

MAR 13 1991

NOTE! An important notice to parties about administrative relief appears at the end of this order.

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re Application GA-907 of)	ORDER M. V. G. NO. 1480
)	
ROWLAND, ENOCH & MILTON BLOCH)	HEARING NO. GA-907
d/b/a KLEENWELL BIOHAZARD WASTE)	
AND GENERAL ECOLOGY CONSULTANTS)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
for a Certificate of Public)	AND INITIAL ORDER
Convenience and Necessity to)	DENYING APPLICATION
Operate motor vehicles in)	
furnishing GARBAGE AND REFUSE)	
COLLECTION SERVICE.)	
.)	

After notice to all interested parties, Administrative Law Judge Christine Clishe of the Office of Administrative Hearings held hearings on this matter on August 2 and 3, and October 1, 15, 16, 17, and 22, 1990, in Seattle and Olympia, Washington.

The parties were represented as follows:

APPLICANTS: ENOCH ROWLAND AND MILTON BLOCH,
d/b/a KLEENWELL BIOHAZARD WASTE
AND GENERAL ECOLOGY CONSULTANTS
By James T. Johnson
Attorney at Law
1502 IBM Building
1200 Fifth Avenue
Seattle, Washington 98101

COMMISSION: WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION
By Marjorie R. Schaer
Assistant Attorney General
1400 South Evergreen Park Drive S.W.
Olympia, Washington 98504

WUTC
Cause No. <u>76-920304</u>
Exhibit # <u>13</u>
Witness <u>Rowland</u>
Date <u>5-13-92</u>

PROTESTANTS: WASHINGTON WASTE MANAGEMENT ASSOCIATION
By James K. Sells
Attorney at Law
510 Washington Avenue, Suite 300
Bremerton, Washington 98310

R.S.T. DISPOSAL CO., INC.
FEDERAL WAY DISPOSAL CO., INC.
NICK RAFFO GARBAGE CO., INC.
BAYSIDE WASTE HAULING & TRANSFER, INC.
NORTHWEST GARBAGE CO., INC.
SNOKING GARBAGE CO., INC.
RAINIER DISPOSAL CO., INC.
By Jack R. Davis
Attorney at Law
Suite 1200 IBM Building
Seattle, Washington 98101

AMERICAN ENVIRONMENTAL
MANAGEMENT CORPORATION
By David W. Wiley
Attorney at Law
1700 Bellevue Place
10500 N.E. 8th Street
Bellevue, Washington 98004-4332

SURE-WAY INCINERATION, INC.
By Boyd Hartman
Attorney at Law
11000 Main Street
Bellevue, Washington 98004

INTERVENORS: None

SUMMARY: The application should be denied. Existing solid waste collection companies had authority under their certificates to transport biohazardous waste, but none of those companies was providing such service to the satisfaction of the Commission. The applicants have not established the cost of service and their financial and regulatory fitness to conduct the proposed operations.

MEMORANDUM

I. BACKGROUND

A. Procedural History

On March 20, 1990, Enoch Rowland and Milton Bloch, doing business as Kleenwell Biohazard Waste and General Ecology

Consultants ("Kleenwell" or "applicants"), filed this application with the Commission for a certificate of public convenience and necessity.

Several certificated solid waste carriers and two temporary certificate holders filed protests. Seven days of hearings were held. The provision of two volumes of the transcripts was delayed.

After the hearing, counsel for the applicants notified the Commission that the partnership has been dissolved and asked for substitution of Enoch Rowland, individually, as applicant.

B. Proposed Service

Applicants propose to offer garbage and refuse collection service consisting of biohazardous, infectious, contaminated and other related infectious medical wastes, in specialized containers in Western Washington. The wastes will be incinerated at the Recomp facility near Ferndale, Washington. The applicants will also offer customer training in identifying and handling biohazardous waste. Witnesses supporting the applicants were located exclusively in King County.

II. ISSUES

1. Are existing solid waste collection companies serving the territory requested to the satisfaction of the Commission?
2. Is it necessary to compare the applicants with other applicants for permanent authority?
3. Does the public convenience and necessity require the service proposed by the applicants?
4. Have the applicants established their financial fitness, the cost of service, and the feasibility of their operations?
5. Are the applicants otherwise fit, willing, and able to conduct the proposed operations?

III. APPLICABLE STATUTES AND RULES

The Commission regulates solid waste collection companies under Chapter 81.77 of the Revised Code of Washington.

The statute which establishes the requirement for and factors for consideration before issuance of a certificate of public convenience and necessity reads, in part, as follows:

RCW 81.77.040 Certificate of convenience and necessity required -- Procedure when applicant requests certificate for existing service area. No solid waste collection company shall hereafter operate for the hauling of solid waste for compensation without first having obtained from the commission a certificate declaring that public convenience and necessity require such operation...

Issuance of the certificate of necessity shall be determined upon, but not limited to, the following factors: The present service and the cost thereof for the contemplated area to be served; an estimate of the cost of the facilities to be utilized in the plant for solid waste collection and disposal, sworn to before a notary public; a statement of the assets on hand of the person, firm, association or corporation which will be expended on the purported plant for solid waste collection and disposal, sworn to before a notary public; a statement of prior experience, if any, in such field by the petitioner, sworn to before a notary public; and sentiment in the community contemplated to be served as to the necessity for such a service.

... [W]hen an applicant requests a certificate to operate in a territory already served by a certificate holder under this chapter, the commission may, after hearing, issue the certificate only if the existing solid waste collection company or companies serving the territory will not provide service to the satisfaction of the commission.

In all other cases, the commission may, with or without hearing, issue certificates, or for good cause shown refuse to issue them, or issue them for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted such terms and conditions as, in its judgment, the public convenience and necessity may require...

Rules implementing Chapter 81.77 RCW are found in Chapter 480-70 of the Washington Administrative Code.

WAC 480-70-160 states the qualifications for a certificate of public convenience and necessity:

Applicant for a certificate of public convenience and necessity must show that it is fit, willing and able to provide the proposed service and, in addition, the granting thereof shall be determined by the provisions of section 5, chapter 295, Laws of 1961 [RCW 81.77.030], as amended.

(RCW 81.77.030 requires the Commission to supervise and regulate every solid waste collection company within Washington State.)

WAC 480-70-500 et seq. sets forth special requirements for certificated garbage collection companies handling biohazardous or biomedical waste, as defined in WAC 480-70-050. Those requirements include an operational plan; training of employees; packaging and containment of waste; a disposal facility which is approved by appropriate state, local, and federal agencies; properly completed shipping paper; additional insurance; and prompt reporting of accidents.

The laws and rules cited and set forth above must be applied to the facts in this matter. Each of the issues listed in Section II above is discussed below.

IV. DISCUSSION AND DECISION

1. Are existing solid waste collection companies serving the territory requested to the satisfaction of the Commission?

Before the Commission may grant an application for a certificate to collect solid waste there must be a showing that existing solid waste collection companies will not provide service to the satisfaction of the Commission in the territory sought by the applicant. RCW 81.77.040.

