

CAUSE NO. 97-12163

TEXAS DISPOSAL SYSTEMS  
LANDFILL, INC.  
Plaintiff,

vs.

WASTE MANAGEMENT, INC. and  
WASTE MANAGEMENT OF  
TEXAS, INC.,  
Defendants.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

126<sup>th</sup> JUDICIAL DISTRICT

**PLAINTIFF'S THIRD AMENDED PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff, Texas Disposal Systems Landfill, Inc. ("TDSL") complaining of Waste Management, Inc. ("WMI") and Waste Management of Texas, Inc. ("WMT") (collectively the "Defendants" or "Waste Management"), and respectfully shows the Court as follows:

I.  
**PARTIES**

1. Plaintiff TDSL is a Texas corporation duly formed and existing under the laws of the State of Texas. Plaintiff's principal office and place of business is at 12200 Carl Road, Creedmoor, Texas 78601.

2. Defendant WMT is a Texas corporation duly formed and existing under the laws of the State of Texas. It is a subsidiary of Defendant WMI. WMT has appeared in this case and may be served through its counsel of record.

3. Defendant WMI is a Delaware corporation registered to do business in the State of Texas. WMI has appeared in this case and may be served through its counsel of record. To the extent that Defendant WMI has changed its name to Waste Management Holdings, Inc., as

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represented by Defendant, Plaintiff continues to assert its cause of action against this successor entity.

II  
JURISDICTION AND VENUE

4. The amount in controversy in this cause, exclusive of interest and costs, exceeds the minimum jurisdictional limits of this Court. Venue is proper in Travis County, Texas, pursuant to § 15.002 and § 15.017 of the Texas Civil Practice and Remedies Code.

III  
CONDITIONS PRECEDENT

5. All conditions precedent to the filing of this suit and request for relief have been expressly complied with.

IV  
FACTS

6. Both TDSL and the Defendants are solid waste management companies with waste handling and landfill operations. Defendants and related entities comprise the largest solid waste management company in the world, measured by total sales. TDSL is a regional company operating in the Austin/San Antonio corridor. It operates a solid waste management landfill in Southeast Travis County and solid waste transfer stations in both the City of San Antonio and Travis County. TDSL and Defendants are competitors who routinely bid and compete for the same customers and contracts in Austin, San Antonio and surrounding counties.

7. The Defendants, particularly Waste Management of Texas, Inc., have a dominant role in the City of San Antonio's disposal of its municipal and industrial solid waste as well as the disposal of commercial and industrial waste collected by Waste Management or related entities and from other haulers in the City of San Antonio market area. Defendants have engaged in a joint enterprise with regard to their conduct with Plaintiff TDSL. Using the WMI Covell Gardens landfill and the WMI Comal County landfill, Defendants have accumulated a

market share in excess of 45% of the disposal of municipal and industrial solid waste in the City of San Antonio market area.

8. In the City of San Antonio, like many other cities, residential collection of household garbage and other trash is performed primarily by the city with city trucks, using city employees. Those trucks then haul the collected waste either directly to a landfill with which the city has a contract to accept the waste or to a transfer station where the waste is collected in larger trucks to be hauled to a landfill. From 1982 to January 1998, the City of San Antonio operated the Starcrest Transfer Station where city route trucks would bring the collected waste and long-haul city trucks would then “transfer” that waste to a landfill.

9. From 1993 to today only three landfills have been qualified and contracted with the City of San Antonio to accept municipal and industrial solid waste—Waste Management’s Covel Gardens, BFI’s Tessman Road landfill, and TDSL’s landfill near Buda. This is a highly concentrated market. During the relevant period, Waste Management received far more of the San Antonio market area waste than the other two landfills. In 1997 Waste Management had a solid waste stream market share in San Antonio of approximately 48.4%. In 2001 that market share had increased to approximately 51.1%. These percentages evidence that at all relevant times a dangerous probability existed that Waste Management would achieve monopoly power in the landfill business for the San Antonio market area.

