considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e). As the Court of Appeals for the District of Columbia Circuit held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft,* 56 F.3d 1448, 1458–62 (D.C. Cir. 1995). The courts have recognized that the term '''public interest' take[s] meaning from the purposes of the regulatory legislation.'' *NAACP* v. *Federal Power Comm'n,* 425 U.S. 662, 669 (1976). Since the purpose of the antitrust laws is to preserve ''free and unfettered competition as the rule of trade,'' *Northern Pacific Railway Co.* v. *United States,* 356 U.S. 1, 4 (1958), the focus of the ''public interest'' inquiry under the APPA is whether the proposed Final Judgment would serve the public interest in free and unfettered competition. *United States* v. *American Cyanamid Co.,* 719 F.2d 558, 565 (2d Cir. 1983), *cert. denied,* 465 U.S. 1101 (1984); *United States* v. *Waste Management, Inc.,* 1985–2 Trade Cas. ¶66,651, at 63,046 (D.D.C. 1985). In conducting this inquiry, ''the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.''[5] Rather,

[a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.,* 1977–1 Trade Cas. ¶61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988), *quoting United States* v. *Betchtel Corp.,* 648 F.2d 660, 666 (9th Cir.), *cert denied,* 454 U.S. 1083 (1981). *See also Microsoft,* 56 F.3d 1448 (D.C. Cir. 1995). Precedent requires that:

the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is '*within the reaches of the public interest.*' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[6]

A proposed consent decree in an agreement between the parties which is reached after exhaustive negotiations and discussions. Parties do not hastily and thoughtlessly stipulate to a decree because, in doing so, they

waive their right to litigate the issues involved in the case and thus save themselves the time, expense, and inevitable risk of litigation. Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and the elimination of risk, the parties each give up something they might have won had they proceeded with the litigation.

United States v. *Armour & Co.,* 402 U.S. 673, 681 (1971).

The proposed Final Judgment therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a proposed final judgment requires a standard more flexible and less strict that the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted).''[7]

VIII. Determinative Documents

The only determinative document, within the meaning of the APPA, that was considered by the United States in formulating the proposed Final Judgment is the preliminary Letter of Intent between defendant ECC and Thiele Kaolin Company, a copy of which is attached as Exhibit A.

Respectfully submitted.

Dated: May 24, 1999.

For Plaintiff United States of America:

Patricia G. Chick,

D.C. Bar #266403, Trial Attorney, U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Suite 3000, Washington, DC 20530, Telephone: (202) 307–0946, Facsimile: (202) 514–9033.

Exhibit A

Exhibit A cannot be published in the **Federal Register.** A copy can be obtained from the Documents Office of the U.S. Department of Justice, Antitrust Division, 325 7th Street, N.W., Room 215, Washington, D.C. 20530, (202) 514–2481.

[FR Doc. 99–14470 Filed 6–10–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil No. 98 CV 7168 (FB)(MDG)]

United States, State of New York, Commonwealth of Pennsylvania and State of Florida v. Waste Management, Inc., Ocho Investment Corp., Eastern Environmental Services, Inc.; Response to Public Comments on Antitrust Consent Decree

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that on May 21, 1999, the United States filed its responses to public comments on the proposed Final Judgment in *United States* v. *Waste Management, Inc. and Eastern Environmental Services, Inc.,* Civil No. 98 CV 7168 (FB)(MDG) (E.D.N.Y., filed Dec. 31, 1998), with the United States District Court in Brooklyn, New York.

On November 17, 1998, the United States, New York, Pennsylvania and Florida filed a Complaint, which alleged that Waste Management's proposed acquisition of Eastern Environmental

[5] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.,* 406 F.Supp. 713, 715 (D.Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. 93–1463, 93rd Cong. 2d Sess. 8–9, *reprinted in* (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[6] *United States* v. *Bechtel,* 648 F.2d at 666 (citations omitted) (emphasis added); *see United States* v. *BNS, Inc.,* 858 F.2d at 463; *United States* v. *National Broadcasting Co.,* 449 F. Supp. 1127, 1143 (C.D. Cal. 1979); *United States* v. *Gillette Co.,* 406 F. Supp. at 716. *See also United States* v. *American Cyanamid Co.,* 719 F.2d at 565.

[7] *United States* v. *American Tel. and Tel Co.,* 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom. Mayland* v. *United States,* 460 U.S. 1001 (1983), Quoting *United States* v. *Gillette Co., supra,* 406 F. Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985).

would violate Section 7 of the Clayton Act, 15 U.S.C. 18, by substantially lessening competition in waste collection and/or disposal in nine markets around the country, including the New York, NY (disposal of commercial and residential municipal solid waste); Pittsburgh and Bethlehem/Allentown, PA (disposal of municipal solid waste); Carlisle/Chambersburg, PA area (collection of commercial waste and disposal of municipal solid waste); and Miami/Ft. Lauderdale, and suburban Tampa, FL (collection of commercial waste). The proposed Final Judgment, filed on December 31, 1998, requires Waste Management and Eastern to divest commercial waste collection and/or municipal solid waste disposal operations in each of the geographic areas alleged in the Amended Complaint.

Public comment was invited within the statutory 60-day comment period. The public comments and the United States's responses thereto are hereby published in the **Federal Register** and have been filed with the Court. Copies of the Amended Complaint, Hold Separate Stipulation and Order, proposed Final Judgment, Competitive Impact Statement, and the United States's Certificate of Compliance wit Provisions of the Antitrust Procedures and Penalties Act (to which the public comments and the United States's responses are attached) are available for inspection in Room 215 of the Antitrust Division, Department of Justice, 325 7th Street, NW, Washington, D.C. 20530 (telephone: 202–514–2481) and at the Office of the Clerk of the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201.

Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations and Merger Enforcement, Antitrust Division.

United States's Certificate of Compliance With Provisions of the Antitrust Procedures and Penalties Act

The United States of America hereby certified that it has complied with the provisions of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), and states;

1. The Complaint in this case was filed on November 17, 1998, and an Amended Complaint was filed on December 1, 1998. The proposed Final Judgment (''Judgment'') and the Hold Separate Stipulation and Order (''Hold Separate Order'') were filed on December 31, 1998. The government's Competitive Impact Statement was filed on February 2, 1999.

