



U.S. Department of Justice

Antitrust Division

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

May 20, 1999

Mr. Dean D.W. DeLong
Executive Director
Monroe County Municipal Waste
Management Authority
912 Main Street, Suite 203
Stroudsburg, PA 18360

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. DeLong:

This letter responds to your letter of April 22, 1999 commenting on the Final Judgment in the above case. The Amended Complaint in the case charged, among other things, that Waste Management's acquisition of Eastern Environmental would substantially lessen competition in collection or disposal of waste in a number of markets throughout the Northeast and in Florida. In northeastern Pennsylvania, the Amended Complaint alleged, the merger would substantially reduce competition in the collection of commercial waste in the Scranton/Wilkes-Barre market. The proposed Final Judgment now pending in federal district court in Brooklyn, New York would settle the case with respect to the Scranton market by, *inter alia*, requiring Waste Management to divest its front-end loader commercial waste collection routes that service Luzerne and Lackawanna counties, which comprise much of the greater metropolitan Scranton/Wilkes-Barre, PA area. This divestiture, if approved by the Court, would establish an independent competitor in the market for which relief was sought, and replace the competitive rivalry lost when Waste Management acquired Eastern Environmental.

In your letter, you express concern that neither the Complaint in this case nor the proposed Judgment address the competitive effects of the merger in Monroe County, PA, in which a combination of Waste Management and Eastern Environmental would dominate municipal and commercial waste collection services, controlling over eighty percent of all waste collected. The combined firm has already substantially increased its prices for collection of municipal waste. We believe that the proposed Judgment, and the pending decree in the earlier USA Waste/Waste Management case,¹ address the competitive issues you have raised.

¹*United States v. USA Waste Services, Inc., Waste Management, Inc., et al.*, No. 1:98 CV 1616 (N.D. Ohio, filed July 17, 1998). The consent decree in the USA Waste case ordered Waste Management to divest its commercial waste collection routes that service the City of Allentown,

Monroe County is a thinly populated area that abuts and lies directly southeast of the Scranton/Wilkes-Barre area. Its business and population center -- Stroudsburg -- is about 30 miles from the Scranton/Wilkes-Barre area and about 25 miles north of the city of Allentown and Northampton and Lehigh counties in Pennsylvania.

The divestitures of commercial waste collection routes mandated by this Judgment and the decree in the USA Waste case, once implemented, would establish a relatively large independent commercial waste hauler in both the Scranton/Wilkes-Barre and Allentown areas. Given the proximity of these markets to Monroe County, the rivalry offered by the new competitors should be sufficient to discipline any exercise of market power by the combined Waste Management and Eastern Environmental in the collection of commercial waste. The new competitors established by these antitrust judgments may also be capable of vigorous competition in the collection of the county's residential waste, a market not addressed in our complaint or the consent decree.²

In addition, the next two largest waste haulers in Monroe County following Waste Management's acquisition of Eastern would be Hopkins and Muscaro, each of which is about the same size as Eastern in Monroe County. Thus, after the merger, there may be as many as four other competitors in the market -- Hopkins, Muscaro, and the two decree firms -- capable of competing as vigorously as Eastern prior to its acquisition by Waste Management.

and Lehigh and Northampton counties. Those routes were divested to Republic Services, Inc., which installed a large independent competitor in the commercial waste collection market in the Allentown, PA area.

²In general, barriers to entry into the collection of residential waste are not as formidable as those that impede entry into the collection of commercial waste. For this reason, the Division did not challenge the combination's effect on the market for collecting the county's residential waste. Of course, as you point out, entry into collection of residential waste could be very difficult in those situations in which the area's disposal facilities are controlled by a waste collection rival. That is not the case here. In Monroe County, there is at least one other major independent landfill (owned by DeNaples) that accepts significant amounts of the county's waste. Moreover, the closest landfill owned by Eastern Environmental apparently accepted less than 200 tons of waste annually from Monroe County, and hence did not compete directly against the Waste Management landfill.

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,

J. Robert Kramer II
Chief
Litigation II Section