

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF CONSIDERING A) RESOLUTION NO 98-2735
REQUEST BY WASTE MANAGEMENT)
DISPOSAL SERVICES OF OREGON, INC. FOR) Introduced by Mike Burton,
CONSENT TO A MERGER BETWEEN WASTE) Executive Officer
MANAGEMENT, INC. AND USA WASTE)
SERVICES, INC.)

WHEREAS, effective April 11, 1988, Metro entered into a contract for solid waste disposal services with Oregon Waste Systems, Inc. (now known as Waste Management Disposal Services of Oregon dba Oregon Waste Systems, Inc.); and

WHEREAS, the contract between Metro and its Contractor specified in Article 29 that "Any change of control or the transfer of a controlling interest in the beneficial ownership of Contractor shall constitute a default under the terms of this Contract, unless Metro consents to such transfer"; and

WHEREAS, in March of 1998, Waste Management Inc., entered into a Merger Agreement with USA Waste, Inc. pursuant to which Waste Management, Inc. and all of its subsidiaries, including Waste Management Disposal Services of Oregon, would become wholly-owned subsidiaries of USA Waste, Inc.; and

WHEREAS, at no time between March 1998 and July 16, 1998 did Waste Management seek the consent of Metro to the proposed merger and the resulting change of control or transfer of controlling interest in the beneficial ownership of Metro's Contractor; and

WHEREAS, on July 16, 1998, Waste Management, Inc. consummated its merger with USA Waste Services, Inc.; and

WHEREAS, such merger was consummated without requesting or receiving the consent of Metro; and

WHEREAS, on September 3, 1998, Metro's Executive Officer provided notice of default to the new Waste Management company; and

WHEREAS, the contract into which the parties entered provided the Contractor with thirty days to cure such default or give Metro reasonable assurance that the default will be promptly cured which date was extended to November 2, 1998, at the request of new Waste Management; and

WHEREAS, by letter dated November 2, 1998, new Waste Management requested the consent of Metro to its merger with USA Waste; and

WHEREAS, such a request for the consent of Metro was not timely made before a default had occurred under the contract; and

WHEREAS, the granting of consent would not be in the public interest under the circumstances, which include, without limitation, the contractor's failure to request consent until four months after a default had occurred under the contract, the potential for Metro's rights under the contract to be impaired due to the merger, and the effects of such a merger on the disposal of solid waste from the Metro region;

BE IT THEREFORE RESOLVED:

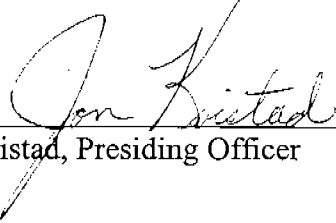
That the Metro Council denies the request of Waste Management Disposal Services of Oregon for consent to the merger of Waste Management, Inc. and USA Waste, Inc.

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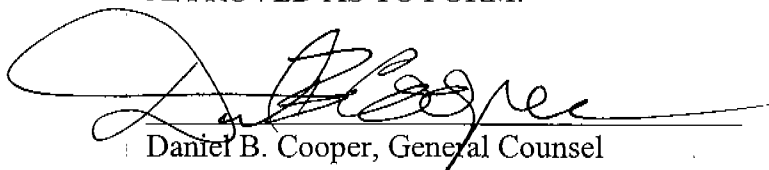
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ADOPTED by the Metro Council this 19th day of November 1998.



Jon Kvistad, Presiding Officer

APPROVED AS TO FORM:



Daniel B. Cooper, General Counsel

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STAFF REPORT

RESOLUTION NO. 98-2735 FOR THE PURPOSE OF CONSIDERING A REQUEST BY WASTE MANAGEMENT DISPOSAL SERVICES OF OREGON, INC. FOR CONSENT TO A MERGER BETWEEN WASTE MANAGEMENT, INC. AND USA WASTE SERVICES, INC.