10. Similarly, Waste Management operated at least two landfills serving the Austin area called the WMI Austin Community Landfill and the WMI Williamson County Landfill. Through the use of these landfills, Waste Management was the market leader in the Austin area landfill market, achieving a substantial percentage of the disposal of Austin municipal and industrial solid waste. As with the City of San Antonio, residential waste within the City of

Austin is picked up primarily by City of Austin crews and then taken to local landfills. The City of Austin previously disposed of residential waste at the city's landfill near what was to become Austin-Bergstrom International Airport. When the airport opened, federal and state regulations required the city to cease accepting putrescible waste at its landfill. In 1993, even before the city's landfill was limited to certain dry waste streams, Waste Management had approximately 38.9% of the municipal and industrial solid waste disposal market for the Austin area. By 2001, it had approximately 39.7% market share. These percentages evidence that at all relevant times a dangerous probability existed that Waste Management would achieve monopoly power in the Austin area even before Austin its own landfill to nonputrescible waste. Waste Management sought to expand its market share and achieve monopoly power by seeking all of the waste that would have to be diverted from the City of Austin Landfill when Austin-Bergstrom International Airport opened, further enhancing Waste Management's monopoly power.

11. Upon information and belief, Defendants, acting by and through their employees and a network of public relations consultants, lobbyists, and other agents or representatives, have routinely and secretly attempted to disparage the reputation of Plaintiff and its waste management capabilities in an effort to monopolize the San Antonio and Austin municipal and industrial solid waste market, eliminate competition, and undermine Plaintiff's existing and prospective business relationships. These communications have been directed to, among others, the Texas Natural Resource Conservation Commission ("TNRCC") for the purpose of causing Plaintiff to undergo expensive and time-consuming regulatory evaluations and re-evaluation of its liner, other landfill design features, and compliance issues at the San Antonio transfer station, in an effort to undercut Plaintiff's ability to effectively compete and divert Plaintiff's focus on competitive bids against Defendants. Upon information and belief, other similar

communications (including without limitation those described herein) have been directed at the news media and state and local government officials, as well as customers and potential customers of TDSL.

12. Defendants have attempted to injure Plaintiff and monopolize the municipal and industrial solid waste disposal market in the San Antonio and Austin areas through such communications in part because Plaintiff and Defendants were competing for business in Austin, Texas and San Antonio, Texas. Defendants have a history of compliance problems with state and federal environmental regulations, including without limitation at Defendants' Austin Community Landfill (ACL). Due to Defendants' concern that TDSL's superior compliance with environmental regulations would give TDSL an advantage in competing for business in Austin and San Antonio, Defendants engaged in a course of conduct aimed at disparaging TDSL, particularly its environmental reputation, through communications with customers, potential customers, and the media.

13. Among such communications, on or about January 30, 1997, a document titled "Action Alert" and containing derogatory and false information about TDSL was sent, via fax, by Mr. George Cofer, a respected environmental advocate in the Austin area, to more than sixty community activists and governmental officials. The "Action Alert" uses many items of misinformation in an effort to incite the reader to unwittingly interfere with TDSL contracts and business relations, to the benefit of the Defendants. The "Action Alert" put out a call to action for the reader to express dissatisfaction over TDSL's business dealings and its facilities' environmental integrity to the San Antonio mayor and City Council members, Travis County officials, and the *San Antonio Express-News*.

14. The "Action Alert" contains many false statements and implications. For example, the "Action Alert" refers to an alleged "proposal" by the San Antonio City Council to increase the amount of waste sent to TDSL as part of a thirty-year agreement. In fact, this was not a "proposal." The San Antonio City Council voted to grant the contract to TDSL on December 5, 1996, almost two months before the "Action Alert" was distributed by Mr. Cofer. However, due to Defendants' wrongful interference with this business relationship – through a course of common conduct including, but not limited to, the distribution of the "Action Alert" – the signing of the contract by the City Manager was delayed until January 7, 1998.

15. By way of further example, and without limitation, the "Action Alert" also falsely stated that TDSL's landfill liner was "an exception to the EPA Subtitle D Environmental Rules." In fact, the TDSL landfill liner has been reviewed and approved by the State of Texas through the TNRCC as an EPA Subtitle D Performance Design – in other words, TDSL's liner is not an "exception," but rather is fully compliant with Subtitle D. The "Action Alert" also falsely alleges that any type of waste may be accepted for disposal at TDSL other than hazardous waste. This claim is untrue because there are several types of waste TDSL cannot accept other than hazardous waste, including unprocessed medical waste, radioactive waste, oil and gas waste, certain petroleum contaminated materials, among others. The "Action Alert" falsely states or implies that TDSL's operation of a transfer station in San Antonio would increase truck traffic on I-35, thereby increasing traffic/mobile source air emissions, traffic volume, and the potential for accidents. The "Action Alert" further falsely states or implies that TDSL does not utilize a leachate collection system. In fact, such a system was, and is, in place and operating in TDSL's landfill, as required by TDSL's facility permit.

