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7 BEFORE THE WASHINGTON UTILITIES
8 AND TRANSPORTATION COMMISSION
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10 WASTE CONNECTIONS OF
11 WASHINGTON, INC.,

12 Complainant,

13 v.

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

18 Respondents.

Case No.: TG-071194

INTERVENOR CLARK COUNTY'S
ANSWER TO PETITION FOR
ADMINISTRATIVE REVIEW

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20 COMES NOW the Intervenor, Clark County, Washington and, in answer to the Petition
21 for Administrative Review filed by the Complainant, Waste Connections of Washington, Inc.,
22 states as follows:

- 23 1. Clark County concurs with and adopts the summary of proceeding set forth in
24 Section I of the petition.
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26 2. Clark County concurs with and adopts the basis of the petition and challenges to
27 the initial order set forth in Section II of the petition.
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1 3. Clark County concurs with and adopts the exceptions to the initial order set forth
2 in Section III of the petition.

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4 4. Clark County concurs with and adopts the additional challenges to the initial order
5 set forth in Section IV of the petition.

6 BY WAY OF FURTHER ANSWER, Clark County states as follows:

7 5. The controversy which is the subject matter of this proceeding involves
8 allegations that the Respondents, ECTI and Waste Management, engaged in the collection and
9 transportation of solid waste over public highways without obtaining the required authority from
10 the State of Washington in the form of a certificate of public convenience and necessity pursuant
11 to RCW 81. 77.040 and WAC 480-70-081.¹

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13 The Respondents filed a motion for summary determination claiming that the proceeding
14 is moot “because the services challenged in this action have been completed.”² The
15 administrative law judge concluded, “Since Respondents have seized the activities of which
16 Waste Connections complains, a cease and desist order from the Commission would be
17 meaningless” and granted the Respondent’s motion.³

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19 6. The initial order should be set aside because the complaint sought relief other than
20 the issuance of a cease and desist order. The complaint sought declaratory relief for a
21 determination that the challenged activities were in violation of applicable laws and regulations.⁴
22 More significantly, the initial order determined that this proceeding did not present matters of
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27 ¹ See, Initial Order at paragraph 5.

28 ² See, Motion for Summary Determination at paragraph 10.

29 ³ See, Initial Order at paragraph 14.

⁴ See, Complaint at paragraph 11.

1 substantial public interest due to the lack of participation by the Commission's regulatory staff.¹
2 Such a conclusion is unwarranted and contrary to law.

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4 7. The public interest in the regulation of the collection and transportation of solid
5 waste is fundamental and cannot be denied.² The Commission is charged with supervising and
6 regulating solid waste companies, including "requiring compliance with local solid waste
7 management plans and related implementation ordinances."³ The collection and transportation
8 of solid waste has been recognized as a matter affecting fundamental public health, safety and
9 welfare. *Citizens for Clean Air v. Spokane*, 114 Wn.2d 20, 39, 785 P.2d 447 (1990). The
10 purpose of establishing a comprehensive statewide solid waste program is to prevent land, air
11 and water pollution and to conserve the resources of the state. RCW 70.95.020. The primary
12 responsibility for adequate solid waste handling is delegated to local jurisdictions. RCW
13 70.95.020. The authority of local jurisdictions to regulate solid waste management was recently
14 recognized in *Ventenbergs v. City of Seattle*, 163 Wn.2d 92, 178 P.3d 960 (2008).

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17 Clark County petitioned to intervene in this proceeding because, *inter alia*, the alleged
18 conduct violates Chapter 24.12 of the Clark County Code and adversely affects the public health,
19 safety and welfare of the citizens of Clark County.⁴ The petition to intervene was granted.

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21 8. A court will retain jurisdiction to determine a matter "even though moot, if they
22 present matters of substantial public interest, particularly where final determination of the issue
23 is essential in guiding the conduct of public officials."⁵

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26 ¹ See, Initial Order at paragraphs 18, 19 and 21.

27 ² See, Chapter 81.77, RCW.

28 ³ RCW 81.77.030(5).

29 ⁴ See, Clark County's Petition to Intervene at paragraph 2.


⁵ *Ackerley Communications v. Seattle*, 92 Wn.2d 905, 912, 602 P.2d 1177 (1979), and *DeFunis v. Odegaard*, 84 Wn.2d 617, 628, 529 P.2d 438 (1974).

1 9. The practical result of the initial order is to deprive regulated solid waste
2 collection companies and local governments from having the opportunity to obtain the
3 Commission's determination of the legality of an offender's conduct, so long as the offender is
4 able to complete the challenged activity prior to a hearing on the merits. Such an outcome is not
5 in the public interest. Additionally, establishing the Commission's regulatory staff's
6 participation in a proceeding as being determinative of the existence of "public interest" is
7 unprecedented and puts staff in the position of being pressured to participate in every proceeding
8 involving private complaints. Further, the initial order fails to recognize Clark County's interest
9 and involvement in the proceeding in its consideration of whether the public interest exception to
10 the mootness doctrine applies.

11 10. For the foregoing reasons, Clark County requests the Commission to set aside the
12 initial order and remand this matter for further proceedings.

13 DATED this 9th day of June, 2008.

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E. Bronson Potter, WSBA #9102
Chief Civil Deputy
Of Attorneys for Intervenor Clark County

CERTIFICATE OF SERVICE

On this 9th day of June, 2008, I hereby certify that I caused true and correct copies of the foregoing *Clark County's Answer to Petition for Administrative Review* to be served upon the following parties in the manner(s) specified:

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DATED this 9th day of June, 2008, at Vancouver, Washington.


Thelma Kremer