

BEFORE THE WASHINGTON UTILITIES
AND TRANSPORTATION COMMISSION

WASTE CONNECTIONS OF
WASHINGTON, INC.,

Complainant,

v.

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

Respondents.

Case No. TG-071194

DECLARATION OF
POLLY L. McNEILL

I, Polly L. McNeill, declare under penalty of perjury as follows:

1. I am a citizen of the United States and a resident of the State of Washington. I am over eighteen years of age and fully competent to make this declaration. I make this declaration based on my personal knowledge.

2. Attached as Exhibit 1 is a true and correct copy of an excerpt from the transcript of the prehearing conference on February 4, 2008, in Docket No. TG-071194 (Volume II, Pages 29-38).

3. Attached as Exhibit 2 is a true and correct copy of the Department of Ecology's Industrial Website describing the status of the seven aluminum smelters originally operating in Washington.

DATED this 24th day of March, 2008, at Seattle, Washington.

s/ Polly L. McNeill

Polly L. McNeill

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION

3 WASTE CONNECTIONS OF)
4 WASHINGTON, INC.,)
5 Complainant,)
6 vs.)
7 ENVIRO/CON & TRUCKING, INC.,)
8 a Washington Corporation,)
9 ENVIROCON, INC., a)
10 corporation, and WASTE)
11 MANAGEMENT DISPOSAL SERVICES)
12 OF OREGON, INC.,)
13 Respondents.)

DOCKET NO. TG-071194
Volume II
Pages 29 - 49

COPY

12 A prehearing conference in the above matter
13 was held on February 4, 2008, at 1:32 p.m., at 1300
14 South Evergreen Park Drive Southwest, Olympia,
15 Washington, before Administrative Law Judge DENNIS
16 MOSS.

17 The parties were present as follows:

18 WASTE CONNECTIONS OF WASHINGTON, INC., by
19 DAVID W. WILEY, Attorney at Law, Williams, Kastner, 601
20 Union Street, Suite 4100, Seattle, Washington 98101;
telephone, (206) 233-2895.

21 ENVIRO/CON & TRUCKING, INC.; WASTE MANAGEMENT
22 DISPOSAL SERVICES OF OREGON, INC., by POLLY L. MCNEILL,
23 Attorney at Law, Summit Law Group, 315 Fifth Avenue
South, Suite 1000, Seattle, Washington 98104;
telephone, (206) 676-7040.

24 Kathryn T. Wilson, CCR

25 Court Reporter

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1 CLARK COUNTY, by BRONSON POTTER (via bridge
2 line), Deputy Prosecuting Attorney, Civil Division of
3 the Prosecuting Attorney's Office, Post Office Box
5000, Vancouver, Washington 98666; telephone, (360)
397-2478.

4 WASHINGTON REFUSE & RECYCLING ASSOCIATION, by
5 JAMES K. SELLS, Attorney at Law, Ryan, Sells,
6 Uptegraft, 9657 Levin Road Northwest, Suite 240,
Silverdale, Washington 98383; telephone, (360)
307-8860.

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P R O C E E D I N G S

1
2 JUDGE MOSS: Let's be on the record. This is
3 Dennis Moss at the Washington Utilities and
4 Transportation Commission. I'm an administrative law
5 judge, and this case has been transferred to me with
6 the advent of Theo Mace leaving our employ for other
7 pastures, whether green or otherwise.

8 As I understand the status of the case, we've
9 had one prehearing conference. There have been a few
10 pleadings back and forth, and the purpose of our
11 prehearing today is essentially to set out procedural
12 process going forward.

13 The first order of business will be to take
14 appearances, and for those of you here in the room, I
15 believe you have already entered an appearance, so you
16 can tell me your name and the name of your client.
17 Mr. Bronson, you are on the bridge line?

18 MR. POTTER: Yes.

19 JUDGE MOSS: I'll ask you to enter your full
20 appearance, address, phone number, and so on and so
21 forth since I believe this is your first personal
22 appearance on the record; is that correct?

23 MR. POTTER: It is. I had another deputy in
24 my office representing the County at the first
25 prehearing conference.

1 JUDGE MOSS: I'll ask you to do that as a
2 matter of formality when we get to you, and I'll take
3 you last. You will be fourth. So let's go ahead, and
4 we should start with Complainant, I suppose.

5 MR. WILEY: David Wiley appearing today on
6 behalf of Waste Connections of Washington, Inc., and my
7 address and fax and e-mail remain the same.

8 MS. MCNEILL: Polly McNeill appearing today
9 on behalf of Waste Management Disposal of Oregon, Inc.,
10 and Enviro/Con and Trucking, Inc. There is two
11 Respondents.

