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STATE OF WASH.  
UTIL. AND TRANSP.  
COMMISSION

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BEFORE THE WASHINGTON UTILITIES  
AND TRANSPORTATION COMMISSION

WASTE CONNECTIONS OF  
WASHINGTON, INC.,

Complainant,

vs.

ENVIRO/CON & TRUCKING, INC., a  
Washington corporation; ENVIROCON,  
INC., a corporation; and WASTE  
MANAGEMENT DISPOSAL SERVICES  
OF OREGON, INC.,

Respondents.

Case No.: TG-071194

INTERVENER WRRA'S  
REPLY TO MOTION FOR  
SUMMARY DETERMINATION

**COMES NOW** Intervener Washington Refuse and Recycling Association  
(WRRA) and respectfully submits the following

**FACTS:** Intervener will, for the purpose of this motion, accept what  
appears to be at least a tentative agreement regarding the facts which are  
pertinent to the motion. Specifically, that is that job has been completed, and  
whatever CDL there was to be hauled from the State has been hauled; and  
that it was not hauled by the WUTC certificated hauler for the area. The job  
apparently is over, and that is the basis for the mootness motion.

**SUMMARY DETERMINATION:** Respondents base this motion on one  
issue, that of the mootness. As Intervener understands the motion, the  
argument boils down to: because the job is finished there is no longer a

1 "justiceable controversy" therefore there is nothing for the Commission to rule  
2 on.

3 There is no lack of law on this very issue, nearly all of which comes  
4 from the Courts rather than agencies. However, as per WAC 480-07-  
5 380(2)(9), those decisions are relevant and instructive here.

6 The applicable law is thoroughly and correctly cited in Complainant's  
7 Answer to Motion for Summary Determination. It is well settled that Courts  
8 will not rule on cases where there is no longer a controversy, leaving only an  
9 "academic" issue. Hough v. Stockbridge, 113 Wn.App. 532,536, 54 P. 3d 192  
10 (2002). However, it is equally well settled that an issue is not moot, and  
11 should be decided if it presents an issue of "continuing and substantial public  
12 interest." Marriage of Horner, 151 Wn.2d 884, 891, 93 P. 3d 124 (2004).

13 The Courts have developed and applied a three-pronged test to  
14 determine if they issue is continuing and substantial public interest.

15 The Court will review:

- 16 1) The public or private nature of the issue;
- 17 2) The need for a judicial decision to provide  
18 future guidance to public officials; and
- 19 3) The likelihood the issue will recur.

20 In Re Personal Restraint of Silas, 135 Wn. App. 564, 568, 145 P. 3d  
21 1219 (2006).

22 This is the test which should be applied here, resulting, Interveners  
23 believe, in a clear need for the issue to be addressed and resolved.

24 First, although this is a dispute is between two private entities, it  
25 involves solid waste, which makes it a public issue; in fact a public health and  
26 safety issue. The handling and disposal of solid waste is a "recognized  
governmental function. Citizens for Clean Air v. Spokane, 114 Wn.2d 20, 39,  
785 P.2d 447 (1990); King County v. Algonia, 101 Wn.2d 789, 794, 681 P.2d  
1281 (1984). The material at issue here, "CDL," is solid waste. RCW  
70.95.030(23). Although this may appear to be a private dispute, it is

1 thoroughly public in nature, and inherently involves the public health and  
2 safety.

3 Secondly, there is a significant need for the Commission to provide  
4 guidance in this area. This is a very basic issue as to whether or not non-  
5 hazardous CDL must be hauled from a remediation site by the certificate  
6 hauler, rather than a non-certificated trucking contractor. Commission  
7 enforcement and policy staff need and deserve to have direction on this  
8 issue.<sup>1</sup>

9 Finally, and perhaps of greatest concern to Intervener is the matter of  
10 reoccurrence of this situation. There are actual and potential remediation  
11 sites throughout the state. It is possible, if not probably, that this exact  
12 situation will occur time and time again; and most certainly will involve  
13 smaller, local haulers who do not have the resources to fight each and every  
14 instance, either at the administrative or judicial level.

15 It is interesting also to note that if this matter is dismissed for  
16 mootness, a very dangerous message is sent to the seemingly endless  
17 numbers of illegal haulers and sham recyclers who infiltrate the industry:  
18 that is "finish the job quickly and quietly and you are home free." If and when  
19 the legitimate hauler finds out, and the job is done, the only recourse is to the  
20 Courts. The Courts, however would not have the valuable, if not essential  
21 direction from the appropriate agency when making a decision. An important  
22 issue such as this should not "... escape review because the facts of the  
23 controversy are short lived." Westerman v. Cary, 125 Wn.2d 277, 286, 892  
24 P.2d 1067 (1994)

25 Finally, a word about Glick v. Verizon Northwest, Inc., Docket UT-  
26 040535, attached to the Motion to Dismiss. Although this case provides a  
fascinating character study of a disgruntled customer, it has nothing to do  
with the issue at hand. It was a summary determination, but the decision

<sup>1</sup> It is interesting to note that in Silas, supra, the Court specifically noted that the Dept. of Corrections needed "guidance" from the Court on the issue at hand. The same is true here.

1 was based upon the Statute of Limitations, and has nothing to do with  
2 mootness.

3 CONCLUSION: This action concerns an issue of substantial and  
4 current public interest. It will come up again and again as the never ending  
5 story of illegal hauling continues. A ruling here will define and hopefully erect  
6 parameters relating to this type of situation. Lack of a ruling can only  
7 encourage more of this, and unfailingly result in even more of the same.

8 Respectfully submitted this 17 day of March, 2008.

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**FACSIMILE TRANSMITTAL SHEET**

DATE: Monday, March 17, 2008 TIME: 3:02 PM  
 TO: Ms. Carole J. Washburn, Executive Secretary FACSIMILE: 1-360-586-1150  
 AT: WUTC TELEPHONE: 1-360-664-1174  
 FROM: Terre Skelly (for Jim Sells)  
 RE: TG-071194 OUR FILE NO: 1604-185

Number of pages transmitted (including this cover sheet): **SIX (6)**

MESSAGE: Carole - please find attached a copy of Intervener WRRRA's Reply to Motion for Summary Determination. This reply is due today, so I am faxing it to you and will mail the original and three copies. I have e-mailed a copy to Judge Moss. I have also e-filed the reply so hopefully all my bases are covered. Cheryl Sinclair is on vacation, so I taking care of this for Mr. Sells in her absence. Thank you.

Terre M. Skelly, Office Administrator

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