In the usual solid waste proceeding, for residential and/or commercial solid waste collection service, the Commission reviews an existing carrier's service, customer complaints and ability to resolve them, history of compliance with regulation, and other matters relevant to the carrier's ability to provide service to the satisfaction of the Commission. See Order M.V.G. No. 1402, R.S.T. Disposal Company, Inc., d/b/a Tri-star Disposal, Cause No. GA-845; Seattle Disposal Company, d/b/a Rabanco Companies, Cause No. GA-851 (July, 1989).

This proceeding is different. It concerns biohazardous and infectious waste. In a recent order concerning an application for a certificate to transport biohazardous waste, the Commission noted the unique nature of biohazardous waste and set forth a test to determine if existing companies will serve to the satisfaction of the Commission. That order read, in pertinent part:

This case is somewhat different from the typical garbage and refuse collection case in that the applicant seeks statewide authority for a specific category of garbage and refuse. The services offered are specialized, the material requires special handling and special treatment before disposal... The test is not necessarily whether the protestants have refused service to specific customers. Rather, the Commission should ask what service would have been available to the customers if they had asked their regular haulers.

Order M.V.G. No. 1451, In re Sure-Way Incineration, Inc.,
App. No. GA-868 (Nov., 1990)

Several permanently-certificated solid waste collection companies filed protests to this application. Those companies hold authority to collect biohazardous or infectious medical waste. See Order M. V. G. No. 1452, In re American Environmental Management Corp., App. No. GA-874 (Nov., 1990).

An evaluation of service provided by each company-protestant is necessary to decide whether they were providing the proposed service to the satisfaction of the Commission.

For such an evaluation, the appropriate time period is prior to March 20, 1990, the date this application was filed. The Commission, in other solid waste cases, has used that time period, commenting as follows:

... The kind of service provided by an existing certificate holder after a person files a competing application cannot be used to defeat an application--that is, the service being provided by an existing certificate holder prior to the time a competing application is filed is the service that will be examined to evaluate the need for applicant's service. Order M.V.G. No.

795, In re Anthony J. DiTomasso, d/b/a DiTomasso Bros. Garbage Service, App. No. GA-508, (Nov., 1975).

The Commission cited the DiTomasso case with approval in 1988. See Order M.V.G. No. 1335, In re Superior Refuse Removal Corporation, App. No. GA-849 (June, 1988).

a. R.S.T. Companies. Jerry Graham, sales manager and public relations for R.S.T. Disposal Co., Inc., Nick Raffo Garbage Co., Inc., and Federal Way Disposal Co., Inc., testified on behalf of those companies. As of the date of the application, these companies actively provided solid waste collection service to the full extent of their territorial authority (see below). The companies have no authority to serve the Cities of Seattle and Renton.

R.S.T. Disposal Co., Inc. held Certificate G-185 and actively provided solid waste collection service in the south King County area under that certificate. R.S.T. Disposal also does business under the name Tri-Star Disposal, which provided solid waste collection service in the City of Kent.

Nick Raffo Garbage Co., Inc. held Certificate G-16 and actively provided solid waste collection service in areas of south King County.

Federal Way Disposal Co., Inc. held Certificate G-35 and actively provided solid waste collection service in most of the City of Federal Way.

On April 22, 1988, Nick Raffo Garbage Co., Tri-Star Disposal, and R.S.T. Disposal Co. sent letters to those customers who could be identified as possible generators of biohazardous or infectious medical waste. The letters said that each company was "ready, willing, and able" under its existing certificate to transport biohazardous and infectious wastes. It also said that the company had not had any requests to haul such waste to a special incinerator or disposal facility. The letter invited generators of such waste to contact the company, which would continue to provide for customers' waste disposal needs. No one asked for biohazardous waste collection after getting the letter. The R.S.T. companies have done no other solicitation of business from generators of biohazardous waste. Mr. Graham knew of no requests for service from the shippers supporting this application.

Mr. Graham said that the equipment operated by the R.S.T. companies was suitable for all types of wet and dry garbage and refuse. Upon further questioning, he said that there "could be some piece of equipment" that "could possibly" be used

to transport biohazardous waste. The suitability of his companies' existing equipment for collection of biohazardous waste hasn't been shown. These protestants could get suitable equipment through a related company.

The R.S.T. companies are ready, willing, and able to provide service in collection of biohazardous waste, according to Mr. Graham. New company ownership has committed itself to providing any needed service. If service was requested, it would be provided, he said. Mr. Graham and other employees have attended seminars and conferences, trying to "keep on top of what's going on in the medical waste field." The companies are also pursuing an agreement, the terms of which were unclear, to have another company provide assistance if R.S.T. equipment isn't readily available to provide service [TR 1032, 1041]. The R.S.T. companies did not show any arrangements they had made for a suitable disposal site nor an operational plan to collect, transport, and dispose of biohazardous waste.

The R.S.T. companies did, through their letter of April 22, 1988, advise potential generators of biohazardous waste that they wish to provide service. However, the R.S.T. companies haven't solicited customers for such service since then. Mr. Graham's testimony does not establish that a customer would have found biohazardous waste collection, transportation, and disposal available from the companies. The R.S.T. companies may have been willing to provide service to their customers, but more is needed here to satisfy the Commission that they were providing such service. Mr. Graham's assertions of readiness and ability to provide the service are not credible. There was no showing of any preparedness to provide service, nor of the proper equipment, personnel, or disposal plan required by the unique solid waste at issue. Protestants R.S.T. Disposal Co., Inc., Federal Way Disposal Co., Inc., and Nick Raffo Garbage Co., Inc. have not provided the service the applicants propose to the satisfaction of the Commission.

b. Bayside Companies. The protestants known collectively as the Bayside companies are wholly owned subsidiaries of Waste Management of North America (WMNA). Within Western Washington, each subsidiary of WMNA is a separate operating unit with a general manager who reports to the WMNA regional operations manager in Kirkland, Washington. The WMNA regional office advises and trains subsidiaries in such areas as environmental regulations and specialized waste handling.

Pamela Badger, senior environmental specialist for WMNA, has a master's degree in public health, with a minor in environmental microbiology. She has served on the Department of Ecology infectious waste technical advisory group and is familiar with federal, state, and local regulations on handling

biohazardous waste. She has advised WMNA subsidiaries in the Northwest on environmental regulations, has prepared biomedical and biohazardous operating plans in accordance with Commission regulations, and has trained employees in handling biohazardous waste and use of their spill kit.

Bayside Waste Hauling & Transfer, Inc. (Bayside), at the time of the application, held Certificate G-140. Under that certificate, Bayside was actively providing solid waste collection service to the extent of its authority, including service to the City of Seattle and the White Center and Skyway areas (south of Seattle).

Rainier Disposal Company (Rainier) held certificate G-63 at the time of the application and provided solid waste collection service in Renton, Factoria, and southeast King County, including the Black Diamond-Enumclaw area.

Snoking Garbage Company (Snoking) held certificate G-126, and provided solid waste collection service in the northeastern corner of King County, including Bothell, Kirkland, Redmond, Duvall, and Carnation.

Northwest Garbage Company (Northwest) held certificate G-43 and provided solid waste collection service in most of Snohomish County (excluding the City of Everett), and northwest King County including Richmond Beach.

