

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

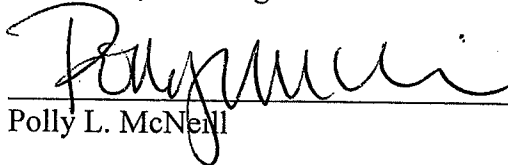
I, Polly L. McNeill, declare under penalty of perjury as follows:

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 the Fact Sheet for the Evergreen Aluminum Smelter Facility Cleanup Enforcement Order.

3. Attached as Exhibit 2 is a true and correct copy of the Enforcement Order (In the Matter of Remedial Action by Evergreen Aluminum LLC).

DATED this 3rd day of March, 2008, at Seattle, Washington.



Polly L. McNeill

EXHIBIT 1

Evergreen Aluminum Smelter Facility Cleanup Enforcement Order



Enforcement Order Requires Interim Cleanup Action EVERGREEN ALUMINUM SMELTER - Vancouver, WA

Washington State Department of Ecology (Ecology) will issue an Enforcement Order requiring the owners to cleanup soil and water contaminants at the EVERGREEN ALUMINUM smelter. The smelter stands on a larger facility site, amid support buildings and other land owned by Alcoa, Inc.

Ecology's powers and duties, defined by the Model Toxics Control Act ("MTCA" – say *modt-kuh* – in Chapter 70.105D RCW), compel this Order to restore environmental health and protect human health.

EVERGREEN's smelter operations—since 2002—added to existing soil and water contamination on the larger site. Both owners of the combined properties, known previously as "Alcoa Vancouver," and as "VANALCO," want to sell the property during year 2008, to the Port of Vancouver.

This fact sheet describes the remedial action EVERGREEN must perform on its portion of the greater property site, in Vancouver.

What is an Enforcement Order?

The Enforcement Order directs the property owner to investigate past practices, locate and assess the extent of contamination, then plan and complete approved environmental cleanup actions at the site.

This Order requires EVERGREEN to: (a) find, map, and list contaminants of concern at the smelter; (b) design a site sampling strategy for those contaminants--sample density and depth, sampling protocols, and project QA/QC procedures; (c) identify applicable cleanup standards for the contaminants; and (d) develop a feasibility study informed by the sampling effort; (e) then, after agency approval, perform those interim actions

needed to ensure the property complies with our soil and water quality cleanup standards.

Under this Order EVERGREEN ALUMINUM must treat, remove /replace, or contain and cap (isolate) contaminated soil or water, and must prevent the release or threatened release of any hazardous substance onto or from its smelter site.

Administrative advantage

Issuing an Enforcement Order, rather than negotiating an Agreed Order, hastens the MTCA cleanup process-- allowing faster redevelopment to publicly-owned property.

Ecology's Enforcement Order compels the owner to perform work needed to ensure the site's condition complies with well established standards for the proposed use. The owner will demonstrate the site complies through both scheduled and unscheduled site inspections, and through tests, monitoring, and data reports. If EVERGREEN should fail to fulfill the Order, the owner would accrue on-going penalty fines and continued legal liability.

The timing of this Enforcement Order serves community plans. Three areas of the property remain to be cleaned up: the original aluminum smelter (EVERGREEN) site; and a waste oil lagoon known as "the Columbia Marine Lines Site," and the PCB-contaminated sediments (in the Columbia River) adjacent to the smelter.

The cleanup of the combined properties will allow ownership pass to the Port of Vancouver in 2008.

