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Albert F. Schlotfeldt*
D. Jean Shaw*
Eugene H. "Trey" Tennyson, III

VIA FAX AND HAND DELIVERY

August 30, 1994

TG-941154
(F)

*Also Admitted to Oregon Bar

Mr. Steve McLellan, Secretary
Washington Utilities and
Transportation Commission
1300 Evergreen Park Drive South
P. O. Box 9022
Olympia, WA 98504-9022

Re: Waste Management Disposal Services of Oregon, Inc.
Our File No. 144-3

Dear Mr. McLellan:

Enclosed for filing is the original and four copies of The Disposal Group's Complaint against Waste Management Disposal Services of Oregon, Inc. dba Oregon Waste Systems. After filing the original Complaint, please return one of the copies, conformed, to our office in the enclosed envelope.

Thank you for your assistance in this matter.

Very truly yours,



CYNTHIA A. HORENSTEIN

CAH:llk

Enclosures

cc via fax: Mark Leichner, The Disposal Group
Doug Haaga, The Disposal Group
Brian Carlson, Clark County Public Services

cc via hand delivery:
Bob Boston, WUTC
Teresa Osinski, WUTC

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BEFORE THE UTILITIES AND TRANSPORTATION COMMISSION
OF THE STATE OF WASHINGTON

THE DISPOSAL GROUP, INC., dba)	
Vancouver Sanitary Service and)	CAUSE NO.
Twin City Sanitary Service, a)	
Washington corporation (G-65);)	FORMAL COMPLAINT
)	OF THE DISPOSAL
Complainant,)	GROUP, INC.
vs.)	
)	
WASTE MANAGEMENT DISPOSAL)	
SERVICES OF OREGON, INC., dba)	
Oregon Waste Systems,)	
a Delaware corporation;)	
)	
Respondent.)	

Complainant, The Disposal Group, Inc. (hereinafter ("TDG")), P.O. Box 4658, Vancouver, WA 98662-0658 through its attorneys Cynthia A. Horenstein and Horenstein & Duggan, P.S., P.O. Box 694, Vancouver, WA 98666-0694 files this Formal Complaint pursuant to RCW 81.04.110 and WAC 480-09-420(5) against Respondent Waste Management Disposal Services of Oregon, Inc. dba Oregon Waste Systems (hereinafter "OWS"), Washington Registered Agent: CT Corporation System, 520 Pike Street, Seattle, WA 98101, alleging as follows:

1.

Complainant, TDG, is a corporation duly organized under the laws of the state of Washington and is one of two exclusive certified haulers of solid waste in the unincorporated areas of Clark County pursuant to Chapter 81.77 RCW. (The other certified

1 hauler, Buchmann Sanitary Service, Inc., [G-79], is affiliated with
2 TDG.)

3 2.

4 TDG provides refuse collection services pursuant to Certificate
5 of Public Convenience and Necessity No. G-65 in both incorporated
6 and unincorporated areas of Clark County.

7 3.

8 Respondent, OWS, does not possess the requisite Certificate of
9 Public Convenience and Necessity from the Washington Utilities and
10 Transportation Commission pursuant to Chapter 81.77 RCW to transport
11 solid waste over the public highways of the state of Washington.

12 4.

13 Complainant, TDG, alleges that Respondent, OWS, is violating
14 the following law of the state of Washington and regulation of the
15 Washington Utilities and Transportation Commission:

16 (a) "No solid waste collection company shall hereafter
17 operate for the hauling of solid waste for compensation
18 without first having obtained from the commission a
19 certificate declaring that public convenience and
20 necessity require such operation." RCW 81.77.040.

21 (b) "No solid waste collection company shall operate,
22 establish or begin operation of a line or route or serve
23 any territory, or any extension, for the purpose of
24 transporting solid waste on the public highways of this
25 state, without first having obtained from the commission
26 a certificate declaring that public convenience and
27 necessity requires, or will require, the establishment and
28 operation of such line or route or in such territory."
29 WAC 480-70-070.

30 5.

31 Complainant, TDG, alleges that Respondent, OWS, is violating
32 Chapter 81.77 RCW and Chapter 480-70 WAC by performing the following
acts: Respondent is engaged in the transportation of solid waste
for compensation on the public highways of this state by
transporting solid waste from or near 6200 Old Lower River Road,
Vancouver, Washington to Columbia Ridge Landfill in Arlington,

1 Oregon without first having obtained a Certificate of Public
2 Convenience and Necessity.

3 6.