16. In addition to the many specific false statements and implications contained in Defendants' "Action Alert," the document's overall thrust, when read in context and as a whole, is that TDSL's landfill is environmentally inferior to other landfills in the Central Texas, Travis County, and San Antonio areas – including Defendants' ACL – because, among other things, TDSL's landfill allegedly did not have a liner or leachate collection system (which could lead to the contamination of ground and surface water) and because the TDSL landfill allegedly was not restricted from receiving certain types of potentially dangerous waste. This implication or impression was created through omission and/or juxtaposition of facts. Defendants knew this impression was false and/or entertained serious doubts to that effect.

17. The information contained in the Action Alert was provided to Mr. Cofer by Defendants for the purpose of provoking a reconsideration of the San Antonio City Council's vote to award TDSL the above-referenced thirty-year agreement, to delay the signing of the finalized contract by the San Antonio City Manager, and to create a concern in the Austin environmental and regulatory community for the purpose of discouraging the City of Austin from entering into a contract for long-term disposal capacity with TDSL, the privatization of recycling facilities, and the formation of a joint venture for a transfer station. Mr. Cofer did not know that the San Antonio City Council had already unanimously awarded this contract to TDSL. Mr. Cofer also was unaware of the falsity of the allegations regarding Plaintiff's landfill liner. After Mr. Cofer received an overwhelming negative response from some of the recipients of the Action Alert who are knowledgeable about solid waste issues and the TDSL facility, Mr. Cofer faxed a retraction to the Action Alert's recipients several days later. In the retraction, Mr. Cofer names certain Defendants as the source of the false information. Mr. Cofer also faxed a response written by TDSL along with his retraction. In private conversations with TDSL and

others, Mr. Cofer admitted that he had been provided the inaccurate and misleading information contained in the Action Alert by Don Martin, public relations consultant for Defendants and representative of the Defendants. Mr. Cofer also stated that Al Erwin, a representative of the Defendants, had made similar statements to him. Mr. Erwin also indicated he had communicated with employees of the TNRCC responsible for regulating landfills who would support his claims. Although Mr. Cofer sent the Action Alert, it is clear that the false information contained in it was provided by Defendants, and Mr. Cofer was used as a involuntary courier of Defendants' misinformation. In essence, Defendants were the direct publishers of the "Action Alert" or, alternatively, the distributors of the information they provided to Mr. Cofer, and the fact that the "Action Alert" would be published by him to many interested environmental groups and their leaders was reasonably foreseeable, again making Defendants responsible for the publication.

18. At the time Mr. Cofer's letter was sent, Plaintiff and Defendants had recently finished a very competitive bid process in San Antonio and were in the midst of competition for a large, long-term contract with the City of Austin that would include landfill services, a processing center for recyclables collected at curbside, and an Austin waste transfer station. At the time the Action Alert was transmitted by Mr. Cofer, TDSL and the Defendants had just submitted bids to the City of Austin seeking a contract to receive solid waste for 30 years, to process recyclables collected at curbside by the City, and to construct and operate a transfer station. Unbeknownst to Mr. Cofer, these bids had been submitted on January 24, 1997, just one week prior to his distribution of the Action Alert. The City of Austin, as part of the bid process, had required all applicants to abstain from lobbying the city council or city staff and from engaging in activity that would attempt to influence or affect the city council's bid and selection process. Upon information and belief, Defendants, or at least one of them, submitted a bid to the

City of Austin and agreed to the lobbying restriction described above. Several city council members were sent the Action Alert, which contained false statements and implications about TDSL. Defendants' use of a third party to send the fax was designed to avoid the lobbying restriction while preventing TDSL from contacting city council members to refute these false claims.

19. As described above, the City of San Antonio awarded a contract to TDSL on December 5, 1996 to operate a waste transfer station and to dispose of the waste processed through this transfer station. The Action Alert requested recipients to contact the San Antonio Mayor and City Council to express concerns about continuing the contractual relationship between TDSL and San Antonio. The fax was an attempt by Defendants to persuade the San Antonio Mayor, City Council, and staff to refrain from committing the December 1996 contract to a final writing.

