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BEFORE THE WASHINGTON UTILITIES  
AND TRANSPORTATION COMMISSION

WASTE CONNECTIONS OF  
WASHINGTON, INC.,

Complainant,

vs.

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

Respondents.

Case No.: TG-071194

INTERVENOR WRRRA'S  
REPLY TO PETITION FOR  
ADMINISTRATIVE REVIEW

**COMES NOW** Intervenor Washington Refuse and Recycling Association  
(WRRRA) and respectfully submits the following:

PROCEEDINGS: Complainant Waste Connections of Washington, Inc.  
(WCI) has thoroughly set forth the procedural history here, and there is no  
reason for WRRRA to repeat it. Suffice it to say that WRRRA concurs with WCI's  
summary of the "proceedings to date," and finds it to be accurate and  
complete.

WRRRA also agrees with WCI's extensive review of the law and its  
conclusion that this proceeding has been ended prematurely by a factually  
and legally unsupportable Initial Order which should be reversed, allowing  
this proceeding to continue on to determination on the merits.

1 Again, WRRRA will try very hard not to repeat the exhaustive research  
2 and detail of WCI's petition, but does wish the Commission to give particular  
3 attention to two issues:

4 PUBLIC INTEREST: This action involves allegations of illegal activity;  
5 i.e. the hauling of solid waste by a non-certificated carrier, and the brokering  
6 of the act by a company whose affiliates hold G-certificates, and by  
7 implication should know better. To be sure, these are allegations and may or  
8 may not be proven, but the Initial Order arbitrarily cuts off any chance of  
9 either outcome, either of which would serve to further define just exactly what  
10 the "public interest" is in a situation such as this.

11 The Initial Order appears to rely significantly on the absence of  
12 Commission Staff in this proceeding to somehow justify its apparent  
13 conclusion that the public interest is not at stake here. This is simply wrong  
14 on three counts:

15 First, Staff, as per the Declaration of Chris Rose<sup>1</sup> specifically refutes the  
16 Initial Order's conclusions that "only the Staff or Public Counsel can  
17 articulate public interest issues or impacts." It is a very dangerous concept  
18 indeed to even imply a conclusion that if Staff does not directly take part in a  
19 Commission proceeding the public interest is not at stake. Mr. Rose clearly  
20 recognizes that, and the Commission should give substantial weight to his  
21 Declaration.

22 Secondly, the Initial Order's conclusions regarding the public interest  
23 would appear to ignore the presence of Intervenor Clark County. As the  
24 Commission is well aware, counties have significant authority and investment  
25 in solid waste management within their boundaries. The very fact that Clark  
26 County intervened in this proceeding belies the conclusion that the public  
interest is not involved. The public interest is that the laws of this state and  
Clark County be followed.

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<sup>1</sup> Appendix A to WCI's Petition for Administrative Review, p. 2-3.

1 Finally, the Initial Order's conclusion is simply contrary to the law. The  
2 collection and transportation of solid waste is a fundamental public health  
3 and safety issue, and a "recognized governmental function." **Citizens for**  
4 **Clean Air v. Spokane**, 114 Wn.2d 20, 39, 785 P.2d 447 (1990). This long-  
5 standing concept was reaffirmed by our state's Supreme Court just a few  
6 months ago in **Ventenbergs v. Seattle**, 163 Wn.2d 92, 178 P.3d 960 (2008).  
7 The idea that unless Commission Staff or Public Counsel is directly involved  
8 in a solid waste proceeding the public interest is similarly not involved, is just  
9 plain wrong.

10 PRECEDENTIAL EFFECT: The major parties in this matter obviously  
11 have competent, experienced counsel and are well able to present their  
12 positions to the Commission. WRRRA, on the other hand, represents the vast  
13 majority of the rest of the regulated industry who, although not directly  
14 involved in this dispute, are vitally concerned with its outcome. As we have  
15 pointed out in previous pleadings and discussions, this cannot be perceived  
16 as an isolated incident that only affects two large companies. The message  
17 one cannot help but take from the Initial Order is that activity which, at the  
18 very least, is allegedly illegal is okay as long as it is completed before the  
19 administrative process (which can be, and often is, excruciatingly slow) can be  
20 completed, or even started. Where does this leave the small hauler who sees  
21 this sort of thing happening in its certificated territory? Can it seek an  
22 injunction in Superior Court without exhausting its administrative remedies?  
23 Probably not. It then files a complaint with the Commission, or institutes an  
24 action such as WCI did here, and hopes the illegal haul doesn't end before the  
25 administrative process is completed. If the alleged illegal hauler finishes the  
26 job before a hearing can be held,<sup>2</sup> too bad; no remedy because the issue is  
moot. That just does not make legal or common sense. But that is exactly  
what this Initial Order concludes.

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<sup>2</sup> And, as here, a BAP does not happen, for whatever reason, including, as here, not surprisingly, with the objection of Respondent's counsel.

1 The Initial Order's conclusions almost beg for comparison to a criminal  
2 law situation where an alleged crime has been successfully completed before  
3 the authorities discover it, or during an investigation. Because the deed has  
4 been done, does this mean the investigation ceases and no consequences are  
5 suffered or legal precedent set if the crime indeed is found to have been  
6 committed? Obviously that makes no sense in such a situation; nor does it  
7 make any sense here. WCI has complained that Respondents have violated  
8 the law by transporting solid waste without legal authority to do so. The  
9 Complainant is entitled to a ruling, whether the activity has ceased or not. Of  
10 equal importance, every other G-certificate holder in the state needs and  
11 deserves to have guidance from the Commission on the merits of this most  
12 important of issues; particularly at a time when this portion of the solid waste  
13 stream is subject to unprecedented challenges in the forms of diversion and  
14 unauthorized collection and transportation.

13 CONCLUSION: The Initial Order should be reversed and the matter  
14 remanded for completion of the administrative process.

15 Respectfully submitted this 6 day of June 2008.



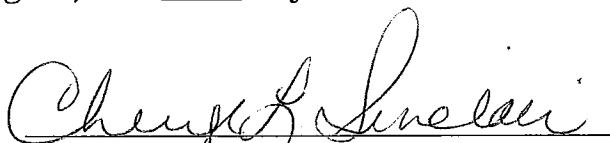
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23 Attorneys for Washington Refuse  
24 and Recycling Association  
25  
26

1  
2 **CERTIFICATE OF SERVICE**

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

6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26	<i>Attorneys for Complainant Waste Connections of Washington, Inc.</i> David W. Wiley Williams Kastner PO Box 21926 Two Union Square 601 Union Street Seattle, WA 98111-3926 DWiley@williamskastner.com	<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
	<i>Attorneys for Waste Management Disposal Services of Oregon, Inc.</i> Polly L. McNeill Summit Law Group 315 - 5th Avenue S. Seattle, Washington 98104 pollym@summitlaw.com	<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
	Bronson Potter Deputy Prosecuting Attorney Clark County Prosecuting Attorney's Office Civil Division P.O. Box 5000 Vancouver, WA 98666-5000 bronson.potter@clark.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

DATED at Silverdale, Washington, this 9<sup>th</sup> day of June 2008.

  
Cheryl L. Sinclair