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 NEW JERSEY Division of Criminal Justice Antitrust and Procurement Fraud Bureau P.O. Box 085 Trenton, NJ 08625-0085, Plaintiffs, v. WASTE MANAGEMENT, INC., 1001 Fannin Street, Suite 4000 Houston, TX 77002, and ALLIED WASTE INDUSTRIES, INC., 15880 Greenway-Hayden Loop, Suite 100 Scottsdale, Arizona 85260, Defendants.	Case No. 1:03CV01409 JUDGE: Gladys Kessler DECK TYPE: ANTITRUST DATE STAMP: 06/27/2003

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 New Jersey ("New Jersey"), 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 voting securities and waste hauling and disposal 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 asset and stock purchase agreements dated January 29, 2003, Waste Management plans to acquire from Allied certain voting securities and waste hauling and disposal assets. The proposed transaction would lessen competition substantially as a result of Waste Management's acquisition of the following: (1) hauling assets in Pitkin County, Colorado; (2) hauling assets in Garfield County, Colorado; (3) hauling assets in Augusta, Georgia; (4) hauling assets in Myrtle Beach, South Carolina; (5) hauling assets in Morris County, New Jersey; (6) hauling assets in Bergen and Passaic Counties, New Jersey; (7) voting securities and disposal assets serving Bergen and Passaic Counties, New Jersey; and (8) disposal assets in Tulsa, Oklahoma.

2. Defendants Waste Management and Allied are two of only a few significant providers of waste collection or disposal services in each of the identified areas. Unless the acquisition is enjoined, consumers of waste collection or disposal services in these areas 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. This action is filed by the United States 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. New Jersey 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, and they own and operate transfer stations, landfills, and incinerators which process and dispose of municipal solid waste. In their waste collection and disposal businesses, Waste Management and Allied make sales and purchases in interstate commerce, ship waste in the flow of interstate commerce, and engage in activities substantially affecting 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. "Augusta, Georgia area" means Columbia, Richmond, McDuffie, Lincoln, and Warren Counties, Georgia.

7. "Bergen and Passaic Counties, New Jersey disposal area" means Bergen and Passaic Counties, New Jersey and areas within 10 miles of these counties.

8. "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.

9. "Myrtle Beach, South Carolina area" means Horry and Georgetown Counties, South Carolina.

10. "Small container commercial waste collection service" 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).

11. "Transfer station" means an intermediate disposal site, often used in more densely populated areas, for the processing and temporary storage of solid waste before transfer, in bulk, to more distant facilities for final disposal.

12. "Tulsa and Muskogee, Oklahoma area" means Muskogee, Rogers, Tulsa, and Wagoner Counties, Oklahoma.

III.

DEFENDANTS AND THE TRANSACTION

13. Waste Management is a Delaware corporation with its principal office in Houston, Texas. Waste Management is the nation's largest waste hauling and disposal 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.

14. Allied is a Delaware corporation with its principal office in Scottsdale, Arizona. Allied is the nation's second largest waste hauling and disposal 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.

15. On January 29, 2003, Defendants Waste Management and Allied entered into asset and stock purchase agreements pursuant to which Waste Management would acquire from Allied, *inter alia*, certain voting securities and waste hauling or disposal assets in the areas of Pitkin County, Colorado; Garfield County, Colorado; Augusta, Georgia; Myrtle Beach, South Carolina; Morris County, New Jersey; Bergen and Passaic Counties, New Jersey; and Tulsa and Muskogee, Oklahoma.

IV.

TRADE AND COMMERCE

A. The Relevant Service Markets

Small Container Commercial Waste Collection Service

16. 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.

17. Small container commercial waste collection 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 ("FEL") trucks. Less frequently, haulers may use more maneuverable, but less efficient, rear-end load ("REL") trucks, especially in those areas in which a collection route includes narrow alleyways or streets. FEL trucks are unable to navigate narrow passageways easily and cannot efficiently collect the waste located in them.

18. On a typical small container commercial waste collection route, an operator drives a FEL vehicle 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 FEL 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.

19. 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 FEL trucks, waste collection firms routinely use REL 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.

