

Boyd Hartman

ATTORNEY
AT
LAW

11000 Main St.
Bellevue, Washington 98004
(206) 453-0312
FAX (206) 451-3796

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STATE OF WASH
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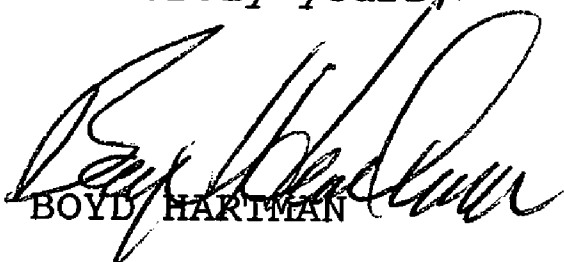
Mr. Paul Curl
Acting Secretary
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION
P.O. Box 9022
Olympia, WA 98504-9022

Re: ENOCH ROWLAND d/b/a KLEENWELL BIOHAZARD
AND GENERAL ECOLOGY CONSULTANTS
Docket No. TG-920304

Dear Mr. Curl:

Enclosed is the original and three copies of the Petition for
Administrative Review filed on behalf of Ryder Distribution
Resources, Inc., in the above entitled cause.

Sincerely yours,



BOYD HARTMAN

BH:br

Enclosures

cc: Mr. Steven W. Smith
Mr. James T. Johnson
Mr. James Sells
Mr. David Wiley
Mr. Richard Finnigan
Ms. Cynthia A. Horenstein
Mr. Warren Goff

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Determining)	
the Proper Carrier Classifi-)	
cation of:)	DOCKET NO. TG-920304
)	
ENOCH ROWLAND d/b/a KLEENWELL)	RYDER DISTRIBUTION
BIOHAZARD AND GENERAL ECOLOGY)	RESOURCES, INC.
CONSULTANTS)	PETITION FOR
_____)	ADMINISTRATIVE REVIEW

COMES NOW Ryder Distribution Resources, Inc., through its attorney of record, Boyd Hartman, and submits the following as its Petition for Administrative Review.

PRELIMINARY STATEMENT

This proceeding involves a challenge by the Commission concerning the lawfulness of operations contended to be interstate in nature. The Respondent, has for several years engaged in the collection and disposal of infectious medical waste, a service asserted to be regulated under the provisions of RCW 81.77.040. Respondent had previously been denied authority to engage in that service when disposal occurred within the state of Washington (Exhibit 13). Since that denial, Respondent has continued to conduct the same operations, but has transported the waste to California for disposal. Respondent now asserts that his operations are interstate in character and not subject to state jurisdiction.

The hearing held in this proceeding revealed no facts differing from what was presented to the Commission in Cause GA-907, Kleenwell's application proceeding, except for the change in disposal site, and the length of time the product is held in storage after collection and consolidated for shipment to California.

Ryder in its Post Hearing Brief suggested to the Law Judge that she view the record in light of the Commission's decision in *ALL COUNTY DISPOSAL SERVICE, INC.*, Cause No. TG-1859 (Aug. 1985), wherein the Commission held that the Commission regulated only the collection of garbage and refuse for disposal and stated:

" . . . The disposal of the garbage and refuse thus collected may be at any point and the location of the disposal site is incidental to the transportation for collection." (Page 6)

As further noted in that case:

"Here, the state does not regulate the means of interstate commerce, but rather regulates the in-state aspects of the carrier's business which are central to the health, safety and welfare of the public." (Page 6)

The Commission further noted at page 7 of that order that the disposal site was "irrelevant" to its jurisdiction. The Commission, as noted, did not regulate disposal sites nor was it even necessary to include in a carrier's authority grant a request for a disposal site. This concept was more clearly stated in *SURE-WAY INCINERATION, INC.*, Order M.V.G. No. 1451, Hearing GA-868 (Nov. 1990) where this Commission stated, referring to *ALL COUNTY*, supra:

"It is not necessary to request authority from the Commission to transport the waste across state lines and in fact the Commission has no power to grant authority of that nature. . ."

Viewing the record in context of those decisions, the efforts by Kleenwell to change disposal sites to defeat state jurisdiction was a nullity.

The Administrative Law Judge has acknowledged the fact that there are two aspects of the service challenged on this record, the collection for disposal, and the transportation of the waste to California where it is disposed of. However, her attempts to reconcile *MAIN v. TAYLOR*, 477 U.S. 131 (1986), *PIKE v. BRUCE CHURCH, INC.*, 397 U.S. 137 (1970) and to distinguish the case of *MEDIGEN OF KENTUCKY AND MEDIGEN OF PENN. v. P.U.C. of WEST VA.*, 787 F. Supp. 602 (S.D., W. VA. 1992), lead one to the conclusion that she has neglected the distinction in *ALL SERVICE* and *SURE-WAY* and views the service of Kleenwell as interstate in nature, but subject to the state jurisdiction as a permissible restraint on interstate commerce. This treatment of the record unnecessarily jeopardizes state jurisdiction of the purely intrastate activity of collection waste for disposal.