Snoking, Rainier, and Bayside now collect only sharps (needles, syringes, lancets, etc.) in their respective areas. Their regular solid waste collection trucks have a special bin on the side for transporting the sharps, which are taken to the Cedar Hills landfill for disposal. Under King County regulations, containerized sharps are considered treated biohazardous waste.

The Bayside companies have not provided service in Western Washington in collection of untreated biohazardous waste, which requires an approved disposal site. The WMNA subsidiary in Kennewick provides full biohazardous waste collection service, with disposal of waste subcontracted to American Environmental Management Corporation. WMNA has had no approved disposal facility available in Western Washington, although it is trying to work out an acceptable treatment and disposal arrangement. Ms. Badger investigated using the Recomp incinerator at Ferndale. She and WMNA decided not to use this incinerator because of environmental concerns, especially the disposal of ash, and possible surface water contamination caused by storage of ash on that site.

Robert Schille is special projects, public affairs and utilities, transportation liaison management manager of WMNA's northwest office. He opposes this application, because there is no need for an additional carrier of biohazardous waste. He projects his company expanding service in this area and knows of no instances where the Bayside companies have denied a request for such service. WMNA is prepared to invest in specialized equipment for Western Washington when that is needed.

Although the Bayside companies had authority to collect untreated biohazardous waste, they presented no evidence that they were providing that service in Western Washington. The record shows that WMNA has a program of employee training and provides technical advice to its subsidiaries on biohazardous waste handling. WMNA's Kennewick company is providing full biohazardous waste collection service. The King County subsidiaries are providing treated infectious waste collection service. These indicate WMNA will likely be able and willing to provide full service in Western Washington in the near future. However, ability and intent to serve in the future should not defeat an application, when there was no demonstrated available service by the protestants prior to the time the application was filed. In summary, the Bayside companies were not providing service to the satisfaction of the Commission, in this specialized area, at the time this application was filed.

c. The Washington Waste Management Association. The Washington Waste Management Association protested this application on its own behalf and on behalf of its statewide members. John Paul Jones III, executive director, testified for the Association. The position of the Association is that its members are ready and willing to provide service in collection of biohazardous waste, when asked. Mr. Jones presented a membership list of forty-six members with authority to provide solid waste collection service, along with copies of their certificates. These certificate holders cover most of the State of Washington. Mr. Jones did not address the carriers' ability to provide biohazardous waste collection service at the time this application was filed.

From the certificates provided by the Association, its members had the authority to provide biohazardous waste collection service. Under the Commission's test, there has been no showing that members of the Washington Waste Management Association were providing the specialized service requested by applicants to the satisfaction of the Commission, when this application was filed.

ISSUE NO. 1 SUMMARY DISCUSSION

The existing certificate holders who protested this application, individually or through the Washington Waste Management Association, held authority to provide the specialized service in the territory requested by the applicants. However, at the time the application was filed, none of those carriers were providing such service to the satisfaction of the Commission, nor were they prepared to provide such service, if requested. Since existing solid waste collection companies were not serving the territory requested by the applicants, to the satisfaction of the Commission, the Commission is not prohibited from issuing a certificate to the applicants.

2. Is it necessary to compare the applicants with other applicants for permanent authority?

At the time this application was filed, two competing applications for permanent authority were pending before the Commission.

American Environmental Management Corp. (AEMC) had applied for a certificate of public convenience and necessity to operate motor vehicles in furnishing garbage and refuse collection service consisting of biohazardous, infectious, contaminated and pathological waste and other related infectious medical wastes in specialized containers from points in the State of Washington to incineration sites owned and/or operated by American Environmental Management Corporation.

Sure-Way Incineration, Inc. (Sure-Way) had applied for a certificate of public convenience and necessity to operate motor vehicles in furnishing refuse collection service consisting of infectious, contaminated and pathological waste, bio medical wastes, and other related infectious medical waste from hospitals, medical clinics or laboratories, nursing homes, medical or dental offices or clinics, health care centers, blood banks, pharmaceutical establishments, veterinary offices or clinics, funeral parlors, crematories, psychiatric care centers or offices, biological products industries and other bio medical institutions to incineration plants or other licensed disposal sites in the state of Washington.

Both Sure-Way and AEMC have operated under temporary authority granted by the Commission, while this Kleenwell application is pending. Neither Sure-Way nor AEMC is an existing certificate holder, within the meaning of RCW 81.77.040.

Since these three applications were not consolidated for hearing, a comparative analysis in this initial order would not be appropriate. A comparison would, where necessary, be more appropriately done by the Commission, upon review.

ISSUE NO. 2 SUMMARY DISCUSSION

It is inappropriate and unnecessary, in this initial order, to analyze competing applications for biohazardous waste collection services.

3. Do the public convenience and necessity require the service proposed by the applicants?

RCW 81.77.040 requires a finding that public convenience and necessity require the proposed operation before a certificate may be issued. In this case, the testimony of a public health expert and of seven biohazardous waste generators has established that public convenience and necessity require the requested operation. The detailed testimony of those witnesses is set forth in the findings of fact, below. In addition to a need for the proposed service to get rid of the generators' waste, important public health considerations are involved here.

Two of applicants' witnesses (Dr. Clausing and Ms. Kirby) testified that until recently, untreated medical waste was put into the regular solid waste stream and usually put into landfills. In the last few years, medical and public health professionals have become aware of the danger to public health from untreated medical waste, as blood-borne viral agents have multiplied. The testimony of Dr. George E. Kenny (set forth in detail in the findings of fact) was illuminating in that regard. Dr. Kenny described the danger to public health of the AIDS and hepatitis B viruses, which are deadly in a substantial percentage of cases. Based upon his years of experience and study, Dr. Kenny estimated that within the next ten years or so, another forty new infectious agents will be found in blood, and many of these agents will be more of a health problem than hepatitis B. He believes that careful handling and disposal of biohazardous waste is necessary for public safety.

Dr. Kenny mentioned federal, state, and local regulations enacted recently, requiring safe handling, transportation, and disposal of biohazardous waste. Since early 1990, untreated biohazardous waste cannot be put into King County landfills. Other witnesses commented on similar rules which have been, or are being, developed in Snohomish County, the City of Tacoma/Pierce County, and Kitsap County. The Commission, in June 1990, adopted new regulations to define and regulate the collection of biohazardous waste. This type of waste is clearly of increasing concern.

Applicants' supporting shippers were all located in King County and in need of the type of specialized service which Kleenwell proposes to provide, particularly in view of King

County regulations on biohazardous waste. As discussed above, shippers' needs are not being met by existing solid waste collection companies, in spite of their contentions to the contrary.

ISSUE NO. 3 SUMMARY DISCUSSION

The public convenience and necessity require the applicants' proposed operation, as shown by testimony from supporting shippers and a medical expert.

4. Have the applicants established their financial fitness, the cost of service, and the feasibility of their operations?

