

BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

WASTE CONNECTIONS OF
WASHINGTON, INC.

Complainant,

v.

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

Respondents.

DOCKET NO. TG-071194

AMENDED COMPLAINT

I. PRELIMINARY STATEMENT/STATEMENT OF ISSUE

I Waste Connections of Washington, Inc., 9411 N.E. 94th Avenue, Vancouver, Washington 98662, (hereinafter "Complainant"), a Washington corporation, and holder of Certificate of Public Convenience and Necessity No. G-253, by and through its counsel, David W. Wiley of Williams Kastner, Suite 4100, Two Union Square, 601 Union Street, Seattle, Washington 98101, and pursuant to RCW 81.04.110, 81.77.030 and WAC 480-07-370(a), brings this Amended Complaint against Enviro/Con & Trucking, Inc., *et al.* (hereinafter

AMENDED COMPLAINT - 1

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“Respondents”), asking the Washington Utilities and Transportation Commission (hereinafter “Commission” or “WUTC”), to find Respondents’ activities in engaging in the collection and transportation of solid waste from the Evergreen Aluminum remediation site (hereinafter “the site”) in unincorporated Clark County over the public highways for compensation for disposal without certificate authority to be developed on this record is subject to RCW 81.77.040, RCW 81.77.100 and WAC 480-70-006, *et seq.*, and that any such past shipments without a certificate of public convenience and necessity are a violation of law and rule subjecting Respondents to possible fine for infractions thereof.

II. JURISDICTION / STATUTE AND RULES AT ISSUE

2 The Commission has jurisdiction over this Complaint and the Respondents’ activities described herein under RCW 81.04.110, 81.77.040, 81.04.385, 81.04.387, 81.04.405 WAC 480-70-006, WAC 480-70-021, WAC 480-70-041 and various other laws and rules.

III. STATEMENT OF FACTS RELIED UPON

3 Complainant is the holder of WUTC Certificate of Public Convenience and Necessity No. G-253, attached hereto as Exhibit A, which authorizes Complainant to collect solid waste in unincorporated Clark County.

4 To Complainant’s knowledge and belief, Respondent Enviro/Con & Trucking, Inc. and Waste Management Disposal Services of Oregon, Inc. and possibly other entities repeatedly engaged in the collection and transportation of solid waste in the form of construction debris and/or construction waste (hereinafter “C & D Waste”) over the public highways of the state, as defined by WAC 480-70-041, from the Evergreen Aluminum site in unincorporated

Clark County, 5701 Lower River Road, Vancouver, Washington to Hillsboro, Oregon in 2007 and potentially in previous or subsequent years without a Certificate of Public Convenience and Necessity in violation of RCW 81.77.040, WAC 480-70-081(1) and WAC 480-70-236(1), *et seq.*

5 Complainant further alleges on information and belief that Respondent Enviro/Con & Trucking, Inc. and/or Respondent Waste Management Disposal Services of Oregon, Inc. individually and/or jointly assumed the overall degree of responsibility for the transportation and disposal of C & D Waste on the subject job site subjecting them jointly and/or severally to regulation under Chapter 81.77 as solid waste collection companies and asks the Commission to so find after hearing on this Amended Complaint.

IV. BASIS FOR AMENDED COMPLAINT

6 Under RCW 81.77.090, every person who violates or fails to comply with, or who procures, aids, or abets in the violation of any provisions of RCW 81.77, *et seq.*, or who fails to obey, or comply with any rule, regulation, or requirement of the commission, or any part or provision thereof, is guilty of a gross misdemeanor.

7 On information and belief, Complainant alleges that in the weeks preceding the filing of the original Complaint in June, 2007 to approximately February, 2008, Respondent Enviro/Con & Trucking unlawfully operated as an uncertificated solid waste collection company in unincorporated Clark County, Washington by collecting C & D Waste on the site and by subsequently transporting solid waste over the public highways of the State for compensation.

8 On information and belief, Complainant alleges that Respondent Waste Management Disposal Services of Oregon, Inc. and/or its affiliates or assigns contracted in whole or in part with Evergreen Aluminum for the collection, removal, transport, and disposal of C & D Waste from the site in Clark County for ultimate disposal at the Hillsboro, Oregon Landfill owned and/or operated by Waste Management Disposal Services of Oregon, Inc. and/or its parent or affiliate, and which project has managed, on information and belief, by or on behalf of Envirocon, Inc. and/or Evergreen Aluminum.

9 Complainant also alleges that the featured collection and transportation of C & D Waste violates local law, specifically Chapter 24.12 of the Clark County Code, in that those activities appear to circumvent the solid waste management plan for Clark County by diverting delivery of collected C & D Waste which should rightfully be transported by WCW to county transfer stations.