20. The Defendants' drafting and distribution of the Action Alert is simply one event in the course of a continuing pattern of similar conduct in their efforts to monopolize the municipal and industrial solid waste disposal markets in the San Antonio and Austin areas and interfere with Plaintiff's contracts and business relationships that amounts to the same transaction or occurrence. Defendants had, for a period of time unknown to Plaintiff due to Defendants' concealment of their activities, carried on a campaign of knowing misinformation regarding TDSL, including the status of its landfill's liner and the comparative environmental quality of TDSL's landfill and others in the Central Texas, Travis County, and San Antonio area, including without limitation Defendant's Austin landfill, known as the Austin Community Landfill (ACL). One of the themes of this continuing misinformation campaign has been that TDSL's landfill is environmentally inferior to Defendants' ACL facility. This has been repeated

by Defendants in the Action Alert as well as prior and subsequent writings and oral statements. This continuing theme is part of the same transaction or occurrence that spawned the Action Alert.

21. Defendants have made false statements and implications, both orally and in writing, regarding TDSL with knowledge of falsity and/or with reckless disregard of the truth. Additionally or in the alternative, Defendants made such false statements and implications when, in the exercise of due diligence, they should have known those statements were false. The Defendants intentionally and/or recklessly issued these defamatory statements with the express purpose of harming TDSL's reputation in the community and specifically with governmental bodies including (without limitation) the TNRCC, the City of Austin, and the City of San Antonio. Further, Defendants made these statements, took other actions and engaged in other predatory or anti-competitive conduct with the specific intention of interfering with the prospective contractual relations with the City of Austin, interfering with TDSL's existing and/or prospective contractual relations with the City of San Antonio, and monopolizing the disposal of municipal and industrial solid waste in the San Antonio and Austin market areas, all with the intent to cause TDSL economic damage. In fact, such actions have caused damage to TDSL in an amount exceeding the minimum jurisdictional limits of this Court.

22. Defendants' continued pattern of attempted monopolization and misconduct has continued uninterrupted despite the presence and pendency of this lawsuit. For example, and without limitation:

- Waste Management attempted to discourage the San Antonio City Council from approving the City's entry of a contract with TDSL for privatization of the Starcrest Transfer Station and attempted to prevent TDSL from operating the transfer station after the contract to operate was finalized.

- Waste Management successfully bid for the City's Regional Environmental Enterprise Zone designation that denied Plaintiff TDSL participation in such a program and then, once it won the designation from the City, never delivered on the promises it made to get the designation.
- Waste Management sought to convince the City to "moth ball" the Transfer Station even after the city had committed itself to keeping it open to effectively cancel the city's contract with TDSL.
- Mr. Robert Drenth, Regional Vice President for Defendants at the time, sent a letter dated March 10, 1998 to John German, the City of San Antonio Public Works Director. Mr. Drenth, for and on behalf of Defendants, maliciously and intentionally tried to persuade the City of San Antonio's Public Works Department and the Planning Department to place restrictions on the City-owned Starcrest Transfer Station. Defendants asked the City for these restrictions based on alleged violations of zoning ordinances and alleged violations of the City's TNRCC permit for the transfer station. The proposed restrictions would have effectively eliminated TDSL's ability to operate the transfer station, making it impossible to process its own waste and third-party waste through the transfer station. The proposed restrictions would have caused TDSL to violate its long-term service and disposal contract with the City. The proposed restrictions were objectively baseless and brought only as a sham to injure Plaintiff TDSL.
- In addition (and again by way of example and without limitation), Defendants forwarded an unsigned memo to the City of San Antonio and the TNRCC alleging five violations of the Starcrest Transfer Station State Permit by TDSL. Larry Cohn, Defendants' landfill manager in San Antonio, later admitted to Bob Gregory (of TDSL) that he had sent the memo to the TNRCC's regional office. A San Antonio City Council member and a member of City Staff told TDSL representatives that Mr. Cohn had also given them a copy of the memo. The memo takes several TNRCC permit issues from Robert Drenth's March 10, 1998 letter and alleges that TDSL had committed violations of various regulations. This "anonymous complaint" was objectively baseless and brought as a sham to injure Plaintiff TDSL.
- In another example of this pattern of continuing conduct, on July 14, 1998, Defendants issued a press release in Austin containing several false and/or misleading statements with the express purpose and intent to cause further economic and financial harm and/or ruin to TDSL.

