



U.S. Department of Justice

Antitrust Division

City Center Building
1401 H Street, NW
Washington, DC 20530

September 13, 1999

Ms. Rosalind Rowen
Sierra Club New York City Group
c/o 225 East 6th Street - Suite 3H
New York, New York 10003

Re: *Comment on Proposed Final Judgment in United States, State of Ohio, et al. v. USA Waste Services, Inc., Waste Management, Inc., et al., Civil No. 98-1616 (N.D. Ohio, filed July 16, 1998)*

Dear Ms. Rowen:

Thank you for your letter commenting on the Final Judgment submitted for entry in the above case. The Complaint in this case charged, among other things, that USA Waste's acquisition of Waste Management would substantially lessen competition in the disposal of New York City's commercial waste. The proposed Judgment would settle the competitive concerns with respect to the New York City market by, *inter alia*, requiring the defendants to divest (a) the USA Waste's SPM Transfer Station; (b) USA Waste's All City Transfer Station; and (c) the pending application by USA Waste for a permit to construct and operate the Nekboh Transfer Station, also in Brooklyn, NY. *See* Judgment, §§ II (C)(2) (i)(1)-(3) and IV(A). To ensure the defendants' continued cooperation with the purchaser in its efforts to get the Nekboh site permitted, the proposed Judgment further provides that if the Nekboh Transfer Station does not receive an operating permit within one year after entry of the Judgment, the defendants must divest the Scott Avenue Transfer Station, also in Brooklyn, NY. *See* Judgment, §§ II (C)(2)(i)(4) and IV(B). In a transaction approved by the United States in August 1998, under the terms of the decree, the defendants divested All City Waste Transfer Station and their application for a permit for the proposed Nekboh site to Republic Services, Inc., which previously did not operate any waste disposal sites in the New York City area.

Your comment relates solely to those portions of the Judgment that require USA Waste to divest all title and interest in its application to construct and operate the Nekboh transfer station in Brooklyn, New York. *See* Judgment, §§ II (C)(1)(i)(2) and IV(A) and (B). As you point out, the site of the proposed Nekboh facility abuts an area that the state of New York recently identified for potential preservation under its Clean Water/Clean Air Bond Act. Though Governor Pataki vetoed legislation that would have provided funds for purchasing the site for development as a park, he instructed the state Department of Environmental Conservation to conduct an environmental assessment of the Nekboh site before issuing an operating permit for a transfer station on that site.

You requested that we modify the Judgment to permit the Nekboh site to be sold to the state for development as a public park. We strongly believe that prompt divestiture of the Nekboh permit application, and speedy permitting, construction and opening of a transfer station on the Nekboh site

is essential to ensure vigorous competition in the disposal of New York City's commercial waste. Developing this site as a public park would frustrate that goal.

On the other hand, nothing in the proposed Judgment would preclude the appropriate New York permitting authorities from lawfully deciding not to issue a permit to operate a waste transfer facility on the Nekboh site. Whether Republic obtains an operating permit for a transfer station on the Nekboh site would depend on a variety of factors, including an assessment of the environmental impact of a waste transfer station on that site. Your contention that constructing the Nekboh waste transfer station would preclude preservation of the site as a public park should be addressed to the state and local regulatory agencies that review and ultimately resolve such issues in the ordinary course of the permitting process.

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,

/s/

J. Robert Kramer II
Chief
Litigation II Section