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September 11, 2009

GORDON L. WALGREN, *Of Counsel*

Mr. Dave Danner
Executive Director and Secretary
Washington Utilities and
Transportation Commission
1300 S Evergreen Park Dr. SW
P. O. Box 47250
Olympia, WA 98504-7250

RECEIVED
PROGRAMS MANAGEMENT
2009 SEP 14 AM 8:22
STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

Re: No. TG-071194
Waste Connections of Washington v. Waste Management, et al.

Dear Mr. Danner:

Enclosed you will find an original and 6 copies of Response of Intervenor WRRR to Motion to File Amended Complaint and Opposition to Motion to Amend.

Very truly yours,

RYAN SELLS UPTEGRAFT, INC. P.S.



Cheryl L. Sinclair
Legal Assistant to
JAMES K. SELLS

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RECEIVED
ENVIRONMENTAL MANAGEMENT
2009 SEP 14 AM 8:22
STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

BEFORE THE WASHINGTON UTILITIES
AND TRANSPORTATION COMMISSION

WASTE CONNECTIONS OF
WASHINGTON, INC.,

Complainant,

vs.

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

Respondents.

Case No.: TG-071194

RESPONSE OF INTERVENOR
WRRRA TO MOTION TO FILE
AMENDED COMPLAINT AND
OPPOSITION TO MOTION
TO AMEND

COMES NOW Intervenor Washington Refuse and Recycling Association (WRRRA) and responds to Complainant Waste Connections of Washington, Inc.'s (WCI) Motion to File Amended Complaint; and to Waste Management Disposal Services of Oregon, Inc. and Enviro/Con & Trucking, Inc.'s (WMI) Opposition to Motion to Amend as follows:

INTERVENOR'S POSITION: WRRRA's position has been consistent throughout this matter. It has submitted briefs and argument both with the Commission supporting WCI's Complaint and its right to bring this issue before the Commission for a factual determination as to the legality of WMI's admitted actions in the collection and transfer of solid waste at the subject

1 site in Clark County, and in support of WCI in Thurston County Superior
2 Court.

3 It seems to WRRRA that WCI simply wants “its day in Court,” i.e. a
4 chance for the Commission to make a factual determination as to the legality
5 or illegality of WMI’s actions. The Commission itself, along with the Thurston
6 County Superior Court, would seem to agree that this matter is worthy of
7 consideration, and we should get on with it and stop spending all the parties’
8 resources on procedural haggling, which seems to have brought us back right
9 to where we started. WCI should be given the opportunity to try and prove its
10 position that a significant illegal haul took place – it may or may not do so,
11 but Order 05 certainly gives it that opportunity.

12 **ARGUMENT:** The applicable law here clearly envisions a private
13 complaint brought pursuant to **RCW 81.04.110** as being “an enforcement
14 proceeding.”¹ The availability of such actions is essential for the Commission
15 to meet its statutory mandate of protection of the consumer/ratepayer. As
16 Commission staff have pointed out in this action, it simply does not have the
17 available resources to investigate all allegations of misconduct, and must rely
18 on private entities to assist in protection of the public interest.

19 This very case is illustrative of that concept. If an unregulated hauler
20 encroaches on a regulated hauler’s territory (as we believe happened here),
21 the ultimate victims are the ratepayers, as when the regulated volume goes
22 down, prices inevitably go up. Any regulatory agency exists to protect the
23 public, and assistance in that endeavor by the regulated community should
24 be encouraged, not discouraged, as WMI seems to argue.

25 As WRRRA has consistently argued in this action, there is considerably
26 more at stake here than what may be an isolated, albeit significant, dispute
between two large corporations. The issue of illegal collection and hauling of
solid waste is of serious statewide significance. The availability and validity of

¹ see Order 05, Conclusion of Law 2
Response of Intervenor WRRRA to Motion to
File Amended Complaint and Opposition
to Motion to Amend - 2

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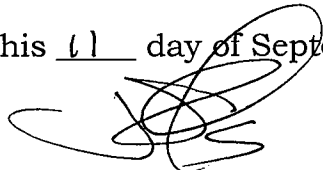
1 private actions pursuant to **RCW 81.04.110** and other statutes and rules is
2 essential to the very viability and effectiveness of the solid waste regulatory
3 system.

4 This works both ways. The regulated industries provide enforcement
5 assistance to the Commission, but also rely on the Commission for guidance
6 in how to deal with these kinds of situations. A full factual hearing and
7 eventual ruling here will be of significant value in dealing with similar
8 situations that may arise in the future (and we can be virtually certain they
9 will). To the rest of the regulated haulers in the state, a “meaningful remedy”
10 would be a Commission ruling on the legality or illegality of WMI’s actions in
11 this matter. That would not be an “advisory opinion,” it would be a
12 Commission Ruling and Order which could result in penalties being imposed.
13 Although it certainly is important to impose penalties when appropriate,
14 WRRA is equally concerned that the legal and factual issues here be fully
15 explored and addressed by the Commission.

16 **CONCLUSION:** This matter is of significant importance to the solid
17 waste industry in this state. The Commission recognizes this in its Order 05.
18 Just because one particular remedy may be moot because the allegedly illegal
19 act has been completed does not mean other remedies are not available and
20 appropriate. The only way to find out is for a factual hearing to be held and
21 an Order issued. WMI’s position that no such hearing should take place is
22 inconsistent with its other position, that it has done nothing wrong. The
23 “wasting of resources” has already taken place and continues with this latest
24 round of briefing. The factual issues could well have been resolved by hearing
25 long ago. Instead, WMI continues to posture to avoid the Commission’s
26 consideration of a simple issue – was this or was this not an illegal haul?
That is the question to which the industry deserves an answer.

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1 Respectfully submitted this 11 day of September 2009.

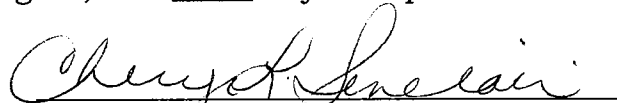
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3 _____
4 JAMES K. SELLS
5 WSBA No. 6040
6 Ryan Sells Uptegraft, Inc. P.S.
7 9657 Levin Rd. NW, Suite 240
8 Silverdale, WA 98383
9 Attorneys for Washington Refuse
10 and Recycling Association

11 **CERTIFICATE OF SERVICE**

12 I hereby certify that I have this day served this document upon all
13 parties of record in this proceeding, by the method as indicated below.

14 <i>Attorneys for Complainant Waste Connections of Washington, Inc.</i> David W. Wiley Williams Kastner PO Box 21926 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
15 <i>Attorneys for Waste Management Disposal Services of Oregon, Inc.</i> Polly L. McNeill Summit Law Group 315 - 5th Avenue S. Seattle, Washington 98104 polym@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
16 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

17 DATED at Silverdale, Washington, this 11th day of September 2009.

18 
19 Cheryl L. Sinclair