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UTIL. AND TRANSP.  
COMMISSION

**SENT VIA WEB PORTAL AND EMAIL**

Mark L. Johnson, Executive Director  
Washington Utilities and Transportation Commission  
621 Woodland Square Loop SE  
PO Box 47250  
Olympia, WA 98504-7250

**Re: In the matter of Determining the Proper Carrier Classification of, and  
Complaint for Penalties Against: INTERNATIONAL RESOURCE  
MANAGEMENT INC. D/B/A WASTEEXPRESS AND D/B/A WASTEEXPRESS  
HAZARDOUS WASTE DISPOSAL Docket TG-200131**

Dear Mr. Johnson,

Enclosed for filing in the above referenced docket are International Resource Management Inc.'s Answer to the above referenced Complaint and Certificate of Service.

Sincerely,

---

Thomas R. Benke  
Attorney – Managing Member  
trbenke@env-compliance.com

Enclosures  
cc: Parties

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BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Determining the Proper ) DOCKET NO. TG-200131  
Carrier Classification of, and Complaint )  
for Penalties Against: ) ANSWER  
)  
INTERNATIONAL RESOURCE )  
MANAGEMENT, INC. D/B/A )  
WASTEXPRESS AND D/B/A )  
WASTEXPRESS HAZARDOUS WASTE )  
DISPOSAL )

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International Resource Management, Inc.’s (“WasteXpress”) address for purposes of this proceeding is:

Arthur Marx, Chief Executive Officer  
IRM Inc.  
PO Box 31100  
Portland, OR 97231  
Phone: 503-224-3206  
Email: arthur@wastex.com

International Resource Management, Inc.’s (“WasteXpress”) representative for purposes of this proceeding is:

Thomas R. Benke, OSB 92225  
The Environmental Compliance Organization LLC  
PO Box 83706  
Portland, OR 97283  
Phone: 503-246-1514  
Email: trbenke@env-compliance.com

1 International Resource Management, Inc. dba WasteXpress and WasteXpress Hazardous  
2 Waste Disposal (hereinafter “WasteXpress”) answers the Complaint of the Washington Utilities  
3 and Transportation Commission dated June 11, 2020 (the “Complaint”) as stated below.

4  
5 ANSWER

6 1. Because paragraph 1 of the Complaint contains no legal or factual allegations,  
7 WasteXpress neither admits nor denies this paragraph.

8 2. WasteXpress admits the allegations in paragraph 2 of the Complaint.

9 3. WasteXpress admits the facts of its registration with the Oregon Secretary of State  
10 as alleged. WasteXpress denies that it does not hold a Commission-issued common carrier  
11 permit. WasteXpress holds Permit No. CC069068 issued January 23, 2020. WasteXpress  
12 admits that it does not hold a certificate from the Commission declaring that public convenience  
13 and necessity require its operation, pursuant to RCW 81.77.040. WasteXpress denies that it is  
14 required to operate subject to a certificate of public convenience and necessity pursuant to  
15 RCW 81.77.040 because WasteXpress does not operate as a “solid waste collection company” as  
16 that term is defined in commission rules at WAC 480-70-041.

17 4. WasteXpress is without sufficient information to admit or deny the allegations in  
18 paragraph 4 of the Complaint. If an admission or denial is required, WasteXpress denies the  
19 allegations in paragraph 4 of the Complaint.

20 5. WasteXpress admits the allegations in paragraph 5 of the Complaint.

21 6. WasteXpress admits the allegations in paragraph 6 of the Complaint. As a point  
22 of clarification, WasteXpress does not “dispose” of waste. The phrase “we do hazardous waste  
23 disposal” is intended to mean that, in addition to transporting waste, WasteXpress facilitates  
24 disposal on behalf of the customers from whom it receives waste.

ANSWER

PAGE 2

1           7.     WasteXpress admits the allegations in paragraph 7 of the Complaint.  
2           8.     WasteXpress admits the allegations in paragraph 8 of the Complaint.  
3           9.     WasteXpress neither admits nor denies the allegations in paragraph 9 of the  
4 Complaint because Staff’s August 27, 2019 letter speaks for itself. To the extent that  
5 WasteXpress may be required to admit or deny the allegations in paragraph 9, WasteXpress  
6 denies the actual allegations because they are not a complete recitation of the August 27, 2019  
7 letter.

8           10.    WasteXpress denies the allegations in paragraph 10 of the Complaint because  
9 they are not a complete or completely accurate recitation of the September 4, 2019  
10 teleconference.

11          11.    WasteXpress neither admits nor denies the allegations in paragraph 11 of the  
12 Complaint because WasteXpress’ September 9, 2020 email speaks for itself. To the extent that  
13 WasteXpress may be required to admit or deny the allegations in paragraph 11 of the Complaint,  
14 WasteXpress denies the actual allegations because they are not a complete recitation of the  
15 September 9, 2019 email. WasteXpress objects to Staff’s editing of WasteXpress’ statement,  
16 particularly redaction of the phrase “promulgated to administer and enforce chapter 81.77 RCW”  
17 in reference to the definitions promulgated at WAC 480-70-041. This is the core issue of  
18 statutory and rule interpretation before the Commission, whether the Commission’s definition of  
19 “solid waste collection” promulgated at WAC 480-70-041 – limited as it is by the phrase “from  
20 residential or commercial customers” – is controlling. Notably, the Staff did not include  
21 reference to the definitions in WAC 480-70-041 in their recitation of “Applicable Law”. Instead,  
22 Staff only references statutory language and applies it as Staff interprets that language, thereby  
23 usurping the role of the Commission in administering and enforcing chapter 81.77 RCW.