An applicant for authority under Chapter 81.77 RCW must establish the cost of service for the present service in the area to be served, and an estimate of the cost of facilities to be used in the plant for solid waste collection and disposal. The Commission has held that the applicant must establish "its costs of operation and facilities and demonstrate the financial feasibility of the operation." Order M.V.G. No. 1367, In re Northwest Unitech, Inc., GA-864 (Jan., 1989)

The Commission recently elaborated on the tests for financial fitness in a solid waste proceeding, as set forth below:

The Commission here is trying to determine whether an applicant has enough money to start and maintain operations, whether it has a source of funds to allow it to operate through the start up phase of business (when it most likely will not be profitable), whether it can provide consistent service to its customers and can continue to meet those customers' needs by acquiring additional equipment and personnel if necessary. An applicant for solid waste collection authority must provide more financial information than an applicant for motor carrier authority because the statutory scheme is different and entry to the solid waste market is more strictly controlled. The Commission needs enough information to be reasonably certain that the company will not go out of business, leaving its customers stranded. Finally, the Commission does need information about an applicant's cost of providing the proposed service in order to

determine, especially as between competing applicants, whether the applicant's finances will allow it to provide the proposed service.

Order M. V. G. No. 1451, In re Sure-Way Incineration, Inc., GA-868 (Nov., 1990)

a. Applicants: Enoch Rowland and Milton Bloch formed a partnership to do business as Kleenwell Biohazard Waste and General Ecology Consultants. Mr. Rowland's scientific and technical credentials and expertise are undisputed, and he is the operating and managing partner. Mr. Bloch contributed \$10,000 capital to this partnership. After the hearing, the partnership was dissolved. Counsel for applicants did not give information about the financial effect of the dissolution of the partnership. Considering the questionable ability of the applicants to operate, as discussed below, withdrawal from the partnership of the partner providing the capital would be damaging.

b. Financial Fitness: Applicants' information about company finances was incomplete and conflicting. At the time the application was filed, applicants listed \$19,497.52 in assets and liabilities of \$641.20 (Exhibit 9). Considerable testimony from Mr. Rowland and Ms. Bowman, applicants' accountant, established that both liabilities and operating expenses were understated. Applicants gave no accurate and complete information on income and expenses, despite repeated requests by protestants and the Assistant Attorney General. Mr. Rowland maintained that Kleenwell was generating a small profit. However, some partnership expenses were absorbed by Mr. Rowland's corporation. These included wages for Mr. Rowland, a secretary and a bookkeeper. Projections of revenue were unrealistically high, in view of applicants' several months of operations. On several different pro forma and income and expense statements, expenses were underestimated or stated. See Ex. 7, 34, 47, 49, and 52. The company was not making a profit.

Mr. Rowland said he had family backing for this venture. He first testified that his brother would give him up to \$100,000, which would not have to be repaid. (TR 74) Later, Mr. Rowland testified that this \$100,000 would have to be repaid. (TR 579, 958) Mr. Rowland presented a letter from his brother, stating that if permanent authority was granted, John Rowland could provide \$100,000. Applicants presented no independent verification of John Rowland's ability to provide this money. It is not credible that applicants have access to \$100,000. In any event, Enoch Rowland was not willing to use up this \$100,000 to make up operating losses. He was willing to borrow against his personal property to operate Kleenwell. Ms. Bowman was of the

opinion that the company would have a hard time starting again after a three to six-month shutdown of operations.

c. Cost of Service: The evidence presented of cost of the proposed service was also incomplete, conflicting, and understated, as noted in the preceding paragraphs. Because Mr. Rowland's corporation absorbed many of Kleenwell's expenses, it determining the actual cost of service is difficult. A new business may not be able to accurately forecast the costs of operation and revenue. However, Kleenwell has been operating for several months and more accurate data was expected. From what was presented, the applicants have not even remotely established their cost of service.

ISSUE NO. 4 SUMMARY DISCUSSION

The applicants must show their financial fitness and the feasibility of their operations. They provided no reliable and consistent evidence in this proceeding. What was provided gives rise to ample doubt as to their ability to meet the Commission's requirements. The applicants have not established their financial fitness, cost of service, and feasibility of their operations. They should not be granted permanent authority.

5. Are the applicants otherwise fit, willing, and able to conduct the proposed operations?

An applicant for authority under Chapter 81.77 must show its regulatory fitness to receive authority. WAC 480-70-160. This means the applicant must establish a willingness and ability to comply with the rules and laws present in a regulated environment.

As set forth in the findings of fact, below, the operating witness for the applicant professed his familiarity with and intent and desire to abide by the applicable laws and regulations. From the entire record, Mr. Rowland evinced a certain degree of confusion and misunderstanding about the laws and rules. Some problems, such as drivers not wearing protective clothing, he corrected. Paperwork requirements, such as shipping documents and billing by tariff application, don't seem to be his forte'. However, at two different times, the applicants have knowingly continued operations after being told to stop waste collection by the Commission. The applicants have also knowingly violated Health Department regulations, in storing waste longer than allowed. The applicants' assurances of compliance don't match their actions and are not believable. They are unwilling or unable to comply with Commission laws and rules and are therefore unfit to receive authority to operate a solid waste collection company.

Several witnesses testified about problems at Recomp, such as pollution and ash storage. There may be problems with that facility, but this order will not second guess the evaluation of Recomp by the Health Department. Kleenwell has an approved disposal site.

The witness for Sure-Way alleged that Kleenwell had used Sure-Way's boxes for its customers. And Kleenwell, in its transportation agreement, said it was accepting ownership of the waste. Several witnesses were of the opinion that such acceptance was violative of law. True or not, the taking of boxes and the taking of title to the waste are not matters over which the Commission has jurisdiction.

ISSUE NO. 5 SUMMARY DISCUSSION

The applicants, by their actions, have shown themselves to be unfit to receive the requested authority. They have not and most likely will not comply with the Commission's rules and laws. They should not be granted permanent authority.

Based on the entire record and the file in this matter, the undersigned administrative law judge makes the following proposed findings of fact and conclusions of law.

FINDINGS OF FACT

1. On March 20, 1990, Enoch Rowland and Milton Bloch, doing business as Kleenwell Biohazard Waste and General Ecology Consultants, filed an application with the Commission for a certificate of public convenience and necessity to operate motor vehicles in furnishing garbage and refuse collection service consisting of biohazardous, infectious, contaminated and other related infectious medical wastes, in specialized containers, in Western Washington.
2. Timely protests were filed by: James K. Sells, attorney, on behalf of the Washington Waste Management Association; Jack R. Davis, attorney, on behalf of R.S.T Disposal Co., Inc., Federal Way Disposal Co., Inc., Nick Raffo Garbage Co., Inc., Bayside Waste Hauling & Transfer, Inc., Northwest Garbage Co., Inc., Snoking Garbage Co., Inc., and Rainier Disposal Co., Inc.; David W. Wiley, attorney, on behalf of American Environmental Management Corporation; and Boyd Hartman, attorney, on behalf of Sure-Way Incineration, Inc. No one sought to intervene in this proceeding.
3. By letter dated January 25, 1991, James T. Johnson, attorney for the applicants, advised that the

partnership of Enoch Rowland and Milton Bloch had been dissolved. He requested that Enoch Rowland, as an individual, be substituted for the partnership as the applicant in this proceeding. He noted that since Mr. Bloch had no part in management of the business, the dissolution of the partnership represented no real change in the management. He said that the only reference to Mr. Bloch in the hearing concerned Mr. Bloch's \$10,000 contribution to capital of the partnership. The letter did not address the financial impact of the partnership dissolution.