23. By publishing and distributing the above-described false and defamatory statements and implications, Defendants actually expected, or reasonably should have suspected, that Plaintiff would be compelled to respond to Defendants' attempt to monopolize the markets and to rebut such statements and implications, which rebuttal in turn required Plaintiff to restate

Defendants' false and defamatory statements and implications. For example, the Action Alert urged recipients to contact various public officials and the media to complain about Plaintiff's alleged environmental inadequacies. Defendants knew or reasonably should have known that Plaintiff would be unable to determine each and every recipient of the false information contained in the Action Alert, since that false information would be passed on to others. Therefore, Plaintiff was compelled to follow up the Action Alert with corrective information to a much wider audience than those who originally received the Action Alert. Because Plaintiff's corrective information, by necessity and foreseeably, included the false statements and implications originally disseminated by Defendants, Defendants are liable for the distribution by Plaintiffs just as if Defendants themselves had distributed the false and defamatory statements and implications directly to the ultimate recipients.

24. As a further example of Defendants' interference with Plaintiff's business and attempted monopolization is that in August or September of 1999, Defendants hired key personnel away from a company affiliated with Plaintiff – in violation of those employees' contracts – in order to damage Plaintiff and the affiliated company, including without limitation to gain knowledge of confidential information and to cripple Plaintiff's ability to compete with Defendants, particularly in the San Antonio market.

25. Defendants' continuing course of wrongful conduct is not limited to the specific acts described above, but also may include (upon information and belief, and without limitation) the following: falsely representing to the City of Austin that the ACL had thirty years of capacity or that they could rely on their other landfill locations in nearby counties, thereby unfairly competing with Plaintiff, whose landfill actually *did* have the required capacity; engaging and/or attempting to engage in improper financial dealings with persons in San

Antonio; failing to disclose environmental conditions at the ACL facility that were required to be disclosed to the government under state and/or federal law; and causing or encouraging government officials to file or make erroneous charges or complaints about TDSL for the purpose of benefiting Defendants.

V.  
COUNT ONE:  
DEFAMATION (LIBEL AND SLANDER)

26. Plaintiff hereby adopts and incorporates the allegations in all foregoing paragraphs.

27. Defendants intentionally, recklessly, and/or negligently made false and defamatory statements and implications regarding TDSL. Defendants published or promoted the publication of the false and defamatory statements and implications to third parties without any legally recognized privilege to do so. Defendants' publications of the false and defamatory statements and implication were intentional and/or grossly negligent and were intended to and did directly and proximately cause the Plaintiff harm and damages. In the alternative, the defamatory statements and implications made by Defendants about TDSL constitute defamation per se.

28. The written false, defamatory statements and implications made by Defendants about TDSL constitute libel; the oral false, defamatory statements and implications made by Defendants about TDSL constitute slander. These statements and implications were intended to injure the Plaintiff's reputation and expose the Plaintiff to public hatred, contempt, ridicule, and financial injury and to impeach the Plaintiff's business honesty and integrity. The defamatory statements constitute defamation per se in that they falsely and wrongly impugn TDSL's honesty, and were intended to cause injury to TDSL's business and professional relations. The defamatory statements and implications, both oral and in writing, were made with actual malice.

The Defendants caused the publication of false and misleading statements and implications with the knowledge that they were false or with substantial grounds for knowing that they might be false and/or with reckless disregard to whether they were true. Further, Defendants intended to convey these false and defamatory implications about TDSL, and knew that these implications were, in fact, false, or acted with reckless disregard as to their falsity.

29. As a direct and proximate result of the Defendants' actions, Plaintiff has suffered damages and will continue to suffer damages in an amount within the jurisdiction of this Court. Defendants' actions, as described above, caused actual damage to Plaintiff's business reputation, as well as disparaging the qualities of its landfill and, therefore, damaging its reputation. Defendants attempted to create doubt in the minds of public officials, influential environmental leaders, and the public in general concerning the safety and efficacy of Plaintiff's landfill. Defendants' actions damaged Plaintiff's reputation in an amount that, as allowed under Texas law, is to be determined by the jury. Plaintiff has endured, and will continue into the future to endure, serious injury to TDSL's business reputation, good name, and standing in the community. Plaintiff seeks damages for these severe injuries.

30. Further, the Defendants acted with the malice required to support an award of exemplary damages. The Defendants acted with the specific intent to cause injury to Plaintiff and/or acted with conscious indifference to the rights, safety, or welfare of the Plaintiff. The Defendants had an actual, subjective awareness that their conduct and the conduct of their agents, employees, and servants involved an extreme degree of risk of harm to the Plaintiff. The Defendants ratified or approved the conduct of their agents, employees, and servants who carried out the actions herein described. These persons are, and were at all times relevant to this lawsuit, agents, employees, and servants of the Defendants and, in doing the acts described in this

petition, were acting within the scope of their employment and/or their agency relationships. The Defendants ratified and approved the conduct of their agents, employees, and servants with the full knowledge that these persons were acting with malice.