1           12.     WasteXpress neither admits nor denies the allegations in paragraph 12 of the  
2 Complaint because Staff’s September 17, 2020 email speaks for itself. To the extent that  
3 WasteXpress may be required to admit or deny the allegations in paragraph 12 of the Complaint,  
4 WasteXpress denies the actual allegations because they are not a complete recitation of the  
5 September 17, 2019 email. WasteXpress objects to Staff’s reference to the definition of  
6 “commercial authority”. The issue before the Commission is whether WasteXpress’ operations  
7 require a certificate of public convenience and necessity pursuant to RCW 81.77.040...

8           *A solid waste collection company shall not operate for the hauling of solid waste*  
9           *for compensation without first having obtained from the commission a certificate*  
10           *declaring that public convenience and necessity require such operation. \* \* \**

11 ...and pursuant to WAC 480-70-081(1)

12           ***Certificate required.*** *A person must have a certificate of public convenience and*  
13           *necessity from the commission before operating as a solid waste collection*  
14           *company in the state of Washington.*

15 The term “commercial authority” is not included within either of the statutory or regulatory  
16 definitions of “solid waste collection company”, RCW 81.77.010 and WAC 480-70-041  
17 respectively.

18           13.     WasteXpress neither admits nor denies the allegations in paragraph 13 of the  
19 Complaint because WasteXpress’ September 25, 2020 email speaks for itself. To the extent that  
20 WasteXpress may be required to admit or deny the allegations in paragraph 13 of the Complaint,  
21 WasteXpress denies the actual allegations because they are not a complete recitation of the  
22 September 25, 2019 email.

23           14.     WasteXpress neither admits nor denies the allegations in paragraph 14 of the  
24 Complaint because Staff’s September 26, 2020 email speaks for itself. To the extent that

1 WasteXpress may be required to admit or deny the allegations in paragraph 14 of the Complaint,  
2 WasteXpress denies the actual allegations because they are not a complete recitation of the  
3 September 26, 2019 email.

4 15. WasteXpress neither admits nor denies the allegations in paragraph 15 of the  
5 Complaint because WasteXpress' November 6, 2019 email speaks for itself. To the extent that  
6 WasteXpress may be required to admit or deny the allegations in paragraph 15 of the Complaint,  
7 WasteXpress denies the actual allegations because they are not a complete recitation of the  
8 November 6, 2019 email. WasteXpress objects to Staff's reference to the "factors" of  
9 WAC 480-70-016(4) because those "factors" are not part of either the statutory or regulatory  
10 definitions of "solid waste collection company" at RCW 81.77.010 and WAC 480-70-041  
11 respectively. In its Complaint at paragraph 34 Staff references the "factors" of WAC 480-70-  
12 016(4) as determinative of "whether operations require a solid waste certificate or a motor carrier  
13 permit". To the contrary, WAC 480-70-016 addresses situations where a company is technically  
14 required to operate pursuant to both a certificate of public convenience and necessity and a motor  
15 carrier permit (i.e., "...carriers *may* be required to hold *both* a solid waste certificate...and a  
16 motor carrier permit...") Use of the phrase "may be required" in WAC 480-70-016 indicates  
17 that the Commission has discretion to except some companies, although technically operating as  
18 a "solid waste collection company", from the requirement of operating pursuant to a certificate.  
19 The "factors" of WAC 480-70-016(4) merely guide the Commission's exercise of its discretion.  
20 WasteXpress stated in its November 6, 2019 email that its operations are "primarily waste-  
21 related", thus admitting that the *exception* of WAC 480-70-016 from operating pursuant to a  
22 certificate of public convenience and necessity would not apply if its operations otherwise fell  
23 within the definition of "solid waste collection". WAC 480-70-016 is therefore irrelevant to the  
24 issue of statutory and rule interpretation before the Commission in this matter.

ANSWER

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1           16.     WasteXpress neither admits nor denies the allegations in paragraph 16 of the  
2 Complaint because Staff’s November 18, 2019 email speaks for itself. To the extent that  
3 WasteXpress may be required to admit or deny the allegations in paragraph 18 of the Complaint,  
4 WasteXpress denies the actual allegations because they are not a complete recitation of the  
5 November 18, 2019 email. WasteXpress specifically denies Staff’s assertion that if WasteXpress  
6 is “transporting solid waste” that a “certificate of necessity is required.” The origin of the solid  
7 waste is determinative (e.g., “from residential or commercial customers”), not simply that the  
8 material collected is “solid waste”.

9           17.     WasteXpress admits the allegations in paragraph 17 of the Complaint.

10          18.     WasteXpress denies the allegations in paragraph 18 of the Complaint because  
11 they are not a complete or completely accurate recitation of the December 5, 2019  
12 teleconference.

13          19.     WasteXpress is without sufficient information to admit or deny the allegations in  
14 paragraph 19 of the Complaint. If an admission or denial is required, WasteXpress denies the  
15 allegations in paragraph 19 of the Complaint.