Date: November 17, 1998

Prepared by: Bruce Warner

RECOMMENDED ACTION

Adopt Resolution No. 98-2735, which denies the request of Waste Management Disposal Services of Oregon for post-merger consent for a merger between Waste Management, Inc. and USA Waste Services, Inc.

FACTUAL BACKGROUND AND ANALYSIS

Effective April 11, 1988, Metro entered into a solid waste disposal services contract with Oregon Waste Services, Inc. (Since that time, the corporate name of the entity has been changed to Waste Management Disposal Services of Oregon.) Article 29 of the general contract conditions states in part that:

“Any change of control, or the transfer of a controlling interest in the beneficial ownership of Contractor shall constitute a default under the terms of this contract unless Metro consents to such a transfer.”

On July 16, 1998, without requesting or receiving the prior consent of Metro, Waste Management was merged with Dome Merger Subsidiary, Inc., a wholly owned subsidiary of USA Waste, Inc., which had been formed solely for the purpose of accomplishing the merger. Waste Management was the surviving corporation following the merger with Dome, but became a wholly owned subsidiary of USA Waste through an exchange of shares which occurred at the time of the merger. Following the merger, USA changed its name to “Waste Management, Inc.” and Waste Management became known as “Waste Management Holdings, Inc.”

On September 3, 1998, Metro Executive Officer Mike Burton informed representatives of new Waste Management that the consummation of the merger without requesting or receiving the consent of Metro violated Article 29 of the solid waste disposal services contract. The Executive Officer declared the contract in default, and provided the Contractor with the contractually required period to cure the default or provide Metro reasonable assurances that the default would be promptly cured.

By letter dated November 2, 1998 (attached), new Waste Management responded to the letter of the Executive Officer. While strongly disagreeing that a default had occurred, Waste Management Disposal Services requested Metro’s consent of the already-consummated merger.

The Executive Officer and the Director of the Regional Environmental Management Department have sought the advice of the Office of General Counsel, which notes that the request for consent was not timely made, having come nearly four months following the merger for which consent is sought. Additionally, based on advice of legal counsel, and under the current circumstances, it does not appear to be in the public interest to approve the request for consent to the merger.

EXECUTIVE OFFICER’S RECOMMENDATION

The Executive Officer recommends adoption of Resolution No. 98-2735, thereby denying the request of Waste Management Disposal Services of Oregon for consent to the consummated merger between Waste Management Inc. and USA Waste Services, Inc.



COLUMBIA RIDGE LANDFILL & RECYCLING CENTER
A WASTE MANAGEMENT COMPANY

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November 2, 1998

EXECUTIVE OFFICER

VIA HAND DELIVERY

Mike Burton
Executive Director
Metro
600 NE Grand Avenue
Portland, Oregon 97233

**Re: Waste Management Disposal Services of Oregon, Inc./
Metro Waste Disposal Services Contract**

Dear Mr. Burton:

By letter dated September 3, 1998, Metro claimed that the merger of Waste Management, Inc. and USA Waste Services, Inc. constitutes a default under Article 29 of the Waste Disposal Services Contract entered into between Oregon Waste Systems, Inc.¹ and Metro. Oregon Waste strongly disagrees with Metro's interpretation of Article 29 of the Waste Disposal Contract and with Metro's contention that a default occurred.

Oregon Waste believes that the contract default claim is a mere pretext to Metro's real motive: to change the contract price. At the time the Waste Disposal Contract was signed in 1988, Oregon Waste took considerable risk in contracting to provide waste disposal services to Metro for a fixed price for a twenty-year term without having a permitted, operating landfill in place. Now that Oregon Waste has invested millions of dollars to permit, construct and operate its landfill and has faithfully performed for more than half the life of the Waste Disposal Contract, Metro appears to be looking for an excuse to alter the terms of the agreement. Oregon Waste and Metro have enjoyed an excellent working relationship over the past eleven years, and we value highly that relationship. That relationship should continue.