2. Pursuant to 15 U.S.C. 16(b), the Judgment, Hold Separate Order, and Competitive Impact Statement were published in the **Federal Register** on February 26, 1999 (64 Fed. Reg. 9527). A copy of the notice is attached as Exhibit 1.

3. Pursuant to 15 U.S.C. 16(d), the United States furnished copies of the Amended Complaint, Hold Separate Order, proposed Final Judgment and Competitive Impact Statement to anyone requesting them.

4. Pursuant to 15 U.S.C. 16(c), a summary of the terms of the proposed Judgment and the Competitive Impact Statement were published in The New York Times, a newspaper of general circulation in New York, NY, and in the The Washington Post, a newspaper of general circulation in the District of Columbia. Copies of the certificates of publication from The New York Times and The Washington Post appear in Exhibit 2.

5. On January 11, 1999, the defendants—Waste Management, Inc., Eastern Environmental Services, Inc., and Ocho Acquisition Corporation—filed with the Court a joint statement describing their communications with employees of the United States Department of Justice concerning the proposed Final Judgment, as required by 15 U.S.C. 16(g).

6. During the 60-day comment period after publication of notice in the **Federal Register**, The New York Times and The Washington Post, the United States received five written comments on the proposed settlement. These comments were from: (a) the Pulaski County, Kentucky Solid Waste Management District; (b) the Environmental Committee of the Pocono Mountains Chamber of Commerce in Stroudsburg, Pennsylvania; (c) the Schuylkill County, Pennsylvania Office of Solid Waste and Resource Management; (d) the Monroe County, Pennsylvania Municipal Waste Management Authority; (e) Recycle Worlds Consulting Corporation of Madison, Wisconsin.

7. The United States evaluated and responded to each of the comments it received. The comments did not convince the United States that it should withdraw its consent to the proposed settlement. The complete text of the comments and the responses appear in Exhibits 3–7; they are summarized below.

A. The Pulaski County, KY Comment

The Pulaski County Solid Waste Management District complained that a combination of Waste Management and Eastern would substantially eliminate competition in the collection and disposal of the county's residential waste. In our response, we point out that Pulaski County has entered into a long-term contract for collection and disposal of its waste, which does not expire until sometime in the year 2002. Under these circumstances, we note, it is highly unlikely that the merger had eliminated any existing competition between the defendants in waste collection or disposal services. In our views, it is simply to early to predict whether the merger would eliminate any significant potential competition that may occur after the contract expires in 2002.

B. The Monroe County, PA Comments

The Monroe County Municipal Solid Waste Authority and the Pocono Mountains Chamber of Commerce, both based in Stoudsburg, PA, asserted that the governments should have sought and obtained divestiture relief that would eliminate the anticompetitive effects of the defendants' merger in Monroe County, Pennsylvania. In that market, these commentators point out, a combination of Waste Management and Eastern would control eighty percent of more of the collection and disposal of the county's municipal waste. In its response, the United States pointed out that the proposed Final Judgment requires the defendant to divest the Waste Management commercial hauling routes in the Scranton/Wilkes-Barre, PA area, which is about 30 miles from the major population center of Monroe Country, and that the earlier Final Judgment in *United States* v. *USA Waste Services, Inc. and Waste Management, Inc.*, No. 1:98 CV 1616 (N.D. Ohio, filed July 17, 1998), requires Waste Management to divest commercial waste hauling routes in the Allentown, PA area, which is only about 20 miles south of Monroe County. These divestiutes, once approved by the courts, would install in each of these areas one or more new competitors whose operations would be sufficiently close to provide a serious competitive check on the combination's ability to raise prices after consummating their merger.

C. The Schuylkill County Comment

The Schuylkill County Office of Solid Waste and Resource Management (''OSWRM''), based in Pottsville, PA, similarly complained that the governments should have sought and obtained divestiture relief that would eliminate the anticompetitive effects of the merger in Schuylkill County, PA. OSWRM alleged that the merger would leave Waste Management as the

dominant commercial waste hauler in Schuylkill County.

In our response, we pointed out that the United States did not seek relief with respect to commercial hauling in Schuylkill County because the amount of commerce was relatively small (Eastern's operations had less than $1 million in annual revenue), and Schuylkill County, like Monroe County, is reasonable close to two areas in which divestitures mandated by the pending final Judgment and the consent decree in USA Waste case would establish independent competitiors fully capable of disciplining an exercise of market power by Waste Management after it merges with Eastern.

D. The Recycle Worlds Consulting Corp. Comment

RecycleWorlds, a private waste industry consultant, expressed concern that the Final Judgment would not halt the wave of mega-mergers currently sweeping through the nation's waste industry. In this rapidly consolidating industry, some markets, RecycleWorlds explained, may become dominated by a handful of large integrated waste collection and disposal firms, and more prone to collusive price increases by the few remaining competitors. To prevent Waste Management from squeezing waste collection competitors by increasing the prices at landfills sites at which they dispose their waste, RecycleWorlds would require Waste Management to divest its waste collection operations or its waste disposal operations in any market in which it competes with Eastern. Failing that, RecycleWorlds urged the government not to approve any asset divestiture under the Judgment to any of the handful of major integrated waste firms, such as Republic, Allied or BFI. These firms may be more inclined to cooperate with Waste Management in raising prices in some markets in order to avoid potential price wars with Waste Management elsewhere.

In its response, the United States noted that it does not believe that requiring Waste Management to divest all collection or disposal operations in any overlap market would be more procompetitive than the divestitures ordered by the pending Judgment. Indeed, pursuing Recycle World's alternative may result in Waste Management obtaining vast market power in waste collection or in waste disposal services since, in effect, if Waste Management agrees to divest one line of business it can obtain an overwhelming market share in the other line. As to Recycle World's second point, the United States will not approve any proposed divestiture under the Judgment that may substantially lessen competition in any market. To that end, the Antitrust Division recently rejected Waste Management's proposal to divest these assets under the decree to Allied Waste Services, Inc. Allied, the nation's third largest waste industry firm, had agreed to acquire Browning-Ferris Industries, Inc., the industry's second firm. The pervasive competitive overlaps between the Allied/BFI operations and the disposal and collection operations ordered divested under the Judgment convinced the United States that the proposed divestiture would not advance competition in any market.

