed, national waste management companies have been established that now operate in many areas

across the country. The financial and technical resources of these newer companies have enabled them to expand rapidly by using expensive capital equipment and increasingly advanced collection and disposal technology.

8. Solid waste collection services may be provided by private collectors directly to residential, commercial and industrial customers through contracts between the collector and the customer, or through municipal contracts or franchises. Direct contracts are commonly employed for commercial and industrial customers, while municipal contracts or franchises are most often used in residential service. Under the municipal contract arrangement, a solid waste collector agrees to collect specified wastes generated within specified areas of a local government's boundaries in exchange for payment by the local government. Under the franchise arrangement, a solid waste collector is awarded the right, usually exclusive, to collect specified wastes generated in specified areas of a local government's boundaries; usually the franchised collector then bills waste generators directly for the services provided.

9. Solid waste is generally collected by side loading, rear loading, front loading and roll-off vehicles. Rear and side loading vehicles are generally used to collect solid waste from residential customers and from commercial establishments that generate relatively small quantities of solid waste similar in amount to that generated by residential customers.

These trucks generally utilize a two or three person crew who manually load the waste into the rear or side of the vehicle. Front loading vehicles generally collect solid waste from large apartment complexes and commercial customers, including retail and wholesale stores, office buildings and industrial parks. Customers served by front loaders deposit their waste in metal containers that can be lifted over the front of the truck by means of a hydraulic hoist and emptied into the storage section of the vehicle. Rear loading vehicles can also be equipped to empty containers by attaching a winch mechanism to the top rear portion of the vehicle. Roll-off vehicles are generally used to collect waste from industrial customers who generate large amounts of waste, and are also employed at construction sites, where large quantities of heavy, non-compactible wastes are generated. A roll-off truck uses a hydraulic hoist system to load a large container onto its body. Roll-off containers are transported individually to the disposal site where they are emptied before being returned to the customer's premises.

10. Containerized service is different from hand-load solid waste collection service. Containerized service involves the storage of solid waste in large metal containers that are emptied by specially designed collection vehicles usually operated by one or two persons. Containerized service provides the customer with a mechanized method of solid waste collection. Customers for this type of service are generators of larger amounts of waste than customers for hand-load



collection services. Containerized service is provided most often with front-load, rear-load or roll-off equipment.

11. Containerized front-load and rear-load services make up the commercial solid waste collection market, which is separate and distinct from the market for roll-off solid waste collection service and from the market for hand-load solid waste collection service. The market served by containerized front-load and rear-load equipment is called the commercial market because almost all the customers for these services are businesses or large apartment complexes. The market served by roll-off equipment is called the industrial market because most of the customers for roll-off services are engaged in manufacturing, processing, or construction. The market served by hand-load collection equipment is called the residential market because, even though some small businesses may use hand-load service, the vast bulk of customers for hand-load solid waste collection service is composed of residential customers.

12. The geographic markets within which residential, commercial and industrial solid waste collection services are provided are generally local. It is not economically efficient for heavy trash collection equipment to travel long distances to landfills or between customers. For the same reason it is not efficient for a collector to serve one area from a distant base. Collectors therefore must establish garages and related

facilities within each general area served. The geographic boundaries of solid waste collection markets are generally limited to a central city and surrounding suburbs.

13. Municipal solid waste collection contracts or franchises between solid waste management companies and local governments are frequently awarded pursuant to competitive bidding among qualified companies. While competition for direct contract services is relatively continuous among waste management companies doing business in a geographic market, municipal contracts and franchises are awarded on a periodic basis. Consequently, during the term of the contract or exclusive franchise, there is no competition among solid waste management companies for solid waste collection services within the area covered by the contract or franchise. Municipalities may also award contracts to operate solid waste disposal facilities to waste management companies.