¹Oregon Waste Systems, Inc. is now known as Waste Management Disposal Services of Oregon, Inc., dba Oregon Waste Systems, Inc. For the sake of brevity this entity will be referred to as "Oregon Waste." The contract between Oregon Waste and Metro will be referred to as the "Waste Disposal Contract."

For the reasons detailed below, Oregon Waste requests that Metro withdraw its September 3 letter.

A. FACTUAL BACKGROUND

1. The Terms of the Agreement to Merge.

On March 10, 1998, Waste Management, Inc. ("WMI") entered into a merger agreement with USA Waste Services, Inc. ("USA Waste"). The agreement provided a process for merger of the two companies, with numerous conditions precedent to consummation of the merger. WMI agreed to merge with Dome Merger Subsidiary, Inc., a wholly-owned subsidiary of USA Waste. The resulting corporate entity was to be known as Waste Management Holdings, Inc. and was to remain a wholly-owned subsidiary of USA Waste. USA Waste was to change its name to Waste Management, Inc. ("New WMI"). The agreement also provided that Waste Management Holdings, Inc. would continue to own Waste Management of North America, Inc. ("WMNA"). WMNA in turn would continue to own its subsidiary, Oregon Waste. The consummation of the merger was subject to numerous conditions, including approval by the stockholders of each company and approval by the United States Department of Justice pursuant to the Hart-Scott-Rodino Antitrust Improvement Act of 1976. As part of the antitrust investigation, the Oregon Department of Justice was to analyze the effect of the merger on the waste disposal industry in Oregon.

2. Metro had Ample Prior Opportunity to Assert that Article 29 Required its Consent to the Merger.

Shortly after WMI and USA Waste entered into the agreement, Oregon Waste and USA Waste representatives personally notified Metro of the pending merger. On March 31, 1998, Duane Woods and Doug Sobey of USA Waste met with Metro Executive, Mike Burton, Solid Waste Director, Bruce Warner, Metro Senior Assistant Counsel, Marvin Fjordbeck and other Metro solid waste staff members to discuss the details of the pending merger. At that time, Oregon Waste and USA Waste informed Metro that there would be no operational changes resulting from the merger that would affect Oregon Waste's performance of the Waste Disposal Contract. Mr. Woods also provided Mr. Fjordbeck with a copy of the Form 8-K dated March 10, 1998, that was filed with the Securities and Exchange Commission describing the pending merger agreement. Later that day, Duane Woods and Doug Sobey met with Marvin Fjordbeck and John Kvistad, the presiding Metro Council member. At no time during these meetings or from the date of these meetings through the completion of the merger did Metro suggest that the merger would require Metro's consent or that failure to obtain Metro's consent would constitute a default under the Waste Disposal Contract.

Representatives of WMI also met with Metro on April 1, 1998, to discuss the pending merger. Again, Metro did not contend that the merger would require Metro's consent or that

the failure to obtain Metro's consent would constitute a default under the Waste Disposal Contract. Furthermore, as part of the Oregon Department of Justice's analysis of the pending merger on Oregon's waste disposal industry, the Department requested certain information from Metro regarding its waste disposal contracts with various entities. Metro provided information to the Department, including specifically information about the Waste Disposal Contract. This information was used, in part, to help the U.S. Department of Justice develop a consent decree with USA Waste requiring USA Waste to take certain actions including the divestiture of certain assets within the State of Oregon and allowing the merger to be consummated. During the period of time that Metro spoke to, corresponded with, and provided documents to the Department of Justice, Metro never asserted to the Department, to USA Waste or to WMI that the merger required Metro's consent or that failure to obtain Metro's consent would constitute a default under the Waste Disposal Contract. Obviously, a default and termination of the Waste Disposal Contract would have had a material impact on the review conducted by the Department of Justice.