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

Disposal of MSW

21. MSW has physical characteristics that readily distinguish it from other liquid or solid waste. MSW can be disposed of lawfully in a landfill, a transfer station, or an incinerator, and such facilities must be located on approved types of land and operated under prescribed procedures. Federal, state and local safety, environmental, zoning, and permit laws and regulations dictate critical aspects of storage, handling, transportation, processing, and disposal of MSW in each market. In Oklahoma, for instance, most MSW is disposed of in landfills which

are permitted and regulated by the state. Landfill permit restrictions often impose severe limitations on the type and amount of waste that can be deposited. In other areas, such as northern New Jersey, landfills are scarce because of significant population density and the limited availability of suitable land. Accordingly, most MSW is burned in an incinerator or brought to transfer stations where it is compacted and transported to a more distant permanent disposal site. Anyone who fails to dispose of MSW in a lawful manner can be subject to severe civil and criminal penalties.

22. Because of the strict laws and regulations that govern the disposal of MSW, there are no good substitutes for MSW disposal. Firms that compete in the disposal of MSW can profitably increase their charges to haulers of MSW without losing significant sales to any other firms. Thus, disposal of MSW 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 Markets

Small Container Commercial Waste Collection Service

23. Small container commercial waste collection 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 FEL or REL vehicle cannot be efficiently driven long distances without collecting significant amounts of MSW, which makes it economically impractical for a small container commercial waste collection firm to service metropolitan areas from a distant base. Haulers, therefore, generally establish garages and related facilities within each major local area served.

24. Local small container commercial waste collection firms in the areas of Pitkin County, Colorado; Garfield County, Colorado; Augusta, Georgia; Myrtle Beach, South Carolina; Morris County, New Jersey; and Bergen and Passaic Counties, New Jersey can profitably increase charges to local customers without losing significant sales to more distant competitors. Each of these areas 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.

Disposal of MSW

25. MSW is generally transported by collection trucks to landfills and transfer stations, and the availability of disposal sites close to a hauler's routes is a major factor that determines a hauler's competitiveness and profitability. The cost of transporting waste to a disposal site is often a substantial component of the cost of disposal. Although, where available, MSW can be transported to distant landfills through transfer stations using large transfer trailer trucks, the use of a transfer stations adds fixed transportation and processing costs. The cost advantage of local landfills limits the areas where MSW can be economically transported and disposed of by haulers and creates localized markets for MSW disposal services.

26. Due to the high costs of transporting MSW and the substantial travel time to other disposal facilities based on distance, natural barriers, and congested roadways, haulers of MSW generated in Bergen and Passaic Counties, New Jersey are generally limited to disposing their waste at transfer stations in the Bergen and Passaic Counties, New Jersey disposal area (i.e., transfer stations within Bergen or Passaic Counties or within 10 miles of these counties). In the event of a small but significant increase in the price of the disposal of MSW in this area, haulers of MSW generated in Bergen and Passaic Counties, New Jersey would not turn to disposal

facilities outside this area. Firms that compete for the disposal of MSW generated in Bergen and Passaic Counties, New Jersey can profitably increase their charges for disposal of MSW generated in this area without losing significant sales to more distant disposal sites. The Bergen and Passaic Counties, New Jersey disposal area is therefore a section of the country, or relevant geographic market, for purposes of analyzing the competitive effects of the acquisition under Section 7 of the Clayton Act.

27. Due to the high costs of transporting MSW and the substantial travel time to other disposal facilities based on distance, natural barriers, and congested roadways, haulers of MSW in the Tulsa and Muskogee, Oklahoma area are limited to disposing their waste at disposal sites within roughly 25 miles of Tulsa and Muskogee, Oklahoma. In the event of a small but significant increase in the price of the disposal of MSW in the Tulsa and Muskogee, Oklahoma area, haulers of MSW generated in the area would not turn to disposal facilities outside the area. Firms that compete for the disposal of MSW generated in the Tulsa and Muskogee, Oklahoma, area can profitably increase their charges for disposal of MSW generated in this area without losing significant sales to more distant disposal sites. The Tulsa and Muskogee, Oklahoma, area is therefore a section of the country, or relevant geographic market, for purposes of analyzing the competitive effects of the acquisition under Section 7 of the Clayton Act.