8. Pursuant to 15 U.S.C. 16(b)–(h), the United States has arranged to publish in the **Federal Register** by May 29, 1999, a copy of the comments and the United States's responses.

9. With these steps having been taken, the parties have fulfilled their obligations under the APPA. Pursuant to the Hold Separate Order that the Court entered on December 31, 1998, the Court may now enter the proposed Judgment, if it determines that the entry of the Judgment is in the public interest. For the reasons set forth in the Competitive Impact Statement, and in its responses to the public comments, the United States strongly believes that the Judgment is in the public interest and that the Court therefore promptly should enter it.

Dated: May 20, 1999.

Respectfully submitted,

Anthony E. Harris, Esquire (AH 5876)

U.S. Department of Justice, Antitrust Division, 1401 H Street, NW, Suite 3000, Washington, DC 20530, (202) 307–6583.

Exhibit 1

Exhibit 1 was unable to be published in the **Federal Register**. A copy can be obtained from the Documents Office of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW., Room 215, Washington, DC 20530, or call (202) 514–2481. It is can also be obtained from the **Federal Register**, Volume 64 No. 38, Page 9527–9541 dated Friday, February 26, 1999.

Exhibit 2

Exhibit 2 Advertising Order forms was unable to be published in the **Federal Register**. A copy can be obtained from the Document Office of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW, Room 215, Washington, DC or (202) 514–2481.

Exhibit 3

March 26, 1999.

J. Robert Kramer II,

Chief, Litigation II, Anti-Trust Division, United States Department of Justice, 1401 H Street N.W., Suite 3000, Washington, DC 20530

Re: *United States of America, State of New York, Commonwealth of Pennsylvania, and State of Florida vs. Waste Management, Inc., Ocho Acquisition Corp., and Eastern Environmental Services, Inc.*

United States District Court/Eastern District of New York Case Number: 98–7168

Dear Mr. Kramer: This letter will advise of my representation of the Pulaski County (KY) Solid Waste Management District. The District Board has approved a Resolution opposing the acquisition of Eastern Environmental Services, Inc., by Waste Management, Inc. The Resolution is enclosed, and is submitted to you pursuant to the public comment period, and should be included as comment on the acquisition and above-referenced litigation and proposed final judgment therein.

If you need any additional information relative to this matter, please do not hesitate to contact me at one of the above-listed telephone numbers or address. Thank you for your assistance in this regard.

Very truly yours,

Jeffrey Scott Lawless,

Travis, Pruitt & Lawless.

Enclosure: Resolution

cc:
Board Members
Solid Waste Coordinator

Resolution of the Board of the Pulaski County Solid Waste Management District

Whereas the Pulaski County Solid Waste Management District is a Solid Waste Management District established pursuant to the provisions of Chapter 109 of the Kentucky Revised Statutes, and as such is given the authority to operate and contract for services relative to the operation of solid waste management facilities, and said district is further given the authority under the Pulaski County Solid Waste Management Ordinance, to make, amend, revoke, and enforce reasonable rules and regulations, governing the storage, collection, transportation, processing, and disposal of solid waste, and shall prepare, update, implement, and maintain the Solid Waste Management Plan for the Pulaski County geographical area, said County being a political subdivision of the Commonwealth of Kentucky, with an estimated population of 56,000, and;

Whereas, as of or about 1996, there were within Pulaski County, Kentucky, two independent, locally owned entities engaged in the collection and transportation of solid waste, said entities being ''B & M Sanitation Service, Inc.'' and ''G & W Disposal, Inc.'' and since that time, said entities

have been acquired, either by merger or stock acquisition, by Waste Management Inc., and;

Whereas, as of 1999, there were five (5) landfills operating in the Commonwealth of Kentucky, within a one-hundred (100) mile radius of Pulaski County, which engage in the processing or disposal of solid waste, being more particularly identified (with the respective owners of each) as follows:

(1) Lilly, Kentucky (Waste Management, Inc.)
(2) Williamsburg, Kentucky (Waste Management, Inc.)
(3) Irvine, Kentucky (Waste Management, Inc.)
(4) Pulaski Landfill (Eastern Environmental Services, Inc.)
(5) Stanford, Kentucky (Republic)

and;

Whereas, the District is a party to an agreement with G & W Disposal, Inc., (now Waste Management, Inc.) for the provision of solid waste collection services to citizens and residents of Pulaski County, Kentucky, and the District is further a party to an Agreement with Pulaski Grading, Inc. (a subsidiary of Eastern Environmental Services, Inc.), for the provision of solid waste disposal services to and for the benefit of the citizens and residents of Pulaski county, Kentucky, and that said agreements expire by their terms during calendar year 2002, and;

Whereas, the United States Department of Justice and others have initiated an action in the United States District Court for the Eastern District of New York, styled *United States of America, State of New York, Commonwealth of Pennsylvania, and State of Florida* v. *Waste Management, Inc., Ocho Acquisition Corp., and Eastern Environmental Services, Inc.*, 98–7168, contesting the acquisition (hereinafter the ''Acquisition'') of Eastern Environmental Services, Inc. (hereinafter ''Eastern''), and Waste Management, Inc., (hereinafter ''Waste Management'') and according to the pleadings of record therein, the Acquisition ''would substantially reduce competition in disposal of municipal solid waste in'' five highly concentrated markets, ''and that it would substantially lessen competition in commercial waste collection services in four highly concentrated'' markets, and further, it is alleged that ''the loss of competition would likely result in consumers paying higher prices and receiving fewer or lesser quality services for the collection and disposal of waste'', and;

Whereas on December 31, 1998, the Plaintiffs in the aforementioned litigation filed a Proposed Settlement that would permit Waste Management to complete its acquisition of Eastern, but would require said Defendants to divest certain waste collection and disposal assets in such a way as to preserve competition in the market areas identified in the pleadings; and,

Whereas, pursuant to the Competitive Impact Statement filed of record in the aforementioned action:

> Significant new entry into [affected waste collection and disposal] markets would be difficult, time consuming, and unlikely to occur soon. Many customers of commercial waste collection firms have entered into ''Evergreen'' contracts, tieing them to a market incumbent for indefinitely long periods of time. In competing for uncommitted customers, market incumbents can price discriminate, i.e. selectively (and temporarily) charge unbeatably low prices to customers targeted by entrants, a tactic that would strongly discourage a would-be competitor for competing for such accounts, which, if won, may be very unprofitable to serve. The existence of long-term contracts are price discrimination substantially increases any would-be new entrant's costs and time necessary for it to build its customer base and obtain efficient scale and route density to become an effective competitor in the market.