4 When TDG became aware of OWS' intention to transport solid
5 waste from Alcoa's facility (which began on or about August 22,
6 1994), TDG contacted Alcoa to advise them, as site owner, of the
7 solid waste regulatory scheme in Washington. See Exhibit "A"
8 attached hereto. Alcoa responded that OWS' transportation was
9 exempt from state regulation. See Exhibit "B" attached hereto.
10 Citing Joray Trucking Corp. Common Carrier Application, 99 MCC 109
11 (1965), TDG noted to Alcoa that the transportation of solid waste
12 for compensation on the highways of the state of Washington is
13 regulated by the Washington Utilities and Transportation Commission.
14 See attached Exhibit "C". OWS' response claimed that the material
15 they were transporting "has value...and therefore is not a commodity
16 that would come under a G Certificate in the state of Washington."
17 See Exhibit "D" attached hereto. TDG then requested the Commission
18 enforce RCW 81.77 or, in the alternative, require OWS to demonstrate
19 the material it is transporting is regulated under RCW 81.80 and
20 that OWS has authority to transport the materials from Alcoa's
21 facility. See Exhibit "E" attached hereto.

22 7.

23 Complainant, TDG, has been damaged by Respondent's illegal
24 conduct and has sustained financial loss thereby.

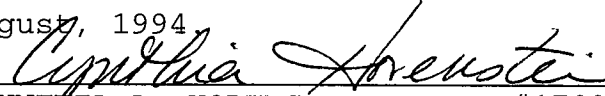
25 WHEREFORE, Complainant, TDG, requests the Commission to grant
26 the following relief:

- 27 1. Issue a Cease and Desist Order after notice and hearing
28 prohibiting Respondent from violating Chapter 81.77 RCW; and
- 29 2. Undertake all necessary steps to insure compliance with
30 and enforcement of Chapter 81.77 RCW and Chapter 480-70 WAC; and
31

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3. Require OWS to compensate TDG for its financial damages due to OWS' violation of the above noted statutes and regulations.

DATED this 30 day of August, 1994


CYNTHIA A. HORENSTEIN, WSBA #17830
Of Attorneys for Complainants
The Disposal Group, Inc.

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John R. "Rick" Potter*
Albert F. Schlotfeldt*
D. Jean Shaw*
Eugene H. "Trey" Tennyson, III

HAND DELIVERED

August 9, 1994

*Also Admitted to Oregon Bar

Mr. R.E. Denius
Aluminum Company of America
5509 N.W. Lower River Road
Vancouver, WA 98660

Re: Wastewater Sludge Impoundment Clean Up
Our File No. 144-3

Dear Mr. Denius:

Our office represents The Disposal Group, Inc. and Buchmann Sanitary Service, Inc., solid waste collection companies in Clark County, Washington. It has come to our attention that Alcoa has contracted with RUST Remedial Services to close Alcoa's wastewater sludge impoundment in Vancouver, Washington. We understand that the closure includes transportation of the materials to a landfill by a Waste Management company. The Disposal Group and Buchmann Sanitary Service asked us to review whether the proposed transportation of waste from the impoundment at Alcoa's Vancouver site to a landfill is in compliance with Washington's solid waste statutes and regulations.

As you may know, Washington State regulates the transportation of solid waste (see Chapter 81.77 RCW). The agency with oversight of solid waste transportation is the Washington Utilities and Transportation Commission (WUTC). The WUTC issues certificates of public convenience and necessity (garbage certificates or G-Certificates) to authorized providers of solid waste collection service. The Disposal Group and Buchmann Sanitary Service both hold G-Certificates.

The regulatory scheme's premise is that if materials are being transported for compensation to a municipal waste landfill, they are a commodity which requires a Certificate of Public Convenience and Necessity from the WUTC. Because The Disposal Group and Buchmann Sanitary Service are the only haulers with authority from the WUTC to transport waste from Clark County, the contract for transportation from the Alcoa facility is impermissible under Washington law. The Disposal Group is available to meet your

EXHIBIT

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Mr. R.E. Denius
August 9, 1994
Page 2

transportation needs. The contact at The Disposal Group is Mark
Leichner (892-9594).