12 JUDGE MOSS: So I'll likely refer to them as
13 "Respondents." Mr. Sells?

14 MR. SELLS: If Your Honor please, James Sells
15 appearing on behalf of intervenor Washington Refuse and
16 Recycling Association.

17 JUDGE MOSS: Mr. Potter?

18 MR. POTTER: P. Bronson Potter, Clark County
19 prosecuting attorney's office representing Clark
20 County. My mailing address is PO Box 5000, Vancouver,
21 Washington, 98666. Telephone is (360) 397-2478, and
22 e-mail is bronson.potter@clark.wa.gov.

23 JUDGE MOSS: I have read the file in this
24 case, and I think I even skipped my way through the
25 prehearing conference transcript. If memory serves,

1 there was some discussion early on about resolving this
2 case by dispositive motion, and so the first question
3 that I have is whether the parties remain of the view
4 that that's the way we should proceed. Mr. Wiley?

5 MR. WILEY: I don't think it's going to -- I
6 think we should set a dispositive motion deadline, but
7 I don't think at this juncture -- I don't mean to speak
8 for Ms. McNeill, but I don't think either of us feel
9 that it's fully resolvable without some testimony on
10 it.

11 JUDGE MOSS: Do you share that view,
12 Ms. McNeill?

13 MS. MCNEILL: Thank you, Your Honor. The
14 process of doing discovery through the data requests
15 has actually resulted in some questions on our end, and
16 so we feel that there needs to be some further
17 discovery. In particular, we have identified some
18 third parties for whom we would like to request
19 payments, and that is all for the purpose of developing
20 facts that have to do with the affirmative defenses of
21 my clients.

22 Mr. Wiley and I have a dispute about this,
23 which actually I would suggest today would be a good
24 opportunity to present it to you for your resolution on
25 it because I think your determination in the disputed

1 issue would relate to whether or not subpoenas would be
2 issued for the third-party witnesses potentially, and I
3 don't know if you want me to stop there or tee up the
4 issue for you.

5 JUDGE MOSS: Go ahead.

6 MS. MCNEILL: Mr. Wiley has filed a complaint
7 in this matter that has to do with allegations
8 regarding unauthorized solid waste collection from a
9 job site that arose in the context of an environmental
10 remediation project. As we have discussed amongst
11 ourselves, we are confronted with a determination of a
12 bright line in what is currently a gray area of
13 practice, primarily in how environmental remediations
14 are done throughout the state commonly without
15 involving the certificated haulers, but having said
16 that, there is an issue that has been presented with
17 regard to certain constituents and waste treatment that
18 are generated out of an environmental remediation
19 project, and Mr. Wiley's particular focus of attention
20 has been on a portion of the waste, the construction
21 and demolition portion of the remediation.

22 The Complaint then alleges that my client,
23 Waste Management of Oregon, arranged for the
24 supervision and disposal of solid waste, and the
25 Enviro/Con and Trucking, or as we call them ECTI, is

1 actually an illegal transporter. I pleaded affirmative
2 defenses, two of which go to the operations of
3 Mr. Wiley's clients.

4 One of my understandings is that his client
5 actually engages in a business that is quite similar if
6 not the same as the operations of Waste Management of
7 Oregon, and in order to explore that, I have both in
8 terms of data requests, I have asked for information
9 that geographically exceeds the boundaries of Clark
10 County, which is the jurisdiction in which the subject
11 activities are alleged to have occurred, and Mr. Wiley
12 has responded to that, and I'll let him give you his
13 argument, that he does not believe there is any
14 authority to go beyond the geographic boundaries of
15 Clark County.

16 I feel I have an obligation to develop facts
17 that relate to the affirmative defenses that my clients
18 may have, and I think that clean hands, the defense of
19 saying that you really are not able to bring this
20 complaint because you yourself are doing is it one that
21 I need to explore. So I think that's the issue; Dave?

22 MR. WILEY: Your Honor, I think she's alluded
23 to a couple of the points at which we are in agreement
24 and a couple of the points in which we are in some
25 disagreement, and I share Polly's view that this is a

1 timely prehearing conference today because in this
2 latest round of data requests, we've sort of drilled
3 down now to objections and scope issues.

4 Polly is correct that I believe the issues
5 are framed in Paragraph 5 and 6 of our complaint, which
6 is a complaint that is limited to an unincorporated
7 portion of Clark County on one single disposal site
8 involving one waste stream that the Commission has very
9 clearly defined as solid waste for the purposes of WUTC
10 regulation and Commission laws.

11 Where we are diverging right now is that I
12 believe under the statutes of the Complainant -- this
13 is not a show-cause proceeding brought by the
14 Commission, but it is the Complainant that has the
15 burden of proof. That would be me.