4. Enoch Rowland testified in support of this application. The applicant is willing to provide the services for which it requests authority.

5. Enoch Rowland and Milton Bloch formed an equal partnership to collect, transport, and dispose of biohazardous medical waste and to advise generators of regulations affecting the identification, handling, and disposal of medical waste. Mr. Bloch contributed \$10,000 capital to this partnership. Only Mr. Rowland has been involved in the operations and management of the company.

6. Kleenwell shares an office and warehouse in South Seattle with Kleenwell Medical Supplies, Inc., which is owned by Mr. Rowland and his wife. The warehouse is securely fenced and locked and contains a freezer to store boxes of biohazardous waste awaiting disposal. The freezer will hold at most forty to sixty boxes, depending on box size. A 1974 enclosed van, equipped with a spill kit, is used for collecting biohazardous waste. The Health Department has inspected and approved the storage facility and van. Kleenwell will rent an enclosed truck to carry waste to the incinerator. The Health Department approved of this arrangement. Those vehicles are suitable for the proposed operations.

7. Mr. Rowland will train drivers in safe handling of biohazardous waste, and in documentation requirements. At the time of the hearing, Kleenwell employed one driver, who was paid on a commission basis (percentage of sales).

8. During the course of the hearing, Kleenwell was negotiating for a disposal site closer than those of Security Environmental Systems (SES) and Browning Ferris Industries (BFI) in California. Transportation costs to those disposal sites were prohibitive. In September, 1990, the Recomp Incinerator at Ferndale, Washington, became available to Kleenwell, at a cost of \$75.00 per load or \$.18 per pound, whichever is greater. The Health Department has inspected Recomp and found it acceptable. Applicants have a suitable, permitted disposal site.

9. Kleenwell had \$750,000 in liability and property damage insurance. When Mr. Rowland was advised that \$1,000,000 in such insurance was required, he obtained that insurance coverage.

10. Kleenwell has a King County permit to store biohazardous waste. Other Western Washington counties requiring permits are Pierce, Snohomish, and perhaps Kitsap. Mr. Rowland has not inquired as to other counties' requirements. Kleenwell intends to serve biohazardous waste generators in Western Washington. In mid-September, 1990, Mr. Rowland applied for a permit in Pierce County. He has no permits in Snohomish and Kitsap Counties.

11. Mr. Rowland holds a bachelor's degree in medical technology and a master's degree in clinical microbiology. He has completed course work toward his Ph.D. He holds certification as a clinical laboratory scientist and has twelve years' experience as a community college instructor of medical technology. For about twenty years, he has been associated with the Puget Sound Institute of Pathology (now SmithKline Beecham Laboratories). His duties there have included collection of medical waste. In 1980, Mr. Rowland started T & R Enterprises. That company sold medical supplies, provided clinical laboratory services, and collected medical waste as a service to its customers. The business entity T & R ceased to exist in June 1990, and transferred the van and office furniture owned by T & R to Kleenwell (the partnership), which came into being during 1989.

12. Up until 1989 or 1990, the Seattle-King County Department of Public Health (hereinafter Health Department) allowed laboratories to pick up a total of one hundred pounds of medical waste per month, as a service to their customers. In May of 1989, Mr. Rowland looked into getting (and in June 1989 did get) a permit from the Health Department to collect and dispose of medical waste. He collected medical waste but had first Sure-Way Incineration, Inc. (Sure-Way) and later American Environmental Management Corporation (AEMC) dispose of the waste.

13. In July or August, 1989, Mr. Rowland heard from AEMC that he needed a certificate from the Commission for his waste collection service. Until then, Mr. Rowland did not understand the difference between a Health Department permit and a Commission solid waste certificate. From that time until January 1990, Mr. Rowland or Robert Sanders (his employee) talked several times with Commission employees Robert Rosengreen and Bob Sutherland. At first, they advised Kleenwell that a certificate wasn't needed and a registered exempt status would be appropriate. Mr. Rowland did get that registration.

14. Mr. Sanders was present during the first two days of the hearing but was not called as a witness. Counsel for applicant asked that questions about company operations be deferred to Mr. Sanders. Before the hearing reconvened on October 1, Mr. Sanders was diagnosed with a terminal illness and left the company to return to the Midwest. Testimony as to his actions and knowledge was in some instances admitted, although hearsay, over the objections of counsel for the Commission staff and protestants.

15. After investigation in late 1989 and early 1990, the Commission sent Mr. Rowland a letter, dated January 22, 1990. For some unknown reason, he did not receive it until about February 1. This letter stated that Kleenwell's operations were subject to regulation by the Commission; that Kleenwell was required to apply for and hold a garbage certificate from the Commission in order to collect and dispose of waste; and that until Kleenwell held such a certificate, its collection and disposal of waste materials must cease.

16. The Commission notified AEMC that Kleenwell was ordered to cease operations. On February 9, 1990, AEMC wrote to Messrs. Rowland and Sanders, terminating their contract to pick up waste from "T & R Medical." AEMC specified February 16, 1990, as their final waste pick-up date.

17. In March 1990, the Health Department ordered Kleenwell to stop collection because Kleenwell had no disposal facility and was holding waste longer than allowed.

18. Kleenwell continued to collect biohazardous medical waste until about March 1, 1990.

19. In April 1990, Kleenwell and Browning Ferris Industries (BFI) signed a contract designating BFI's Fresno, California, facility as a secondary disposal site, for a monthly administrative fee of \$300, plus \$.25 per pound for any waste taken for disposal. Kleenwell also agreed in April to use Security Environmental Systems' (SES) disposal facility in California as a primary disposal site, at a cost of \$.30 per pound of waste. On September 12, 1990, BFI notified Kleenwell that the Recomp incinerator was available for waste disposal, at a cost of \$75.00 per load or \$.18 per pound, whichever is greater.

20. Applicants applied with the Commission for a temporary certificate, which was issued on June 19, 1990 (TG-80). On July 1, 1990, the Health Department issued a permit to Kleenwell for one infectious waste vehicle. On July 11, 1990, the Health Department advised Mr. Rowland by letter that his storage methods and facility met Health Department requirements.

On September 24, 1990, the Health Department approved Kleenwell's use of the Recomp Incineration Facility for treatment and disposal of infectious waste, with the stipulation that the SES site in Southern California would be a backup disposal facility. Applicants have a suitable disposal site available to them.

21. Kleenwell has and will operate a 1974 Ford van which has been inspected and approved by the Health Department for collection and transportation of infectious waste. This van contains a spill kit, to disinfect and clean any spilled material. Kleenwell's warehouse is fenced and locked. A freezer inside the warehouse can hold from 40 to 60 boxes of waste. The average weight of each box, when filled, is about eighteen pounds. Mr. Rowland had heard that Mr. Sanders had opened and repacked some boxes of waste, but that practice has ceased. Mr. Rowland and Mr. Sanders did not always wear protective clothing when collecting and handling the boxes of waste. On occasion, the vehicle used to deliver medical supplies for the corporation was also carrying boxes of biohazardous waste picked up from customers. Mr. Rowland has stopped this practice.