and, the District does hereby adopt said statement as its own finding, as a correct and accurate statement of the nature of waste collection activity as its exists in Pulaski County, Kentucky, as the District has in the past entered into such extended contracts for the provision of collection and disposal services (specifically, the most recent contracts being of a ten year duration), and;

Whereas the District does hereby make a finding that the acquisition by Waste Management of aforementioned Pulaski County-area solid waste collectors, and the proposed acquisition by Waste Management of Eastern, significantly reduces the competitive options of the District and its citizens, for the collection and disposal of residential and commercial waste, and would likely result in an increase (or a refusal to negotiate further reductions) in the fees and charges for collection and disposal of the residential and commercial waste of the District and its citizens, and;

Whereas, as was noted in the Competitive Impact Statement, and the District does hereby find:

> Entry into the disposal of municipal solid waste is difficult. Government permitting laws and regulations make obtaining a permit to construct or expand a disposal site an expensive and time-consuming task. Significant new entry into these markets is unlikely to occur in any reasonable period of time, and is not likely to prevent exercise of market power after the [Acquisition].

and

> [In the Pulaski County geographic area] Waste Management's acquisition of Eastern would remove a significant competitor in disposal of municipal solid waste. With the elimination of Eastern, [Waste Management] will no longer compete as aggressively since it will not have to worry about losing business to Eastern. The resulting substantial increase in concentration, loss of competition, and absence of reasonable prospect of significant new entry or expansion by market incumbents likely ensure that customers will pay substantially higher prices for disposal of municipal solid waste, collection of [residential or] commercial waste, or both, following the [Acquisition], and;

Whereas, the District desires to eliminate the anti-competitive effects of the Acquisition in collection and disposal of municipal solid waste from Pulaski County, Kentucky.

Now, therefore, be it hereby resolved, by the Board of the Pulaski County Solid Waste Management District, as follows:

(A) That the Pulaski County Solid Waste Management District opposes and objects to the Acquisition of Eastern Environmental Service, Inc., by Waste Management, Inc.

(B) The the Pulaski County Solid Waste Management District respectfully requests that the United States Department of Justice, Anti-Trust Division, modify the proposed Final Judgment as follows:

> 1. That Eastern Environmental Services, Inc., be required to sell, on or before a reasonable date certain, its interest in the Pulaski Landfill, (located at Dixie Ben Road, Pulaski County, Kentucky, being License Number 100–00008, issued by the Natural Resources and Environmental Protection Cabinet, Division on Waste Management), to the Pulaski County Solid Waste Management District, Pulaski County, Kentucky, or any other purchaser acceptable to both the United States, the Commonwealth of Kentucky, and the Pulaski County Solid Waste Management District.

Or alternatively:

> 2. That Waste Management, Inc. or Eastern Environmental Services, Inc., be required to open and obtain a continuous operating permit issued by the Kentucky Department of Natural Resources for the operation of a landfill to be located in Pulaski County, Kentucky, and that said landfill be thereupon leased to the District for a term of years, subject to the approval of the Commonwealth of Kentucky, and the District.

Or alternatively:

> 3. That Waste Management be required to develop, construct, and implement an alternative solid waste management or disposal facility, whereby the efficiency of extracting ''recovered material'' is increased, waste requiring disposal is reduced, solid waste is managed in an environmentally

protected manner, and solid waste is converted to beneficial by-products or materials; and that such facility be operated jointly with, or solely by, the Pulaski County Solid Waste Management District, for a period not to exceed twenty years.

(C) That this Resolution be communicated to the United States Department of Justice, Anti-Trust Division, to the attention of the following: J. Robert Kramer, II, Chief, Litigation II, Anti-Trust Division, United States Department of Justice, 1401 H Street N.W., Suite 3000, Washington, DC 20503.

and that said comments be evaluated by the United States Department of Justice, so that the concerns of the residents and citizens of Pulaski County, Kentucky may be addressed and included in such manners as the United States Department of justice Antitrust Division may, under the circumstances, consider appropriate.[1]

Adopted this the 18th day of March, 1999.

Pulaski County Solid Waste Management District

Charles T. Estes,

Board Chairman.

Attest: Donna Turner,

Secretary.

Jeffrey Scott Lawless, Attorney,

Travis, Pruitt & Lawless, P.O. Drawer 30, Somerset, KY 42502–0030.

Jeffrey Scott Lawless, Esquire,

Travis, Pruitt & Lawless, 207 East Mt. Vernon Street, Post Office Drawer 30, Somerset, KY 42502–0030

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. Lawless: This letter responds to your letter of March 26, 1999 commenting on the Final Judgment in this case on behalf of your client, the Pulaski County, Kentucky Solid Waste Management District. The Amended Compliant in this case charged, among other things, that Waste Management's acquisition of Eastern Environmental would substantially lessen competition in collection or disposal of municipal solid waste in 12 markets in New York, Pennsylvania, and Florida. The proposed consent decree, now pending in federal district court in Brooklyn, New York, would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the markets alleged in the Complaint.[1] This relief, if approval by the Court, would establish one or more new competitors in each of the markets for which relief was sought, replacing the competitive rivalry lost when Waste Management acquired Eastern Environmental.

In your letter, you express concern that neither the complaint nor the proposed Judgment address the competitive effects of the merger in the collection and disposal of residential waste in Pulaski County, Kentucky. A combination of Waste Management and Eastern Environmetal would control four of the five landfills within a 100 mile radius radius of Pulaski County.

The United States did not allege that a combination of Waste Management and Eastern Environmental would raise serious competitive problems in the collection and disposal of Pulaski County because the county has long-term agreements with Waste Management and with Eastern Environmental, which provide that the residential waste will be collected by Waste Management and that disposal of that waste will be handled by Eastern Environmental. These agreements, which do not expire until at 2002, effectively preclude competition between Waste Management and Eastern for the county's collection and disposal of waste. In addition, in this case, we believe that it would be difficult to predict what the competitive landscape will look like in 2002 when Pulaski County is once again in the market for a firm to collect and to dispose of its resident's waste. For that reason, we were not prepared to allege, or attempt to prove, that the proposed merger would be anticompetitive in Pulaski County, KY.