16 Ms. McNeill has alluded to her defenses,
17 which are found in Paragraph 4 in her answer. They are
18 affirmative defenses. There is no counterclaim
19 pending, and while I've been patient and cooperative, I
20 think she would say, to this stage in discovery, we are
21 now reaching the point where I think the issues she is
22 raising go far beyond the scope of the Complaint, the
23 defense and the narrowly-drawn scope of this
24 proceeding, which I will say, Your Honor, I spent a lot
25 of time refining so that we could, in fact, focus on

1 the particular allegations in this complaint.

2 I'm not asking about Waste Management's
3 certificated operations in the 23 or odd counties in
4 which they operate. I'm not talking about any other
5 job type or site. I'm talking about an actual large,
6 industrial demolition site that we believe the facts
7 will clearly show Waste Management and its contractor
8 violated Commission law and rule by collecting,
9 transporting, and moving over the public highways of
10 the state construction and demolition debris material
11 that rightfully should have gone to the G certificate
12 holder.

13 I'm not expanding the scope in my burden of
14 proof. I intend to prove and establish that. I do not
15 intend to address operations of either company in any
16 other territory, and I think now that the discovery
17 rules would, in fact, be violated, particularly with
18 respect to my burden of proof, if we go on these
19 protracted what appear now to be fishing expeditions on
20 other issues that I haven't raised.

21 So we welcome a schedule, Your Honor, just to
22 finish. We welcome setting of a schedule that I think
23 will address the conventional completion of a
24 proceeding like this with some discussion of prefiled
25 versus live testimony and all the other sort of stages

1 that.

2 MS. MCNEILL: We also welcome a schedule with
3 that, and just again to be more specific with regard to
4 the exact area of inquiry that I have is related to the
5 data requests that I have submitted to Mr. Wiley's
6 client, certainly, but also the subpoena would have to
7 do with drivers of the trucking company from whom I
8 have nothing, no verified or under-oath testimony, but
9 information that they have transported waste for
10 Mr. Wiley's client in the same manner ECTI has
11 transported for Waste Management Disposal of Oregon.
12 So there is other trucking companies and drivers that I
13 would like to subpoena.

14 JUDGE MOSS: Mr. Sells, do you want to be
15 heard on this?

16 MR. SELLS: We are generally in agreement
17 with the Complainant here. Although to the intervenor,
18 this is a broad-based question that's going to have
19 application statewide, this case here involves Clark
20 County and we, of course, pledge not to expand the
21 issues when we petitioned to intervene, and I think
22 there is plenty of issues resolving this one single
23 job, and we don't need to go beyond there, but we do
24 look forward to getting an order that has applicability
25 elsewhere.



[Aluminum Facilities](#) | [Oil Refineries](#) | [Pulp & Paper](#) | [Other Facilities](#) | [Facility Map](#)

[Industrial Home](#)

[Facilities](#)

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Aluminum Facilities

There are currently five aluminum smelters in Washington State. Of these five, two are operating, one temporarily curtailed, and two are in the process of dismantling. Two other previously operating aluminum smelters completed demolition in 2006 (Kaiser Mead - Spokane & Kaiser Tacoma) and are no longer functional smelters. A magnesium smelter (Northwest Alloys) closed permanently in 2001. The Industrial Section has responsibility to oversee the operating and closing smelters to ensure their compliance with water, air, and waste regulations. These eight facilities were built between 1940 and 1970.

The aluminum smelters built in the early 1940's were constructed without control scrubbers and chemical waste water treatment systems. These early control systems were installed because of the environmental damage caused by fluoride emissions. Smelters built between 1950 and 1970 were constructed with pollution control facilities. In the late 1990s or early in the year 2000 the Washington State aluminum and magnesium smelters were either temporarily curtailed or permanently shutdown because of the high cost of energy and the low price of aluminum.

The clean-up occurring at the Evergreen/Alcoa Smelter:

- [Alcoa Vancouver Site](#)

The five aluminum smelters in Washington are:

Four are located on the Columbia River

- [Alcoa, Wenatchee](#)
- [Columbia Gorge Aluminum \(temporarily curtailed\)](#)
- [Chinook Ventures LLC \(permanently closed and being dismantled\)](#)
- [Evergreen Washington LLC \(permanently closed 5/24/2006 and being dismantled\)](#)

One located at Cherry Point near Ferndale

- [Alcoa Primary Products, Intalco Works](#)

You can find out more about the aluminum smelting process from the EPA document "[Profile of the Nonferrous Metals Industry](#)"

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For More Information Please Contact [Kathy Vermillion](#)