Please give me a call should you wish to discuss this.

Sincerely,



CYNTHIA A. HORENSTEIN

CAH:dl

cc: Mark Leichner, The Disposal Group (via fax (206) 892-8471)
Doug Haaga, The Disposal Group (via fax (206) 892-8471)
Brian Carlson, Clark County Public Services
(via fax (206) 737-6051)
Don Lewis, WUTC Transportation Programs Compliance Manager
(via fax (206) 586-1150)
Bob Boston, WUTC Enforcement Section (via fax (206) 586-1150)
R.E. Yester, Alcoa (via fax (412) 553-4822)
Bob Huber, Alcoa (via fax (509) 664-2163)
Frank Willman, RUST Remedial Services (via fax (206) 575-4548)
Bob Schille, Waste Management of Washington
(via fax (206) 828-2433)

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EXHIBIT

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PAGE

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James A. Bollenbacher
412-553-4255

August 12, 1994

Cynthia A. Horenstein
Horenstein & Duggan
First Interstate Tower
900 Washington Street, Suite 900
Vancouver, Washington 98666-0694

Re: Alcoa wastewater Sludge Disposal

Dear Ms. Horenstein:

In response to your letter dated August 9, 1994 to Mr. R. E. Denius, I am enclosing a copy of a letter from Davis Wright Tremaine regarding the need for a G-Certificate to transport the sludge from Alcoa's surface impoundment to the landfill in Oregon. It appears from this letter that the statutory provisions that you reference are not applicable to the type of transportation that will occur in this project. This sludge will be shipped interstate by rail car to a state of the art landfill in Oregon. Because you have raised a concern about the legality of this shipment, I thought it fair to allow you to review this letter and offer any counter authority of which you may be aware.

Please understand that Alcoa makes every effort to comply with all laws regarding environmental remediation projects, including transportation regulations. We also strive to protect the environment to the greatest extent possible during these projects. We believe the contractors we have selected for this project are the best to help us in these efforts.

I look forward to your response to the enclosed letter.

Very truly,

James A. Bollenbacher

cc: Russ Lester - 19
R. E. Denius - Vancouver (by fax)

EXHIBIT B
PAGE 1 of 6

DAVIS WRIGHT TREMAINE

LAW OFFICES

1600 CENTURY SQUARE · 1501 FOURTH AVENUE · SEATTLE, WASHINGTON 98101-1688
(206) 622-3150

WILLIAM K. RAENIUSSEN
(206) 628-7760

August 10, 1994

VIA FAX (412) 553-4064 and U.S. MAIL

Mr. James Bollenbacher
Aluminum Company of America
425 6th Avenue, Rm 1244
Pittsburgh, PA 15219

Re: Oregon Waste Systems; TOFC/COFC Exemption

Dear Mr. Bollenbacher:

This firm represents Oregon Waste Systems ("OWS"). As we discussed this afternoon by telephone, I am writing in connection with the August 9, 1994 letter to Mr. R.E. Denius of the Aluminum Company of America ("ALCOA") sent by Cynthia A. Horenstein on behalf of The Disposal Group, Inc. and Buchman Sanitary Service, Inc.

Contrary to Ms. Horenstein's contention, a G-Certificate is not required for the intermodal transport of waste from the ALCOA site in Washington to the OWS landfill in Gilliam County, Oregon. Specifically, waste will be placed into sealed intermodal containers at the ALCOA site and hauled by truck to an intermodal railyard in Portland, Oregon, from which the waste will be loaded onto railcars for delivery to the landfill in Oregon. As explained below, Congress and the Interstate Commerce Commission have exempted such trailer-on-flatcar/container-on-flatcar (TOFC/COFC) operations from state regulation.

A. TOFC/COFC Exemption from State Regulation.

The Interstate Commerce Commission exempts trailer-on-flatcar/container-on-flatcar (TOFC/COFC) service from state regulation. See 49 CFR 1090.2. The above-described operation

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Seattle

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Mr. James Bollenbacher
August 10, 1994
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meets the ICC definition of TOFC/COFC service.¹ Consequently, as discussed below, the truck hauling in Washington is exempt from state regulation.