3. The Merger is Consummated.

Following consent by the U.S. Department of Justice and the State Department of Justice, the merger became effective on July 16, 1998. As required by the merger agreement, the Board of Directors of New WMI consists of an equal number of members from the Boards of Directors of WMI and USA Waste. The CEO of USA Waste, Mr. John Drury, became the CEO of New WMI. In addition, the merger agreement provided that the shareholders of WMI receive 0.725 shares of USA Waste for each share of WMI that they owned. The merger resulted in former WMI shareholders owning approximately 60% of New WMI. This information, along with a copy of the joint proxy statement, was provided by Oregon Waste to Metro by letter dated July 22, 1998, in response to comments attributed to Metro representatives in *The Oregonian* by which, for the first time, Metro asserted that the merger constituted a default under the Waste Disposal Contract. Oregon Waste's July 22 letter also re-emphasized to Metro that Oregon Waste would continue to be a wholly-owned subsidiary of WMNA, which in turn would continue to be a wholly-owned subsidiary of Waste Management Holdings, Inc. Oregon Waste explained that the merger was not a change in control or a transfer of beneficial ownership of Oregon Waste that required Metro's consent under Article 29.

B. ANALYSIS OF THE WASTE DISPOSAL CONTRACT

1. Article 29 Does not Apply.

Without explanation your letter asserts that a default occurred because the merger constituted either or both "a change in control" and a "transfer of a controlling interest in the beneficial ownership of the Contractor" under Article 29 of the Waste Disposal Contract.

Article 29 of the Waste Disposal Contract provides:

“Any change in control or the transfer of a controlling interest in the beneficial ownership of the Contractor shall constitute a default under the terms of this Contract, unless Metro consents to such a transfer. ‘The transfer of a controlling interest of Contractor’ shall include, but is not limited to, the transfer of 10 percent (10%) or more of the beneficial ownership of Contractor to or from a single entity, unless Metro, at Contractor’s request, finds to the contrary. However, intra-company transfers, such as transfers between different subsidiaries or branches of the parent Corporation of Contractor, shall not be construed as transfers of a controlling interest in Contractor. If, however, Metro determines that the new ownership can adequately and faithfully render the services called for in this Contract for the remaining term of the Contract, then Metro may elect to execute a novation, allowing the new ownership to assume the rights and duties of this Contract and releasing the previous ownership of all obligation and liability. The new ownership would then be solely liable for any work and/or claims attendant to this Contract.” (Emphasis added.)

The terms “control” and “beneficial ownership” are not defined in the Waste Disposal Contract. As mandated by Article 2 of the General Conditions of the Waste Disposal Contract, any analysis of Article 29 and its undefined terms must be made in accordance with Oregon law.

a. There Has Been No “Change in Control” of Oregon Waste.

The phrase “change in control” is not defined in the Waste Disposal Contract. Nevertheless, the language of Article 29 and of the Waste Disposal Contract as a whole demonstrate that the parties intended the phrase “change in control” to mean a change in control of Oregon Waste that was exercised by Oregon Waste’s parent corporation, WMNA. For example, the fourth sentence in Article 29 establishes the standard for Metro’s evaluation of whether to consent to a change in control. The standard specified is whether the “new ownership” can adequately and faithfully render the service called for in the Waste Disposal Contract. Article 29 uses the term “new ownership” to describe the party that Metro must evaluate to determine if that party can perform the contract. This use of the word “ownership” confirms that Article 29 is intended to apply only to a change of ownership of the Contractor, i.e., a sale or merger of Oregon Waste itself, not the sale or change of control of a grandparent corporation of Oregon Waste. Only the transfer of Oregon Waste stock, pursuant to a sale or merger, would result in a change in ownership of that company. No sale

or merger of Oregon Waste has occurred as a result of the merger of USA Waste and WMI. All of the stock of Oregon Waste is still held by WMNA.

