

[Service Date May 28, 2004]

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In re Application No. GA-079251 of	)	DOCKET NO. TG-040221
	)	ORDER NO. 03
HAROLD LEMAY ENTERPRISES,)	
INC., ET AL)	
)	
For an Extension of Certificate No.)	
G-98 for a Certificate of Public)	
Convenience and Necessity)	
.....)	
In re Application No. GA-079254 of	)	DOCKET NO. TG-040248
	)	ORDER NO. 03
KLEEN ENVIRONMENTAL)	
TECHNOLOGIES INC.)	
)	
For a Certificate of Public)	
Convenience and Necessity)	
.....)	
In re Application No. GA-079226 of	)	DOCKET NO. TG-040553
	)	ORDER NO. 02
RUBATINO REFUSE REMOVAL,)	
INC.	)	PREHEARING CONFERENCE
	)	ORDER; ORDER OF
For an Extension of Certificate No.	)	CONSOLIDATION;
G-58 for a Certificate of Public	)	ESTABLISHING PROCEDURAL
Convenience and Necessity to	)	SCHEDULE; NOTICE OF
Operate Motor Vehicles in Furnishing	)	PREHEARING CONFERENCE;
Solid Waste Collection Service	)	(To be held on September 21,
	)	2004)
	)	NOTICE OF HEARINGS
	)	(To be held beginning
	)	September 27, 2004)
.....)	

- 1 **NATURE OF PROCEEDING.** Docket Nos. TG-040221, TG-040248, and TG-040553 are applications by Harold LeMay Enterprises Inc. (LeMay), Kleen Environmental Technologies, Inc. (Kleen Environmental), and Rubatino Refuse Removal, Inc. (Rubatino), respectively, for certificates and extensions of certificates of public convenience and necessity for collection of solid waste, in particular biomedical waste. The applications are consolidated for hearing and determination under WAC 480-07-320 and WAC 480-70-111, as the applications request overlapping territory and were filed within the time period required in the rule.
- 2 **CONFERENCE.** The Washington Utilities and Transportation Commission (Commission) convened a prehearing conference in consolidated Docket Nos. TG-040221, TG-040248, and TG-040553 at Olympia, Washington on May 20, 2004, before Administrative Law Judge Ann E. Rendahl.
- 3 **APPEARANCES.** James K. Sells, Ryan Sells Uptegraft, Inc., P.S., Silverdale, Washington, represents LeMay and Rubatino as applicants, as well as LeMay, Rubatino, Consolidated Disposal Services, Inc., and Washington Refuse and Recycling Association (WRRRA) as protestants to the Kleen Environmental application. Greg W. Haffner, Curran Mendoza P.S., Kent, Washington, represents Kleen Environmental as applicant and as an intervenor in the LeMay and Rubatino applications. Stephen B. Johnson, Garvey Schubert Barer, Seattle, Washington, represents Stericycle of Washington, Inc. (Stericycle) as a protestant to all three applications. Gregory J. Trautman, Assistant Attorney General, Olympia, Washington, represents the Commission's regulatory staff ("Commission Staff" or "Staff"). Contact information provided at the conference for the parties' representatives is attached as Appendix A to this order.

- 4 **PETITIONS FOR INTERVENTION.** Kleen Environmental filed a petition to intervene in the LeMay application on March 10, 2004, and petitioned orally at the prehearing conference for intervenor status in the Rubatino application. No party objected to Kleen Environmental's petitions for intervention. The Commission finds that Kleen Environmental has established a substantial interest in Docket Nos. TG-040221 and TG-040553 and that Kleen Environmental's participation will be in the public interest. Kleen Environmental's petitions to intervene are granted.
- 5 **CONSOLIDATION.** On April 19, 2004, the Commission entered Order No. 01 in Docket Nos. TG-040221 and TG-040248, consolidating that matters for hearing and consideration pursuant to WAC 480-70-111 and 480-07-320, finding that the two applications involved related principles of law and overlapping requests for authority. On May 13, 2004, the Commission entered Order No. 02 in consolidated Docket Nos. TG-040221 and TG-040248, and Order No. 01 in Docket No. TG-040553, consolidating the three applications for purposes of hearing.
- 6 During the conference, Kleen Environmental objected to the consolidation of the Rubatino application with the other two for hearing, and moved to revise its application to remove the restrictive amendment it filed on March 31, 2004, to avoid conflict with the Rubatino application. No party objected to that motion and the motion was granted. In addition, Staff asserted that the three applications should be consolidated under WAC 480-70-111 as the applications meet the standard of subsection (b) of the rule: The Rubatino application, Docket No. TG-040553, was filed on March 22, 2004, within thirty days of the mailing date of the application docket notice of the original application, which was March 23, 2004.