16          20.     WasteXpress admits the allegations in paragraph 20 of the Complaint.

17          21.     WasteXpress admits the allegations in paragraph 21 of the Complaint.

18          22.     WasteXpress admits the allegations in paragraph 22 of the Complaint.

19 WasteXpress ceased transporting biomedical waste in Washington on or before August 28, 2019,  
20 when it received Staff’s letter of August 27, 2019 attached to the Complaint as Attachment G.

21          23.     WasteXpress admits the allegations in paragraph 23 of the Complaint.

22          24.     To the extent that the definitions of “public service company” enacted at  
23 RCW 81.04.010(16) and of “common carrier” enacted at RCW 81.040.010(11) include the term  
24 “solid waste collection company”, WasteXpress denies that it operates as a “solid waste

1 collection company” as that term has been defined in Commission rules promulgated to  
2 implement and enforce the statutory provisions of RCW Chapter 81.77, specifically  
3 WAC Chapter 480-70 “Solid waste and/or collection companies” (e.g., “The purpose of these  
4 rules is to administer and enforce chapter 81.77 RCW...” WAC 480-70-001). The Commission  
5 has interpreted the term “solid waste collection company” by its definition of “solid waste  
6 collection company” promulgated at WAC 480-70-041 (“Definitions, general”):

7 *“Solid waste collection company” means every common carrier, including a contract*  
8 *carrier, who provides solid waste collection service.*

9 More to the point, the term “solid waste collection” is not defined in statute. The Commission  
10 has interpreted the term “solid waste collection” by its definition of “solid waste collection” also  
11 promulgated at WAC 480-70-041 (“Definitions, general”):

12 *“Solid waste collection” means collecting solid waste from residential or commercial*  
13 *customers and transporting the solid waste, using a motor vehicle, for collection and/or*  
14 *disposal over the highways of the state of Washington for compensation. (emphasis*  
15 *added)*

16 With the exception of its collection of biomedical waste as described in the Complaint at  
17 paragraph 22, which service has ceased as described in this Answer at paragraph 22,  
18 WasteXpress denies that it collects solid waste from residential or commercial customers.

19 25. Paragraph 25 of the Complaint contains legal conclusions to which no answer is  
20 required. To the extent that an answer is required, WasteXpress admits that the Commission  
21 regulates public service companies pursuant to a delegation of authority from the legislature but  
22 denies that WasteXpress operates as a public service company.

23 26. Paragraph 26 of the Complaint contains legal conclusions to which no answer is  
24 required. To the extent that an answer is required, WasteXpress denies that it operates as a



1 “solid waste collection company” or is otherwise a “public service company” (or “public service  
2 corporation” as alleged). With that caveat, WasteXpress admits the allegations in paragraph 26  
3 of the Complaint.

4 27. Paragraph 27 of the Complaint contains legal conclusions to which no answer is  
5 required. To the extent that an answer is required, WasteXpress denies that the definition of  
6 “solid waste collection company” enacted at RCW 81.77.010(7) as interpreted by the  
7 Commission at WAC 480-70-041 includes WasteXpress’ collection of solid waste in the state of  
8 Washington.

9 28. Paragraph 28 of the Complaint contains legal conclusions to which no answer is  
10 required. To the extent that an answer is required, notwithstanding the broad definition of  
11 “common carrier” promulgated at WAC 480-70-041, WasteXpress denies that it is a “common  
12 carrier” as defined at RCW 81.77.010(3). WasteXpress is exclusively a “contract carrier” as  
13 defined at RCW 81.77.010(4), meaning that it hauls solid waste only for specific customers with  
14 whom it has specially and individually contracted for service, not the general public. Moreover,  
15 WasteXpress denies that it operates as such a “common carrier” in the sense that the legislature  
16 intended in enactment of RCW Chapter 81.04.

17 29. WasteXpress admits the allegations in paragraph 29 of the Complaint.

18 30. Paragraph 30 of the Complaint contains legal conclusions to which no answer is  
19 required. To the extent that an answer is required, WasteXpress denies that the definition of  
20 “solid waste” enacted at RCW 70.95.030 and RCW 81.77.010(9) is relevant to the Commission’s  
21 assessment of penalties pursuant to RCW Chapter 81.04, to determination of the proper “carrier  
22 classification” of WasteXpress, and/or to whether WasteXpress is required to operate pursuant to  
23 a certificate of public convenience and necessity pursuant to RCW 81.77.040 as interpreted and  
24 implemented by the Commission in its rules at WAC Chapter 480-70 because the definition of