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.

Exhibit 4

J. Robert Cramer, II

Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street NW, Suite 3000, Washington, DC 20530

cc: Pennsylvania Attorney General Fisher

Dear J. Robert Cramer, II: The Pocono Mountains Chamber of Commerce Environmental Committee would like to offer its comments on the issue referenced above.

Our Committee serves the Chamber of Commerce's Executive Committee and Board of Directors, reviewing environmental issues and advising on appropriate Executive Committee and Board actions. The Environmental Committee also comments directly, where appropriate, on environmental issues impacting Monroe County. The Environmental Committee feels the referenced merger does not serve the best interests of Monroe County citizens.

The results of the merger is that one parent company will control collection and disposal of a disproportionate amount of the county's municipal waste. The county's other haulers are independent operators. These haulers will be unable to compete for commercial waste collection and municipal collection contracts. And, since none of these smaller companies owns a disposal facility, Waste Management will control their tipping fees. Recent history has shown that the independents are charged higher tipping fees than Waste Management charges its own haulers.

Since the merger a number of commercial businesses have contacted the Environmental Committee, reporting that their commercial collection rates have nearly tripled. While our committee understands that Waste Management has submitted a divestiture plan intended to alleviate concerns of this nature, this plan has done nothing to relieve the onerous effect the merger has had on Monroe County.

Our informed opinion is that approval of the merger will adversely effect the interest of Monroe County's citizens and businesses.

Thank you for the opportunity to file these comments. Please contact us if we can answer any other questions.

Respectfully,

Michael Beckenbach,

Chairman, Pocono Mountains Chamber of Commerce Environmental Committee.

Mr. Michael Beckenbach,

Chairman, Environment Committee, Pocono Mountains Chamber of Commerce, c/o Gallagher & Gallagher, Stroudsburg Division, 701 Main Street, 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. Beckenbach: This letter responds to your letter of April 10, 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

[1] Although some acquisitions, like some snakes, are beneficial, the Kentucky Court of Appeals once noted that ''may snakes are poisonous, and only the zoologist, herpetologist, or experienced woodsman is able to distinguish those which are not'' *Lawson* v. *Commonwealth,* 164 S.W.2d 972 (1942). The District would therefore defer to the good judgment of the ''experienced woodsmen'' of the Department of Justice's Anti-Trust Division.

[1] The markets alleged in the Amended Complaint, and for which divestiture relief was obtained in the Final Judgment, include the disposal of municipal solid waste in the Pittsburgh, Carlisle-Chambersburg, and Bethlehem, PA areas, and in New York City, NY (commercial and residential); and collection of commercial waste in the Carlisle-Chambersburg, Bethlehem, and Scranton, PA; suburban Tampa (Hillsborough Co.) and Miami/Ft. Lauderdale, FL (Dade and Broward counties) areas.

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 consent decree address the competitive effects of the merger in Monroe County, PA, in which a combination of Waste Management and Eastern 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 this competitive issue.

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 ordered by this Judgment and the decree in the USA Waste case would establish independent commercial waste haulers in 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 post-merger exercise of market power by the combined Waste Management and Eastern in the collection of commercial waste. These new competitors 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.

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.

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.

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

Exhibit 5

J. Robert Kramer, II,
Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530

Re: *United States, et al.* v. *Waste Management, Ocho Acquisition Corp. and, Eastern Environmental Services, Inc.* Civil No. 98 CV 7168 (FB)

Dear Mr. Kramer: On behalf of the residents of Schuylkill County, please consider the contents of this letter as public comment in response to a proposed final judgment in the above referenced matter which was advertised in the **Federal Register** on February 26, 1999 pursuant to the provisions of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h).

The County of Schuylkill is a political subdivision established by Pennsylvania law and is authorized by Act 101, the Municipal Waste Planning, Recycling and Waste Reduction Act of 1988, to provide for disposal capacity for municipal waste generated within its boundaries. For the past nine years, this has been accomplished by providing individuals, municipalities and the commercial sector reasonable and cost effective municipal waste collection and disposal alternatives through capacity assurance and operation contracts with permitted waste processing and disposal facilities. The County also licenses haulers of municipal waste, which allows the County to properly track the disposition of its waste. The ability of the County to provide this valuable service has been substantially impaired by the recent merger of Waste Management, Inc. and Eastern Environmental Services, Inc. The County believes that the proposed settlement does not meet the requirements of the Clayton Antitrust Act and is not in the public interest for reasons listed below.

1. Schuylkill County is located in East Central Pennsylvania and is in fact adjacent to market areas named in the complaint as being adversely affected from a competitive standpoint by the merger. A regional map is enclosed with this letter identifying the municipal waste hauling, processing and disposal operations that serve Schuylkill County. The County has identified that the result of the merger would be that one company would control the collection and disposal of approximately 66% of the County's municipal waste stream. This figure is backed-up by two sources of information: (1) PA Dept. Of Environmental Protection's Waste Destination Reports and (2) the County's hauler licensing database which indicates the merged companies would own 95% of the commercial front-end load container capacity; 44% of the rear-load capacity; and 60% of the roll-off container capacity.

2. Remaining haulers within the county are small, independent companies that are unable to compete in two important and specific areas, commercial waste collection and municipal contracting. The independent haulers do not have the necessary equipment to conduct commercial collection effectively. Also, the small companies cannot compete effectively for large municipal contracts. Typically, the only hauling companies that bid on municipal contracts in Schuylkill County are Waste Management, Pine Grove Hauling Co. (Eastern) and J.P. Mascaro. Mascaro usually is the high bidder due to the long distance to their nearest disposal facility. The result of the merger has been, and will be, a substantial reduction in competition in those specific areas.

3. Since the merger, it is well documented that Waste Management has raised its rates significantly for the collection of commercial and residential waste.

4. The proposed settlement agreement has already been implemented with the requirement that the companies divest certain relevant assets. However, these divestitures have no effect on the competitive disadvantages created by the merger in this area.

5. The County encourages municipal governments to join together to bid waste collection contracts to more cost effectively manage their municipal waste streams. However, with no competitive bidders, those efforts will fail.