B. Interstate Transport from Washington to Oregon is Exempt from State Regulation.

In 1980, Congress enacted the Staggers Rail Act, 94 Stat. 1895, 49 U.S.C. §§ 10101 et seq., which authorized the ICC to exempt from state regulation "transportation that is provided by a rail carrier as a part of a continuous intermodal movement." See 49 U.S.C. 10505(f). In 1981, the ICC adopted regulations exempting both the motor portion and rail portion of TOFC/COFC service from state regulation. See 49 CFR § 1039.13 (1986); see also Improvement of TOFC/COFC Regulation, 364 ICC 731 (1981). This regulation was upheld in American Trucking Ass'n Inc., 656 F.2d 1115 (5th Cir. 1981), which involved an interstate TOFC/COFC shipment.

Rail trailer-on-flatcar/container-on-flatcar (TOFC/COFC) service means the transportation by rail, in interstate or foreign commerce, of:

- (1) Any freight-laden highway truck, trailer or semi-trailer,
- (2) The freight-laden container portion of any highway truck, trailer or semitrailer having a demountable chassis,
- (3) Any freight-laden multimodal vehicle designed to operate both as a highway truck, trailer, or semitrailer and as a rail car.
- (4) Any freight-laden intermodal container comparable in dimensions to a highway truck, trailer, or semi-trailer and designed to be transported by more than one mode of transportation, or
- (5) Any of the foregoing types of equipment when empty and being transported incidental to its previous or subsequent use in the TOFC/COFC service.

49 CFR 1090.1(a).

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Mr. James Bollenbacher
August 10, 1994
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In 1987, the U.S. Supreme Court upheld an ICC regulation exempting from state regulation intrastate TOFC/COFC shipments made on trucks owned by railroads. ICC v. Texas, 479 U.S. 450, 107 S.Ct. 787, 93 L.Ed.2d 809 (1987).

C. Expansion of Exemption to Non-Railroad Owned Trucks.

The Supreme Court's 1987 ruling in ICC v. Texas was limited to motor freight service performed with equipment owned and operated by the railroad. See ICC v. Texas, 479 U.S. 450, 457, 107 S.Ct. 787, 93 L.Ed.2d 809 (1987). However, in 1989, the ICC expanded the exemption to include motor truck equipment that is not owned and operated by the railroad. See Improvement of TOFC/COFC Regulations, 6 I.C.C.2d 208 (1989); see also Central State Motor Freight Bureau, 924 F.2d 1099 (D.C. Cir. 1991). This expanded exemption provides:

Except as provided in 49 U.S.C. 10505(e) and (g), 109229(1), and 10530, rail TOFC/COFC

In ICC v. Texas, 479 U.S. 450, 107 S.Ct. 787, 93 L.Ed.2d 809 (1987), the Supreme Court reversed the Fifth Circuit's decision in Texas v. United States, 770 F.2d 452 (5th Cir. 1985), in which the lower court attempted to limit the exemption from state regulation only to those TOFC/COFC shipments that crossed state lines. The Supreme Court stated: "It is undisputed that the [ICC's] power to grant these exemptions from state regulation is coextensive with its own authority to regulate, or not to regulate, these intermodal movements by rail carrier." ICC v. Texas, 479 U.S. at 455. The Supreme Court hence concluded that, because the ICC has jurisdiction over the intrastate trucking portion of continuous TOFC/COFC transport, the Commission also properly exercised its authority to exempt that same intrastate transport from state regulation. Id. at 456-461.

Therefore, even as to waste originating from customers in Oregon that remains entirely intrastate, the truck haul is nevertheless exempt from state regulation under ICC v. Texas. The Oregon PUC, upon consultation with the Oregon Attorney General, has agreed that such intrastate TOFC/COFC service is exempt from state regulation. See letter from Norman Meyers (Administrator of the Economic Regulation Division of the Oregon PUC) to Northwest Container Services dated May 3, 1993 (attached).