1 “solid waste collection”, and therefore the definition of “solid waste collection company”,  
2 promulgated at WAC Chapter 480-70 depends not on what a company collects and transports but  
3 rather upon from whom a company collects solid waste (e.g., “solid waste collection means  
4 collecting solid waste from residential or commercial customers...” WAC 480-70-041).  
5 Further, WasteXpress denies that the definition of “commercial authority” is relevant to the  
6 Commission’s assessment of penalties pursuant to RCW Chapter 81.04, to determination of the  
7 proper “carrier classification” of WasteXpress, and/or to whether WasteXpress is required to  
8 operate pursuant to a certificate of public convenience and necessity pursuant to RCW 81.77.040  
9 as interpreted and implemented by the Commission in its rules at WAC Chapter 480-70 because  
10 the term “commercial authority” is not a part of the definition of “solid waste collection”  
11 promulgated at WAC 480-70-041. Further, WasteXpress denies that the definition of  
12 “commercial service” is relevant to the Commission’s assessment of penalties pursuant to RCW  
13 Chapter 81.04, to determination of the proper “carrier classification” of WasteXpress, and/or to  
14 whether WasteXpress is required to operate pursuant to a certificate of public convenience and  
15 necessity pursuant to RCW 81.77.040 as interpreted and implemented by the Commission in its  
16 rules at WAC Chapter 480-70 because the term “commercial service” is not a part of the  
17 definition of “solid waste collection” promulgated at WAC 480-70-041.

18 31. Paragraph 31 of the Complaint contains legal conclusions to which no answer is  
19 required. To the extent that an answer is required, WasteXpress denies that it operates as a  
20 “solid waste collection company” as that term has been defined in Commission rules  
21 promulgated to implement and enforce the statutory provisions of RCW Title 81, specifically  
22 WAC Chapter 480-70 “Solid waste and/or collection companies”.

1           32. Paragraph 32 of the Complaint contains legal conclusions to which no answer is  
2 required. To the extent that an answer is required, WasteXpress denies that it is a “public service  
3 company” as defined at RCW 81.04.010(16).

4           33. Paragraph 33 of the Complaint contains legal conclusions to which no answer is  
5 required. To the extent that an answer is required, WasteXpress denies that there is any question  
6 of fact as to WasteXpress’ operations to be determined by the Commission. Rather, there is a  
7 dispute between Commission Staff and WasteXpress about the meaning of the definition of  
8 “solid waste collection company” promulgated at WAC 480-70-041. Procedurally, this dispute  
9 should be resolved in accordance with RCW Chapter 81.77 and WAC 480-70-031, not  
10 RCW Chapter 81.04 as the Commission has alleged.

11           34. Paragraph 34 of the Complaint contains legal conclusions to which no answer is  
12 required. To the extent that an answer is required to admit or deny the allegations in paragraph  
13 34, WasteXpress denies that the “factors” of WAC 480-70-016(4) are relevant because those  
14 “factors” are not part of the definition of “solid waste collection company”. In paragraph 34 the  
15 Commission references the “factors” of WAC 480-70-016(4) as determinative of “whether  
16 operations require a solid waste certificate or a motor carrier permit”. To the contrary,  
17 WAC 480-70-016 addresses situations where a company is technically required to operate  
18 pursuant to both a certificate of public convenience and necessity (because its operations meet  
19 the definition of “solid waste collection”) and a motor carrier permit. The “factors” of WAC  
20 480-70-016(4) inform the Commission’s exercise of its discretion to determine whether a  
21 company’s operations, although its operations may technically implicate the definition of “solid  
22 waste collection”, should be excepted from the requirement of operating pursuant to a certificate  
23 of public convenience and necessity. WasteXpress stated in its November 6, 2019 email that its  
24 operations are “primarily waste-related”, thus admitting that the *exception* of WAC 480-70-016

1 from operating pursuant to a certificate of public convenience and necessity would not apply if  
2 its operations fell within the definition of “solid waste collection”. WAC 480-70-016 is  
3 therefore irrelevant to the issue of whether WasteXpress operates as a “solid waste collection  
4 company” for which a certificate of public convenience and necessity is required in accordance  
5 with RCW 81.77.040 as interpreted and implemented by the Commission in rules promulgated at  
6 WAC 480-70-081.

7 35. Paragraph 35 of the Complaint contains legal conclusions to which no answer is  
8 required. To the extent that an answer is required, WasteXpress denies that the Commission is  
9 authorized and directed to (“must”) order WasteXpress to cease and desist in its operations.

10 36. Paragraph 36 of the Complaint contains legal conclusions to which no answer is  
11 required. To the extent that an answer is required, WasteXpress denies that it operates as a  
12 “solid waste collection company” subject to penalty pursuant to RCW 81.04.380.

13 37. WasteXpress admits that in collecting medical waste as alleged at paragraph 22 of  
14 the Complaint, which identifies commercial customers only, that it operated as a “solid waste  
15 collection company” “for the hauling of solid waste for compensation without first having  
16 obtained from the commission a certificate declaring that public convenience and necessity  
17 require such operation.” With the exception of its collection of medical waste, which ceased on  
18 or before August 28, 2019, WasteXpress denies that it operated or operates as a “solid waste  
19 collection company” as that term is defined at RCW 81.77.010 and as interpreted by the  
20 Commission in rules promulgated at WAC 480-70-041.

21 38. In answer to paragraph 38 of the Complaint, WasteXpress denies that the  
22 Commission has authority to assess penalties against WasteXpress under RCW 81.04.380  
23 because WasteXpress is not a “solid waste collection company” as that term is defined at  
24 WAC 480-70-041.

ANSWER

PAGE 11

1           39.     In answer to paragraph 39 of the Complaint, WasteXpress denies that the  
2 Commission has authority to order WasteXpress to cease and desist (pursuant to  
3 RCW 81.04.510, as referenced in paragraph 35 of the Complaint) from transporting solid waste  
4 until it has obtained a certificate of public convenience and necessity authorizing it to operate for  
5 the hauling of solid waste.