Consequently, the County feels that the proposed judgement provides no relief in the area from the anti-competitive effects of the merger of Waste Management and Eastern Environmental, and the public interests will not be served by the approval of the proposed consent decree.

The County appreciates this opportunity to file written comments. Please contact me if you have any questions or require additional information.

Sincerely,

Wayne Bowen,

County Environmental Coordinator.

Enclosures.

cc:
Board of County Commissioners
U.S. Senator Specter
U.S. Senator Santorum
U.S. Rep. Holden
Senator Rhoades
Rep. Argall
Rep. Allen
Rep. Lucyk
William McDonnell, PADEP NE Regional Office
Jim Snyder, PADEP Central Office
Bob Shafer
Michael O'Rourke, Esq.
Mark Scarbinsky
Mary Kay Bernosky, Esq.

The Major MSW Hauling Operations and Processing/Disposal Facilities Serving Schuylkill County Map of April 1999 was not able to be published in the **Federal Register**. A copy can be obtained from the Documents Office of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW., Room 215, Washington, DC 20530 or (202) 514–2481.

Major MSW Hauling Operations and Processing/Disposal Facilities Servicing Schuylkill County, April 1999

Hauling Operations

In-County
- Waste Management
1. Pottsville (consolidated with Deitrick Coal Twp.)
2. Frackville (consolidated with Deitrick Coal Twp.)
- Eastern Environmental
3. Pine Grove Hauling, Port Clinton (consolidated with Deitrick Coal Twp.)
4. Pine Grove Hauling, Schuylkill Haven (formerly Minchoff) (consolidated with Deitrick Coal Twp.)
- Other major or potential major competitors None

Out-of-County
- Waste Management
5. Deitrick Sanitation, Coal Twp., Northumberland Co.
6. Waste Management, Allentown, Lehigh County
7. Waste Management, Scranton, Lackawanna County
8. Grand Central Sanitation, Pen Argyl, Northampton County
- Eastern Environmental
9. Altamere, Mt Carmel, Northumberland Co. (consolidated with Deitrick Coal Twp.)
10. Pine Grove Hauling, Lansford, Carbon County (formerly Knepper Sanitation) (consolidated with Deitrick Coal Twp.)
- Other Major or Potential Major Competitors
11. BFI, Leesport, Berks Co.
12. Mascaro, Nantocke, Luzerne Co., Reading, Berks Co., Lehigh Co.
13. Republic, Allentown, Lehigh Co. (acquired routes from Waste Management Allentown per Justice Department)
14. Slusser, Hazleton, Luzerne Co.
15. Carbon Service, Lehighton, Carbon Co.

Disposal/Transfer Facilities

In-County
- Waste Management
16. BSC transfer station, Pottsville (currently not accepting waste)
- Eastern Environmental
17. Coldren Transfer Station, Port Clinton (Pine Grove Hauling)
18. Pine Grove Landfill
- Other Major or Potential Major Competitors
19. Tamaqua Transfer Station
20. NSLA Transfer Station
21. CES Landfill, Foster Twp.

Out-of-County
- Waste Management
22. Deitrick Transfer Station Coal Twp., Northumberland Co.
23. Transfer Station, New Smithville, Lehigh Co.
24. Grand Central Landfill, Pen Argyl, Northampton Co.
25. Dauphin Meadows Landfill, Dauphin Co.
26. Modern Landfill, York Co.
27. Pottstown Landfill, Montgomery Co.
28. G.R.O.W.S. Landfill, Bucks Co.
29. Tullytown Landfill, Bucks Co.
- Eastern Environmental
30. Bethlehem Landfill, Northampton, Co.
31. Alliance Landfill, Lackawanna Co.
- Other Major or Potential Major Competitors
32. Mascaro Transfer Facility, Lehigh Co.
33. Keystone Landfill, Lackawanna Co.
34. Chrin Landfill, Northampton Co.
35. Pioneer Crossing Landfill (Mascaro), Berks Co.
36. Conestoga Landfill (BFI), Berks Co.

Impact of Waste Management/Eastern Merger

Number of hauling operations controlled by merger—10 (67%)
Controlled by others—5 (33%)
Number of disposal facilities controlled by merger—9 (64%)
Controlled by others—5 (36%)
Number of transfer facilities controlled by merger—4 (57%)
Controlled by others—3 (43%)
Total controlled by merger—23 (64%)
Controlled by others—13 (36%)

Mr. Wayne Bowen,
Environmental Coordinator, Office of Solid Waste and Resource Management, Schuykill County Courthouse, 401 North Second Street, Pottsville, Pennsylvania 17901–2528

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. Bowen: This letter responds to your letter of April 26, 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 south central 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/Wilkes-Barre 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 Schuylkill 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] may address the competitive issues you have raised.

Schuylkill County is a thinly populated area that abuts and lies directly southwest of the Scranton/Wilkes-Barre area. Though the county's business and population center, Pottsville, is about 40 miles from the Scranton/Wilkes-Barre area, it is only about 25 miles west of the city of Allentown and Northampton and Lehigh counties in Pennsylvania.

As you point out, the Final Judgment does not require Waste Management to divest any of the commercial route operations that it acquired from Eastern in Schuylkill County. The Division did not seek divestiture relief with respect to that market for several reasons. First, the total amount of commercial waste collection business that Waste Management assumed through acquiring Eastern was small, less than $1 million in annual revenues. Second, Schuylkill County abuts several counties in which the Judgment required Waste Management to divest route operations. The divestitures of commercial waste collection routes mandated by this Judgement and the decree in the USA Waste case, once implemented, would establish relatively large independent commercial waste haulers in both the Scranton/Wilkes-Barre and Allentown areas. Given the proximity of these markets to Schuylkill County, rivalry offered by the new competitors may be sufficient to discipline any exercise of market power in commercial waste collection by the combined Waste Management and Eastern. Also, the new commercial waste hauling competitors established by these judgments may be capable of offering vigorous competition in the collection of the country's residential waste, a market not addressed in our complaint or the consent decree.[2]

Finally, I should point out that the Judgment and the decree in the USA Waste case mandate that Waste Management divest two large landfills, Modern and Bethlehem, that you indicate also service the Schuylkill County market. The divestitures of these landfills will introduce additional competition in the disposal of waste from the Schuylkill County area.

