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October 5, 1992

Mr. Paul Curl, Secretary  
Washington Utilities and  
Transportation Commission  
Chandler Plaza Building  
1300 S. Evergreen Park Dr. SW  
Mail Stop FY-11  
Olympia, WA 98504

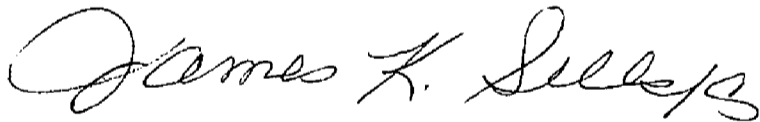
**Re: Docket No. TG-920304  
Rowland, d/b/a Kleenwell**

Dear Mr. Curl:

Enclosed for filing in the above matter you will find an original and three copies of Reply of Washington Waste Management Association to Respondent's Petition for Administrative Review.

Very truly yours,

McCLUSKEY, SELLS, RYAN,  
HABERLY & UPTEGRAFT



JAMES K. SELLS

JKS:cs

Encls.

cc: Mr. David Wiley  
Mr. Richard Finnigan  
Ms. Cindy Horenstein  
Mr. Steve Smith  
Mr. James Johnson  
Mr. J. P. Jones  
Mr. Jack Davis  
Mr. Boyd Hartman

STATE OF WASH  
UTIL & TRANSP  
COMMISSION

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BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Determining )	
the Proper Carrier Classifi- )	DOCKET NO. TG-920304
cation of: )	
ENOCH ROWLAND d/b/a KLEENWELL )	REPLY OF WASHINGTON WASTE
BIOHAZARD AND GENERAL ECOLOGY )	MANAGEMENT ASSOCIATION TO
CONSULTANTS )	RESPONDENT'S PETITION FOR
)	ADMINISTRATIVE REVIEW

COMES NOW Intervenor Washington Waste Management Association and replies to Respondent's Petition for Administrative Review as follows:

REPLY TO EXCEPTIONS:

EXCEPTION A: Respondent argues that the Administrative Law Judge's statement that Respondent's customers do not care where their waste is disposed of is incorrect. However, Respondent does not cite to the record to support his contention. In fact, the record reflects that the ALJ is correct in her statement. The following colloquy took place between Mr. Rowland and Asst. Attorney General Smith at page 57:

Q. At the time you were operating under your temporary certificate, did any of your customers have any objection to your disposing of their waste at Ferndale?

A. No.

1 Q. So it would be fair to say your customers were  
2 indifferent as to whether their medical waste  
3 was disposed out of state or within the state  
4 of Washington?

5 A. That's true.

6 Also, Mr. Rubatino was asked by Mr. Hartman if any of his customers  
7 had ever designated a disposal site, and he could not recall of any  
8 customer doing so. (Tr. 84)

9 The ALJ's statement is an entirely accurate summary of the  
10 record as it relates to this point.

11 EXCEPTION B: See argument below.

12 EXCEPTION C: See Exception "A" above.

13  
14 EXCEPTION D: Respondent argues that it is not engaged  
15 in any intrastate commerce and, therefore, this matter is factually  
16 "identical" to Medigen v. Public Service Commission, 787 F.Supp.  
17 602 (S.D. W.Va. 1992). In fact, it is clear that Respondent is  
18 engaged in intrastate commerce and that is one of the many factors  
19 which distinguishes this matter from Medigen. Mr. Rowland himself  
20 acknowledges that his shippers have no "fixed intent" that the  
21 commodity be shipped to California. (Tr. 54, 84).

22 Respondent collects waste within the state of Washington and  
23 transports it to a facility within the state of Washington. The  
24 waste remains at the storage facility for up to 90 days before  
25 being reloaded and transported to California. (Tr. 31-33). The  
26 movement from shipper to storage is strictly intrastate. There is  
27 absolutely nothing in this record that would, or could, suggest  
28 otherwise.  
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30  
31 EXCEPTIONS E AND F: Respondent argues that the finding  
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1 that medical waste poses a "significant public health risk" is  
2 unsupported. This assertion is incredible in view of the testimony  
3 in this hearing; the legislative findings in RCW 70.95.010 (quoted  
4 in WWMA's Post-Hearing Brief at pp. 5-6), and the Commission's  
5 previous findings and rulings in the American Environmental (Order  
6 MVG 1452) and Sureway (Order MVG 1451) matters. Mr. Rowland  
7 himself testified as follows:

8 Q. And are there health risks involved with  
9 exposure to infectious waste?

10 A. Yes, there are, certainly.

11 Q. And in your view should inadvertent exposure  
12 to infectious waste be minimized or  
13 eliminated?

14 A. Yes. (Tr. 63)

15 Further on in "Exception F" Respondent reiterates its argument  
16 that Washington's regulatory scheme is an impermissible burden on  
17 interstate commerce. That argument is no better now than it was at  
18 the inception of this action. The arguments against Respondent's  
19 positions are set forth in virtually all of the briefs submitted in  
20 this matter and need not be repeated here. Suffice it to say that  
21 the evidence in this hearing clearly established that the  
22 Washington regulatory structure is, at worst, an indirect burden on  
23 interstate commerce which clearly serves legitimate local purposes;  
24 i.e., the protection of the public and the assurance of universal  
25 solid waste service. 2

26  
27 EXCEPTION G: See above.

28  
29 EXCEPTION H: Obviously Kleenwell is a solid waste  
30 collection company. RCW 81.77.010(7) defines "solid waste  
31 collection company" as:  
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1 . . . every person or his lessees, receivers or trustees,  
2 owning, controlling, operating or managing vehicles used  
3 in the business of transporting solid waste for  
4 collection and/or disposal for compensation, except  
5 septic tank pumpers, over any public highway in this  
6 state whether as a "common carrier" thereof or as a  
7 "contract carrier" thereof;

8 It would seem perhaps too obvious to point out that Respondent's  
9 operation meets this definition perfectly.

10 Respondent does not transport waste "directly from the  
11 generators in Washington to the incinerator in California" as  
12 claimed in this exception. The testimony was clear that the waste  
13 is transported to a storage facility for up to 90 days before  
14 making the trip to California. (Tr. 31-33).

15 EXCEPTION I: See above.

16 EXCEPTION J: Again, Respondent attempts to disprove its  
17 own witnesses' testimony. Whatever else he may be, Mr. Rowland  
18 certainly is qualified to discuss the hazards of medical waste. He  
19 holds National Certification for Medical Laboratory Personnel  
20 (Ex. 1); and a certificate from the American Society for  
21 Microbiology (Ex. 2). He has a bachelor's degree in medical  
22 technology, a pharmacy degree, and a Master's Degree in clinical  
23 microbiology. He has worked in the medical laboratory and research  
24 fields since 1958. (Tr. 27-28).

25 The other witness, Wayne Turnberg, holds a Master's Degree in  
26 Public Health and was project manager for "risk evaluation" of  
27 medical waste prepared for the King County Health Department (Tr.  
28 121-122). He has advised Congress and the Council of State  
29 Governments on medical waste issues, (Tr. 123) and authored a  
30 comprehensive report to the Washington legislature on medical  
31 waste. (Tr. 124). It would be difficult to imagine an individual  
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better qualified to offer expert testimony on this issue.

EXCEPTION K: See above.

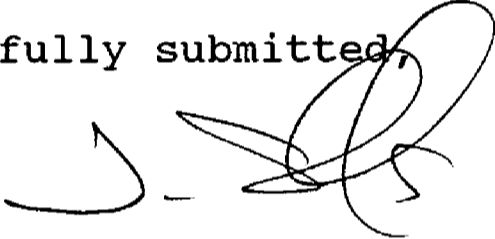
EXCEPTION L: See above.

EXCEPTION M: See above.

EXCEPTION N: See above.

CONCLUSION: The Administrative Law Judge has issued a thoughtful and legally correct initial order. It accurately reflects the evidence presented in this hearing and accurately states the law. It should be adopted by the Commission.

Respectfully submitted,



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Waste Management Association

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CERTIFICATE OF SERVICE

I hereby certify that on this day a true copy of the foregoing was mailed by first class mail, postage prepaid, to the following:

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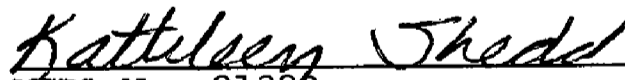
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Subscribed and sworn to before me this 5th day of October, 1992.

Margaret C. Alessi  
Notary Public for the  
State of Washington  
Residing at Bremerton, WA  
My commission expires Feb 2/15/95