22. On June 25, 1990, Kleenwell picked up two sharps containers from Dr. Goldman. From that time until October 3, 1990, Kleenwell did not take any waste to a disposal site. Mr. Rowland knew that King County regulations allowed him to store infectious waste in his freezer for a maximum of ninety days from the date the waste was generated. Kleenwell retained infectious waste in its freezer for more than ninety days from the date it was generated, in violation of Health Department regulations. Kleenwell has no method in place to establish when customers generate the waste.

23. Mr. Rowland testified that his brother, John Rowland would give him \$100,000, if applicants receive permanent authority. At first, Mr. Rowland said this money would not need to be repaid. Later he testified it would need to be repaid and was a line of credit. He presented a letter from his brother, showing agreement to provide the funds, with no verification of John Rowland's ability to do so. We find Enoch Rowland's testimony that he has access to this money less than credible, considering his conflicting testimony and the absence of verification of John Rowland's financial ability to provide the money.

24. Applicants presented several income and expense and pro forma statements, showing what was represented to be actual income and expenses and projected income and expenses [Exhibits 7, 34, 43, 47, 48, 49, and 52]. Information on these statements was contradictory and inaccurate, considering their contents and testimony of Mr. Rowland and Ms. Lorraine Y. Bowman, Affordable Accounting and Tax Service, Inc. The applicants did

not establish their financial fitness nor cost of service to any reliable degree.

25. Kleenwell filed a tariff with the Commission, covering biohazardous waste. The Commission approved this tariff on June 16, 1990. Kleenwell is allowed to charge \$20.00 for pick up of one box per month, consultation, and delivery of supplies (one special biohazardous waste box with lid and plastic liner, one sharps container, and one box of latex gloves). The tariff establishes a minimum of one pickup per month. Pickup of additional boxes is allowed at the rate of \$12.00 per box. Mr. Rowland knew that he had to charge in accordance with this tariff. Kleenwell charges its customers for sharps containers which are larger than one gallon, or in greater quantities than one per month. There is no provision in its tariff for such charges. Applicants submitted copies of statements and invoices for several shipper witnesses. Those statements and invoices showed some improper application of the tariff. In several instances, it was not possible to tell from the billings and invoices whether the tariff had been properly applied.

26. For a time, Kleenwell had customers sign a transportation contract (see Exhibit 10), which said that Kleenwell accepted ownership of the waste tendered by customers.

27. On August 24, 1990, by Order M.V.G. No. 1441, the Commission vacated Order M.V.G. No. 1434 (which had granted Kleenwell temporary authority) and set the matter for a brief adjudicative proceeding. Mr. Rowland received this order around August 24, but continued his operations on advice of his attorney. On October 2, 1990, the Commission issued Order M.V.G. No. 1445, denying Kleenwell's application for temporary authority. As of October 17, 1990, Mr. Rowland was continuing his operations although he knew that his temporary authority was denied. Kleenwell has received no citations from the Commission.

28. Mr. Rowland testified that he has made errors in starting and operating his business, but that he has learned and is now abiding by regulations. He stated that he intends to operate in compliance with laws and regulations. We find that testimony to be without credibility, since he knowingly violated Commission laws, rules, and orders in February, March, August, September, and October, 1990. He also knowingly violated Health Department regulations by holding infectious waste longer than allowed. His billings were not in accordance with the tariff, although he was aware the Commission required that. Applicants are not fit from a regulatory standpoint to receive the requested certificate.

29. George E. Kenny, B.S., M.S., Ph.D., testified as an expert witness for the applicant. Dr. Kenny is a professor

and chairman of the Department of Pathobiology, University of Washington, School of Public Health and Community Medicine; and adjunct professor, Department of Microbiology, University of Washington, School of Medicine. He has thirty years' experience in infectious disease research. He is chairman of the University of Washington Biohazards Committee, and he teaches a course on handling biohazardous materials. During 1989, he served on an advisory committee to develop a proposal to regulate the handling and transport of hazardous materials, for the Department of Ecology.

30. Dr. Kenny has seen an increase in blood-borne viral agents and believes forty new agents of that sort will appear within the next ten years or so. Vaccines to combat these viruses are not yet available. Hepatitis B, Hepatitis C, and AIDS viruses are examples of existing blood-borne viruses which are major hazards for health care workers. Exposure to those viruses can cause death, in a substantial percentage of carriers of those viruses. Dr. Kenny believes any materials contaminated with blood or body fluids, including sharps, must be disinfected and/or disposed of through incineration or steam sterilization (autoclaving).

31. As a consultant, Dr. Kenny visited the Kleenwell company and reviewed its written procedures. He found the storage site, vehicle, packaging, and procedures suitable for handling and transporting biohazardous waste. He was aware of past problems with the Recomp incinerator at Ferndale (specifically air emissions, ground water pollution, and ash disposal). In his opinion it is preferable to transport biohazardous waste as short a distance as possible, to minimize the likelihood of accidents. He believes that it is important to develop and use nearby incinerators which meet pollution standards.

32. Vernon D. Clausing, osteopathic physician and owner and operator of the Community Family Practice Clinic, Seattle, testified in support of this application. As a general practitioner, Dr. Clausing and his clinic generate medical waste. Examples of that waste are: needles, lancets, syringes, and scalpel blades (all generally classified as sharps); laboratory and surgical wastes such as soiled gauze, blood and pustular material; and infectious material such as bacteriological cultures. Dr. Clausing regards any body fluid and anything which comes into contact with body fluid as potentially infectious.

33. The clinic now uses Sure-Way to dispose of such waste, with a monthly pickup. Dr. Clausing did not know what volume of waste the clinic generated. Before using Sure-way, the clinic disposed of such waste in the regular garbage. Dr. Clausing is most concerned about the safe handling of such waste

within his clinic, to protect his employees and the public. As a citizen, he has some concern about the safe and proper disposal of such waste after it leaves his clinic. He sees no particular present benefit to himself of having the waste properly incinerated. He is generally satisfied with Sure-way's services, although he would prefer the applicant's services because Mr. Rowland provides in-house education about handling and disposing of infectious waste. If the applicant were to receive a certificate from the Commission, Dr. Clausing would consider using Kleenwell. Nick Raffo Garbage Co., Inc. is the regular solid waste collector for the clinic. Dr. Clausing has not asked that company to provide specialized service in collection and disposal of infectious waste, and Nick Raffo Company has not offered to provide that service.

34. Kathy Byquist, formerly primary office nurse for Steven Epstein, MD, testified in support of this application. Ms. Byquist retired from her position three weeks before the hearing, but Dr. Epstein authorized her to represent him. He is an obstetrician-gynecologist. In addition to his main office in the Riverton Heights area of Seattle, Dr. Epstein has satellite clinics in Factoria (Bellevue) and Riverton Heights. The largest part of medical waste this shipper generates is microbiological material (such as culture plates) and blood drawing material. The office and clinics generate one box per week of medical waste and one sharps container per month. Ms. Byquist found Kleenwell's service to be very efficient. She didn't remember any sales effort by Sure-way or AEMC. Safety of employees, timely pickups, and proper disposal are the primary considerations for this medical office.

