

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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;)	Civil No. 1:98 CV 1616
COMMONWEALTH OF PENNSYLVANIA;)	Judge Ann Aldrich
STATE OF TEXAS;)	
STATE OF WASHINGTON; and)	
STATE OF WISCONSIN,)	
)	
Plaintiffs,)	Filed:
)	
v.)	
)	
USA WASTE SERVICES, INC.;)	
DOMER MERGER SUBSIDIARY; and)	
WASTE MANAGEMENT, INC.,)	
)	
Defendants.)	

UNITED STATES'S CERTIFICATE OF COMPLIANCE WITH
PROVISIONS OF THE ANTITRUST PROCEDURES AND PENALTIES ACT

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, the proposed Final Judgment ("Judgment"), and the Hold Separate Stipulation and Order ("Hold Separate Order") were filed on July 16, 1998. The United States's Competitive Impact Statement was filed on July 23, 1998.

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 September 24, 1998 (63 Fed. Reg. 51125). 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 Complaint, Hold Separate Order, proposed 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 Cleveland Plain Dealer*, a newspaper of general circulation in Cleveland, OH, and in *The Washington Post*, a newspaper of general circulation in the District of Columbia. Copies of the certificates of publication from *The Cleveland Plain Dealer* and *The Washington Post* appear in Exhibit 2.

5. On January 21, 1999, the defendants -- USA Waste Services, Inc.; Dome Merger Subsidiary; and Waste Management, Inc. -- filed with the Court a joint statement describing their communications with employees of the United States Department of Justice concerning the proposed 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 Cleveland Plain Dealer* and *The Washington Post*, the United States received a total of 13 written comments on the proposed settlement. The comments were from:

- (a) Recycle Worlds Consulting Corp., Madison, WI (Ex. 3);
- (b) Honorable Joseph R. Lenthol, New York State Assemblyman for the 50th District, Brooklyn, NY (Ex. 4);
- (c) Sierra Club of New York City Group, New York, NY (Ex. 5);

- (d) Neighbors Against Garbage, Brooklyn, NY (Ex. 6);
- (e) Red Hook Civic Association, Brooklyn, NY (Ex. 7);
- (f) Rose Institute of State and Local Government, Claremont College, Claremont, CA (Ex. 8);
- (g) Gold Fields Mining Corporation, Los Angeles, CA (Ex. 9);
- (h) Coastal Waste Management, Sacramento, CA (Ex. 10);
- (i) York County Solid Waste and Refuse Authority, York, PA (Ex. 11);
- (j) Calvert Trash Systems, Inc., Owings, MD (Ex. 12);
- (k) LaPlata Recycling Center and Depository, Bayfield, CO (Ex. 13);
- (l) Conrad S. Magnuson, Kingston, NH (Ex. 14); and
- (m) Three Rivers Disposal Company, Bozeman, MT (Ex. 15).

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. However, for the reasons set forth in its Memorandum in Support of Entry of the Modified Final Judgment, the United States was persuaded to move for a minor modification of the proposed Judgment, which would eliminate the defendants' obligation to divest the Scott Avenue Transfer Station in Brooklyn, NY, and substitute a divestiture of one of two smaller transfer stations, Vaccarro or Gesuale, also in New York City.

Copies of the comments and the United States's responses appear in Exhibits 3-15; they are summarized below.

A. General Comment on the Divestiture Relief in the Proposed Judgment

Recycle Worlds, a private waste industry consultant, urged the United States not to approve any asset divestiture under the proposed Judgment to one of the major integrated waste collection and disposal firms, such as Republic Services, Inc.; Allied Waste Industries, Inc.; or Browning-Ferris Industries, Inc. (Ex. 3). In Recycle Worlds's view, these firms may be more inclined to cooperate with the defendants in raising prices in some markets in order to avoid potential price wars with the defendants elsewhere.

In response, we noted that the United States could not categorically conclude that selling the consent decree assets to a large national waste collection and disposal firm, such as Republic, would be less competitive than a sale to municipal agency or small independent firm, or that large waste companies are more prone to collude, when given the opportunity, than small independent firms. Also, large waste collection and disposal companies may enjoy some competitive advantages, such as better access to capital and more extensive experience, that would make them in some respects more formidable competitors than small independent firms.

In a series of transactions beginning in September 1998 and ending in early 1999, the United States approved Republic as a purchaser of all of the waste collection and disposal assets ordered divested under the Judgment, except the Baltimore area disposal assets, which the United States approved for sale to BFI in October 1999.