August 2007

**PUBLIC COMMENT PERIOD
FOR ENFORCEMENT ORDER**

August 6, 2007 through
Friday, September 5,
2007

**SEND WRITTEN COMMENTS
TO:**

PAUL SKYLLINGSTAD
DEPARTMENT OF ECOLOGY
INDUSTRIAL SECTION
PO BOX 47706
OLYMPIA, WA 98504-7600
(360) 407-6949 (phone)
(360) 407-6903 (fax)
psky461@ecy.wa.gov

PUBLIC MEETING

7:00 PM Wednesday
August 22, 2007
Clark College Campus
Foster Auditorium
1800 E McLoughlin Blvd.
Vancouver, WA 98663

**INFORMATION
REPOSITORIES**

Read a printed copy of the
Enforcement Order at either of
the following locations:

Industrial Section
Department of Ecology
300 Desmond Drive
Lacey, WA 98503
Phone: 360/407-6916

Fort Vancouver
Regional Library
1007 East Mill Plain Blvd
Vancouver, WA
Phone: 360/695-1566

TCP Publication # 07-09-103

printed on recycled paper

Ecology scheduled only one comment period for the Evergreen property. We welcome your questions and comments about the sampling and cleanup methods. Please send your comments at any time through September 5, 2007. (The box on the front page shows where to read copies of the documents, and gives the time and location of the public meeting.) The mapping and interim cleanup actions performed under the Enforcement Order should satisfy EVERGREEN's responsibility for its portion of the larger site.

Site background

Alcoa, Inc. owned and operated the full smelter complex from the late 1940's until 1986. From the early 1950's through the mid 1980's Alcoa's complex included the aluminum smelter and a series of fabrication plants. In those buildings, Alcoa used its aluminum metal to form finished goods such as wire, rods, and extruded channels.

In 1987 Alcoa sold the smelting operation to VANALCO, but retained title to the manufacturing buildings and surrounding land. In 2000 VANALCO closed the smelter and in 2002 sold it to EVERGREEN ALUMINUM Company. EVERGREEN operated the smelter from 2002.

In 1987 Alcoa also began closing and selling portions of the remaining manufacturing buildings and surrounding property, while VANALCO and EVERGREEN each operated the aluminum smelter.

What's been done?

EVERGREEN ALUMINUM reviewed the site's land use history and identified areas of confirmed and suspected releases. The Enforcement Order required the smelter operators to submit a sampling plan for investigating certain areas of the smelter. Those areas include: carbon storage and green mill (PAH contamination), bone yard south of smelter potlines (metals contamination), the rectifier and transformer yard (oil and PCB contamination), site electrical grid (PCB contamination), carbon anode bake ovens (fluoride ground water contamination), and closed bake oven wet scrubber sludge lagoon (PAH contamination). EVERGREEN will characterize any new contamination found during the smelter building's demolition.

After Ecology approves the sampling plan EVERGREEN will submit its remedial investigation and feasibility study for the facility. The Feasibility Study will include a list of interim actions that are complete or in progress during the smelter building demolition. The study will also detail a list of remedial technologies EVERGREEN initially screened, and a focused list of alternative cleanup actions. Those alternatives will at a minimum include:

- no remediation, and long-term monitoring;
- completely remove areas showing contamination in concentrations higher than a cleanup threshold, and ground water monitoring;
- remove contaminant source areas from the site, capping (placing an impermeable material over the area to prevent leaching and migration);
- limited source area removal, pumping and treating groundwater, and capping the area.

Prior to starting the smelter cleanup EVERGREEN will complete and report the results of investigating and soil and water sampling, will establish an approved protocol for conformational sampling, and will identify the correct cleanup standards for the smelter site's contaminants of concern.

What happens next?

The Enforcement Order will take effect before the comment period ends. But we will weigh the merits of each comment. If any comment persuades Ecology that the site requires more cleanup, we will revise the final cleanup action for the EVERGREEN Alcoa site, and we will conduct it later, under terms of a Consent Decree.

Ecology invites you to visit an information repository at the Fort Vancouver library. Read and comment on the proposed Enforcement Order and on EVERGREEN ALUMINUM's proposed interim remedial actions. Convey your ideas to Ecology's decision-makers. And participate in the Public Meeting at Clark College - Foster Auditorium at 7:00 o'clock on August 22. Come learn about, discuss, and comment on the proposed interim cleanup action.

