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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

FILED
U.S. DISTRICT COURT
NORTHERN DIST. OF TX
FT. WORTH DIVISION

1997 JUL 29 P 4:06

NANCY DOHERTY, CLERK

UNITED STATES OF AMERICA and
STATE OF TEXAS,

Plaintiffs,

v.

ALLIED WASTE INDUSTRIES, INC.

Defendant.

No.: 497-CV 564 E

BY: _____
DEPUTY

AMENDED COMPLAINT

COME NOW Plaintiffs, the United States of America, acting under the direction of the Attorney General of the United States, and the State of Texas, acting under the direction of the Attorney General of the State of Texas, and file this amended complaint to enjoin the acquisition by Allied Waste Industries, Inc. ("Allied") of the Crow Landfill in Tarrant County, Texas from USA Waste Services, Inc. ("USA Waste") and to obtain equitable and other relief. Plaintiffs complain and allege as follows:

1. Allied and USA Waste are two of only four competitors in Tarrant County operating commercial landfills for the disposal of municipal solid waste ("MSW") generated in Tarrant County.

2. Unless this acquisition is enjoined, there will be only three operators competing to dispose of MSW generated in Tarrant County, and that loss of competition will likely result in consumers paying higher prices for waste disposal and hauling and

receiving fewer or lesser quality services.

I.

JURISDICTION AND VENUE

3. This action is filed under Section 15 of the Clayton Act, 15 U.S.C. § 25, to prevent and to restrain the violation by the defendants of Section 7 of the Clayton Act, 15 U.S.C. § 18. The State of Texas brings this action under Section 16 of the Clayton Act, 15 U.S.C. § 26, to prevent and restrain the violation by the defendants of Section 7 of the Clayton Act, 15 U.S.C. § 18.

4. Allied is engaged in interstate commerce through ownership of landfills and municipal waste hauling operations in Texas and other states. Defendant makes sales and purchases in interstate commerce and engages in activities substantially affecting interstate commerce. The Court has subject matter jurisdiction over this action and over the defendant pursuant to 15 U.S.C. § 22 and 28 U.S.C. §§ 1331 and 1337.

5. Allied transacts business in the Fort Worth area. Venue is therefore proper in this district under 28 U.S.C. § 1391(c).

II.

DEFENDANT

6. Allied is a Delaware corporation with its principal offices in Phoenix, Arizona. Allied is engaged in providing waste hauling and disposal services in 22 states in the United States. In 1996, Allied had total operating revenues of \$806,089,000.

III.

TRADE AND COMMERCE

Relevant Product Market

7. Disposal of MSW in the State of Texas is regulated, and the requirements imposed by Texas law limit the means by which MSW can properly be disposed.

8. The Texas Solid Waste Disposal Act, TEX.HEALTH AND SAFETY CODE ANN. § 361 *et seq.* (Vernon's 1992) ("Solid Waste Disposal Act"), regulates the disposal of garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and other non-industrial solid waste. Under the Solid Waste Disposal Act, MSW is routinely disposed of in landfills. These landfills must be permitted and regulated by the Texas Natural Resource Conservation Commission. Texas requires landfill operators to control soil erosion and sedimentation and to cover the landfill on a daily basis. New landfills must be properly lined and, with certain exceptions, equipped to monitor gas and water quality. By law, Texas landfill operators must meet certain financial criteria, acquire performance bonds and maintain a trust fund to cover closure costs.

9. There are two types of landfills that haulers use for disposal of MSW. Landfills that are open to the general public, or "commercial landfills," will generally accept MSW from anyone or anywhere. Landfills that accept MSW from only certain areas, such as Arlington, Grand Prairie, and the City of Fort Worth

landfills, or "captive landfills," are not viewed by most haulers of MSW to be substitutes for commercial landfills. A small but significant and non-transitory price increase by commercial landfills would not cause a significant number of haulers to turn to captive landfills.

10. Disposal of MSW at commercial landfills is thus a line of commerce, or relevant product market, under Section 7 of the Clayton Act.

Relevant Geographic Market

11. The cost of transporting MSW to a landfill site is a substantial component of the cost of disposal. Total disposal costs may account for as much as 50 percent of the actual amount charged by a hauler for its collection services, hence limiting the areas where MSW can be economically transported and disposed of by haulers. The geographic location of landfills and associated transportation costs create localized markets for the disposal of MSW.

12. Due to the high costs of transporting MSW, and the substantial travel time to other landfills based on distance or congested roadways, haulers of MSW generated in Tarrant County are limited to those commercial landfills located in the "greater Tarrant County area," which includes Tarrant County, southern Denton County, and northern Johnson County. In the event of a small, but significant and non-transitory price increase by the commercial landfills in the greater Tarrant

County area, haulers of MSW generated in Tarrant County would not turn to commercial landfills outside the greater Tarrant County area.

13. The greater Tarrant County area is thus a section of the country, or relevant geographic market, within the meaning of Section 7 of the Clayton Act.

Anticompetitive Effects and Entry

14. There are only four operators of commercial landfills in the relevant geographic market to which haulers of MSW generated in Tarrant County turn to dispose of MSW. They are USA Waste, which owns the Crow Landfill; Allied, which owns the Turkey Creek Landfill; WMI, which owns both the Westside Landfill and DFW Landfill; and the City of Farmers Branch, which owns the Camelot Landfill.