B. Comments on the New York City Divestiture Relief

The United States received four comments on provisions of the proposed Final Judgment that relate to the divestiture relief in the New York City area. Three commentators -- New York State Assemblyman Joseph Lenthol (Ex. 4), the Sierra Club of New York City Group (Ex. 5),

and Neighbors Against Garbage (Ex. 6) -- expressed considerable concern that by ordering the defendants to divest the application for a permit to construct and open the proposed Nekboh Transfer Station in Brooklyn, NY, the Final Judgment would ensure that the new owner would continue the attempt to open a transfer station on that site, despite strong community opposition. The commentators suggested that the United States's move to amend the proposed Judgment in such a way as to end the effort to develop the Nekboh site as a waste transfer station (*e.g.*, requiring the defendants to sell the Nekboh site to a government agency for development as a public park).

In response, we pointed out that the aesthetic and environmental concerns that have fueled community opposition to the proposed Nekboh Transfer Station are unrelated to the competitive concerns that precipitated the governments' antitrust suit. Issues concerning whether a waste transfer station should be constructed on the Nekboh site ought to be presented to, and resolved by, the state and local regulatory officials responsible for issuing the site's operating permit.

A fourth commentator, Red Hook Civic Association (Ex. 7), wanted to know why the United States did not seek divestiture of defendant USA Waste's massive proposed Erie Basin Transfer Station, also in Brooklyn, NY. We noted that Erie Basin, if it is constructed, would primarily handle the city's residential waste, a market unrelated to the disposal of commercial waste market in which the United States alleged that the defendants' merger would substantially eliminate competition.

C. Comments on the California Divestiture Relief

The United States received three comments on those provisions of the Final Judgment relating to the divestiture relief in the California market. Two commentators -- the Rose Institute of State and Local Government, Claremont College, CA (Ex. 8), and Gold Fields Mining Corporation (Ex. 9) -- submitted very lengthy papers that questioned our definition of the relevant geographic market for the disposal of commercial waste from the City of Los Angeles. As these commentators see it, the geographic market should be expanded to include public and private landfills located up to 170 miles east of Los Angeles. This expanded market would include a massive new landfill, Mesquite Regional, partly-owned by the defendants. And they would order the defendants to divest that landfill in order to alleviate the competitive concerns that they believe the combination would raise in the expanded geographic market.

The United States noted, in its response, that it made good economic sense to exclude the remote Mesquite Regional Landfill from the competitive analysis since it is relatively inaccessible to commercial waste haulers from the Los Angeles area. Given this landfill's 170 mile distance from Los Angeles, it would be very expensive for haulers to ship and dispose of commercial waste collected in Los Angeles at Mesquite Regional. Private landfills located much closer to Los Angeles could profitably raise disposal prices without fear of losing significant revenues to this distant landfill. Since Mesquite Regional is not in the relevant market, the defendants should not be required to divest it in order to obtain effective relief.

A third commentator, Coastal Waste Management (Ex. 10), questioned the United States's decision not to allege in its Complaint or seek relief in the proposed Judgment relating to commercial waste hauling in the Sacramento, CA market. We noted, in response, that based on

the evidence available to us at the time, injunctive relief was not warranted in the Sacramento hauling market. Coastal, however, remains free to pursue such a remedy by filing a private antitrust action.

D. Comments on the Divestiture Relief In Other Areas

The York County Solid Waste and Refuse Authority of York County, PA, was very concerned that the ordered divestiture of Waste Management's Modern Landfill would adversely affect its contract to deliver waste to the Authority's incinerator and dispose of ash and noncombustible waste from the incinerator (Ex. 11). Since the proposed Judgment orders that the landfill be divested "subject to" such existing contractual commitments, the sale should not affect these local disposal agreements.

Finally, four commentators -- Calvert Waste Systems (Ex. 12), LaPlata Recycling (Ex. 13), Conrad Magnuson (Ex. 14), and Three Rivers Disposal (Ex. 15) -- complained that the United States should have sought injunctive relief with respect to several markets not alleged in the governments' Complaint, *viz.*, the eastern shore of Maryland; Bayfield, CO; Kingston, NH; and Bozeman, MT.

In our response, we noted that the United States did not seek divestiture relief as to these markets because it was not convinced, based on information available to it at the time, that the merger would create serious competitive problems warranting the imposition of this remedy. Private parties, such as the commentators, certainly remain free to pursue such relief against the defendants by filing a private antitrust suit.

8. Pursuant to 15 U.S.C. §§ 16(b)-(h), the United States has arranged to publish in the *Federal Register* by September 27, 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 July 16, 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, its responses to the public comments, and in its Memorandum in Support of Entry of the Proposed Modified Final Judgment, the United States -- and all of the other parties -- strongly believe that the proposed decree, as amended, is in the public interest and that the Court therefore promptly should enter it.

Dated: September 13, 1999.

Respectfully submitted,

/s/

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