**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,
Department of Justice
Antitrust Division
1401 H Street, NW, Suite 3000
Washington, DC 20530,

and

STATE OF FLORIDA,
Office of the Attorney General
Plaza 1 – The Capitol
Tallahassee, Florida 32399-1050,

Plaintiffs,

v.

WASTE MANAGEMENT, INC.,
1001 Fannin Street, Suite 4000
Houston, Texas 77002,

and

ALLIED WASTE INDUSTRIES, INC.,
15880 Greenway-Hayden Loop, Suite 100
Scottsdale, Arizona 85260,

Defendants.

Case No. 1:03CV02076

JUDGE: James Robertson

DECK TYPE: ANTITRUST

DATE STAMP: October 14, 2003

COMPLAINT FOR INJUNCTIVE RELIEF

Plaintiff United States of America ("United States"), acting under the direction of the Attorney General of the United States, and Plaintiff State of Florida ("Florida"), acting under the direction of its Attorney General, bring this civil antitrust action to enjoin the acquisition by Defendant Waste Management, Inc. ("Waste Management") of certain commercial waste collection and hauling assets (hereinafter referred to as "small container commercial hauling assets") from Defendant Allied Waste Industries, Inc. ("Allied") and to obtain equitable and other relief as is appropriate. Plaintiffs complain and allege as follows:

1. Pursuant to an asset purchase agreement and a stock purchase agreement, both dated August 15, 2003, Waste Management plans to acquire from Allied certain small container commercial hauling assets. The proposed transaction would lessen competition substantially as a result of Waste Management's acquisition of small container commercial hauling assets in Broward County, Florida.

2. Defendants Waste Management and Allied are two of only three significant providers of small container commercial hauling services in Broward County. Unless the acquisition is enjoined, consumers of small container commercial hauling services in Broward County will likely pay higher prices and receive fewer services as a consequence of the elimination of the vigorous competition between Waste Management and Allied.

I.

## JURISDICTION AND VENUE

3. The United States brings this action under Section 15 of the Clayton Act, 15 U.S.C. § 25, to prevent and restrain the violation by Defendants of Section 7 of the Clayton Act, 15 U.S.C. § 18. Florida brings this action under Section 16 of the Clayton Act, 15 U.S.C. § 26, to prevent and restrain the violation by Defendants of Section 7 of the Clayton Act, 15 U.S.C. § 18.

4. Defendants Waste Management and Allied are located in and transact business in the District of Columbia. Venue is therefore proper in this District under Section 12 of the

Clayton Act, 15 U.S.C. § 22 and 28 U.S.C. § 1391(c).

5. Defendants Waste Management and Allied collect municipal solid waste from residential, commercial, and industrial customers. In their waste collection businesses, Waste Management and Allied make sales and purchases in interstate commerce, ship waste in the flow of interstate commerce, and engage in activities that substantially affect interstate commerce. The Court has jurisdiction over this action and over the parties pursuant to 15 U.S.C. § 22 and 28 U.S.C. §§ 1331 and 1337.

## II.

## DEFINITIONS

6. "Broward County" means Broward County, Florida.

7. "MSW" means municipal solid waste, a term of art used to describe solid putrescible waste generated by households and commercial establishments such as retail stores, offices, restaurants, warehouses, and non-manufacturing activities in industrial facilities. MSW does not include special handling waste (*e.g.,* waste from manufacturing processes, regulated medical waste, sewage, and sludge), hazardous waste, or waste generated by construction or demolition sites.

8. "Small container commercial hauling" means the business of collecting MSW from commercial and industrial accounts, usually in "dumpsters" (*i.e.,* a small container with one to ten cubic yards of storage capacity), and transporting or "hauling" such waste to a disposal site by use of a front-end or rear-end load truck. Typical commercial waste collection customers include office and apartment buildings and retail establishments (*e.g.,* stores and restaurants). Small container commercial hauling, as used herein, does not include collection of roll-off

containers.

## III.

## DEFENDANTS AND THE TRANSACTION

9. Waste Management is a Delaware corporation with its principal office in Houston, Texas. Waste Management is the nation's largest waste hauling company. It is engaged in providing waste collection and disposal services throughout the United States. In 2002, Waste Management reported total revenues of approximately $11.1 billion.