Submit written comments by September 5, 2007, to Paul Skyllingstad. Ecology will provide updates of site activities to those who submit comments or who ask for inclusion on the site mailing list.

*If you need this publication in an alternate format, please phone Kathy Vermillion in Lacey at 360/407-6916.
Persons with hearing loss may press 711 to connect with the Washington Relay Service.
Persons with speech disability may phone 877/833-6341 for assistance.*

EXHIBIT 2

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

Evergreen Aluminum LLC

ENFORCEMENT ORDER

No. 4931

TO: Mr. Larry McLellan
Evergreen Aluminum LLC
5701 Lower River Road
P.O. Box 9805
Vancouver, WA 98666

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EXHIBIT A. Site Diagram

I. INTRODUCTION

The objective of the State of Washington, Department of Ecology (Ecology) under this Enforcement Order (Order) is to require remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires Evergreen Aluminum LLC (Evergreen Aluminum) to: 1) develop a list of contaminants of concern for the site, 2) determine a sampling strategy including sampling density and depth, protocol, and QA/QC procedures for those contaminants of concern, 3) develop contaminants of concern cleanup standards for the site, 4) design from the sampling effort a cleanup scenario feasibility study which involves contaminated soil and water remediation with conformational sampling, 5) after approval of the feasibility study complete an interim cleanup and enter into consent decree negotiations for the final cleanup of the combined Alcoa and Evergreen aluminum smelter site.

II. JURISDICTION

This Enforcement Order is issued pursuant to the Model Toxics Control Act (MTCA), RCW 70.105D.050(1).

III. PLP BOUND

This Enforcement Order shall apply to and be binding upon Evergreen Aluminum LLC. To the extent allowed by law, changes in ownership or corporate status shall not alter Evergreen Aluminum's responsibility under this Order. Evergreen Aluminum LLC shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

IV. DEFINITIONS

Unless otherwise specified herein, the definitions set forth in Chapter 70.105D RCW and Chapter 173-340 WAC shall control the meanings of the terms in this Order.

A. Site

The Site is referred to as Evergreen Smelter and is generally located at 5701 Lower River Road, Vancouver, Washington. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. The Site is more particularly described in Site Diagram (Exhibit A). The Site constitutes a Facility under RCW 70.105D.020(4).

B. Potentially Liable Person Evergreen Aluminum LLC Site

Potentially liable persons refer to Evergreen Aluminum.

C. Enforcement Order or Order

“Enforcement Order” or “Order” refers to this Order and each of the exhibits to the Order. All exhibits are an integral and enforceable part of this Order. The terms “Enforcement Order” or “Order” shall include all exhibits to this Order.

V. FINDINGS OF FACT

Ecology makes the following findings of fact, without any express or implied admissions of such facts by Evergreen Aluminum LLC:

A. Aluminum Company of America (Alcoa) is a Pennsylvania corporation which started aluminum smelting operations in Vancouver during the early 1940s. Alcoa completed construction of the aluminum manufacturing facility at the Site in 1940. Alcoa filled the eastern portion of the smelter site with dredge sands from the Columbia River and constructed the smelter during World War II. From 1940 to 1970 they added a number of fabrication operations to the facility. By 1970, the facility contained an aluminum smelter and a series of fabrication plants to form the metal into finished goods such as wire, rod, and extruded channel. Alcoa operated the entire facility for approximately 45 years, until 1986.

B. In 1986 Alcoa closed the aluminum smelter and adjacent manufacturing facilities. Alcoa began to remediate, close, and sell individual land parcels associated with the aluminum manufacturing facility. In 1985, the cable mill operation was sold to ACPC, Inc. who leased the property from Alcoa until 1997. In 1987, Alcoa sold the aluminum smelter to VANALCO, Inc.

and retained title to the extrusion section of the property known as VANEXCO. Alcoa operated VANEXCO until 1991 when it closed. In 1994, Alcoa sold a parcel of property known as the North Parcel to the Clark County Public Utility for construction of a cogeneration plant. In 1997, Alcoa conducted a cleanup on a parcel known as the Northeast Parcel and sold the property to Clark County as a jail site. Glencore purchased the smelter from VANALCO in 2002. Glencore named the new business entity Evergreen Aluminum LLC.