As a second example, the Experience Questionnaire that Oregon Waste submitted to Metro (in response to Metro's original request for bids for the Waste Disposal Contract) demonstrates that Metro was concerned only about the control of Oregon Waste by its parent corporation, WMNA, rather than Oregon Waste's grandparent corporation WMI. The Experience Questionnaire was issued by Metro as part of the Waste Disposal Contract bid package and is defined by Article 1 of the General Conditions to be part of the Waste Disposal Contract. The Experience Questionnaire requested information concerning the Contractor's experience with waste disposal projects. The Questionnaire provides:

"If a partnership, firm, corporation or other entity owns a controlling interest in the bidder, responses to each question in the Experience Questionnaire must be submitted for both the bidder and the parent entity. For purposes of this paragraph, 'controlling interest' shall mean ownership of ten percent (10%) or more of the beneficial ownership of bidder."

Based upon this requirement, Oregon Waste completed the Experience Questionnaire for Oregon Waste and for WMNA. Metro accepted the Experience Questionnaire as completed for WMNA as the controlling corporation. Metro did not request the completion of the Experience Questionnaire by WMI. Metro accepted Oregon Waste's bid as responsive and awarded the Waste Disposal Contract to Oregon Waste. It is clear from the language of the Experience Questionnaire and Metro's actions that Metro intended the term "control" to apply to the controlling interest of Oregon Waste's parent corporation, WMNA, not Oregon Waste's grandparent corporation, WMI.

Prior drafts of Article 29 also confirm that the intent of the parties was that Article 29 would apply only to a change in ownership of Oregon Waste and not to the transfer of control of a parent or grandparent corporation of Oregon Waste. The first two sentences of Article 29 in its first-draft form issued by Metro in October of 1987, read:

"The transfer of ten (10) percent or more of the beneficial ownership of the corporation, partnership, copartnership, or firm charged with the obligations and duties of this Contract or the parent corporation thereof will not be allowed without the express prior written consent of Metro. In the event that the Contractor's business assets are sold, the Metro maintains the right to hold the original owner solely liable." (Emphasis added.)

The first draft of Article 29 thus would have prohibited the transfer of 10% or more of the beneficial ownership of Oregon Waste or its parent corporation, WMNA, without Metro's consent. Article 29, in its current form, prohibits, without consent, the change in control or the transfer of a controlling interest in Oregon Waste and does not include any reference to potential changes in the ownership of the parent corporation. The deletion of the language in the final Waste Disposal Contract forbidding the transfer of a 10% (or more) beneficial ownership of the parent corporation of the Contractor unequivocally demonstrates that Metro intended to specifically exclude the broad application of Article 29 that Metro now advances. This earlier draft also demonstrates that Metro knew how to draft a provision to unambiguously restrict the transfer of the parent or grandparent corporation of Oregon Waste, if that was Metro's intent.

Finally, Oregon courts have analyzed the phrase "change in control" in various contexts, and routinely determined the paramount issue to be a change in the ownership of corporate stock. Although in these cases the "change in control" is generally defined by statute or contract, the common denominator in the cases is the courts' equation of "control" to stock ownership, with all its attendant powers. The ownership of Oregon Waste's stock did not change as a result of the merger. All of Oregon Waste's stock has been, and continues to be, owned by WMNA. There has been no sale, transfer or other change in the ownership of Oregon Waste's stock due to the merger, and, thus, under Oregon case law, there has been no "change in control" of Oregon Waste.

Metro apparently believes that the changes in the directors and officers of Oregon Waste, WMNA and WMI (now Waste Management Holdings, Inc.) resulting from the merger constitute a "change in control." Metro's belief is incorrect. First, Metro's implied consent to historical changes in directors and officers of Oregon Waste, WMNA, and WMI undermines this position. The slate of directors and officers of Oregon Waste, WMNA and WMI has changed numerous times since the Waste Disposal Contract was executed. Metro has never claimed that these changes are a "change in control" that require Metro's consent, nor has Metro announced that failure to obtain Metro's consent to these changes constitutes a default under the Waste Disposal Contract. Metro's historic and practical construction of the term "change in control," therefore, belies its current assertion that the merger of WMI and USA Waste constitutes a "change in control" of Oregon Waste.