10. Allied is a Delaware corporation with its principal office in Scottsdale, Arizona. Allied is the nation's second largest waste hauling company. It is engaged in providing waste collection and disposal services throughout the United States. In 2002, Allied reported total revenues of approximately $5.5 billion.

11. On August 15, 2003, Defendants Waste Management and Allied entered into an asset purchase agreement and a stock purchase agreement pursuant to which Waste Management would acquire from Allied, *inter alia*, small container commercial hauling assets in Broward County, Florida.

## IV.

## TRADE AND COMMERCE

### A. The Relevant Service Market

12. Waste collection firms, or haulers, collect MSW from residential, commercial, and industrial establishments and transport the waste to a disposal site, such as a transfer station, landfill, or incinerator, for processing and disposal. Private waste haulers typically contract directly with customers for the collection of waste generated by commercial accounts. MSW

generated by residential customers, on the other hand, is often collected either by local governments or by private haulers pursuant to contracts bid by, or franchises granted by, municipal authorities.

13. Small container commercial hauling differs in many important respects from the collection of residential or other types of waste. An individual commercial customer typically generates substantially more MSW than a residential customer. To handle this high volume of MSW efficiently, haulers provide commercial customers with dumpsters for storing the waste. Haulers organize their commercial accounts into routes, and collect and transport the MSW generated by these accounts in vehicles uniquely well suited for commercial waste collection – primarily front-end load trucks. Less frequently, haulers may use more maneuverable, but less efficient, rear-end load trucks, especially in those areas in which a collection route includes narrow alleyways or streets. Front-end load trucks are unable to navigate narrow passageways easily and cannot efficiently collect the waste located in them.

14. On a typical small container commercial hauling route, an operator drives a front-end load truck to the customer's container, engages a mechanism that grasps and lifts the container over the front of the truck, and empties the container into the vehicle's storage section where the waste is compacted and stored. The operator continues along the route, collecting MSW from each of the commercial accounts, until the vehicle is full. The operator then drives the front-end load truck to a disposal facility, such as a transfer station, landfill, or incinerator, and empties the contents of the vehicle. Often, the operator returns to the route and repeats the process.

15. In contrast to a commercial collection route, a residential waste collection route is

significantly more labor intensive. The customer's MSW is stored in much smaller containers (*e.g.,* garbage bags or trash cans) and instead of front-end load trucks, waste collection firms routinely use rear-end load or side-load trucks manned by larger crews (usually, two-person or three-person teams). On residential routes, crews generally hand-load the customer's MSW, typically by tossing garbage bags and emptying trash cans into the vehicle's storage section. Because of the differences in the collection processes, residential customers and commercial customers usually are organized into separate routes. Likewise, other types of collection activities, such as the use of roll-off containers (typically used for construction debris) and the collection of liquid or hazardous waste, are rarely combined with commercial waste collection. This separation of routes is due to differences in the hauling equipment required, the volume of waste collected, health and safety concerns, and the ultimate disposal option used.

16. The differences in the types and volume of MSW collected and in the equipment used in collection services distinguish small container commercial hauling from all other types of waste collection activities. These differences mean that small container commercial hauling firms can profitably increase their charges for small container commercial hauling services without losing significant sales or revenues to firms engaged in the provision of other types of waste collection services. Thus, small container commercial hauling is a line of commerce, or relevant service, for purposes of analyzing the effects of the acquisition under Section 7 of the Clayton Act.

**B. The Relevant Geographic Market**

17. Small container commercial hauling services are generally provided in highly localized areas because to operate efficiently and profitably, a hauler must have sufficient

density in its commercial waste collection operations *(i.e.,* a large number of commercial accounts that are reasonably close together). In addition, a front-end load or rear-end load vehicle cannot be efficiently driven long distances without collecting significant amounts of MSW, which makes it economically impractical for a small container commercial hauling firm to service metropolitan areas from a distant base. Haulers, therefore, generally establish garages and related facilities within each major local area served.

