



U.S. Department of Justice

Antitrust Division

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

September 13, 1999

Mr. John McGettrick
Co-Chairman
The Red Hook Civic Association
178 Coffey Street
Brooklyn, New York 11231

Re: *Comment on Proposed Final Judgment in United States, State of Ohio, et al. v. USA Waste Services, Inc., Waste Management, Inc., et al., Civil No. 98-1616 (N.D. Ohio, filed July 16, 1998)*

Dear Mr. McGettrick:

Thank you for your letter commenting on the Final Judgment submitted for entry in the above case. The Complaint in this case charged, among other things, that USA Waste's acquisition of Waste Management would substantially lessen competition in the disposal of New York City's commercial waste. The proposed Judgment would settle the competitive concerns with respect to the New York City market by, *inter alia*, requiring the defendants to divest: (a) the USA Waste's SPM Transfer Station; (b) USA Waste's All City Transfer Station; and (c) the pending application by USA Waste for a permit to construct and operate the Nekboh Transfer Station, also in Brooklyn, NY. *See* Judgment, §§ II (C)(2) (i)(1)-(3) and IV(A). To ensure the defendants' continued cooperation with the purchaser in its efforts to get the Nekboh site permitted, the proposed Judgment further provides that if the Nekboh Transfer Station does not receive an operating permit within one year after entry of the Judgment, the defendants must divest the Scott Avenue Transfer Station, also in Brooklyn, NY. *See* Judgment, §§ II (C)(2)(i)(4) and IV(B).

In a transaction approved by the United States in August 1998, under the terms of the proposed Judgment, the defendants divested All City Waste Transfer Station and their application for a permit for the proposed Nekboh site to Republic Services, Inc., which previously did not operate any waste disposal sites in the New York City area.

You have pointed out that although the proposed Final Judgment orders the defendants to divest a number of waste transfer stations in Brooklyn and in the Bronx, the Judgment does not order them to divest their interest in the proposed Erie Basin Marine Transfer Terminal, a large waste disposal facility that USA Waste had proposed permitting and constructing in the Red Hook section

of Brooklyn, NY. You asked whether the defendants' retention of this disposal facility might nullify the effects of the ordered divestitures, and whether the defendants ought to be forced to withdraw their proposal to permit and construct the Erie Basin facility.

As noted above, the Complaint alleged that defendants' transaction would substantially reduce competition in the disposal of the city's commercial waste. The proposed Erie Basin site, however, was designed primarily for handling the city's residential waste, not its private commercial waste. This waste transfer station (and others proposed by competitors) would replace disposal capacity that would be lost when New York City closes its only municipal landfill, Fresh Kills, in late 2001. Although a portion of the Erie Basin facility, if permitted, might handle some private commercial waste, at the moment, whether Erie Basin will be permitted is somewhat speculative. In any event, we do not see Erie Basin as a significant competitive factor in the disposal of private commercial waste, and hence, there was no reason for us to insist that the defendants divest it to alleviate any competitive concerns regarding competition in the disposal of New York City's private commercial waste.

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