C. The Site is situated on the flood plain of the nearby Columbia River. Alcoa characterized the hydrogeology of the area by extracting and analyzing numerous soil cores in the vicinity of smelter. The ground water system in the area can be divided into four general hydrogeologic units: the shallow zone, the intermediate zone, the deep zone, and the aquifer zone. The predominant ground water flow direction beneath the Site is toward the Columbia River in the deeper hydrogeologic units. The shallow zone consists of dredged sand placed on the Site during the late 1940s and early 1950s. A perched water table is located in the shallow zone during the wetter months of the year. The direction of the movement of water in the saturated portions of the shallow zone beneath the Site is unknown. Information from monitoring wells located at the NPL Site indicate that the shallow zone is approximately 10 feet thick and has a horizontal hydraulic conductivity of 10^{-3} to 10^{-4} cm/sec. Materials directly beneath the dredged sand are the intermediate zone silty clays and clayey silts that were deposited in relatively low energy flood plain environments. This zone is composed of relatively low energy flood plain deposits and is saturated. Water moves predominantly downward in the intermediate zone due to a high vertical hydraulic gradient. The intermediate zone silts and clays are approximately 30 to 40 feet thick and have a horizontal conductivity of 10^{-4} to 10^{-6} cm/sec. Laboratory testing of the intermediate silts indicates that the vertical conductivities of the material is often considerably less than the horizontal values. The results of the testing show values in the range of 10^{-7} to 10^{-8} cm/sec.

D. Evergreen Aluminum has entered into negotiations with the Port of Vancouver to develop the Site into a port. The Port of Vancouver would like to receive a Site free from contamination.

E. Evergreen Aluminum conducted a preliminary historical site review at the Site and identified areas where they confirmed releases to soil and areas where they suspect that contamination exists. These areas include:

- Buildings 52 and 54 Carbon Storage and Green Mill – Probable PAH contamination.
- Boneyard South of Building 59 - Preliminary soil sampling indicates metals contamination.
- Rectifier – Transformer Yard - Probable low level PCB and mineral oil contamination.
- Site Electrical System - Probable small areas of PCB contamination from single transformers found in various spots around the Site.
- Buildings 58, 60, and 64 Carbon Anode Bake Ovens – Possible contamination in the soils and groundwater because the base of the bake ovens is below or near the top of the shallow groundwater table. Evergreen suspects that soil and groundwater in the area could be contaminated from the oven dewatering system. Fluoride is suspected in ground water.
- Old Carbon Bake Oven Wet Scrubber Settling Ponds – Probable soil contamination with unknown chemicals. Two old settling ponds are located under the existing A398 bag houses. Evergreen will conduct a subsurface investigation to determine contaminants of concern in the buried ponds.

Evergreen Aluminum will characterize and remediate any new contamination discovered during building demolition.

F. During initial site sampling, Evergreen Aluminum discovered levels of fluoride above MTCA ground water standards and PAHs, petroleum hydrocarbons, fluoride, and PCBs above MTCA soil cleanup standards.

VI. ECOLOGY DETERMINATIONS

A. The Site which has an address of 5701 N.W. River Road, Vancouver, WA is known as the Evergreen Aluminum Smelter LLC. Evergreen Aluminum is an “owner and operator” as defined in RCW 70.105D.020(12) of a “facility” as defined in RCW 70.105D.020(4).