6           40.     Paragraph 40 of the Complaint (requesting “other or further relief”) contains legal  
7 conclusions to which no answer is required. To the extent that an answer is required,  
8 WasteXpress denies that the Commission is authorized to order the “other or further relief”  
9 requested.

10          41.     In answer to paragraph 41 of the Complaint, WasteXpress denies that there is  
11 probable cause to issue the Complaint.

12          42.     Paragraph 42 of the Complaint contains legal conclusions to which no answer is  
13 required.

14          43.     Paragraphs 43, 44, 45, 46, 47, 48 and 49 of the Complaint state legal opinions or  
15 conclusions or describes procedural matters for the conduct of the hearing into this matter that do  
16 not require an answer. Thus, WasteXpress neither admits nor denies the allegations in those  
17 paragraphs.

18  
19                                   DEFENSES AND AFFIRMATIVE DEFENSES

20          44.     The Complaint is styled “In the Matter of Determining the Proper Carrier  
21 Classification of, and Complaint for Penalties Against” Respondent WasteXpress. This is a  
22 reference to WAC 480-70-016, an administrative rule promulgated to administer and enforce  
23 chapter 81.77 RCW. Pursuant to WAC 480-70-016(2) the Commission has authority to *except* a  
24 “solid waste collection company” from the requirement of operating under a certificate of public

1 convenience and necessity otherwise required by WAC 480-70-081(1). The “factors” of  
2 WAC 480-70-016(4) (pled at paragraph 34 of the Complaint) are not determinative of whether a  
3 person or entity is a “solid waste collection company”. The “factors” merely guide the  
4 Commission’s exercise of its discretion to except a “solid waste collection company” from the  
5 requirement of operating under a certificate. Whether or not a person or entity is operating as a  
6 “solid waste collection company” that must operate under a certificate of public convenience and  
7 necessity is instead determined by the definition of “solid waste collection company”  
8 promulgated at WAC 480-70-041 which the Commission fails to cite in support of its claims.  
9 Therefore, the Commission has failed to state a claim and its Complaint must be dismissed.

10 45. If WasteXpress operates as a “solid waste collection company” (which  
11 WasteXpress does not concede) it operates as a “specialized solid waste collection company” as  
12 defined at WAC 480-70-041:

13 *“Specialized solid waste collection company” means a company providing other*  
14 *than traditional solid waste collection service. Specialized companies generally*  
15 *haul specific waste products for specific customers, provide only on-call or non-*  
16 *scheduled service, or provide accessorial services not normally provided by*  
17 *traditional solid waste collection companies.*

18 In its February 27, 2020 letter to Staff (Attachment U to the Staff report), WasteXpress wrote as  
19 follows:

20 *WasteXpress is aware of numerous transporters who haul industrial waste from*  
21 *industrial customers without a certificate of convenience and necessity.*  
22 *Moreover, Messrs. Komp and Marx are concerned about the Commission’s*  
23 *ability to establish rate structures and billing systems appropriate to the*  
24 *transportation of industrial waste (given that the myriad of rates charged by*

1            *haulers are very specific and unique to the type of hazard being handled and*  
2            *includes disposal costs which vary greatly depending on the chemical and*  
3            *physical characteristics of the wastes.)*

4    In its May 7, 2020 letter to Staff’s counsel (which Staff does not recognize in its Complaint,  
5    attached hereto as Exhibit A) WasteXpress explained that it generally hauls specific waste  
6    products for specific customers, provides only on-call or nonscheduled service, and provides  
7    accessorial services not normally provided by traditional solid waste collection companies. In  
8    that May 7, 2020 letter WasteXpress also asked for technical assistance in preparing an  
9    application for a certificate of public convenience and necessity for a specialized solid waste  
10   collection company, writing:

11            *...WasteXpress intends to proceed with submission of an application for a*  
12            *certificated of convenience and necessity (even as UTC staff and WasteXpress*  
13            *may also proceed with a “request for clarification” pursuant to WAC 480-70-*  
14            *031.) If you could please help me to understand how Class C “specialized solid*  
15            *waste collection companies are regulated differently from “traditional solid waste*  
16            *collection companies” by the Commission, that would help with preparation of*  
17            *the application tremendously.*

18    UTC Staff have never explained to WasteXpress exactly *how* it should prepare an application for  
19    certificate of public convenience and necessity as a Class C “specialized solid waste collection  
20    company” when there is no tariff – indeed cannot be a tariff – applicable to its diverse industrial  
21    customer base and the accessorial services it provides to each unique customer. WAC 480-70-  
22    216 provides in part that the Commission will enforce statutes, rules, and commission order  
23    through...a program emphasizing education and technical assistance.” Staff’s baseless assertion  
24    that the term “commercial customers” in the definition of “solid waste collection” promulgated