ARGUMENT

When dealing with a constitutional question of this nature, in a field where Federal jurisdiction is preeminent, it would seem unwise to use the broad brush approach asserted here. Reliance on the testimony of Mr. Turnburg and Mr.

Dempsey to sustain the state's regulation over the shipment of the medical waste to California after collection is unsustainable. The assertion of such jurisdiction must ultimately rest upon the public health and safety concerns of the state.

Mr. Dempsey's argument that unfettered competition would impair service and adversely affect the public health and safety plays well in the state of Washington, but has fallen flat in Washington on the Potomac. A challenge to the assertion of state jurisdiction will be before a federal judge who must look at a record totally devoid of any evidence that entry regulation has any relationship whatever to the safe transportation of this waste.

As noted by the court in *MEDIGEN*, once the waste is containerized and isolated at the point of generation, there is no showing that any public health risk is involved in the transportation of the waste. The inherent hazard of the waste does not equate to the necessity of economic regulation of interstate transportation. Hazardous waste, of which this product is on a federal level, is not subject to federal economic regulation. To convince a Federal Court that entry regulation is necessary to protect the public of Washington on shipments of hazardous waste to California is a burden of impossible magnitude. The Commission would do far better to define its jurisdiction to eliminate the federal question as it did in *ALL SERVICE*.

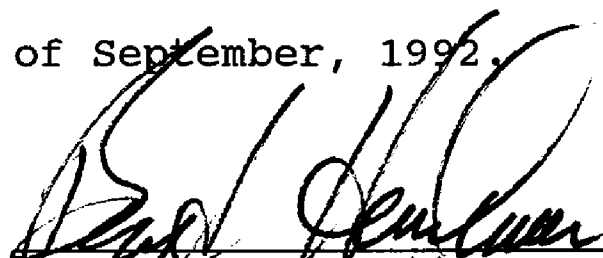
Another problem with the recommended decision is the Law Judge's treatment of the issue regarding transportation intent. Again she correctly notes that there is no formation of transportation intent at the point of generation. The generators do not care where (or sometimes how) their waste is treated or destroyed. They assume the carrier has appropriate knowledge and an obligation to affect lawful treatment or disposal. However, when Kleenwell ships the waste from storage to disposal in California there is formed a specific transportation intent and a clear interstate activity. This is a further reason to define the limits of Commission jurisdiction.

To regulate this aspect of the haul would very probably invoke the argument that all hazardous waste shipments moving from Washington to Arlington, Oregon for example, are subject to jurisdiction. Indeed consolidated shipments of municipal waste from transfer stations would next be subject to challenge as would shipments into the state of hazardous materials.

There is no purpose to be achieved on this record in treating the question presented as one involving interstate commerce. There is nothing but hazard ahead for the Commission and the industry it regulates should the Commission attempt to impose jurisdiction over the entirety of the operations here involved. The *MEDIGEN* decision cannot be ignored and is not as distinguishable as suggested. In

the final analysis, a court must be concerned as to why Washington is the only state in the nation other than West Virginia contending entry regulation is necessary to protect its citizens from the hazards associated with the transportation of this waste.

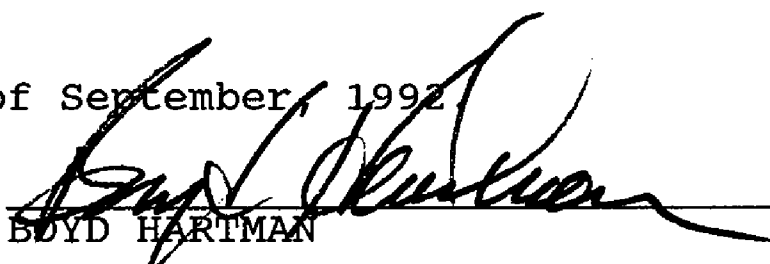
DATED THIS 25th day of September, 1992.


BOYD HARTMAN, Attorney for
Ryder Distribution Resources,
Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a true and correct copy of the foregoing Petition for Administrative Review upon applicant's attorney, James T. Johnson, Two Union Square, Suite 3000, 601 Union St., Seattle, WA 98101-2324; Richard A. Finnigan, 1201 Pacific Ave. Suite 1900, Tacoma, WA 98402; James Sells, 510 Washington Ave., Bremerton, WA 98310; David W. Wiley, 1700 Bellevue Place, 10500 N.E. 8th St., Bellevue, WA 98004; Cindy Horenstein, 900 Washington St., Suite 900, Vancouver, WA 98660 and Steven W. Smith, Assistant Attorney General, 1400 S. Evergreen Pk. Dr. S.W., Olympia, WA 98504, by mailing a copy thereof, by United States Mail, postage pre-paid, properly addressed to said parties.

DATED this 25th day of September, 1992.


BOYD HARTMAN

BOYD HARTMAN
Attorney at Law
11000 Main St.
Bellevue, WA 98004
(206) 453-0312