15. Allied and USA Waste compete with each other and with other companies to provide MSW disposal services in the greater Tarrant County area. That competition has resulted in lower waste disposal prices to haulers, which in turn has permitted those haulers to compete more effectively for business in Tarrant County. Using a measure of market concentration called the Herfindahl-Hirschman Index ("HHI"), which is defined and explained in Appendix A, the post-acquisition HHI, based on the amount of waste from Tarrant County disposed of in 1996 at the five landfills in the relevant geographic market, would exceed 3500, with an increase in the HHI of over 400. This number is

likely understated because the capacity limitations on the Camelot Landfill limit its ability to provide a competitive constraint. Thus, an acquisition by Allied of the Crow Landfill would substantially increase concentration in the market.

16. Should Allied acquire the Crow Landfill, there will be only three landfill operators in the relevant market. The elimination of one of such a small number of significant competitors will significantly increase the likelihood that consumers will face higher prices and poor quality service for the disposal of MSW generated in Tarrant County.

17. Captive landfills would not compete for the disposal of additional waste from haulers of waste generated outside its borders to deter or counteract an anticompetitive price increase after the acquisition because these landfills exist almost exclusively to serve the needs of their local communities.

18. Obtaining regulatory approval for either a new landfill or the expansion of an existing landfill in the greater Tarrant County area is a costly and time consuming process that can take several years. Entry by a new landfill or through the expansion of an existing one would not be timely, likely or sufficient to prevent harm to competition.

19. Allied is also engaged in the collection and hauling of waste in the relevant geographic market. Allied and WMI are the dominant haulers in the relevant geographic market, accounting for roughly 80 percent of the hauling by private firms in Tarrant County. Post-acquisition, Allied would have

an increased incentive to raise disposal prices to rival haulers in Tarrant County, to create a substantial barrier for entry to new haulers, or selectively to raise prices to punish or impede independent haulers who attempt to compete with it in Tarrant County.

IV.

VIOLATION ALLEGED

20. On or about March 7, 1997, Allied agreed to purchase the Crow Landfill in Tarrant County, Texas from USA Waste, together with other assets. The likely effect of the acquisition of the Crow Landfill is to substantially lessen competition and to tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act.

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

- a. competition generally in providing disposal at commercial landfills to haulers of MSW generated in Tarrant County will be lessened substantially;
- b. actual and potential competition between Allied and USA Waste in providing disposal at commercial landfills to haulers of MSW generated in Tarrant County will be eliminated; and
- c. competition for the hauling of MSW generated in Tarrant County may be substantially lessened.

V.

PRAYER

WHEREFORE, the plaintiffs respectfully request,

1. That the acquisition of the Crow Landfill by Allied be adjudged to be in violation of Section 7 of the Clayton Act;

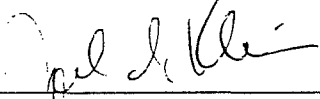
2. That the defendant be permanently enjoined from carrying out any agreement, understanding or plan the effect of which would be to combine the businesses or assets of the Crow Landfill with Allied;

3. That the plaintiffs have such other and further relief as the Court may deem just and proper; and


4. That plaintiffs recover the costs of this action.

Respectfully submitted,

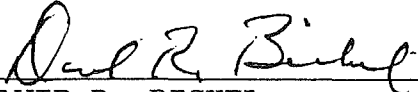
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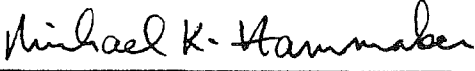
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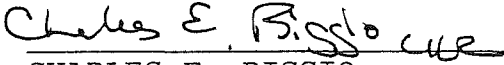
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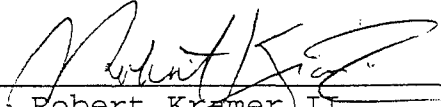


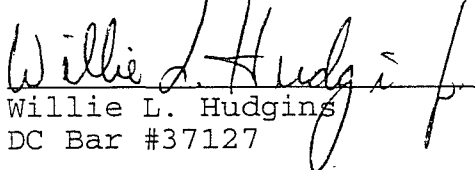
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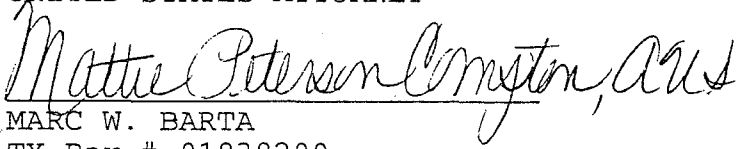

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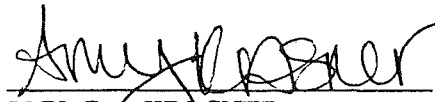
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Appendix A

"HHI" means the Herfindahl-Hirschman Index, a measure of market concentration 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 30, 30, 20, and 20 percent, respectively, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI, which takes into account the relative size and distribution of the firms in a market, ranges from virtually zero to 10,000. The index approaches zero when a market is occupied by a large number of firms of relatively equal size. The index increases as the number of firms in the market decreases and as the disparity in size between the leading firms and the remaining firms increases.

Markets in which the HHI is between 1000 and 1800 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 significant antitrust concerns under the Department of Justice and Federal Trade Commission 1992 Horizontal Merger Guidelines.