C. Reduction in Competition As a Consequence of the Acquisition

28. Defendants Waste Management and Allied directly compete in small container commercial waste collection service in a number of markets nationwide, including the areas of Pitkin County, Colorado; Garfield County, Colorado; Augusta, Georgia; Myrtle Beach, South Carolina; Morris County, New Jersey; and Bergen and Passaic Counties, New Jersey. In each of

these markets, Waste Management and Allied each account for a substantial share of total revenues from commercial waste collection services.

29. Defendants Waste Management and Allied directly compete in the disposal of waste in a number of markets nationwide, including the Tulsa and Muskogee, Oklahoma area, and the Bergen and Passaic Counties, New Jersey disposal area. In these markets, Waste Management and Allied each account for a substantial share of MSW disposal capacity.

Pitkin County, Colorado

30. In Pitkin County, Colorado, the proposed acquisition would reduce from two to one the number of significant firms that compete in the collection of small container commercial waste. After the acquisition, Waste Management would control over 89 percent of total market revenues, which exceed $1.8 million annually. There are no other significant small container commercial waste competitors in this market. Using a standard measure of market concentration called the "HHI" (defined and explained in Appendix A), the post-merger HHI for small container commercial waste collection would be approximately 7965, an increase of 3060 points over the pre-merger HHI of 4905.

Garfield County, Colorado

31. In Garfield County, Colorado, the proposed acquisition would reduce from two to one the number of significant firms that compete in the collection of small container commercial waste. After the acquisition, Waste Management would control over 93 percent of total market revenues, which approximate $3.2 million annually. There are no other significant small container commercial waste competitors in this market. The post-merger HHI for small container commercial waste collection would be roughly 8792, an increase of 4374 points over

the pre-merger HHI of 4418.

Augusta, Georgia

32. In Augusta, Georgia, the proposed acquisition would reduce from three to two the number of significant firms that compete in the collection of small container commercial waste. After the acquisition, Waste Management would control over 63 percent of total market revenues, which approximate $7.5 million annually. The post-merger HHI for small container commercial waste collection would be approximately 5355, an increase in excess of 2000 points over the pre-merger HHI of 3341.

Myrtle Beach, South Carolina Area

33. In the Myrtle Beach, South Carolina area, the proposed acquisition would reduce from three to two the number of significant firms that compete in the collection of small container commercial waste. After the acquisition, Waste Management would control over 58 percent of total market revenues, which exceed $7.4 million annually. The post-merger HHI for small container commercial waste collection would be approximately 4964, an increase of 1668 points over the pre-merger HHI of 3296.

Morris County, New Jersey

34. In Morris County, New Jersey, the proposed acquisition would reduce from four to three the number of significant firms that compete in the collection of small container commercial waste. After the acquisition, Waste Management would control over 41 percent of total market revenues, which exceed $14 million annually. The post-merger HHI for small container commercial waste collection would be approximately 2535, an increase of 798 points over the pre-merger HHI of 1737.

Bergen and Passaic Counties, New Jersey

35. In Bergen and Passaic Counties, New Jersey, the proposed acquisition would reduce from four to three the number of significant firms that compete in the collection of small container commercial waste. After the acquisition, Waste Management would control over 47 percent of total market revenues, which exceed $38 million annually. The post-merger HHI for small container commercial waste collection would be approximately 2632, an increase of 970 points over the pre-merger HHI of 1662.

36. The proposed acquisition would also reduce from four to three the number of significant competitors for the disposal of MSW in the Bergen and Passaic Counties, New Jersey disposal area. Defendants Waste Management and Allied operate five transfer stations in this market and collectively control over 55 percent of the available disposal capacity for Bergen and Passaic Counties. Annual revenue from disposal of waste in Bergen and Passaic Counties, New Jersey is over $50 million. The post-merger HHI for disposal would be over 3500, an increase in excess of 1100 points over the pre-merger HHI of 2359.

Tulsa and Muskogee, Oklahoma Area

37. In the Tulsa and Muskogee, Oklahoma area, the proposed acquisition would reduce from three to two the number of significant competitors for the disposal of MSW. There are currently four owners of the six landfills which service the Tulsa and Muskogee, Oklahoma area. Two of the six landfills are expected to close in the near future, leaving four landfills owned by three companies to service haulers in the area. After the acquisition, Waste Management would own three of the four remaining landfills in this area.