Thank you for bringing your concerns to our attention; we hope this information will

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

[2] In 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, 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.

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.

Exhibit 6

April 22, 1999.

J. Robert Kramer, II,

Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530

Re: United States, et al. v. Waste Management, Inc., Ocho Acquisition Corp. and Eastern Environmental Services, Inc. Civil No. 98 CV 7168 (FB)

Dear Mr. Kramer: Please consider the contents of this letter as public comment in response to an invitation for public comment on proposed Final Judgment in the above referenced matter which was advertised in the Federal Register on February 26, 1998 pursuant to the provision of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h).

The Monroe County Municipal Waste Management Authority is a political subdivision established by Pennsylvania law under the Municipal Authorities Act, of 1945. The Authority by agreement with the County, and as authorized by ACT 101 is responsible for implementing the County's Municipal Waste Management Plan. The Authority operates a waste management system highlighted by the licensing of all municipal waste haulers within the County, and providing individuals, municipalities, and companies reasonable and cost effective municipal waste collection and disposal alternatives through contracts with disposal and transfer facilities. The ability of the Authority to provide this service has been substantially impacted by the recent merger of Waste Management Inc. and Eastern Environmental Services, Inc. The Authority believes that the proposed settlement does not meet the requirements of the Clayton Antitrust Act, and is not in the public interest for the following reasons.

Monroe County is located in northeastern Pennsylvania near, and in fact adjacent to market areas named in the complaint as being adversely affected from a competitive standpoint by the merger. A regional map is enclosed with these comments identifying the location in Monroe County. In earlier comments, a copy of which is enclosed, the Authority identified that the net result of the merger would be that one company would control the collection of approximately 72% of the County's municipal waste stream, and the disposal of approximately 82% of the municipal waste generated within the county.

Remaining haulers within the County are small, independent companies which are unable to compete in two important and specific areas, commercial waste collection and municipal contracting. Furthermore, none of these small independent haulers own disposal facilities, and are required to dispose of the waste at facilities owned by Waste Management which controls disposal fees, often charging independent haulers a higher tipping fee for disposal than is charged to its own hauling company.

The independent haulers do not have the necessary equipment to conduct commercial collection effectively, or to transport municipal waste loads long distance to obtain competitive tipping rates. Also, the small companies cannot compete effectively for large municipal contracts. In addition to Waste Management and Eastern, only one company has responded to municipal requests for competitive bidding. The result of the merger has been, and will be, a substantial reduction in competition in those specific areas.

Since the above merger, it is well documented that Waste Management has nearly tripled rates for the commercial collection of municipal waste. Copies of relevant information in this regard is enclosed. The Authority has been inundated with telephone calls and written communications complaining of the new pricing structures.

The Authority has been urging municipal governments to join together to bid waste collection contracts to more effectively mandate the municipal waste stream. However, with no competitive bidders, those efforts will fail.

The proposed settlement agreement has already been implemented with the requirement that the companies divest certain relevant assets. However, these divestitures have had no effect on the competitive disadvantages created by the merger in this area.

Consequently, we feel that the proposed judgment provides no relief in this area from the anti-competitive effects of the merger of Waste Management and Eastern Environmental, and the public interest will not be served by the approval of the consent degree in this case.

We appreciated the opportunity to file written comments. Kindly contact the undersigned if we can provide further information, or answer any questions.

Sincerely,

Dean D.W. DeLong,

Executive Director.

Enclosures to Exhibit 6 letter from Dean D.W. DeLong, Executive Director of Municipal Waste Management Authority of Stroudsburg, PA was unable to be published in the **Federal Register.** A copy be obtained form the Document Office of the U.S. Department of Justice, Antitrust Division, 325 7th Street, N.W., Room 215, Washington, D.C. 20530 or (202) 514–2481.

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.

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 form 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

[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, 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.

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.

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.

Exhibit 7

Exhibit 7 letter with attachments from Peter Anderson of Recycle Worlds Consulting of Madison, WI dated April 27, 1999 was unable to be published in the **Federal Register**. A copy can be obtained from the Document Office of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW, Room 215, Washington, DC 20530 or (202) 514–2481.

May 20, 1999.

Mr. Peter Anderson,

President, RecycleWorlds Consulting Corp., 4513 Vernon Blvd., Suite 15, Madison, Wisconsin 53705–4964

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. Anderson: This letter responds to your April 27, 1999 comment on the proposal Final Judgment in the above case. The Amended Complaint charged, among other things, that Waste Management's acquisition of Eastern Environmental would substantially lessen competition in collection or disposal of municipal solid waste in 12 markets in New York, Pennsylvania, and Florida. The proposed consent decree, now pending in Federal district court in Brooklyn, New York, would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the markets alleged in the Complaint.[1] This relief, if approved by the Court, would establish one or more new competitors in each of the markets for which relief was sought, replacing the competitive rivalry lost when Waste Management acquired Eastern Environmental.

In a transaction approved by the United States and the State of New York, Waste Management divested to Republic Services, Inc. the rights to Eastern's proposal to dispose of New York City's residential waste in early January 1999, See Judgment section IV(B), On April 20, 1999, the United States, however, rejected Waste Management's proposal to sell the other waste collection and disposal assets under this decree to Allied Waste Industries, Inc. (''Allied''). Such a sale, we concluded, would raise serious competitive concerns in waste collection or disposal, or both, in virtually all of the markets for which the Judgment has ordered relief.[2] Of course, if Waste Management has not divested these assets to an acceptable purchaser within five days after entry of the Judgment, the United States will promptly seek, and the Court will likely appoint, a trustee to complete the sale. See Judgment sections V(A) and (B) and Hold Separate Stipulation and Order, section IV(F).

In your comment, you assert that the diversitures ordered by this Judgment do not go far enough to eliminate the competitive problems in the Nation's waste industry. To be sure, the decree in this case and in other recent Government antitrust cases (e.g., *United States* v. *USA Waste, Inc., Waste Management, Inc.,* No. 1:98 1616 (N.D. Ohio, filed July 21, 1998)) have not prevented the wave of consolidations, currently sweeping through this industry. Indeed, several recent mega mergers have significantly reduced the number of major competitors, and that has perhaps made several waste markets and more susceptible to collusive post-merger price increases. To cure these competitive problems, you propose a fairly ''dramatic remedy,'' *i.e.,* require that Waste Management divest all of its waste disposal or collection operations in markets where there are substantial competitive overlaps between its operations and those of Eastern. If this not not done, then you propose that we ensure that the assets divested under the Judgment are not sold to a large integrated national waste firm, but to a municipal agency or a small stand-along independent—entities that, in your view, may have a greater incentive to vigorously compete against defendants' operations.