1 at WAC 480-70-041 includes “industrial customers” has not been helpful, nor have Staff’s  
2 repeated references to the definitions of “solid waste”, “commercial authority”, and “commercial  
3 service”. Staff’s continual reliance on the “factors” of WAC 480-70-016(4) as defining “solid  
4 waste collection” may reflect agency practice but is objectively erroneous. And Staff’s failure to  
5 respond to WasteXpress’ direct request for technical assistance in completing an application for  
6 a certificate to operate as a “specialized solid waste collection company” – responding instead  
7 with a Complaint against WasteXpress alleging that it has provided “technical assistance  
8 concerning Washington law and the Commission’s solid waste rules” – contravenes the  
9 Commission’s direction to Staff that it emphasize “education and technical assistance” in  
10 enforcing Commission rules. As WasteXpress stated in its September 25, 2019 email to Staff:

11 *WasteXpress is absolutely committed to operating in compliance with all*  
12 *Washington statutes and regulations, but we need to understand how our services*  
13 *fall within the gamut of Chapter 480-70 WAC before making any application.*

14 That remains true to this day. For this reason, if for no other, the assessment of penalties in this  
15 case for WasteXpress’ continued operation as a “solid waste collection company” (assuming that  
16 WasteXpress does not prevail on its defense that its operations do not fall within the definition of  
17 “solid waste collection” promulgated at WAC 480-70-041) would not be appropriate.

## 18 CONCLUSION

19 46. In its report, Staff recommends in part  
20 *...that the Commission file a complaint for penalties of up to \$1,000 per violation*  
21 *for two violations, including one violation for solid waste collection services*  
22 *provided and one violation for advertising on the Company’s website, for a total*  
23 *of \$2,000, as authorized by RCW 81.04.380.*

24 In the Complaint, Staff requests



1           ...that the Commission, pursuant to its authority under RCW 81.04.380, assess  
2           penalties of up to \$1,000 for each violation of RCW 81.77.040.

3           47.     WasteXpress admits and concedes one violation for solid waste collection  
4           services provided, to wit the collection of biomedical waste as alleged in the Complaint at  
5           paragraph 22. WasteXpress hereby tenders \$1,000 in full settlement of that claim.

6           48.     WasteXpress admits that it actively advertises solid waste collection services in  
7           the Seattle and Tacoma areas as alleged in the Complaint at paragraphs 20 and 21 but denies that  
8           its operations (as advertised and/or as provided, except as admitted in paragraph 22 of this  
9           Answer) require a certificate of public convenience and necessity..

10          49.     In its report, Staff recommends in part  
11          ...that the Commission initiate a classification proceeding under RCW 81.04.510  
12          to determine whether WasteXpress is operating as a solid waste carrier in  
13          Washington without the certificate required for such operations by  
14          RCW 81.77.040.

15          WasteXpress assumes that Staff's reference to "solid waste carrier" is intended to be a reference  
16          to "solid waste collection company" as referenced in RCW 81.77.040. In the Complaint, Staff  
17          requests

18          ...that the Commission order WasteXpress to cease and desist from transporting  
19          solid waste until it has obtained a certificate of convenience and public necessity  
20          authorizing it to operate for the hauling of solid waste.

21          WasteXpress assumes that Staff's reference to a "certificate of convenience and public  
22          necessity" is intended to be a reference to a "certificate declaring that public convenience  
23          and necessity require such operation" as referenced in RCW 81.77.040.

1 50. WasteXpress admits that it collects solid waste using a motor vehicle, for  
2 collection and/or disposal over the highways of the state of Washington for compensation.  
3 WasteXpress denies that it collects solid waste from residential or commercial customers. There  
4 is no question of fact as to WasteXpress' operations, only a question of law, a question of  
5 interpretation of "solid waste collection company". RCW 81.04.510 is therefore not appropriate  
6 for resolution of this issue. Therefore, in the interests of comity and to avoid the time, effort and  
7 expense involved in a contested case, the Commission should deny the Request for Relief at  
8 paragraph 39 of the Complaint and order that Staff and WasteXpress submit to the Commission a  
9 request for clarification pursuant to WAC 480-70-031.

10 Dated: July 2, 2020

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THOMAS R. BENKE  
OSB 922251 / 503-246-1514  
Attorney for International Resource  
Management Inc. dba WasteXpress dba  
WasteXpress Hazardous Waste Disposal



## The Environmental Compliance Organization LLC

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PO Box 83706  
Portland, Oregon 97283  
Telephone 503/246-1514  
environmental-compliance.com



Thomas R. Benke  
Managing Member  
trbenke@env-compliance.com

May 7, 2020

Mr. Daniel J. Teimouri  
Assistant Attorney General  
Utilities and Transportation Commission  
PO Box 40128  
Olympia, WA 98504-01289

**Re: WasteXpress**

Dear Mr. Teimouri,

This is Thomas Benke representing International Resource Management, Inc. dba WasteXpress. This letter is in response to your email of April 13, 2020.

### OVERVIEW

We appreciate the Commission's actions contacting and supplying WasteXpress with educational and technical assistance concerning applicable regulations and laws. See WAC 480-70-221(1). However, a *classification* hearing under RCW 81.04.510 as staff suggests is not appropriate. Rather, WasteXpress suggests that the Commission should be requested to resolve the extant issue of rule interpretation (i.e., whether the requirement of a certificate of convenience and necessity includes transport of solid waste obtained from industrial facilities) pursuant to Section 031 of its rules. Irrespective of the Commission's final interpretation, and in part because WasteXpress recognizes that it can be difficult to distinguish between "commercial establishments" and "industrial facilities", WasteXpress intends to submit an application for operation as a "Class C company" as defined in Section 041 of the UTC administrative rules. Further, because WasteXpress provides *accessorial* services and only provides only *on-call* or *nonscheduled service* as those terms are referenced in the definition of "specialized solid waste collection company", WasteXpress requests additional guidance on compliance with the requirements for operation as a Class C specialized solid waste collection company. Separately, WasteXpress is submitting requests under the Public Records Act (PRA) to collect materials to assist in formulating its application.