D. Entry Into Commercial Waste Collection of MSW

38. Significant new entry into small container commercial waste collection service is difficult and time-consuming in the Pitkin County, Colorado; Garfield County, Colorado; Augusta, Georgia; Myrtle Beach, South Carolina; Morris County, New Jersey; and Bergen and Passaic Counties, New Jersey areas. A new entrant into small container commercial waste collection service 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. Entry Into Disposal of MSW

39. Significant new entry into the disposal of MSW in the Tulsa and Muskogee, Oklahoma area, and the Bergen and Passaic Counties, New Jersey disposal area would be

difficult and time-consuming. Obtaining a permit to construct a new disposal facility or to expand an existing one is a costly and time-consuming process that typically takes many years to conclude. Local public opposition often increases the time and uncertainty of successfully permitting a facility. MSW landfills can accept waste only up to their permitted capacity, and each landfill has a finite life span.

40. Obtaining or expanding a landfill in the Tulsa and Muskogee, Oklahoma area is difficult and time-consuming because of the scarcity of suitable land, local resident opposition, environmental concerns, and government regulation.

41. In the Bergen and Passaic Counties, New Jersey disposal area, where it is not practical to construct and permit a landfill, it is necessary to use an incinerator or a transfer station to dispose of waste. Many of the problems associated with the permitting and construction of a landfill likewise make it difficult to permit and construct a transfer station or incinerator.

42. In the Tulsa and Muskogee, Oklahoma area, and the Bergen and Passaic Counties, New Jersey disposal area, entry by a new MSW disposal facility would be costly and time-consuming, and unlikely to prevent market incumbents from significantly raising prices for the disposal of MSW following the acquisition.

F. Harm to Competition

43. The acquisition of Allied voting securities and assets by Waste Management would remove a significant competitor in small container commercial waste collection service and the disposal of MSW in already highly concentrated and difficult-to-enter markets. In each

of these markets, 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 collection of small container commercial waste or the disposal of MSW.

V.

VIOLATION ALLEGED

44. Waste Management's proposed acquisition of certain Allied voting securities and waste hauling or disposal assets in the areas of Pitkin County, Colorado; Garfield County, Colorado; Myrtle Beach, South Carolina; Augusta, Georgia; Morris County, New Jersey; Bergen and Passaic Counties, New Jersey; and Tulsa and Muskogee, Oklahoma likely will lessen competition substantially and tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act.

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

a. competition in small container commercial waste collection service in the Augusta, Georgia; Myrtle Beach, South Carolina; Morris County, New Jersey; and Bergen and Passaic Counties, New Jersey areas will be lessened substantially;

b. competition in small container commercial waste collection service in the Pitkin County, Colorado, and Garfield County, Colorado areas will be eliminated;

c. prices charged by small container commercial waste collection firms in the Pitkin County, Colorado; Garfield County, Colorado; Augusta, Georgia; Myrtle Beach, South Carolina; Morris County, New Jersey; and Bergen and Passaic Counties, New Jersey areas will likely increase;

d. competition in the disposal of MSW in the Tulsa and Muskogee, Oklahoma area, and the Bergen and Passaic Counties, New Jersey disposal area will be lessened substantially; and

e. prices for disposal of MSW in the Tulsa and Muskogee, Oklahoma area, and the Bergen and Passaic Counties, New Jersey disposal area will likely increase.

VI.

REQUESTED RELIEF

Plaintiffs request:

1. That Waste Management's proposed acquisition of Allied's hauling assets in the Pitkin County, Colorado; Garfield County, Colorado; Augusta, Georgia; Myrtle Beach, South Carolina; Morris County, New Jersey; and Bergen and Passaic Counties, New Jersey areas; and Waste Management's proposed acquisition of Allied's disposal assets, or voting securities, or both in the Tulsa and Muskogee, Oklahoma area, and the Bergen and Passaic Counties, New Jersey disposal area 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 voting securities and assets in the asset and stock purchase agreements dated January 29, 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: June 27, 2003.

Respectfully submitted,

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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.