18. Generally, haulers compete for small container commercial hauling customers in "open" competition or through competition for municipal franchises. In open competition work, a hauler competes for individual customers, whereas in franchise work, the hauler is awarded a municipal contract that permits the hauler to provide service to all of the small container commercial customers in that municipality. The municipality decides whether it will grant a franchise or allow haulers to compete for customers in open competition.

19. Local small container commercial hauling firms in Broward County can profitably increase prices to customers in the open areas of Broward County-that is, those not covered by a municipal franchise-without losing sales to a municipal franchise, or to more distant competitors. The open areas of Broward County is a section of the country, or relevant geographic market, for purposes of analyzing the effects of the acquisition under Section 7 of the Clayton Act.

### C. Reduction in Competition As a Consequence of the Acquisition

20. Defendants Waste Management and Allied directly compete to provide small container commercial hauling services for open competition in open areas of Broward County, Florida. Waste Management and Allied each account for a substantial share of total revenues

from commercial waste collection services in Broward County.

21. The proposed acquisition would reduce from three to two the number of significant firms that compete to provide small container commercial hauling services in open areas of Broward County, Florida. After the acquisition, Waste Management would control over 68 percent of total market revenues, which exceed $40 million annually. Using a standard measure of market concentration called the "HHI" (defined and explained in Appendix A), the post-merger HHI for small container commercial hauling would be approximately 5490, an increase of 2063 points over the pre-merger HHI of 3428.

**D. Entry Into Commercial Waste Collection of MSW**

22. Significant new entry into small container commercial hauling business is difficult and time-consuming. A new entrant into small container commercial hauling cannot provide a significant competitive constraint on the prices charged by market incumbents until it achieves minimum efficient scale and operating efficiencies comparable to existing firms. In order to obtain a comparable operating efficiency, a new firm must achieve route density similar to existing firms. However, an incumbent's use of price discrimination and long-term contracts prevents new entrants from winning a large enough base of customers to achieve efficient routes in sufficient time to constrain the post-acquisition firm from significantly raising prices. Differences in the service provided by an incumbent hauler to each customer permit the incumbent to meet competition easily from new entrants by pricing its services lower to any individual customer that wants to switch to the new entrant. An incumbent's use of three-to-five year contracts, which may contain large liquidated damage provisions for contract termination, automatically renew, or permit specified price increases, make it more difficult for a customer to

switch to a new hauler and obtain lower prices for its collection service. These contracts increase the cost and time required by an entrant to form an efficient route, reducing the likelihood that the entrant will ultimately be successful.

### E. Harm to Competition

23. The acquisition of Allied's small container commercial hauling assets by Waste Management would remove a significant competitor in the small container commercial hauling business in a market that is already highly concentrated and difficult to enter. In this market, the resulting substantial increase in concentration, loss of competition, and absence of any reasonable prospect of significant new entry or expansion by market incumbents likely will result in higher prices for small container commercial hauling services.

## V.

## VIOLATION ALLEGED

24. Waste Management's proposed acquisition of Allied's small container commercial hauling assets in Broward County, Florida will lessen competition substantially and tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act.

25. The transaction likely will have the following effects, among others:

a. competition for small container commercial hauling services in open areas of Broward County, Florida will be lessened substantially; and

b. prices charged by small container commercial hauling firms in open areas of Broward County, Florida will likely increase.

## VI.

## REQUESTED RELIEF

Plaintiffs request:

1. That Waste Management's proposed acquisition of Allied's small container commercial hauling assets in Broward County, Florida be adjudged and decreed to be unlawful and in violation of Section 7 of the Clayton Act;

2. That Defendants be permanently enjoined from carrying out the acquisition of small container commercial hauling assets in the asset purchase and stock purchase agreements dated August 15, 2003, or from entering into or carrying out any agreement, understanding, or plan, the effect of which would be to exchange those assets between the Defendants;

3. That Plaintiffs receive such other and further relief as the case requires and the Court deems proper; and

4. That Plaintiffs recover the costs of this action.

Dated: October 14, 2003

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

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## APPENDIX A

## HERFINDAHL-HIRSCHMAN INDEX CALCULATIONS

"HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty, and twenty 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 and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise antitrust concerns under the Horizontal Merger Guidelines issued by the U.S. Department of Justice and the Federal Trade Commission. See *Merger Guidelines* §1.51.