

American Tel. & Tel. Co., 552 F. Supp. 131, 153 n.95 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983) (mem.); *accord* H.R. Rep. No. 93-1463, at 8 (1974).

B. Summary of Public Comments and the United States' Responses

Two individuals expressed their views on the proposed Final Judgment. Copies of this response, without the Appendix, are being mailed to them. A summary of their comments and the responses of the United States are below.

1. Peter Anderson

Peter Anderson, writing on behalf of the Center for a Competitive Waste Industry, requests data discovered by the United States concerning local disposal markets, including the size of the municipal solid waste firms in each market, and the ownership and maximum daily throughput for transfer stations. Mr. Anderson also states that the CIS correctly notes the critical importance of free access to disposal capacity on non-discriminatory terms and notes that the proposed Final Judgment requires the partial divestiture of transfer and disposal assets in New Jersey and Oklahoma.

The United States appreciates Mr. Anderson's comment on the proposed Final Judgment. However, the United States is unable to make public the data that it collected on local disposal markets. Disclosing such data would require that the United States reveal information that was received pursuant to a statute that limits its disclosure¹ or, alternatively, produce sensitive information that the United States will not disclose unless required by law or necessary to further a legitimate public purpose. The United States believes, however, that some of the information requested by Mr. Anderson may be available through various public sources, including the New Jersey Department of Environmental Protection Web site.

Mr. Anderson is mistaken in stating that the decree requires Waste Management to divest transfer or disposal assets in Oklahoma. Rather, the Defendants agreed to exclude from the transaction the sale of Allied's waste-hauling and disposal assets located in the Tulsa and Muskogee, Oklahoma area and, as specified in section XI of the proposed Final Judgment, Waste

Management further agreed to provide the United States with notice of any future acquisition of disposal assets in the Tulsa and Muskogee, Oklahoma area.

2. Gregory Nepl

Gregory Nepl filed a comment setting forth his understanding of the purpose and effect of Section XIII of the proposed Final Judgment relating to "Revisions to Contracts." Mr. Nepl states that he understands proposed Final Judgment precludes Waste Management, effective June 27, 2003, from enforcing any contract term inconsistent with those set forth in section XIII.B. and affecting its commercial waste collection customers in the Augusta, Georgia and Myrtle Beach, South Carolina areas. Mr. Nepl further notes that he understands that Waste Management must also offer new contracts that conform with the terms set forth in the proposed Final Judgment to its new and existing customers subject to the deadlines set forth in Section XIII.

The United States concurs with Mr. Nepl's interpretation of section XIII of the proposed Final Judgment as stated in his letter of October 9, 2003.

III. Conclusion

The United States hereby files the comments of the members of the public together with the Response of the United States to the comments, pursuant to 15 U.S.C. 16(d). The Competitive Impact Statement and this Response to Comments demonstrate that the proposed Final Judgment serves the public interest. Accordingly, the United States will move this Court for entry of the proposed Final Judgment after the comments and the Response are published in the **Federal Register** pursuant to 15 U.S.C. 16(d).

Dated this 9th day of December, 2003.

Respectfully submitted,
Michael K. Hammaker, Esquire,
D.C. Bar No. 233684, *United States Department of Justice, Antitrust Division, 1401 H Street, NW., Room 3000, Washington, DC 20530; (202) 307-0938.*

Certificate of Service

I hereby certify that on this 9th day of November, 2003, I caused a copy of the foregoing Response of the United States to Public Comments on the Proposed Final Judgment and the attached Appendix to be served by electronic filing on Waste Management and Allied Waste Industries, and by first class mail, postage prepaid, on

the State of New Jersey at the addresses given below:

Counsel for Defendant Waste Management, Inc.,
James R. Weiss, Esquire, Preston Gates Ellis & Rouvelas Meeds LLP, 1735 New York Avenue, NW., Suite 500, Washington, DC 20006; *jimwe@prestongates.com*; (202) 628-1700.

Counsel for Defendant Allied Waste Industries, Inc.,

Tom D. Smith, Esquire, Jones Day, 51 Louisiana Avenue, NW., Washington, DC 20001-2113; *tdsmith@jonesday.com*; (202) 879-3971.

Counsel for Plaintiff State of New Jersey, Andrew L. Rossner, Esquire, Assistant Attorney General—Deputy Director, New Jersey Attorney General's Office, Division of Criminal Justice, 25 Market Street, Trenton, NJ 08625-0085; (609) 984-0028.

Stacy R. Procter, Esquire,
CA Bar No. 221078, *United States Department of Justice, Antitrust Division, 1401 H Street, NW., Room 3000, Washington, DC 20530. Telephone: (202) 514-8666.*

To: Hammaker, Michael
Subject: Re: Waste Management: 4/28/03 Sale of \$1 Billion of Allied Waste Assets to Waste Management

We have the Competitive Impact Statement for the Waste Management/Allied swap.

The CIS correctly notes the critical importance to the maintenance of competition of free access to disposal capacity on non-discriminate terms, and goes onto to note the partial divestitures of transfer and disposal assets in New Jersey and Oklahoma.

In order to comment intelligently on the proposed settlement, we would like to ask if DOJ would share its discovery data on local conditions in the market for disposal in those areas. Specifically, the ownership and maximum daily throughputs for transfer stations, and the ownership, maximum daily tonnages and remaining life and locations for landfills. Also, the names and, if possible, very general indices of the size/share (that does impinge on trade secrets) of the municipal solid waste firms in each market.

Thank you.

Peter Anderson,
Center for a Competitive Waste Industry.

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¹ See Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a(h); Antitrust Civil Process Act, 15 U.S.C. 1311 *et seq.*