VI.  
COUNT TWO:  
TORTIOUS INTERFERENCE WITH CONTRACT

31. Plaintiff hereby adopts and incorporates the allegations in all foregoing paragraphs.

32. As described above, TDSL was awarded a contract with the City of San Antonio on December 5, 1996 to operate a transfer station and to provide waste disposal services. At this point, Plaintiff established a contractual relationship with the City of San Antonio and was entitled to the benefits of this relationship. Upon the award of the contract, City staff was instructed to prepare a written document memorializing the specific contractual provisions. Upon information and belief, the Defendants intentionally and willfully interfered with the drafting and execution of the contract by performing acts that were calculated to prevent the execution of the contractual agreement and consummation of the relationship. Additionally, upon information and belief, Defendants have intervened with the TNRCC to attempt to have the transfer station closed and to create problems in the performance of the contract between TDSL and the City of San Antonio. The acts done by the Defendants were without right or justifiable excuse and the acts of the Defendants were and are the proximate cause of actual damages and loss to TDSL.

33. The Defendants had actual knowledge of the existence of TDSL's relationship with the City of San Antonio or the Defendants had knowledge of such facts and circumstances that would have led a reasonable person to believe in the existence of the City Council approved

contract between TDSL and the City of San Antonio.

34. The Defendants willfully and intentionally interfered with the TDSL's contractual relations with the City of San Antonio and acted with malicious intent in an attempt to dissuade the City of San Antonio from formalizing the contract out of spite and ill will toward TDSL and for the sole purpose of causing economic injury to TDSL.

35. TDSL's injuries are a direct and proximate result of the Defendants' acts described above, and have resulted in, and will continue to result in, economic harm and damages to TDSL. Plaintiff seeks an award of compensatory and exemplary damages as a result of the Defendants' intentional, willful and malicious tortious interference with TDSL's contract with the City of San Antonio. TDSL also seeks its attorney's fees for being forced to prosecute this claim against the Defendants.

VII.  
COUNT THREE:  
TORTIOUS INTERFERENCE WITH  
PROSPECTIVE CONTRACTUAL RELATIONS

36. Plaintiff hereby adopts and incorporates the allegations in all foregoing paragraphs.

37. At the time of the acts complained of herein, Plaintiff and the Defendants were in the process of bidding for waste disposal contracts with the City of Austin. As part of the bidding process, the City of Austin precluded any applicants from lobbying or contacting, directly or indirectly, members of the Austin City Council, who would be responsible for awarding the contract. The distribution of the Action Alert, as described above, was undertaken by Defendants and their representatives as a scheme to circumvent this anti-lobbying provision; thus, such distribution was independently tortious or wrongful. Further, the false and defamatory statements and implications made by Defendants and their representatives (in the Action Alert

and elsewhere, as detailed above) were independently tortious or wrongful acts designed to interfere with Plaintiff's prospective contractual relations with the City of Austin. Through these and other acts (including without limitation false representations of landfill capacity), the Defendants tortiously interfered with this prospective contract, and have acted and conducted themselves (by and through their agents, representatives, and employees) in a willful, intentional and malicious attempt to persuade the City of Austin not to award the contract to TDSL. Although Plaintiff ultimately did enter into a contractual relationship with the City of Austin, Defendants' activities resulted in a substantial delay of certain proposed contracts with the City of Austin; further, Defendants' actions forced Plaintiff to expend significant time and effort responding to Defendants' wrongful activities designed to defeat such contract. The Defendants have ratified and approved the tortious or wrongful acts of their agents, representatives, and employees designed to wrongfully interfere with Plaintiffs' prospective contractual relations.

38. The Defendants have acted intentionally and improperly in interfering with the Plaintiff's prospective contractual relations. The Defendants' acts and activities constitute intentional meddling with the business affairs of TDSL, particularly in light of the restriction imposed by the City of Austin in connection with the lobbying efforts. Given the mandate of the City of Austin and the sensitive nature of public opinion and acceptance, the acts of the Defendants are unfair and do not rest on any legitimate interest.