Mr. Daniel Teimouri  
May 7, 2020  
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## BACKGROUND

Your April 13, 2020 email stated in part (reiterated here for convenience):

*If, after review, the Company still believes the Commission lacks subject matter jurisdiction, Staff now believes this threshold issue should be addressed by the Commission in advance of your filing an application for operating authority. In light of the Company's current position that its operations do not require a certificate of convenience and necessity, the most appropriate procedural step, and in Staff's view the best use of the parties' and the Commission's time and resources, would be to initiate a classification hearing pursuant to RCW 81.04.510 and WAC 480-70-016.*

As always, WasteXpress appreciates your and staff's comments and guidance. However, the "threshold issue" is not whether WasteXpress is classified as a "common carrier" (of goods) or a "solid waste collection company" (ref. my email to Ms. McPherson of November 6, 2019) but rather a question regarding interpretation of "solid waste collection company" as defined at WAC 480-70-041. For that reason, WasteXpress believes that a "classification hearing" pursuant to WAC 480-70-016(4) would be inappropriate. Nor does WasteXpress believe that RCW 81.04.510 is applicable, when there is presently no "question of fact" that must be determined by the Commission.

WAC 480-70-031 "Resolving disputes about the meaning of these rules" provides:

*If the interpretation of any rule in this chapter is questioned by a company, a customer, or an applicant, a request for clarification may be filed with the commission.*

Section 031 appears to be the more appropriate basis for getting clarification from the Commission regarding the definition of "solid waste collection company" under Section 041 as referenced in Section 081(1) ("A person must have a certificate of public convenience and necessity from the commission before operating as a solid waste collection company in the State of Washington."), the specific issue being whether a certificate is required when a company transports solid waste obtained from *industrial* (as opposed to *commercial*) customers. Section 031 does not specify *who* should file the "request for clarification". Assuming that it is incumbent upon WasteXpress to file the "request for clarification", what is the procedure for doing so?

While we may proceed with the aforementioned "request for clarification," WasteXpress would also appreciate staff's guidance regarding the definition of "specialized solid waste collection company" under Section 041 and whether WasteXpress' operation as such has any

Mr. Daniel Teimouri  
May 7, 2020  
Page 3

bearing on the issues we are discussing. Relevant definitions promulgated at under Section 41 are as follows:

*“Specialized solid waste collection company” means a company providing other than traditional solid waste collection service. Specialized companies generally haul specific waste products for specific customers, provide only on-call or nonscheduled service, or provide accessorial services not normally provided by traditional solid waste collection companies.*

\* \* \* \* \*

*“Traditional solid waste collection company” means a company engaged in collecting and removing solid waste and recyclable materials from private homes, and/or removing solid waste from commercial establishments, industrial facilities, and other sites. Solid waste is normally picked up on a daily, weekly, or other regular basis. Drivers are usually assigned designated routes to collect curbside residential solid waste or transport cans or containers for commercial businesses. Unless the company’s certificate is restricted against doing so, a traditional solid waste collection company may also perform specialized solid waste collection service.*

\* \* \* \* \*

*“Class C company” means a solid waste collection company that does not provide traditional residential or commercial solid waste operations. This class includes specialized carriers generally hauling specific waste products for specific customers or providing only on-call or nonscheduled service.*

Other than these definitions I have found no reference to “specialized solid waste collection company” in the UTC rules.

It may be relevant to WasteXpress’ discussions with UTC staff to note that WasteXpress’ operations adhere most closely to the definition of “specialized solid waste collection company”:

**WasteXpress generally hauls specific waste products for specific customers.**

The initial task in all proper industrial and special waste disposal, as required by U.S.E.P.A. and Washington Department of Ecology rules, is to make a hazardous and/or dangerous waste determination. WasteXpress confirms, and in most cases assists generators in making, a determination for every waste shipment. This is an important service for WasteXpress’ customers but it is also critically important to WasteXpress because of the “strict liability” imposed on transporters who transport hazardous waste without the required Uniform Hazardous Waste Manifest. Hazardous / Dangerous waste determinations may involve review of a facility’s Material Safety Data Sheets and/or obtaining a sample of the waste for analysis (to determine whether it is “characteristic”, “listed” or otherwise “designates as dangerous waste”).

Mr. Daniel Teimouri

May 7, 2020

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WasteXpress must also determine the regulatory status of the generator (e.g., large quantity generator, small quantity generator, conditionally exempt or very small quantity generator) each time it picks up waste. Each determination is highly specific to each customer – even involving review of the manufacturing process from which the waste derives – and may change for each customer based on timing and amount of waste generation. Finally, WasteXpress is required to comply with all U.S. Department of Transportation rules including determining for each individual shipment DOT hazard class, packaging requirements, shipping document requirements, placarding requirements and that all lids and caps have been tightened to specification.

