

THE ART OF SAYING "NO" OR BAMBI MEETS GODZILLA

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ABSTRACT

The following article examines the law, economics and politics of a recent decision by the San Luis Obispo County Board of Supervisors to deny the assignment of a local solid waste franchise to USA/Waste Management, Inc. The article also discusses a sample assignment provision designed to preserve for local decision-makers maximum discretion in approving or denying transfers or assignments of solid waste franchises.

PROLOGUE

Some of us who are still able to remember the 1960's may recall an underground cartoon entitled "Bambi Meets Godzilla." The story line is based on an exquisitely simple theme: Bambi grazes in a beautiful pastoral setting and Godzilla stomps on Bambi - The End. So what do Bambi and Godzilla have to do with solid waste? They underscore the political perception in San Luis Obispo County, California, of the proposed acquisition of a local solid waste hauler by the largest waste company in the world: USA/Waste Management, Inc.

The continuing consolidation, some might say monopolization, of the solid and hazardous waste industry through mergers and acquisitions is feeding an economic Godzilla. Certainly, all Godzillas are monsters - at least in terms of their sheer magnitude. But not all Godzillas are bad monsters. Some of the nicer Godzillas contribute to our local charities, sponsor our little league teams, and help us build homeless shelters. Nevertheless, local governments must be mindful of the potential ramifications of the continuing monopolization of the waste industry, particularly where waste collection and disposal facilities are owned by the same Godzilla.

MONOPOLIZATION OF SOLID WASTE THROUGH MERGERS AND ACQUISITIONS

Much has been written in recent years about the so called "vertical and horizontal integration" of waste disposal services. The economic concepts are relatively simple: the largest waste management companies seek to acquire,

generally through merger or acquisition, smaller, local waste management companies, with the ultimate eye towards controlling both the collection and disposal ends of the process. According to the USA Waste Services, Inc., 1997 Annual Report:

The Company regularly pursues opportunities to expand its services through the acquisition of additional solid waste management businesses and operations that can be effectively integrated with the Company's existing operations. In addition, the Company regularly pursues mergers and acquisition transactions, some of which are significant, in new markets where the Company believes that it can successfully become a provider of integrated solid waste management services As one of the leading industry consolidators, the Company could announce other transactions with either publicly or privately owned businesses at any time.¹

The process of vertical integration of waste collection services is best described from a local government perspective by one commentator as follows:

A municipality often refrains from undertaking a competitive procurement of an expiring waste collection contract that has long been satisfactorily serviced by a local, family-owned hauling business. Arguing for sole-source renegotiations, the hauler might emphasize his business and social ties to the community and express his intention to remain in town for many years to come and leave the business to his children. Nevertheless, on the date he signs a new agreement, his corporate value is boosted. Despite his

¹ USA Waste Services, Inc., 1997 Annual Report, page 12.