Second, there have been effectively no changes in the personnel responsible for performing the contract at the Columbia Ridge Landfill. With the exception of a change in Oregon Waste's Division President, the remainder of the staff at the landfill is the same before and after the merger, including the District Manager, Steve Seed. On a day-to-day basis, Metro's solid waste is being handled by the same competent staff in the same responsible manner in which the solid waste was handled before the merger. The merger has had no effect on Oregon Waste's provision of services to Metro under the Waste Disposal

Contract. Again, there has been no "change in control" of Oregon Waste that affects the Waste Disposal Contract.

Third, Metro's contention that the change in the directors and officers resulting from the merger constitutes a "change in control" fails to consider that the directors, and indirectly the officers, of any corporation are elected by, and serve at the pleasure of, the shareholders of that corporation. Therefore ultimate control of any corporation is vested in the corporation's shareholders. Using Metro's theory, Metro must examine the ultimate shareholders of New WMI, a company publicly traded on the New York Stock Exchange. Approximately 60% of the shareholders of WMI continued to "control" New WMI after the merger. Thus, there has been no "change in control" of Oregon Waste. The sole shareholder of Oregon Waste (WMNA) and the sole shareholder of WMNA (WMI) are the same before and after the merger, and the majority of the shareholders of New WMI are the same as the shareholders of the former WMI.

b. There Has Been No "Transfer of Beneficial Ownership."

Oregon courts generally define "beneficial ownership" by the separation of legal title and equitable title to real property or personal property, such as stock. The merger has caused no division of the legal title and equitable interest in Oregon Waste's stock. The stock of Oregon Waste was, and continues to be owned by one entity, WMNA. Because WMNA continues to hold both legal and equitable title to Oregon Waste's stock following the merger, no separate beneficial ownership was transferred as a result of the merger.

2. Metro Cannot now Assert that its Consent was Required.

Because there has been no "change in control" or "transfer of a controlling interest of the beneficial owner" of Oregon Waste, Metro must withdraw its September 3 letter. Even if Metro disagrees with Oregon Waste's interpretation of Article 29, Metro is estopped from asserting that its consent was required or that failure to obtain consent constituted a default under the Waste Disposal Contract.

Almost immediately after the merger agreement was entered in March of 1998, representatives of USA Waste and WMI met with representatives of Metro to discuss the pending merger and the Waste Disposal Contract. During this series of meetings, Metro never contended that Oregon Waste was required to obtain Metro's consent to the merger under the Waste Disposal Contract.

If Metro had indicated that consent was required or even generally raised the issue of consent, USA Waste and WMI would had an opportunity to resolve the issue with Metro prior to the merger. USA Waste and WMI had numerous options. For example, USA Waste and WMI could have: (a) requested Metro's consent, (b) restructured the merger so that even

in Metro's view consent was not necessary, or (c) dissolved Oregon Waste and under Article 24.D. of the Waste Disposal Contract allowed Oregon Waste's successor-in-interest to provide adequate assurance of future performance. Having provided good faith notice of the merger and unaware that Metro believed the merger required Metro's consent, USA Waste and WMI proceeded to resolve the outstanding issues complete its antitrust review with the United States and Oregon Departments of Justice and consummate the merger. As a result, the Consent Decree between the United States, certain state attorneys general and New WMI required New WMI to divest of certain assets, including a landfill located in the State of Oregon. Thus, Metro, because of its past practice with respect to the application of this provisions and its misleading silence in the spring meetings with WMI and USA Waste and in the months following, is estopped from now asserting that Metro's consent was required or that a default under the Waste Disposal Contract has occurred.

3. **Assuming Article 29 Applies, Oregon Waste Requests Consent from Metro.**

Oregon Waste does not believe that there has been "any change in control or the transfer of a controlling interest in the beneficial ownership" of Oregon Waste as a result of the merger or that Metro's consent was required. Nevertheless, in order to resolve this matter without further dispute or litigation between the parties, and without waiving any of its rights, Oregon Waste here tenders its request for Metro's consent.