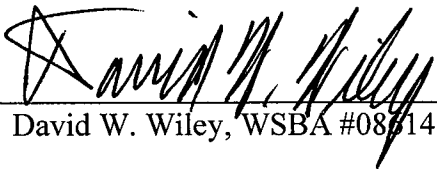
V. STATEMENT OF RELIEF REQUESTED

10 WHEREFORE, Complainant prays for an order, pursuant to RCW 81.04.110, WAC 480-07-305 and WAC 480-07-395 (5), granting its Motion to File Amended Complaint and subsequently finding Respondents singularly or in concert engaged in the collection and transportation of construction and demolition debris (“C & D”) waste located at the previous Evergreen Aluminum remediation site in unincorporated Clark Country, Washington over the public highways for compensation in violation of RCW 81.77.040 and various Commission rules. Additionally, that in so doing, Respondents deprived Complainant of regulated solid waste collection service tariff revenues from activities that were unlawfully

performed by Respondents, thereby directly damaging Complainant. Moreover, that these unlawful activities be found eligible for referral of the record in this matter to the Office of Attorney General and to the Commission on the basis of the facts to be adduced on this record pursuant to RCW 81.04.385, 81.04.387 and RCW 81.04.405, and more specifically, that the transportation, collection and disposal of such C & D waste from the Evergreen Aluminum site in unincorporated territory without a certificate is a violation of applicable law and rule, potentially subjecting Respondents to fine and to such other and further relief as the Commission may subsequently deem just and equitable consistent with the public interest.

RESPECTFULLY SUBMITTED this 25th day of August, 2009.

WILLIAMS, KASTNER & GIBBS PLLC

By  _____
David W. Wiley, WSBA #08614

Attorneys for Complainant Waste
Connections of Washington, Inc.

CERTIFICATE OF SERVICE

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

<p><i>Attorneys for Waste Management Disposal Services of Oregon, Inc. and Enviro/Con & Trucking, Inc.</i> Polly L. McNeill Summit Law Group 315 – 5th Avenue S. Seattle, Washington 98104 pollym@summitlaw.com</p>	<p><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</p>
<p>Brad Lovaas Executive Director Washington Refuse and Recycling Association 4160 6th Avenue S.E., Suite 205 Lacey, WA 98503 brad@wrra.com</p>	<p><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</p>
<p><i>Attorney for Washington Refuse and Recycling Association</i> James R. Sells Ryan Sells Uptegraft Inc. PS 9675 Levin Road N.W., Suite 240 Silverdale, WA 98383-7620 jimsells@rsulaw.com</p>	<p><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</p>
<p>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</p>	<p><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</p>

DATED at Seattle, Washington, this 25th day of August, 2009.



 Lyndsay Taylor, Legal Assistant

WASTE CONNECTIONS OF WASHINGTON, INC.
d/b/a WASTE CONNECTIONS
9411 NE 94TH
VANCOUVER, WA 98662

PERMIT NO.
G-253

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SOLID WASTE COLLECTION SERVICE in Clark County, EXCLUDING the territory described as follows: Starting at the intersection of the east line of Section 10, T5N, R1E and the Clark-Cowlitz County Line (also the centerline of the Lewis River); thence south along said line extended to the southeast corner of Section 22, T5N, R1E; thence west along the south line of said section extended to the northwest corner of Section 28, T5N, R1E; thence south along the west line of said section to the southwest corner of said section; thence west along the south line of Section 29, T5N, R1E extended to its intersection with the Clark-Cowlitz County Line; thence northerly and easterly along said county line to its intersection with the east line of Section 10, T5N, R1E, the point of beginning.

EXCLUDING the City of Camas as of 9/13/1961.

SOLID WASTE COLLECTION SERVICE in that portion of Cowlitz County described as follows: Starting at the intersection of the west line of Section 27, T6N, R3E and the Clark-Cowlitz County Line; thence north along said line extended to the northwest corner of Section 15, T6N, R3E; thence east along the north line of said section to the northwest corner of Section 13, T6N, R3E; thence north along the west line of said section extended to the northwest corner of Section 24, T7N, R3E; thence east along the north line of said section extended to its intersection with the Cowlitz-Skamania County Line (also the east line of Section 24, T7N, R4E); thence south along said county line to its intersection with the Clark-Cowlitz County Line (also the centerline of the Lewis River); thence westerly and southerly along said county line to its intersection with the west line of Section 27, T6N, R3E, the point of beginning.

SOLID WASTE COLLECTION SERVICE in that portion of Skamania County described as follows: Starting at the southwest corner of Section 7, T5N, R5E; thence north along the west line of said section extended to the northwest corner of Section 19, T7N, R5E; thence east along the north line of said section extended to the northeast corner of Section 24, T7N, R6E; thence south along the east line of said section extended to the southeast corner of Section 12, T5N, R6E; thence west along the south line of said section extended to the southwest corner of Section 7, T5N, R5E, the point of beginning.

TG No. 020303

06-20-2002

EXHIBIT A