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Mr. James Bollenbacher
August 10, 1994
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service and highway TOFC/COFC service provided by a rail carrier either itself or jointly with a motor carrier as part of a continuous intermodal freight movement is exempt from the requirements of 49 U.S.C. subtitle IV (Interstate Commercial, regardless of the type, affiliation, or ownership of the carrier performing the highway portion of the service. Motor carrier TOFC/COFC pick-up and delivery services arranged independently with the shipper or receiver (or its representative/agent) and performed immediately before or after a TOFC/COFC movement provided by a rail carrier are similarly exempt. Tariffs heretofore applicable to any transportation service exempted by this section shall no longer apply to such service. The exemption does not apply to a motor carrier service in which a rail carrier participates only as a motor carrier's agent (Plan I TOFC/COFC), nor does the exemption operate to relieve any carrier of any obligation it would otherwise have, absent the exemption, with respect to providing contractual terms for liability and claims.

49 CFR § 1090.2 (emphasis added).

In short, the regulations no longer require that the railroad own and/or operate the trucks used in the motor portion of the TOFC/COFC haul. Therefore, the truck haul in this case is exempt from state regulation, even if it is performed with trucks not owned by the rail carrier.

Please feel free to contact me if you have any questions or would like more information.

Very truly yours,



William K. Rasmussen

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Mr. James Bollenbacher
August 10, 1994
Page 5

cc: Mr. Robert Boston, WUTC Enforcement Section
Mr. Donald Lewis, WUTC Transportation Programs Compliance
Manager
Mr. Robert Wallace, WUTC Regulatory Affairs Office
Mr. Norman Wietting (via fax 206-828-2433)
Mr. Arthur Dudzinski
Mr. Robert Schille
William Jeffry, Esq. (via fax 303-797-6907)
John Keegan, Esq.

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Seattle

EXHIBIT B
PAGE 6 of 6

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D. Jean Shaw*
Eugene H. "Trey" Tennyson, III

VIA FAX (412) 553-4064

August 16, 1994

*Also Admitted to Oregon Bar

James Bollenbacher
Aluminum Company of America
425 Sixth Avenue
Alcoa Building
Pittsburgh, PA 15219-1850

Re: Alcoa Wastewater Sludge Disposal
Our File No. 1444-3

Dear Mr. Bollenbacher:

Thank you for your letter of August 12, 1994, and the accompanying letter from William Rasmussen dated August 10, 1994, setting forth his conclusion that the transportation of sludge from Alcoa's Vancouver facility is not regulated by the Washington Utilities and Transportation Commission ("WUTC") because it is intermodal transportation subject to the Interstate Commerce Commission's ("ICC") jurisdiction.

We do not dispute Mr. Rasmussen's analysis of trailer-on-flatcar/container-on-flatcar regulation as it relates to the transportation of freight. However, Mr. Rasmussen's analysis fails to distinguish between the ICC's authority to regulate freight and its lack of authority to regulate solid waste.

We draw your attention to Joray Trucking Corp. Common Carrier Application, 99 MCC 109, 110 (1965), which addressed whether the transportation "of debris is subject to full economic regulation under part II of the Interstate Commerce Act." The ICC noted that, "Section 202 of the act states, in part, that the provisions of part II apply to the transportation of passengers or 'property' by motor carriers engaged in interstate or foreign commerce. Thus, the question arises as to whether the debris to be transported [from New York to New Jersey] is in fact 'property' for purposes of Commission jurisdiction." Id. The ICC concluded, "All things considered we believe that debris and rubble should not be considered property as affects the jurisdictional scope of the Interstate Commerce Act." Id.

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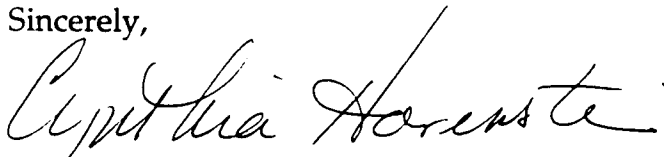
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James Bollenbacher
August 16, 1994
Page 2

In that the ICC has clearly interpreted its jurisdiction to exclude the regulation of solid waste transportation, we look to state law for regulation. As we discussed last week, RCW 81.77.100 is the operative statute which provides that any waste collected within the State of Washington, regardless of whether it is intended for intra or interstate disposal, is subject to WUTC regulation. We refer you to Evergreen Waste Systems, Inc., WUTC Cause No. TG-1911 (1986) for an analysis of RCW 81.77.100.

We suggest a meeting of your remediation project team with participants in Clark County's solid waste system (i.e., Clark County, The Disposal Group and Columbia Resource Company) to discuss your transportation and disposal requirements.