14. Waste management companies often bid for large municipal contracts even though they may not currently be providing waste management services in the local markets in which the municipal customers are located. The large size of these contracts makes it feasible for waste companies to establish a new operational base in any local market where they win such a contract. Large waste management companies, such as WMI and SCA, pursue large municipal contracts on a national basis. While they may encounter competition for specific municipal contracts from regional or large local firms with operations in or near the local markets in which the

municipalities are located, the number and type of firms that actively bid for large municipal contracts are different from those that pursue direct contract service and small municipal contract business. Because of a number of unique factors affecting competition for large municipal contracts, there exists a separate and distinct market for provision of solid waste collection and disposal services pursuant to large municipal contracts or franchises. Unlike other waste collection and disposal services, the large municipal contract or franchise business constitutes a national market.

15. Most commercial, industrial and residential solid wastes are hauled by collectors to sanitary landfills. A solid waste sanitary landfill is a disposal facility located on approved types of land operated under prescribed procedures. In order to be considered a sanitary landfill, a site must have geological and hydrological properties that limit the possibility of water pollution, directly or by leaching. Carefully planned excavation and continuous spreading and compacting of waste, followed by covering with earth or other inert materials at least once a day, maintain sanitary conditions, insure optimum utilization, and prepare the site for ultimate use for other purposes.

16. Suitable sanitary landfills have become increasingly difficult to obtain because of land scarcity, local resident opposition and expanding governmental regulation. The scarcity of sites and increased volume of wastes have resulted in more

intensive use of existing sanitary landfills. As their existing sites become filled, the solid waste disposal operations of waste management companies become increasingly and materially dependent upon their ability to purchase or lease new disposal sites and obtain the necessary permits from regulatory authorities to operate them.

17. Through their many subsidiaries and divisions, WMI and SCA compete with one another and with other solid waste collection companies to provide commercial solid waste collection services in the following markets: Akron, Ohio; Atlanta, Georgia; Dallas, Texas; Dayton, Ohio; Denver, Colorado; Detroit, Michigan; Fort Worth, Texas; Grand Rapids, Michigan; Phoenix, Arizona; San Diego, California; St. Louis, Missouri; Tampa, Florida; Washington, D.C.; and West Palm Beach, Florida. Each of these commercial solid waste collection markets is either moderately or highly concentrated. In each of these commercial solid waste collection markets, the four largest firms account for at least 50 percent of total 1983 commercial solid waste collection revenues. The HHI in each of these commercial solid waste collection markets currently exceeds 1000.

18. In each commercial solid waste collection market specified in paragraph 17 of this complaint, WMI and SCA each accounted for a substantial share of total 1983 revenues from provision of commercial solid waste collection services. The acquisition of SCA by WMI would substantially increase the

combined market share of the four largest firms in each of the commercial solid waste collection markets specified in paragraph 17 of this complaint. The acquisition of SCA by WMI would increase the HHI in each of the commercial solid waste collection markets specified in paragraph 17 of this complaint by more than 100 points.

19. Through their many subsidiaries and divisions, WMI and SCA compete with one another and with other solid waste collection companies to provide industrial solid waste collection services in the following markets: Akron, Ohio; Atlanta, Georgia; Dallas, Texas; Dayton, Ohio; Denver, Colorado; Detroit, Michigan; Fort Worth, Texas; Grand Rapids, Michigan; Phoenix, Arizona; San Diego, California; St. Louis, Missouri; Tampa, Florida; Washington, D.C.; and West Palm Beach, Florida. Each of these industrial solid waste collection markets is either moderately or highly concentrated. In each of these industrial solid waste collection markets, the four largest firms account for at least 50 percent of total 1983 industrial solid waste collection revenues. The HHI in each of these industrial solid waste collection markets currently exceeds 1000.

20. In each industrial solid waste collection market specified in paragraph 19 of this complaint, WMI and SCA each accounted for a substantial share of total 1983 revenues from provision of industrial solid waste collection services. The acquisition of SCA by WMI would substantially increase the

combined market share of the four largest firms in each of the industrial solid waste collection markets specified in paragraph 19 of this complaint. The acquisition of SCA by WMI would increase the HHI in each of the industrial solid waste collection markets specified in paragraph 19 of this complaint by more than 100 points.

