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7 BEFORE THE WASHINGTON STATE
8 UTILITIES AND TRANSPORTATION COMMISSION

9 In Re Application of Waste
10 Management of Washington,
11 Inc. d/b/a WM Healthcare
12 Solutions of Washington

Docket TG-120033

13 INITIAL BRIEF ON PRELIMINARY ISSUES
14 OF WASHINGTON REFUSE & RECYCLING
15 ASSOCIATION; RUBATINO REFUSE
16 REMOVAL, INC.; CONSOLIDATED
17 DISPOSAL SERVICES, INC.; MURREY'S
18 DISPOSAL, INC.; AND PULLMAN DISPOSAL
19 SERVICE, INC.

20 **COME NOW** the above-referenced Protestants Washington Refuse and
21 Recycling Association; Rubatino Refuse Removal, Inc.; Consolidated Disposal
22 Services, Inc; Murrey's Disposal, Inc.; and Pullman Disposal Service, Inc.
23 (collectively "the WRRR Companies") and respectfully submit the following:

24 **I. ISSUES**

25 1) The overriding issue here is simple; i.e. should Applicant be
26 granted additional authority for collection of solid waste, which authority
would be statewide and restricted to medical waste. Of course, there are
subissues of substantial import which makes this Docket somewhat unique,
while leaving in place literally decades of Commission precedent which
should, in fact must, be followed, no matter what the composition of the waste
stream at issue may be.

1 2) As has been said in previous filings, but bears repeating here, the
2 initial issue in a medical waste application is the same as in any other solid
3 waste application. The Commission made itself very clear in ***In re***
4 ***Application of Medical Resource Recycling Systems, Inc.***, Order M.V.G.
5 1707, Hearing GA-76820 (May 1994). Conclusion of Law (3), (pg. 7) leaves no
6 room for confusion on this issue:

7 (3) When an applicant has applied for a Certificate of
8 Public Convenience and Necessity to operate as a solid waste
9 collection company, and the territory is already served by another
10 certificate holder, the Commission may grant the application only
11 when the existing certificate holder will not provide service to the
12 satisfaction of the Commission. Here BFI has failed to provide
13 service to the satisfaction of the Commission.

14 In other words, the primary issue in a solid waste application has not
15 changed simply because the application is limited to medical waste.

16 3) Of equal importance, any applicant must prove it is fit, willing
17 and able to provide the proposed service. It is not enough to make a bare
18 allegation that it is doing so in one or more parts of the state, it must
19 demonstrate its fitness to provide service in those areas where it does not
20 presently do so.

21 4) Perhaps the issue which will be most contentious in this
22 proceeding is that of service currently provided by existing medical waste
23 carriers. The Commission has made it absolutely clear that:

24 Biohazardous waste is solid waste and its transportation is
25 governed by Chapter 81.77 RCW and by RCW 81.77.040. That
26 section bars the Commission from granting authority in a
territory served by an existing carrier unless the Commission
finds that the existing carrier will not provide service to the
satisfaction of the Commission. If it makes that finding under the
same law, it must also find that the proposed service is required
by the public convenience and necessity before it can grant the
application. ***Order 1707***, at pg. 2.

Note that the finding of fitness must come before the Commission can address
the need for the service.

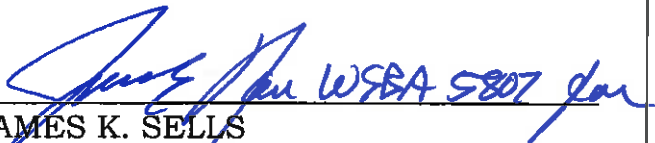
1 Order M.V.G. 1761, Hearing GA-75154, consolidated with *In re Stericycle of*
2 *Washington, Inc.*, Hearing GA-77539 (one order, August 1995). Having said
3 that, the Commission, in Ryder/Stericycle, went on to note that generators of
4 medical waste have concerns about disposal that are legitimate and should be
5 heard. *Ryder*, at 12.

6 8) Although in the years since Ryder it appears that significant
7 progress has been made in medical waste disposal methods, one can assume
8 it will be an issue here; or at least the subject of testimony by all parties. It
9 may or may not be outcome determinative, but it is still important.

10 V. CONCLUSION

11 9) The primary conclusion the undersigned has reached here is that
12 this hearing is going to take longer than perhaps any of us anticipated. (I
13 hope I'm wrong, but don't think so). The issues noted here are broad and, for
14 the most part, traditional to a solid waste application hearing. However, we
15 can, and should, expect that many, many more issues will arise as we go
16 along, and that these issues will be thoroughly and competently addressed by
17 counsel for all parties. This is a major and important matter, not just for
18 medical waste, but for the regulated solid waste industry as a whole.

19 Respectfully submitted this 12th day of June 2012.

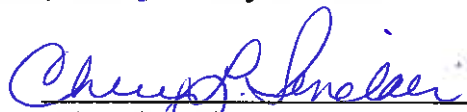
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21 JAMES K. SELLS
22 WSBA No. 6040
23 Attorney for Protestants WRRRA,
24 Rubatino, Consolidated, Murrey's and
25 Pullman
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served this document upon all parties of record in this proceeding, by the method as indicated below, pursuant to WAC 480-07-150.

Washington Utilities and Transportation Commission 1300 S. Evergreen Park Dr. SW PO Box 47250 Olympia, WA 98504-7250 360.664.1160 records@utc.wa.gov	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Email
Fronda Woods 1400 S. Evergreen Park Dr. SW PO Box 40128 Olympia, WA 98504-0218 <u>fwoods@utc.wa.gov</u> <u>BDeMarco@utc.wa.gov</u>	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Email
Administrative Law Judge Gregory Kopta <u>gkopta@utc.wa.gov</u>	<input checked="" type="checkbox"/> Via Email
Jessica Goldman Polly L. McNeill Summit Law Group 315 - Fifth Avenue S. Suite 1000 Seattle, Washington 98101-2939 <u>jessicag@summitlaw.com</u> <u>pollym@summitlaw.com</u> <u>kathym@summitlaw.com</u> <u>deannas@summitlaw.com</u>	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Email
Stephen B. Johnson Jared Van Kirk Garvey Schubert Barer 1191 Second Avenue Suite 1800 Seattle, WA 98101 <u>sjohnson@gsblaw.com</u> <u>jvankirk@gsblaw.com</u> <u>dbarrientes@gsblaw.com</u> <u>vowen@gsblaw.com</u>	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Email

DATED at Silverdale, Washington, this 30th day of June 2012.


Cheryl L. Sinclair