CONSOLIDATED DOCKET NO. TG-040553
ORDER NO. 02

7 The three dockets appear to be legally and factually related, and involve overlapping requests for authority. The parties voiced no objection to consolidating the dockets for hearing and order, subject to the Commission's authority to sever the dockets and to enter individual orders as appropriate. The three dockets are consolidated for hearing and consideration pursuant to WAC 480-07-320 and WAC 480-70-111.

8 **DISCOVERY.** Discovery will be conducted pursuant to the Commission's discovery rules, WAC 480-07-400 – 425. The Commission urges the parties to work cooperatively together to avoid having to bring discovery matters forward for formal resolution.

9 **PROCEDURAL SCHEDULE.** The parties agreed upon a procedural schedule during the conference. The Commission adopts this procedural schedule, which is attached to this Order as Appendix B, and incorporated into the body of this Order by this reference.

10 **NOTICE OF PREHEARING CONFERENCE.** The Commission convenes a prehearing conference in this matter, to address cross-examination time estimates, identify and mark prefiled exhibits and cross-examination exhibits, and to address any remaining issues prior to hearing. **The conference will be held on Tuesday, September 21, 2004, at 9:30 a.m. in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S. W., Olympia, Washington.**

11 **NOTICE OF HEARINGS.** The Commission convenes several hearings in this matter to consider the consolidated overlapping applications of LeMay, Kleen Environmental and Rubatino for certificates for collection of biomedical waste.

CONSOLIDATED DOCKET NO. TG-040553
ORDER NO. 02

A hearing to address the financial and operational fitness of the three applicants will be held during the week of September 27, 2004, beginning on Monday, September 27, 2004, at 9:30 a.m. in the Chambers East Room, located on the First Floor of Kent City Hall, 220 4th Avenue S., Kent, Washington. Separate days of hearing, notice for which is provided below, will be held to address the need for the applicant's proposed service in the Puget Sound, Southwest and Eastern regions of Washington.

- 12 **A hearing to address the needs of shippers for the service proposed by the three applicants in the Puget Sound region will be held on October 6-8, 2004, beginning on Wednesday, October 6, 2004, at 9:30 a.m. in the Chambers East Room, located on the First Floor of Kent City Hall, 220 4th Avenue S., Kent, Washington.**
- 13 **A hearing to address the needs of shippers for the service proposed by the three applicants in the Southwest region will be held on October 12, 2004, beginning at 9:30 a.m. in Room 224 of the Department of Transportation, located at 11018 NE 51st Circle, Vancouver, Washington.**
- 14 **A hearing to address the needs of shippers for the service proposed by the three applicants in the Eastern region will be held on October 28, 2004, beginning at 9:30 a.m. in the Evergreen Conference Room located in the Offices of the Attorney General, 1116 W. Riverside Avenue, Spokane, Washington.**
- 15 **DOCUMENT PREPARATION AND FILING REQUIREMENTS.** Parties must file with the Commission an original plus **six** copies of all pleadings, motions, briefs, and other prefiled materials. Paper copies of these materials are required to conform to the format and publication guidelines set forth in WAC 480-07-395

and 480-07-460, and must be three-hole punched with *oversized* holes to allow easy handling. The Commission may require a party to refile any document that fails to conform to these standards.

- 16 All filings must be mailed or delivered to the Executive Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive, S.W. Olympia, Washington 98504-7250. Both the post office box and street address are required to expedite deliveries by the U.S. Postal Service.
- 17 An electronic copy of all filings must be provided by e-mail delivery to <records@wutc.wa.gov>. Alternatively, parties may furnish an electronic copy by delivering with each filing a 3.5-inch IBM-formatted high-density diskette including the filed document(s). The Commission prefers that parties furnish electronic copies in .pdf (Adobe Acrobat) format, supplemented by a separate file in MS Word 6.0 (or later), or WordPerfect 5.1 (or later) format. Parties are required to organize and identify electronic files as specified in WAC 480-07-140(5).
- 18 **ELECTRONIC SUBMISSION OF DOCUMENTS.** Pursuant to WAC 480-07-145(6), the presiding officer may grant parties a one-day extension of the paper-filing requirement, allowing electronic submission of documents with the Commission on the filing deadline. Parties may only submit documents electronically with the Commission in this proceeding with the permission of the presiding officer. If, at any time during this proceeding, parties are authorized to submit documents with the Commission electronically under WAC 480-07-145(6), Parties must submit the document to records@wutc.wa.gov, and file an original, plus **six** paper copies, of the document with the Commission by the following business day.