21. Through their many subsidiaries and divisions, WMI and SCA compete with one another and with other solid waste collection companies to provide residential solid waste collection services in the following markets: Boston, Massachusetts; Camden, New Jersey; Dayton, Ohio; Denver, Colorado; Detroit, Michigan; Fort Worth, Texas; Los Angeles, California; Muskegon, Michigan; North Shore, Massachusetts; Phoenix, Arizona; San Diego, California; Tampa, Florida; Washington, D.C.; and West Palm Beach, Florida. Each of these residential solid waste collection markets is either moderately or highly concentrated. In each of these residential solid waste collection markets, the four largest firms account for at least 50 percent of total 1983 residential solid waste collection revenues. The HHI in each of these residential solid waste collection markets currently exceeds 1000.

22. In each residential solid waste collection market specified in paragraph 21 of this complaint, WMI and SCA each accounted for a substantial share of total 1983 revenues from provision of residential solid waste collection services. The acquisition of SCA by WMI would substantially increase the

combined market share of the four largest firms in each of the residential solid waste collection markets specified in paragraph 21 of this complaint. The acquisition of SCA by WMI would increase the HHI in each of the residential solid waste collection markets specified in paragraph 21 of this complaint by more than 100 points.

23. WMI and SCA compete with one another in the national market for large municipal contracts and franchises, and are two of only a relatively few such competitors. The number of bidders for such contracts seldom exceeds six, and often it is fewer. The HHI in this market currently exceeds 1000, and the acquisition of SCA by WMI would increase the HHI by more than 100 points.

24. WMI and SCA compete with one another and other solid waste management companies to provide solid waste disposal services in the Fort Worth, Texas and Louisville, Kentucky markets. Each of these solid waste disposal markets is highly concentrated. In each of these markets, the four largest firms account for at least 70 percent of total 1983 solid waste disposal revenues. The HHI in each of these solid waste disposal markets currently exceeds 1800.

25. In the solid waste disposal markets in Fort Worth, Texas and Louisville, Kentucky, WMI and SCA each accounted for a substantial share of total 1983 revenues from provision of solid waste disposal services. The acquisition of SCA by WMI would substantially increase the combined market share of the

four largest firms in each of these solid waste disposal markets. The acquisition of SCA by WMI would increase the HHI in each of these solid waste disposal markets by substantially more than 50 points.

26. WMI and SCA each engage in the business of commercial hazardous waste management. Commercial hazardous waste firms offer off-site treatment and disposal services to manufacturers who generate hazardous waste as a result of their manufacturing processes.

27. The provision of hazardous waste management services is regulated by the United States Environmental Protection Agency and the states pursuant to the Resource Conservation and Recovery Act of 1976 ("RCRA"). All hazardous waste treatment or disposal facilities operate under RCRA permits issued by EPA or states which have qualified to manage their own RCRA regulatory programs. Such facilities also require local zoning and operating approvals. The costs and uncertainties of this pervasive regulatory scheme, as well as long-term liabilities imposed upon disposers of hazardous waste for future adverse environmental effects, constitute substantial entry barriers into commercial hazardous waste management services.

28. The most common, and least expensive method of disposal of hazardous waste in a solid state is burial in a secure chemical landfill. Secure chemical landfills are distinguished from sanitary landfills by higher technological and operating standards, including the use of barriers to



separate incompatible wastes, clay or synthetic liners, leachate collection and monitoring systems. RCRA regulations prohibit the landfilling of some hazardous wastes, and substantially more costly treatment options, such as incineration, exist for some wastes which may be landfilled. Nevertheless, for many hazardous wastes there will be no feasible alternative to landfilling in the foreseeable future, and many treatment options produce residues which are themselves hazardous wastes requiring burial in a secure chemical landfill.