35. Cindee Williams, medical technologist from the Auburn Pediatric Clinic, Auburn, testified in support of the application. Dr. Charles Sweigard, pediatrician, is the sole practitioner at that clinic. The clinic generates medical waste such as serum, blood, bacteriological cultures and specimens, gloves used for blood drawing, and sharps. During the three and one-half years Ms. Williams has been with the clinic, either Sure-Way or Kleenwell has picked up that waste. (During the time of Kleenwell's permit revocation, Lab Services picked up the medical waste, as arranged by Kleenwell.) Sure-Way provided very good service for the first two and one-half years of Ms. Williams's employment. The clinic changed to using Kleenwell because its charge for service was lower than Sure-Way's. Auburn Pediatric Clinic is satisfied with Kleenwell's service and with Mr. Rowland's knowledge of handling and disposal of biohazardous waste. Kleenwell's person who picked up waste wore a regular business suit, and would pick up the waste when delivering medical supplies. AEMC and Sure-Way have asked the clinic for its business. Ms. Williams wants clinic waste picked up by a company licensed by the state. She got a copy of the

Commission's order denying Kleenwell's temporary certificate. Mr. Rowland has not told her about his certificate being in jeopardy.

36. Greg Grantias, vice president of operations and management, Quantum Laboratories, Renton, testified in support of the application. Quantum Labs, started in 1986, is a clinical reference laboratory which analyzes blood and other specimens. This lab generates medical waste consisting of blood, blood tubes, urine, needles and syringes. Quantum has never put its medical waste in the regular garbage. Laboratories had regulations about disposal before clinics and medical offices.

37. From April 1988 to August 1989, Quantum had AEMC dispose of medical waste. Kleenwell provided service to Quantum from August 1989 until Kleenwell's permit was revoked in March 1990, and again from perhaps May until the time of the hearing. Mr. Grantias prefers Kleenwell's service which has included advice on cost containment and problems specific to the lab. Mr. Rowland has expertise in microbiology and has helped Quantum develop a biohazardous waste management plan. Mr. Grantias requires a transporter who can give him documentation of the ultimate destruction of the waste, and who correctly transports the waste in a proper container to an authorized disposal site. He is not concerned about the waste collector combining waste from several boxes into one box. He does not see any problem with the collector having another carrier transport the waste, unless there was a risk of exposure to waste or incorrect disposal.

38. Diana M. Kirby, office manager, bookkeeper, and sometime medical assistant for Norman Arcese, MD, Medical Dental Building, Seattle, testified in support of this application. Dr. Arcese practices internal medicine, specializing in pulmonary disease. The office generates medical waste which is primarily sharps, but also materials which come into contact with blood or feces. Now, the office fills up only one or two boxes per month. Up until about May of 1989, the office placed medical waste in the regular garbage, which was picked up by the Medical Dental Building's janitors.

39. In the spring of 1989, the Medical Dental Building and some governmental office notified Ms. Kirby that regulations required different disposal of medical waste. Mr. Rowland had been selling medical supplies to Dr. Arcese's office. Mr. Rowland told Ms. Kirby that he would also dispose of medical waste. Ms. Kirby began using Mr. Rowland's company for such disposal. She found it very convenient to tell the person who delivered medical supplies that they needed medical waste picked up. During the spring of 1990, when Kleenwell was not allowed to operate, Ms. Kirby combined her office's waste with that of a

nearby physician's office. In August 1990, Kleenwell resumed collection medical waste from Dr. Arcese's office.

40. Ms. Kirby is satisfied with Kleenwell's service and with Mr. Rowland's advice on handling and disposal of their waste. Protestants Sure-Way and AEMC have solicited business from Dr. Arcese's office, but Ms. Kirby did not like the strong approach of AEMC. Ms. Kirby wants to have the waste stored and disposed of as regulations require. She sees an advantage in having the collector of waste also able to take orders for medical supplies.

41. Jack Goldman M.D., Auburn, testified in support of this application. Dr. Goldman specializes in internal medicine and his associate specializes in infectious diseases. Their medical practice generates sharps and materials contaminated with blood and blood products. Usually, Dr. Goldman needs to have one sharps container and one box of biohazardous waste collected each month. Since October 1989, the applicants have collected waste from Dr. Goldman's office. Before that (and during Kleenwell's 1990 suspension of service), Eastside Medical Laboratories picked up this waste. Dr. Goldman wants proper disposal of his biohazardous waste, to prevent contamination, but he does not have a preferred method of disposal. Dr. Goldman has been satisfied with the applicants' services. He does not require applicants' training services. He did not recall any solicitations from AEMC or from Sure-Way. He had not asked his regular garbage hauler for service and that hauler had not offered to collect biohazardous medical waste.

42. All of the waste generators supporting this application are in King County. They must comply with Health Department regulations by using a service such as proposed by the applicants to dispose of their untreated biohazardous waste.

43. The evidence presented establishes that the service proposed by the applicants is reasonably necessary to meet the needs of waste generators and to protect the public from the hazards of untreated infectious waste.

44. Jerry Graham, sales manager and public relations for R.S.T. Disposal Co., Inc., Nick Raffo Garbage Co., Inc., and Federal Way Disposal Co., Inc., testified on behalf of those companies. As of the date of the application, these companies actively provided solid waste collection service to the full extent of their territorial authority. The companies have no authority to serve the Cities of Seattle and Renton.

45. R.S.T. Disposal Co., Inc. holds Certificate G-185 and actively provided solid waste collection service in the south King County area under that certificate. R.S.T. Disposal also

does business under the name Tri-Star Disposal, which provided solid waste collection service in the City of Kent, also under Certificate G-185.

46. Nick Raffo Garbage Co., Inc. holds Certificate G-16 and actively provided solid waste collection service in areas of south King County.

47. Federal Way Disposal Co., Inc. holds Certificate G-35 and under that certificate actively provided solid waste collection service in most of the City of Federal Way.

48. On April 22, 1988, Nick Raffo Garbage Co., Tri-Star Disposal, and R.S.T. Disposal Co. sent letters to their customers who could be identified as possible generators of biohazardous or infectious medical waste. The letter said that each company was ready, willing, and able under its existing certificate to transport biohazardous and infectious wastes. The letter invited generators of such waste to contact the company, which would continue to provide for customers' waste disposal needs. The companies received no requests for service. The R.S.T. companies have done no other solicitation of business from generators of biohazardous waste. Mr. Graham knew of no requests for service from the R.S.T. companies from the waste generators testifying in support of the application.

49. Mr. Graham said that the equipment operated by the R.S.T. companies was suitable for all types of wet and dry garbage and refuse. Upon further questioning, he said that there "could be some piece of equipment" that "could possibly" be used to transport biohazardous waste. Additional equipment could be obtained through a related company. The equipment available to the R.S.T. companies was not suitable for transporting biohazardous waste.

50. Mr. Graham testified that the R.S.T. companies are ready, willing, and able to provide service in collection of biohazardous waste. He said that new company ownership has committed itself to providing any needed service. If service was requested, they would provide it, he said. In support of his contentions, Mr. Graham and other company personnel have attended seminars and conferences, trying to "keep on top of what's going on in the medical waste field." The companies are also pursuing an agreement, the terms of which were unclear, to have another company provide assistance if R.S.T. equipment isn't readily available to provide service [TR 1032, 1041]. The R.S.T. companies did not show any arrangements they had made for a suitable disposal site nor an operational plan to collect, transport, and dispose of biohazardous waste. Mr. Graham's testimony does not establish that a customer would have found biohazardous waste collection, transportation, and disposal

available from the companies. Mr. Graham's assertions of readiness and ability to provide the service are not credible. There was no showing of any preparedness to provide service, nor of the proper equipment, personnel, or disposal plan required by the unique solid waste at issue. Protestants R.S.T. Disposal Co., Inc., Federal Way Disposal Co., Inc., and Nick Raffo Garbage Co., Inc. have not provided the service the applicants propose to the satisfaction of the Commission.