CONSOLIDATED DOCKET NO. TG-040553
ORDER NO. 02

19 **NOTICE TO PARTIES: Any objection to the provisions of this Order must be filed within ten (10) days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.**

Dated at Olympia, Washington, and effective this 28th day of May, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ANN E. RENDAHL
Administrative Law Judge

APPENDIX A

PARTIES' REPRESENTATIVES
CONSOLIDATED DOCKET NOS. TG-040221, TG-040248 & TG-040553

PARTY	REPRESENTATIVE	PHONE	FACSIMILE	E-MAIL
Harold LeMay Enterprises Inc.	JAMES K. SELLS Ryan Sells Uptegraft, Inc., P.S. 9657 Levin Road NW, Suite 240 Silverdale, WA 98383	360-307-8860	360-307-8865	Jimsells@rsulaw.com
Kleen Environmental Technologies, Inc.	GREG W. HAFFNER Curran Mendoza, P.S. 555 W. Smith Street P.O. Box 140 Kent, WA 98035-0140	253-852-2345	253-852-2030	Gwh@currenmendoza.com
Rubatino Refuse Removal, Inc.	JAMES K. SELLS Ryan Sells Uptegraft, Inc., P.S. 9657 Levin Road NW, Suite 240 Silverdale, WA 98383	360-307-8860	360-307-8865	Jimsells@rsulaw.com
Stericycle of Washington, Inc.	STEPHEN B. JOHNSON Garvey Shubert Barer 1191-2 nd Avenue, Floor 18 Seattle, WA 98101-2939	206-464-3939	206-464-0125	Sjohnson@gsblaw.com
Consolidated Disposal Services, Inc.	JAMES K. SELLS Ryan Sells Uptegraft, Inc., P.S. 9657 Levin Road NW, Suite 240 Silverdale, WA 98383	360-307-8860	360-307-8865	Jimsells@rsulaw.com
Washington Refuse and Recycling Association	JAMES K. SELLS Ryan Sells Uptegraft, Inc., P.S. 9657 Levin Road NW, Suite 240 Silverdale, WA 98383	360-307-8860	360-307-8865	Jimsells@rsulaw.com
Commission Staff	Gregory J. Trautman Assistant Attorney General 1400 S. Evergreen Park Dr SW P.O. Box 40128 Olympia, WA 98504-0128	360-664-1187	360-586-5522	Gtrautma@wutc.wa.gov
Admin. Law Judge	Ann E. Rendahl 1300 S. Evergreen Park Dr SW P.O. Box 47250 Olympia, WA 98504-7250	360-664-1144	360-664-2654	Arendahl@wutc.wa.gov

APPENDIX B
PROCEDURAL SCHEDULE
CONSOLIDATED DOCKET NOS. TG-040221, TG-040248 & TG-040553

EVENT	DATE	INTERVAL
Discovery Period Ends	July 16, 2004	—
Applicants' Prefiled Testimony Due	August 13, 2004	28 days
Protestants', Intervenors' and Staff's Prefiled Testimony, and Responsive Testimony Due	September 10, 2004	28 days
Cross-examination time estimates, proposed cross-examination exhibits filed with Commission	Monday, September 20, 2004, by Noon	10 days
Prehearing Conference, in Olympia	Tuesday, September 21, 2004, at 9:30 a.m.	1 day
Hearing on Applicants' Financial and Operational Fitness, in Kent	September 27-October 1, 2004	6 days
Hearing on Shipper Need for Puget Sound region, in Kent	October 6-8, 2004	5 days
Hearing on Shipper Need for Southwest region, in Vancouver	October 12, 2004	4 days
Hearing on Shipper Need for Eastern region, in Spokane	October 28, 2004	16 days
Simultaneous Initial Briefs Due	November 12, 2004	15 days
Simultaneous Responsive Briefs Due	November 30, 2004	18 days