29. At present there are 38 secure chemical landfills in the United States permitted to accept hazardous waste from outside generators. All are operating under interim ("Part A") RCRA permits. While EPA has called for permanent ("Part B") applications on these sites, no Part B permit has yet been issued for any secure chemical landfill. Increasingly stringent requirements for engineering and operation, and higher standards of financial responsibility necessary for a Part B permit, as well as organized public opposition to the siting of landfills in many areas, substantially restrict the possibilities for entry. No new hazardous waste landfill has been permitted east of the Mississippi River in the past five years.

30. WMI operates a secure chemical landfill at Emelle, Alabama. SCA operates a secure chemical landfill at Pinewood, South Carolina. These two facilities are the only landfills in

the Southeastern United States permitted to accept hazardous waste. They compete for customers throughout the Southeast, but especially in areas of Florida, Georgia and Tennessee where neither enjoys a significant transportation cost advantage. For these customers these sites offer the only feasible landfilling alternatives, because of transportation costs to more distant sites. The acquisition by WMI of SCA's Pinewood, South Carolina landfill would create a virtual monopoly.

31. WMI operates a secure chemical landfill near Toledo, Ohio (the Evergreen landfill). SCA operates a secure chemical landfill in Fort Wayne, Indiana (the Adams Center landfill). Evergreen and Adams Center compete with three other landfills for customers in central and eastern Indiana, western Ohio, Michigan and Kentucky. The HHI in this hazardous waste disposal market currently is at least 2000. The acquisition of SCA by WMI would increase the HHI by substantially more than 100.

32. WMI and SCA are engaged in interstate commerce and in activities affecting interstate commerce.

#### V.

#### VIOLATION ALLEGED

33. On August 15, 1984, defendant WMAC offered to purchase for \$28.50 per share all outstanding shares of common stock of SCA tendered by its common shareholders prior to midnight on September 12, 1984.

34. The effect of the acquisition of SCA by WMAC may be substantially to lessen competition or to tend to create a monopoly in the aforesaid trade and commerce in violation of Section 7 of the Clayton Act in the following ways, among others:

(a) Actual competition and the potential for increased competition between WMI and SCA in commercial, industrial and residential solid waste collection services, in the national market for large municipal contracts and franchises, in solid waste disposal services and in landfilling of hazardous wastes in the aforesaid sections of the country will be eliminated; and

(b) Concentration in commercial, industrial and residential solid waste collection services, in the national market for large municipal contracts and franchises, in solid waste disposal services and in landfilling of hazardous wastes in the aforesaid sections of the country will be substantially increased.

#### PRAYER

WHEREFORE, plaintiff prays:

1. That the proposed acquisition of SCA by WMAC be adjudged in violation of Section 7 of the Clayton Act.
2. That WMI and WMAC and all persons acting on their behalf be permanently enjoined from carrying out the acquisition of SCA by WMAC or any similar plan or agreement.
3. That the plaintiff have such other and further relief as the Court may deem just and proper.

4. That the plaintiff recover the costs of this action.

Helmut F. Furth  
HELMUT F. FURTH  
Acting Assistant Attorney General

J. Robert Kramer II  
J. ROBERT KRAMER II

Mark Leddy  
MARK LEDDY

John F. Greaney  
JOHN F. GREANEY

John W. Clark  
JOHN W. CLARK

Patricia G. Chick  
PATRICIA G. CHICK

Attorneys  
Department of Justice  
Antitrust Division

Gregory B. Hoendon  
GREGORY B. HOENDON

John M. Toohy  
JOHN M. TOOHEY

Charles R. Schwidde  
CHARLES R. SCHWIDDE

Molly L. DeBusschere  
MOLLY L. DEBUSSCHERE

Attorneys,  
Department of Justice  
10th Street & Pennsylvania  
Avenues, N.W.  
Washington, D.C. 20530  
Telephone: (202) 724-6583