Sincerely,



CYNTHIA A. HORENSTEIN

CAH:dl

cc: Mark Leichner, The Disposal Group
Doug Haaga, The Disposal Group
Brian Carlson, Clark County Public Services
Don Lewis, WUTC Transportation Programs Compliance Manager
Bob Boston, WUTC Enforcement Section
R.E. Yester, Alcoa
Bob Huber, Alcoa
Frank William, RUST Remedial Services
Bob Schille, Waste Management of Washington

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Oregon Waste Systems, Inc.
5240 N.E. Skyport Way
Portland, OR 97218
1-503/281-2722 • FAX: 503/284-6957



A Waste Management Company

August 22, 1994

VIA FACSIMILE

Mr. Mark Leichner
The Disposal Group
9411 N.E. 94 th Avenue
Vancouver, Washington 98662

Dear Mark:

As you know, Rust Remedial Services, Inc. has contracted with the Aluminum Company of America (ALCOA) to clean out a waste water treatment pond at their plant west of Vancouver, WA. Rust has subcontracted a portion of the project to Oregon Waste Systems to transport the material and reuse/recycle it as daily cover at our Columbia Ridge Landfill at Arlington, Oregon. The value of this material as a daily cover product was very instrumental in our being able to offer a favorable rate to ALCOA.

In addition, this recycled material, will be shipped from the ALCOA plant in the state of Washington via intermodal containers to a rail loading facility in the state of Oregon and then shipped by rail to the Columbia Ridge Landfill. This movement is considered a Container on Flat Car (COFC) movement by the railroad and the ICC. As this material has value and is being recycled, it is considered commercially generated recycled materials and therefore is not a commodity that would come under a G Certificate in the state of Washington.

Your attorney, Cynthia Horenstein, suggested in her August 16, 1994 letter that a meeting with the remediation team and the Disposal Group may be appropriate. If you believe that would be helpful please let me know. If you have any questions please call me at (206) 822-3770.

Sincerely,

Norm Wietting
Vice President Transportation and Sales
Oregon Waste Systems

cc: Frank Wilman - RUST
Chris Zebberneck - RUST
R.E. Yester - ALCOA
Bob Huber - ALCOA
Brian Carlson - Clark County
Don Lewis - WUTC
Bob Schille - Waste Management
Ken Irish - Oregon Waste Systems

EXHIBIT

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D. Jean Shaw*
Eugene H. "Trey" Tennyson, III

SENT VIA FACSIMILE

August 22, 1994

Bob Boston
WUTC Enforcement
1300 S. Evergreen Park Drive, SW
MS FY-11
Olympia, WA 98504

*Also Admitted to Oregon Bar

Re: The Disposal Group

Dear Bob:

As we discussed this afternoon, The Disposal Group has attempted to educate you as to the regulatory scheme of solid waste in Washington as it relates to the transportation of materials from ALCOA's Vancouver facility. We have provided you with copies of our correspondence to ALCOA. Additionally, we have spoken with ALCOA's attorney on a couple of occasions in an attempt to resolve this matter privately. Enclosed you will find a copy of the correspondence we received this afternoon from Oregon Waste Systems, Inc., the transporter of the solid waste from the ALCOA facility. We attempted to contact ALCOA's attorney today. Our telephone call was not returned.

The Disposal Group continues to assume the position that this material is a commodity regulated under RCW 81.77. We request the WUTC's assistance in enforcing RCW 81.77.

In the alternative, The Disposal Group requests the WUTC require Oregon Waste Systems to prove that this material is regulated under RCW 81.80 (i.e., the material has value) and that Oregon Waste Systems has authority to transport materials with value from ALCOA's facility.

We understand that Oregon Waste Systems began transporting at approximately 1:00 p.m. today from ALCOA's Vancouver facility located at approximately 6200 Old Lower River Road, Vancouver, Washington (ALCOA's site is east of the transfer station at 6307 Old Lower River Road) and that approximately 65,000 to 75,000 tons of material will be transported from the site.

Please advise as to how we may be of assistance to you in an enforcement action.

Sincerely,



CYNTHIA A. HORENSTEIN
CAH:djs

EXHIBIT E
PAGE 1 of 1