**WasteXpress provides only on-call or nonscheduled service.**

WasteXpress does not pick up solid waste on a daily, weekly or other regular basis (although some customers may be “due” a pickup periodically depending on their manufacturing schedules and regulatory time-limits for onsite waste storage.) Generally, WasteXpress’ customers will call WasteXpress to arrange for service as needed, or WasteXpress sales staff will periodically call the customer to ask if service is required. WasteXpress does not provide “curbside” service.

**WasteXpress provides accessorial services not normally provided by traditional solid waste collection companies.**

WasteXpress commonly provides the following accessorial (additional) services:

- Onsite cleanup of leaks, spills or other operational releases of hazardous substances;
- Cleaning of industrial equipment and manufacturing areas;
- Waste sampling and analysis;
- Preparation of Uniform Hazardous Waste Manifests, Bills of Lading or other required transportation documentation;
- Lab packing or other onsite bulking;
- Site audits for compliance with storage and handling regulations;
- Regulatory training required by DOT and DOE;
- Compliance assistance with safety and health regulations;
- Identification and provision of waste-specific containers and labeling; and
- General environmental consulting.

Indeed, it is the “specialized” aspect of WasteXpress’ operations that give rise to its concerns regarding the need for tariffs and territorial exclusivity that a certificate of convenience and necessity may imply.

Mr. Daniel Teimouri  
May 7, 2020  
Page 5

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WasteXpress is aware of UTC staff's enforcement action against Wolford Trucking (Docket No. TG-143802). In that case, Wolford Trucking was picking up demolition debris from Boeing and transporting it for disposal. I understand the Commission staff found that by making regular drop-box pickups of construction debris that Wolford was engaged in "removing solid waste from commercial establishments, industrial facilities, and other sites" on a regular basis (e.g. 191 occasions in the month of September 2014) and was therefore deemed a "traditional solid waste collection company". I see no discussion in the Wolford Trucking case of whether Boeing is a "commercial establishment" or an "industrial facility" – presumably because both sources of solid waste are referenced in the definition of "traditional solid waste collection company". WasteXpress would consider Boeing to be an "industrial facility", a relevant distinction given that the definitions of "solid waste collection company" and "specialized solid waste collection company" do not expressly reference pickups from industrial facilities. Nevertheless, the distinction between "commercial establishments" and "industrial facilities" is unclear in the abstract and not something that WasteXpress would look forward to discerning on a customer by customer basis. For that reason, and because WasteXpress would welcome authority to transport hazardous and non-hazardous waste generated by commercial establishments (such as retail establishments which generate "discarded commercial chemical products"), WasteXpress intends to proceed with submission of an application for a certificate of convenience and necessity (even as UTC staff and WasteXpress may also proceed with a "request for clarification" pursuant to WAC 480-70-031.) If you could please help me to understand how Class C "specialized solid waste collection companies" are regulated differently from "traditional solid waste collection companies" by the Commission, that would help with preparation of the application tremendously.

On another note, in your email of April 13, 2020 you noted that "Staff is aware of advertisements by the Company offering solid waste collection services in the state of Washington." WasteXpress' website reflects the fact that it provides a myriad of services to customers in Oregon, Washington and elsewhere in the Pacific Northwest. The company is reviewing existing content for specific references to services not authorized (and therefore not provided) in the State of Washington, but in general staff should understand that the WasteXpress website is not state-specific.

Sincerely,



Thomas R. Benke  
Attorney – Managing Member

cc: Mr. Jeremy Komp  
Mr. Arthur Marx

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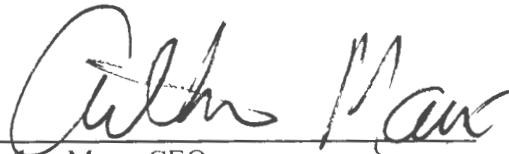
BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Determining the Proper	)	DOCKET NO. TG-200131
Carrier Classification of, and Complaint	)	
for Penalties Against:	)	DECLARATION OF
	)	ARTHUR MARX
INTERNATIONAL RESOURCE	)	
MANAGEMENT, INC. D/B/A	)	
WASTEXPRESS AND D/B/A	)	
WASTEXPRESS HAZARDOUS WASTE	)	
DISPOSAL	)	

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I, Arthur Marx, depose and declare as follows: that I am Chief Executive Officer of International Resource Management, Inc. dba WasteXpress dba WasteXpress Hazardous Waste Disposal; that I have read the foregoing Answer to Complaint and know the contents thereof; that the facts set forth therein are true based on my own knowledge, except as to matters which are therein stated on information and belief, and as to those matters, I believe them to be true.

Dated: July 2, 2020



Arthur Marx, CEO  
International Resource Management Inc.  
dba WasteXpress dba WasteXpress  
Hazardous Waste Disposal



**Docket TG-200131**  
**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the attached ANSWER upon the persons and entities listed on the Service List below via electronic mail, addressed as shown below.

DATED July 2, 2020



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/s/ Thomas R. Benke, OSB #922251  
PO Box 83706, Portland, OR 97283  
(503) 246-1514 / trbenke@env-compliance.com

**For Staff of the Washington Utilities and Transportation Commission**

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