Article 29 provides in part:

"If, however, Metro determines that the new ownership can adequately and faithfully render the services called for in this Contract for the remaining term of the Contract, then Metro may elect to execute a novation, allowing the new ownership to assume the rights and duties of this Contract and releasing the previous ownership of all obligation and liability." (Emphasis added.)

The express language of Article 29 defines both parties' expectations with respect to Metro's consent to a "change in control" or a "transfer of a controlling interest in the beneficial ownership" of Oregon Waste. Article 29 provides specific standards Metro must apply in consenting to a transfer: whether the new ownership can adequately and faithfully render the services provided for in the Waste Disposal Contract. These standards embody the reasonable expectations of Oregon Waste and Metro as to how Metro must evaluate and, then consent to, any change in control or transfer of a controlling interest in Oregon Waste.

Oregon Courts recognize an implied duty of good faith and fair dealing in every contract. The obligation of good faith and fair dealing must effectuate the reasonable expectations of the parties to the contract. As applied to Article 29, this duty means that

Metro has a good faith obligation to consent to the alleged transfer of control because Oregon Waste, its parent, WMNA, and New WMI can continue to adequately and faithfully perform the Waste Disposal Contract.

New WMI can amply demonstrate that it will continue, through its subsidiary Oregon Waste, to adequately and faithfully render the services of the Waste Disposal Contract for its remaining term. Before the merger, WMI (the corporation presumably in "control" of Oregon Waste in order to be consistent with Metro's allegations of default) was the largest solid waste company in the United States. Following the merger, New WMI is the largest and most qualified solid waste company in the United States. Former WMI was financially sound. New WMI is financially sound by any measure. If Metro requires any information regarding the financial condition of New WMI in order to provide consent, please contact me and I will provide the information to Metro.

Metro has previously acknowledged that both USA Waste and WMI are qualified to perform landfill disposal services by sanctioning disposal of solid waste regulated by Metro at facilities owned or operated by subsidiaries of USA Waste and by subsidiaries of WMI. As demonstrated by the Landfill Experience Resumes for New WMI and its subsidiaries, attached as Exhibit A, the integrated experience and expertise of WMI and USA Waste only increases Oregon Waste's ability to "adequately and faithfully perform" its obligations under the Waste Disposal Contract. Prior to the merger, WMI and its subsidiaries owned and operated 137 landfills in North America and USA Waste and its subsidiaries owned and operated 182 landfills in North America. The subsidiaries and affiliates of the New WMI now own or operate over 313 landfills in North America.

New WMI and its subsidiaries are committed to running those landfills in an environmentally responsible manner, in strict compliance with federal, state and local laws and regulations. The combined knowledge of USA Waste and WMI will ensure the continued industry lead in disposal services and the operation of state-of-the-art disposal facilities on the part of New WMI and its subsidiaries such as Oregon Waste. Moreover, Oregon Waste continues to render superior service to its customers. That service has not changed following the merger. Exhibit B provides a list of customers for which Oregon Waste provides disposal services. We encourage Metro to contact any of these customers regarding the quality of service provided by Oregon Waste following the merger.

Metro recently expressed concern over the consolidated ownership and operation by New WMI of regional solid waste disposal facilities. In particular, Metro suggested that New WMI had the ability to affect adversely the tipping fee for waste being disposed of at the Columbia Ridge Landfill pursuant to the Waste Disposal Contract, by directing residues from Wastech and ERI to other facilities owned by other subsidiaries of New WMI. As you know, this issue is now moot as to Wastech, because Wastech has committed to apply to Metro for a license to operate Wastech as a dry-waste only facility. In addition, and in order to further

assuage Metro's concerns, Oregon Waste is willing to commit to send all residues from Wastech and ERI to Columbia Ridge Landfill and include such waste in the calculation of Metro's solid waste volume under the Waste Disposal Contract.