39. Additionally and in the alternative, if the vote of the San Antonio City Council on or about December 5, 1996, as described above, did not result in a binding contract between the City and Plaintiff, Defendants' actions with regard to this prospective contractual relationship were independently tortious or wrongful and thus constitute actionable tortious interference with prospective contractual relations. Defendants' actions (including without limitation the

distribution of the Action Alert, oral statements consistent with the content of the Action Alert, and distribution of other oral and written statements that were false and defamatory) were willful and intentional, were designed with the intent of interfering with Plaintiff's prospective contractual relations, and proximately caused actual damage to Plaintiff, including without limitation a substantial delay in the consummation of the contract with the City of San Antonio. Plaintiff's damages include lost profits that would have accrued but for the delay, expenses incurred by Plaintiff in reasonable expectation of the consummation of the contract, and expenses and other costs incurred by Plaintiff in responding to Defendants' false and defamatory statements and other wrongful actions.

40. The Defendants' conduct in interfering with Plaintiff's prospective contractual relations was willful and intentional, and was undertaken with malicious intent, out of spite and ill will toward TDSL, and for the sole purpose of causing economic injury to TDSL.

41. Plaintiff's injuries are a direct and proximate result of the Defendants' acts described above, and have resulted in, and will continue to result in, economic harm and damages to TDSL. Plaintiff seeks an award of compensatory and exemplary damages, and also seeks its attorney's fees for being forced to prosecute this claim against the Defendants.

VIII.  
COUNT FOUR:  
BUSINESS DISPARAGEMENT

42. Plaintiff hereby adopts and incorporates the allegations in all foregoing paragraphs.

43. Defendants made the false and misleading statements and implications described above with knowledge of their falsity or with reckless disregard of their truth. Additionally, Defendants have made the false and misleading statements concerning TDSL with the intent of

harming TDSL and its economic interests. Defendants have no privilege for their actions, which were willful and intentional, and were undertaken with malicious intent, out of spite and ill will toward TDSL, and for the sole purpose of causing economic injury to TDSL and/or interfering in the economic interest of the Plaintiff. Defendants' actions have proximately caused actual and/or special damages to Plaintiff. TDSL is additionally entitled to exemplary damages based upon the malicious nature of the conduct and communication described herein.

IX.  
COUNT FIVE:  
ATTEMPT TO MONOPOLIZE UNDER STATE LAW—  
TEX.BUS. & COMM. CODE § 15.05(b)

44. Plaintiff hereby adopts and incorporates the allegations in all foregoing paragraphs.

45. The Defendants' predatory and anti-competitive conduct in the San Antonio area and in the Austin area, as described above, was undertaken with a specific intent to monopolize the separate markets in the Austin and San Antonio areas for accepting and disposing of municipal solid waste from those areas. There was a dangerous probability of achieving monopoly power because, at the time of the relevant events, Defendants held in excess of 45% of the market in San Antonio and in excess of 38% of the market in Austin.

46. As a direct and proximate result of Defendants' attempted monopolization, Plaintiff sustained actual harm to its business or property as well as suffering antitrust injury. Defendants' attempted monopolization caused antitrust injury in San Antonio by, among other injuries, delaying the privatization of the Starcrest Transfer Station by attempting to eliminate Starcrest's ability to accept waste, preserving the business for Covell Gardens and resulting in a loss for the City of San Antonio. Defendants' attempted monopolization caused antitrust injury in Austin because, among other injuries, it raised environmental concerns that resulted in a delay in allocating City of Austin waste to be disposed at TDSL.

47. Pursuant to Section 15.25 of the Texas Antitrust Act, Tex. Bus. & Comm. Code § 15.21, the antitrust violations described above, including, but not limited to, Defendants' actions described in paragraph 22 above, are continuing conduct such that these antitrust allegations, brought within four years of such continuing conduct, are not barred by limitations. Further, since the "Action Alert" and the other false communications referred to in this pleading is part of the course of continuing conduct, this allegation of attempted monopolization relates back to Plaintiff's Original Petition or, alternatively, they relate back to the allegations in Plaintiff's First Amended Petition filed in July 2000, less than four years from the date of the conduct alleged herein.

48. Defendants' conduct in support of its attempted monopolization was willful and flagrant. As a result, Plaintiff is entitled to treble its actual damages and to recover its costs of suit and its reasonable attorneys' fees pursuant to Tex. Bus. & Comm. Code § 15.21(a)(1).

49. Alternatively, if there is no finding that Defendants' conduct was willful and flagrant, Plaintiff is entitled to its actual damages together with interest at the post-judgment interest rate determined from the date of filing of a claim under the antitrust laws, along with its costs of suit, including a reasonable attorneys' fee as allowed under Tex. Bus. & Comm. Code § 15.21(a)(1).

