



U.S. Department of Justice

Antitrust Division

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

September 13, 1999

Dr. Alan Heslop
Director
The Rose Institute of State and Local Government
Claremont McKenna College
Adams Hall
340 E. Ninth Street
Claremont, CA 91711-6420

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 Dr. Heslop:

This letter responds to your written comment on the proposed Final Judgment in the above case, now pending in federal district court in Cleveland, Ohio. The Complaint in that case charged, among other things, that USA Waste's acquisition of Waste Management would substantially lessen competition in the disposal of commercial waste from portions of the City of Los Angeles. The proposed Judgment would settle the case by, *inter alia*, requiring the defendants to divest Chiquita Canyon Landfill, a large waste disposal site located about 40 miles northeast of the City of Los Angeles. In a transaction approved by the United States in August 1998, under the terms of the decree, the defendants divested the landfill to Republic Services, Inc., which prior to the sale, did not operate any landfills in the greater Los Angeles area.

Your letter raises two issues related to the competitive effect of the proposed acquisition in the Los Angeles area. First, you question the governments' allegation that the relevant geographic market for purposes of analyzing the effects of the acquisition is commercial waste from the City of Los Angeles, an area defined in the Complaint as those parts of the city east of the San Diego Freeway, Interstate 405. In your view, the relevant market, at a minimum, should include a five-county area comprising not only the City of Los Angeles, but also Los Angeles, Ventura, Orange, Riverside and San Bernardino counties. You note that if the relevant geographic market is broadly defined to include these areas, then the United States should have taken into account competition from -- and sought divestiture of -- defendants' newly-permitted Mesquite Regional Landfill, located nearly 170 miles southeast of the city of Los Angeles.

In defining the relevant geographic market for the disposal of Los Angeles's commercial waste, the United States took into account the extent to which each of the private and public landfills in Southern California could compete for the city's waste. In its competitive analysis, the United States excluded some firms from the relevant geographic market because their landfills were legally

prohibited from accepting any municipal solid waste from the City of Los Angeles (*e.g.*, most of the Los Angeles County landfills). The United States excluded other facilities (*e.g.*, Mesquite Regional Landfill) because of their distance from, and relative inaccessibility to, the Los Angeles area. As noted above, Mesquite Regional Landfill is located 170 miles from the city. Rail is the only practical way to transport waste from Los Angeles to that landfill. With delivered costs in excess of \$45/ton (including transportation and tipping fees costs), the cost of disposing of commercial waste from the City of Los Angeles at Mesquite Regional Landfill would be nearly twice as much as the cost of sending such waste to close-in LA area landfills, which have average tipping fees of about \$23/ton. The four firms that own or operate close-in landfills can profitably increase their prices for disposal of Los Angeles's commercial waste by a small but significant amount, without losing significant business to distant landfills such as Mesquite Regional. In these circumstances, it made economic sense to exclude Mesquite Regional and similarly situated landfills from our competitive analysis in determining the significance of the defendants' merger in the disposal of Los Angeles's commercial waste. *See U.S. Department of Justice Horizontal Merger Guidelines* §§ 1.2-1.3 (1997 ed.).

For similar reasons, it made sense to limit the relevant market to commercial waste that originates in portions of the City of Los Angeles located east of the San Diego Freeway, Interstate 405. Private commercial waste generated in areas of the city west of the freeway can be legally disposed of in several Los Angeles County landfills, and in our view, the availability of the Los Angeles County landfills for the disposal of waste from this section of the city made it unlikely that the merger would substantially reduce competition for such waste.

Finally, you may have overlooked the fact that expanding the relevant geographic market to include the distant Mesquite Regional Landfill would sweep into the market a number of other similarly-situated large landfills that are not owned or otherwise controlled by the four firms that operate close-in Los Angeles landfills. Including these additional firms in the competitive analysis would substantially diminish, perhaps even eliminate, any anticompetitive effect of an acquisition by USA Waste of Waste Management, which would make it difficult to justify requiring that the defendants divest *any* Los Angeles area landfills.

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