We do not believe that requiring Waste Management to divest all of its waste collection or disposal operations in any market in which its operations overlap with Eastern's would produce a more procompetitive result than the relief currently in the Judgment. Indeed, pursuing your proposal would permit Waste Management to acquire the lion's share of any number of waste collection or disposal markets, since, in effect, you propose that if Waste Management agrees to abandon one line of business, it would be free to monopolize the other.

We do, however, agree with your conclusion that Waste Management's divestiture of the decree assets to a firm such as Allied/BFI is undesirable because it would significantly reduce competition and enhance opportunities for cooperative post-merger price increases. We have so informed Waste Management, and we are prepared to have management and sale to these crucial waste assets transferred to a trustee, if Waste Management does not promptly divest these operations to a purchases acceptable to the United States.

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.

Certificate of Service

I certify that on May 20, 1999, I caused a copy of the foregoing United States's Certificate of Compliance with Provisions of the Antitrust Procedures and Penalties Act to be served on the parties in this case by mailing the pleading first-class, postage prepaid, to

[2] In 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.

[1] The markets alleged in the Amended Compliant, and for which divestiture relief was obtained in the Final Judgment, include the disposal of municipal solid waste in the Pittsburgh, Carlisle-Chambersburg, and Bethlehem, PA areas, and in New York City, NY (commercial and residential); and collection of commercial waste in the Carlisle-Chambersburg, Bethlehem, and Scranton, PA; suburban Tampa (Hillsborough Co.) and Miami/FT. Lauderdale, FL (Dade and Broward counties) areas.

[2] In early March 1999, Allied announced that it had agreed to acquire Browning-Ferris Industries, Inc., for $7.5 billion. Allied is the Nation's fourth largest waste collection and disposal firm; BFI is the Nation's second largest waste firm. That combination would, by itself, raise serious competition concerns in a number of waste disposal and collection markets throughout the country. Selling the assets under the decree to a combination of Allied/BFI would result in a significant reduction in actual and potential competition in waste disposal services thought the Northeast—a regional market including major cities along the Eastern seaboard, such as New York, Boston, Philadelphia, Baltimore and Washington—as well as a reduction in localized competition for waste disposal services in the Pittsburgh, PA area, and for commercial waste collection services in the Miami/Ft. Lauderdale, FL area, and potentially in the Carlisle-Chambersburg, PA area.

a duly-authorized legal representative of each of the parties, as follows:

Jonathan L. Greenblatt, Esquire,

Steven C. Sunshine, Esquire,

Michael Strub, Jr., Esquire,

Shearman & Sterling, 801 Pennsylvania Avenue, NW, Washington, D.C. 20004–2604.

James R. Weiss, Esquire,

Preston Gates Ellis & Rouvelas Meeds LLP, 1735 New York Avenue, NW, Washington, DC 20006–8425.

Counsel for Defendants Waste Management, Inc. and Ocho Acquisition Corp.

Neal R. Stoll, Esquire,

Skadden, Arps, Slate, Meagher & Flom, 919 Third Avenue, New York, NY 10022–3897.

Counsel for Defendant Eastern Environmental Services, Inc.

Richard E. Grimm,

Kay Taylor,

Assistant Attorneys General, Antitrust Bureau, Office of the Attorney General, State of New York, 120 Broadway, Suite 26–01, New York, NY 10271.

Counsel for Plaintiff State of New York

James A. Donahue, III,

Chief Deputy Attorney General,

Benjamin L. Cox,

Deputy Attorney General, 14th Floor, Strawberry Square, Harrisburg, PA 17120.

Counsel for Plaintiff Commonwealth of Pennsylvania

Lizabeth A. Leeds,

Douglas L. Kilby,

Assistant Attorneys General, Antitrust Section, PL–01, The Capitol, Tallahassee, FL 32399–1050

Counsel for Plaintiff State of Florida

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DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Forms for Agricultural Recruitment System

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95)(44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the proposed reinstatement, without change, collection of the Agricultural and Food Processing Clearance Order, Form ETA–790, Agricultural and Food Processing Clearance Memorandum, Form ETA–795, Migrant Worker Itinerary, Form ETA–785, and Job Service Manifest Record, Form ETA–785A.

A copy of the proposed information collection request can be obtained by contacting the employee or office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before August 10, 1999.

ADDRESSES: Rogelio Valdez, U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N–4470, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 202–219–5257, extension 167 (this is not a toll-free number) and, Internet address: rvaldez@doleta.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Migrant and Seasonal Farm worker regulations at 20 CFR 653.500 established procedures for agricultural clearance to all local offices to use the interstate clearance forms as prescribed by ETA. Local and State Employment offices use the Agricultural and Food Processing Clearance Order to extend job orders beyond their jurisdictions. Applicant holding local offices use the Agricultural Clearance Memorandum to give notice of action on a clearance order, request additional information, report results, and to accept or reject the extended job order. State agencies use the Migrant Worker Itinerary to transmit employment and supportive service information to labor-demand areas, and to assist migrant workers in obtaining employment. The Job Service Manifest Record shows names, addresses, and characteristics of all people named on the Migrant Worker Itinerary.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

III. Current Action

This is a request for OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) of a reinstatement, without change, to an existing collection of information previously approved and assigned OMB Control No. 1205–0134.

There is no change in burden.

Type of Review: Reinstatement, without change.

Agency: Employment and Training Administration, Labor.

Titles: Agricultural and Food Processing Clearance Order, Agricultural and Food Clearance Memorandum, Migrant Worker Itinerary, and Job Service Manifest Record. OMB Number: 1205–0134.

Affected Public: Individuals and households, employers, and State Governments.

Total Respondents 52.

Frequency: On occasion.

Estimated Total Burden Hours: 6,500.

Form	Volume per year	Hours per response	Hours per year
ETA–790	2.000	1.0	2,000