X.  
COUNT SIX:  
PERMANENT INJUNCTION

50. Plaintiff hereby adopts and incorporates the allegations in all foregoing paragraphs.

51. The Defendants' acts are ongoing and continuous. Plaintiff is entitled to the relief requested as well as equitable and statutory relief. Without an award of the relief requested,

Plaintiff will continue to incur prejudicial harm as a direct and proximate result of the Defendants' actions.

52. The Defendants are performing, are about to perform, or are allowing the performance of acts of defamation and tortious interference relating to TDSL's relationships with the City of Austin and the City of San Antonio in violation of the Plaintiff's rights and in an attempt to monopolize. The actions of the Defendants are calculated to, and are causing, real and irreparable injury to Plaintiff, and pose a threat of danger to Plaintiff's legitimate business interests. Plaintiff is entitled to permanent injunctive relief because the acts of the Defendants have injured and are likely to continue to injure TDSL's business reputation and existing contractual relationships. Pursuant to Section 16.29 of the Texas Business & Commerce Code, injunctive relief is appropriate even though TDSL and Defendants are competitors. The Defendants' conduct is completely without legal justification or excuse. Plaintiff is not requesting an injunction against legitimate competitive activities, but rather an injunction against those activities which do not rise to the level of fair competition, i.e., the issuance of false and defamatory statements concerning TDSL's business practices and services, and other acts harming Plaintiff's business reputation and contractual relationships. Plaintiffs have and will continue to be damaged by the Defendants' conduct by a loss of customers, loss of good will, and other economic impact. Plaintiff has no adequate remedy at law for the injuries described above. The injuries and losses are continuing. The rights involved are unique and irreplaceable, so that it would be impossible to accurately measure, in monetary terms, the damages caused by the Defendants' conduct.

53. Upon the trial on the merits and final judgment, Plaintiff prays that the Court enter a permanent injunction prohibiting the Defendants from tortiously interfering with the

Plaintiff's contracts and prospective contractual relations, as well as defaming the Plaintiff's business reputation in any form or fashion or attempting to monopolize the San Antonio or Austin markets for accepting and disposing of municipal and industrial solid waste.

XI.  
STATUTE OF LIMITATIONS

54. Plaintiff hereby adopts and incorporates the allegations in all foregoing paragraphs.

55. The applicable statutes of limitations do not bar Plaintiff's causes of action. This lawsuit was filed within the limitations period. Additionally or in the alternative, the wrongful acts complained of herein were wrongfully and fraudulently concealed by the Defendants, and/or were inherently undiscoverable through the exercise of reasonable diligence. Additionally or in the alternative, Defendants' wrongful conduct described herein constitutes a single, continuing pattern of similar conduct that amounts to the same transaction or occurrence, and/or constitutes a continuing tort. This single, continuing pattern has continued through the pendency of this lawsuit. Plaintiff also relies on Tex. Bus. & Comm. Code § 15.25, which provides that its antitrust claims are not barred by the statute of limitations.

XII.  
PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff, Texas Disposal Systems Landfill, Inc., prays that:

1. Texas Disposal Systems Landfill, Inc. have judgment, jointly and severally, against Defendants for all actual, consequential, and statutory damages sustained as a result of their tortious interference, defamatory statements and implications, business disparagement, and attempted monopolization as alleged herein and proven at trial;
2. The Court award treble damages for willful and flagrant conduct on the attempted monopolization claim and separate punitive/exemplary damages against each Defendant in a sum to be determined by the trier of fact with regard to the other

claims;

3. The Court award Plaintiff's reasonable attorneys' fees and costs of suit;
4. The Court award prejudgment interest at the highest rate allowable by law;
5. The Court award post-judgment interest at the highest rate allowable by law;
6. A permanent injunction be issued, on final trial of this cause, enjoining the Defendants, their agents, servants and employees, directly or indirectly, from tortiously interfering with TDSL's contractual and prospective contractual relations and from defaming or disparaging TDSL's business reputation, or from attempted monopolization in any form or fashion, including, but not limited to, the issuance and promulgation of the false or misleading statements concerning TDSL's business products or services; and
7. The Court award such other and further relief, general or special, either at law or equity, to which Plaintiff may be justly entitled.

Respectfully submitted,

GEORGE & DONALDSON, L.L.P.

By: 

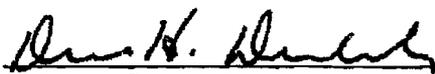
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ATTORNEYS FOR PLAINTIFF

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Third Amended Petition has been served upon counsel for Defendants *via facsimile* on the 6<sup>th</sup> day of May, 2002:

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