- B.** Fluoride, cyanide, and polynuclear aromatic hydrocarbons (PAHs) found at the Site as described above are “hazardous substances” as defined at RCW 70.105D.020(7).
- C.** Based upon all factors known to Ecology, a “release” or “threatened release” of “hazardous substance(s)” as defined in RCW 70.105D.020(20) and RCW 70.105D.020(7), respectively, has occurred at the Site.
- D.** Based upon credible evidence, Ecology issued a PLP status letter to Evergreen Aluminum dated July 19, 2007 pursuant to RCW 70.105D.040, -.020(16) and WAC 173-340-500 After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that Evergreen Aluminum is a PLP under RCW 70.105D.040 and notified Evergreen Aluminum of this determination by letter dated in August 2007.
- E.** Pursuant to RCW 70.105D.030(1) and -.050(1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.
- F.** Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study, or design of a cleanup action. The interim remedial action will allow development of the property in a quick and effective manner.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that Evergreen Aluminum take the following interim remedial actions at the Site and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein:

A. General Work Requirements

1. Prepare a Site health and safety plan for work on the Site in accordance with the most recent OSHA, WISHA rules and their implementing regulations.
2. Obtain any and all state, federal, or local permits required by applicable law before work on the Site can begin.

B. Sampling Plan

Within thirty (30) days of the effective date of this Order, Evergreen Aluminum shall submit a Sampling Plan to Ecology that initiates further soil and water investigations at the Site. The Sampling Plan shall follow WAC 173-340-820 and when completed: a) include the development of a set of contaminants of concern for the Site, b) complete the characterization of the location, quantity, aerial and vertical extent of the contaminants of concern in soils and ground water, and c) determine soil and ground water cleanup standards for the Site contaminants of concern.

C. Remedial Investigation and Feasibility Study

Within 120 days of Ecology's approval of the Sampling Plan, Evergreen Aluminum shall submit a Remedial Investigation and Feasibility Study for the Site. The Remedial Investigation (RI) shall present the contaminant data collected using the approved Sampling Plan in accordance with requirements of WAC 173-340-350(7). The Feasibility Study (FS) shall include an analysis of the alternative cleanup actions that are protective of human health and the environment in accordance with the requirements of WAC 173-340-350 and WAC 173-340-360. The FS shall include a list of interim actions already complete or in progress, an initial screening of remedial technologies, and a detailed evaluation of a focused list of alternative cleanup actions. At a minimum, the FS shall include the following alternative cleanup actions: no remediation and long term monitoring; complete removal of contaminated areas found on site above cleanup standards and ground water monitoring if necessary; removal of source areas from the site and capping; and limited source area removal, pumping and treating contaminated groundwater, and capping. The cleanup actions described in the FS shall use permanent

BEFORE THE WASHINGTON UTILITIES
AND TRANSPORTATION COMMISSION

WASTE CONNECTIONS OF
WASHINGTON, INC.;

Complainant,

v.

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

Respondents.

Case No. TG-071194

DECLARATION OF
POLLY L. McNEILL

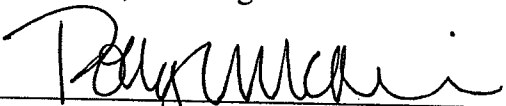
I, Polly L. McNeill, declare under penalty of perjury as follows:

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.



Polly L. McNeill

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION

3 WASTE CONNECTIONS OF)
WASHINGTON, INC.,)

4 Complainant,)
5)

6 vs.)

7 ENVIRO/CON & TRUCKING, INC.,)
a Washington Corporation,)
8 ENVIROCON, INC., a)
corporation, and WASTE)
9 MANAGEMENT DISPOSAL SERVICES)
OF OREGON, INC.,)

10 Respondents.)

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

COPY

11
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
Union Street, Suite 4100, Seattle, Washington 98101;
20 telephone, (206) 233-2895.

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

24 Kathryn T. Wilson, CCR

25 Court Reporter

CONTINENTAL REPORTING SERVICE, INC.
SEATTLE, WASHINGTON
(800) 308 - 3377

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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SEATTLE, WASHINGTON
(800) 308 - 3377

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

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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

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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.