

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

WASTE MANAGEMENT'S AND
ENVIRO/CON & TRUCKING'S
PETITION FOR LEAVE TO REPLY TO
INTERVENORS' ANSWERS TO
WASTE CONNECTIONS, INC.'S
PETITION FOR ADMINISTRATIVE
REVIEW

1. COMES NOW Respondents Waste Management Disposal Services of Oregon, Inc. ("Waste Management") and Enviro/Con & Trucking, Inc. ("ECTI") (collectively, "Respondents") seeking leave to file the attached *Reply to Intervenors' Answers to Waste Connections, Inc.'s Petition for Administrative Review* to address new matters and challenges to *Order 03 Granting Motion For Summary Determination* raised in *Intervenor Clark County's Answer to Petition for Administrative Review* ("Clark County's Answer") and in *Intervenor WRRRA's Reply to Petition for Administrative Review* ("WRRRA's Answer") (collectively, the "Intervenors' Answers") to which a reply is justified.

2. This matter involves a private party complaint brought against Respondents Waste Management and ECTI by Waste Connections of Washington, Inc. ("Waste Connections") disputing the manner in which construction debris and/or construction waste ("C & D Waste") was removed from the Evergreen Aluminum Smelter environmental remediation site (the "Remediation Site") in Clark County, along with hazardous and dangerous waste. In March, the challenged activities were completed prior to any evidentiary hearing, and

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only potential, theoretical, abstract and academic interests remained to be adjudicated by the Commission. Lacking a sufficient stake in the outcome to zealously advocate their positions, Respondents moved to have the case dismissed as moot. On April 22, 2008, Administrative Law Judge Dennis Moss issued *Order 03 Granting Motion for Summary Determination* (the “Initial Order”), concluding that a justiciable controversy was no longer present.

3. On May 30, 2008, Waste Connections filed a *Petition for Administrative Review* (“Waste Connections’ Petition”) challenging the Initial Order. On June 9, 2008, Respondents filed an *Answer to the Petition for Administrative Review* (“Respondents’ Answer”). The same day, Intervenor Washington Refuse and Recycling Association (“WRRA”) and Clark County also answered Waste Connections’ Petition, alleging additional challenges to the Initial Order to which a reply is warranted.

I. ANALYSIS

4. The process governing petitions for administrative review by the Commission is set forth in WAC 480-07-825, which implements the statutory authority of the Administrative Procedures Act, RCW 34.05.464. Respondents believe that Commission rule grants them a right to reply to new challenges raised in the Intervenor’s Answers, and that this *Petition for Leave to Reply* is not strictly required. Respondents seek leave to file a reply as a precautionary measure, in case the other parties dispute Respondents’ right to reply.

1. Respondents may reply to the new challenges raised in the Intervenor’s Answers as a matter of right.

5. The rule allows any party to the adjudicative proceeding to file an answer to a petition for administrative review. WAC 480-07-825(4)(a). It further provides that a party who did not file the petition itself may challenge the subject initial order in its answer. WAC 480-07-825(4)(c). If that happens, any party has the right to reply to new challenges that are raised by another party’s answer. WAC 480-07-825(5)(a).

6. In this case, all of the three remaining parties answered Waste Connections' Petition. Respondents Waste Management and ECTI did not raise new challenges to the initial order, but rather presented arguments upholding the dismissal of the moot case that was granted by the order.

7. Not surprisingly, the Intervenor WRRRA and Clark County supported the position of Waste Connections, and urged the Commission to reverse the Initial Order. WRRRA Answer, p. 1 at ll 23-26; Clark County Answer ¶ 2. Both raised challenges based on arguments that were not presented in Waste Connections' Petition. In particular, they presented arguments suggesting that the participation of Intervenor Clark County in and of itself bestows the privilege of the public interest exception to mootness upon the Complainant, Waste Connections. Putting aside the tautological nature of the reasoning presented (and refuted in the attached Reply), in presenting this argument both Intervenor raised "new challenges" to the Initial Order. Thus, Respondents are permitted by rule to file the attached *Reply to Intervenor's Answers to Waste Connections, Inc.'s Petition for Administrative Review* as a matter of right.

2. Respondents should be granted leave to reply to the new matters raised in the Intervenor's Answers.

8. A party lacking the ability to reply to an answer as a matter of right may nonetheless petition for leave to reply under WAC 480-70-825(5)(a). Because the Intervenor's Answers raised new matters that were not reasonably anticipated, if Respondents do not have the right to reply they should instead be granted leave to do so.

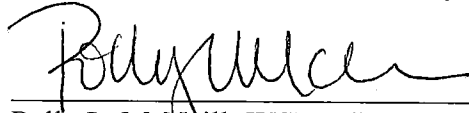
9. In answering Waste Connections' Petition for Administrative Review, Respondents briefly touched on the presence of Intervenor Clark County. See Respondents' Answer ¶ 28 ("It is incumbent on Waste Connections to demonstrate the public interest exception, and merely because a local government intervened cannot create a justiciable controversy where one is not otherwise present.") Respondents did not anticipate Intervenor would argue that statutory and judicial authority that vests local governments with responsibility

for managing solid waste matters would confer upon Waste Connections a public interest exception to mootness. The fact that the Intervenor's arguments are *not* relevant is no reason to preclude Respondents from explaining why.

II. CONCLUSION

10. Respondents therefore request the Commission consider the attached *Reply to Intervenor's Answers to Waste Connections, Inc.'s Petition for Administrative Review* explaining why the arguments presented in Intervenor's Answers do not change the conclusion that the Initial Order should be upheld in dismissing the Complaint of Waste Connections as moot.

DATED this 16th day of June, 2008.



Polly L. McNeill, WSBA # 17437
SUMMIT LAW GROUP PLLC
315 Fifth Avenue South, Suite 1000
Seattle, WA 98104
T: (206) 676-7000
F: (206) 676-7001
Attorneys for Respondent Waste Management
Disposal Services of Oregon, Inc.