51. Pamela Badger testified in opposition to this application on behalf of Waste Management of North America (WMNA). The protestants known collectively as the Bayside companies are wholly owned subsidiaries of WMNA. Ms. Badger is senior environmental specialist for WMNA's northwest regional office. She has a master's degree in public health, with a minor in environmental microbiology. She has served on the Department of Ecology infectious waste technical advisory group and is familiar with federal, state, and local regulations on handling biohazardous waste. She has advised WMNA subsidiaries in the Northwest on environmental regulations, has prepared biomedical and biohazardous operating plans in accordance with Commission regulations, and has trained employees in handling biohazardous waste and use of their spill kit. Within Western Washington, each subsidiary of WMNA is a separate operating unit with a general manager who reports to the WMNA regional operations manager in Kirkland, Washington.

52. Bayside Waste Hauling & Transfer, Inc. (Bayside), at the time of the application, held Certificate G-140. Under that certificate, Bayside was actively providing solid waste collection service to the extent of its authority, including service to the City of Seattle and the White Center and Skyway areas (south of Seattle).

53. Rainier Disposal Company (Rainier) held certificate G-63 at the time of the application and provided solid waste collection service in Renton, Factoria, and southeast King County, including the Black Diamond-Enumclaw area.

54. Snoking Garbage Company (Snoking) held certificate G-126, and provided solid waste collection service in the northeastern corner of King County, including Bothell, Kirkland, Redmond, Duvall, and Carnation.

55. Northwest Garbage Company (Northwest) held certificate G-43 and provided solid waste collection service in most of Snohomish County (excluding the City of Everett), and northwest King County including Richmond Beach.

56. Snoking, Rainier, and Bayside now collect only sharps (needles, syringes, lancets, etc.) in their respective

areas. Their regular solid waste collection trucks have a special bin on the side for transporting the sharps, which are taken to the Cedar Hills landfill for disposal. Under King County regulations, containerized sharps are considered treated biohazardous waste. The Bayside companies have not provided service in Western Washington in collection of untreated biohazardous waste, which requires an approved disposal site. No such site is available to them.

57. The WMNA subsidiary in Kennewick provides full biohazardous waste collection service, with disposal of waste subcontracted to American Environmental Management Corporation.

58. Ms. Badger has investigated using the Recomp incinerator at Ferndale. She and WMNA decided not to use this incinerator because of environmental concerns, especially the disposal of ash, and possible surface water contamination caused by storage of ash on that site.

59. Robert Schille, special projects, public affairs and utilities, transportation liaison management manager of WMNA's northwest office also testified in opposition to this application. He projects his company will provide biohazardous waste collection service. He knows of no instances where the Bayside companies have denied a request for such service. WMNA is prepared to invest in specialized equipment for Western Washington when that is needed.

60. John Paul Jones III, executive director of the Washington Waste Management Association testified in opposition to this application. The Association protested this application on its own behalf and on behalf of its statewide members. Mr. Jones presented a membership list of forty-six members with authority to provide solid waste collection service, along with copies of their certificates. These certificate holders cover most of the State, including King, Pierce, and Kitsap Counties. Mr. Jones believes Association members stand ready to provide infectious waste collection service. He did not address the carriers' ability to provide biohazardous waste collection service at the time this application was filed. Association members had the authority to provide biohazardous waste collection service, but did not do so.

61. Ramona Niewoehner, sales representative, and Jeffrey Daub, salesman, both with American Environmental Management Corporation (AEMC), testified in opposition to this application. That company has a pending application for a certificate of public convenience and necessity to operate motor vehicles in furnishing the following:

garbage and refuse collection service consisting of biohazardous, infectious, contaminated and pathological waste and other related infectious medical wastes in specialized containers from points in the State of Washington to incineration sites owned and/or operated by American Environmental Management Corporation.

Under Certificate TG-72, AEMC provides the service for which it seeks permanent authority.

62. Stan Robinson, general manager of Sure-Way Incineration, Inc. (Sure-Way) testified in opposition to this application. Sure-Way has a pending application for a certificate of public convenience and necessity to operate motor vehicles in furnishing the following:

refuse collection service consisting of infectious, contaminated and pathological waste, bio medical wastes, and other related infectious medical waste from hospitals, medical clinics or laboratories, nursing homes, medical or dental offices or clinics, health care centers, blood banks, pharmaceutical establishments, veterinary offices or clinics, funeral parlors, crematories, psychiatric care centers or offices, biological products industries and other bio medical institutions to incineration plants or other licensed disposal sites in the state of Washington.

Sure-Way has been providing the service set forth above, under authority of Order M.V.G. No. 1356, GA-884. Mr. Robinson alleged that Kleenwell was using Sure-Way boxes for its customers.

CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over the persons and subject matter of this application proceeding.

2. The applicants are willing to provide service, but they have not established their financial and regulatory fitness as required by WAC 480-70-160, nor the cost of the proposed services and financial feasibility of their operations as required by RCW 81.77.040.

3. The application should be denied.


4. The protestants who are existing solid waste carriers did not serve to the satisfaction of the Commission, in providing the specialized infectious waste collection and disposal required by generators of that waste. There is a need for the service which was proposed by the applicant.

O R D E R

IT IS HEREBY ORDERED That Application No. GA-907 of Enoch Rowland and Milton Bloch, d/b/a Kleenwell Biohazard Waste and General Ecology Consultants, be denied.

DATED at Olympia, Washington, and effective this 13th day of March, 1991.

OFFICE OF ADMINISTRATIVE HEARINGS



CHRISTINE CLISHE
Administrative Law Judge

NOTICE TO PARTIES:

This is an initial order only. The action proposed in this order is not effective until a final order of the Utilities and Transportation Commission is entered. If you disagree with this initial order and want the Commission to consider your comments, you must take specific action within a time limit as outlined below.

Any party to this proceeding has twenty (20) days after the service date of this initial order to file a Petition for Administrative Review, under WAC 480-09-780(2). Requirements of a Petition are contained in WAC 480-09-780(4). As provided in WAC 480-09-780(5), any party may file an Answer to a Petition for Administrative Review within ten (10) days after service of the Petition. A Petition for Reopening may be filed by any party after the close of the record and before entry of a final order, under WAC 480-09-820(2). One copy of any Petition or Answer must be served on each party of record and each party's attorney or other authorized representative, with proof of service as required by WAC 480-09-120(2).

In accordance with WAC 480-09-100, all documents to be filed must be addressed to: Office of the Secretary, Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., Olympia, Washington, 98504-8002. After reviewing the Petitions for Administrative Review, Answers, briefs, and oral arguments, if any, the Commission will by final order affirm, reverse, or modify this initial order.