If Metro has any additional business concerns caused by consolidated ownership of regional waste facilities, which Metro considers may provide Metro with a basis to withhold consent, Oregon Waste would like to discuss any such concerns. Furthermore, if Metro requires additional information to grant its consent or to confirm that New WMI, through its great-grandchild subsidiary Oregon Waste, can "adequately and faithfully perform" the obligations under the Waste Disposal Contract, New WMI will make such information available promptly to Metro upon request.

4. Assuming a Default has Occurred, Oregon Waste Exercises its Right to Cure.

Under Article 24.B. of the Waste Disposal Contract, Oregon Waste has the right to cure a default under the Waste Disposal Contract once notified of such default by Metro. Obviously, Oregon Waste does not agree with Metro's claim that a default under the Waste Disposal Contract has occurred. Nonetheless, Oregon Waste hereby exercises its right to cure the alleged default. Oregon Waste can cure any default under the Waste Disposal Contract by providing Metro with assurances that Oregon Waste will continue to perform under the Waste Disposal Contract in the same manner it has performed in the past.

As noted above, New WMI is the largest and most qualified solid waste company in the United States. In that respect, New WMI is fully capable of performing, through its subsidiary Oregon Waste, the obligations set out in the Waste Disposal Contract. Certainly, Exhibit A demonstrates New WMI's and WMNA's abundance of experience in the solid waste disposal business throughout the United States. Moreover, New WMI is financially strong and has more than ample resources to satisfy the obligations of the Waste Disposal Contract.

C. CONCLUSION

Oregon Waste disagrees with the claim of default asserted in Metro's September 3 letter. In particular, for the reasons stated above, Oregon Waste does not accept Metro's assertion that the merger of WMI and USA Waste required Metro's consent or constituted a default under the Waste Disposal Contract. Even assuming there was a transfer which required Metro's consent, Metro had constructive and actual notice of the pending merger through several meetings with WMI and USA Waste representatives during the spring of 1998. Metro at no time during those meetings asserted that the merger required Metro's consent or that the lack of consent constituted a default under the Waste Disposal Contract. Metro's actions were consistent with its historic interpretation and application of this

Mr. Mike Burton
November 2, 1998
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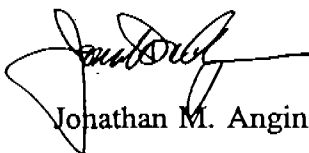
provision. Having sat by in silence while the merger was consummated, Metro is estopped from asserting its default claim.

Although Oregon Waste strongly disagrees that Metro's consent to the merger is required, Oregon Waste by this letter requests that consent. Metro has a good-faith duty under Oregon law to provide that consent. Article 29 provides the standards by which Metro must examine and consent to "new ownership:" the ability to adequately and faithfully perform the obligations set out in the Waste Disposal Contract. As the largest solid waste disposal company in the United States, and as demonstrated by Exhibit A, New WMI, through its subsidiary Oregon Waste, can "adequately and faithfully" continue to perform the Waste Disposal Contract.

Oregon Waste also asserts its right to cure any alleged default under the Waste Disposal Contract. Oregon Waste offers its assurances that it can and will continue to perform under the Waste Disposal Contract in the same manner it has performed in the past. As a practical matter the employees operating the Columbia Ridge Landfill have not changed as a result of the merger. The service provided to Metro under the Waste Disposal Contract has not been affected. In addition, Oregon Waste is backed by the largest and most qualified solid waste company in the United States, which is committed to quality service and superior waste disposal operation.

Although we obviously do not agree that Metro's consent is required, please notify me immediately if Metro has any concerns regarding New WMI's qualifications, the consolidated ownership of regional waste disposal facilities or any other concerns which may cause Metro to consider withholding such consent.

Very truly yours,



Jonathan M. Angin

Attachments

c/attach.:

Mr. Duane Woods
Mr. Van Katzman
Mr. Doug Sobey
Mr. Scott Bradley
Mr. Steven Seward

Mr. Mike Burton
November 2, 1998
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bc/attach.: Mr. Ray Phelps