

VIA FACSIMILE AND REGULAR MAIL

October 20, 1994

*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

STATE OF WASH
UTIL. & TRANSP
COMMISSION

RECEIVED
94 OCT 25 10:43

Re: The Disposal Group, Inc. v. Waste Management Disposal Services of Oregon
Cause No. TG-941154
Our File No. 144-3 (146)

Dear Mr. McLellan:

Pursuant to a continuation of the prehearing conference, held on October 19, 1994, The Disposal Group, Inc. submits the following list of documents to be entered into the record as direct evidence or to which The Disposal Group requests the Commission take judicial notice, pursuant to RCW 34.05.452:

1. Clark County Solid Waste Management Plan, dated April 1994.
2. Contract between Rust Remedial Services, Inc. and Waste Management Disposal Services of Oregon, Inc., dba Oregon Waste Systems, executed by the parties on September 5, 1994 and September 16, 1994.
3. Contract between Waste Management Disposal Services of Oregon, Inc., dba Oregon Waste Systems and T&G Trucking and Freight, Inc., dated July 1, 1994.
4. Oregon Department of Environmental Quality "Rule Interpretation for OAR Chapter 340 Division 97: Relating to the Calculation of Disposal Tonnage for Purpose of Fee Payment by Permitted Municipal and Industrial Solid Waste Landfills," effective October 1, 1994.

At the above-noted conference, it was agreed that a copy of the Clark County Solid Waste Management Plan is available to all parties and thus a copy is not provided herewith. Copies of all other documents are enclosed except for the rule interpretation from DEQ which, due to technical difficulties at our office, we have not been able to

Mr. Steve McLellan
October 20, 1994
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receive from DEQ. A copy will be provided to all parties immediately after we receive it.

At yesterday's conference, the parties also agreed to circulate a list of primary witnesses which we intend to call at the hearing on October 25, 1994. Assuming the most recent draft of Stipulated Facts continues to be agreed to by all parties and there is no objection to introduction of the above-noted documents, either directly or through judicial notice, The Disposal Group will not call witnesses at the hearing.

Sincerely,



CYNTHIA A. HORENSTEIN

CAH:lk

Enclosures

cc: Mark Leichner, The Disposal Group

00144003.L49

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding, by facsimile and first class mail, postage prepaid, to:

John Prusia
Administrative Law Judge
Utilities and Transportation
Subdivision of the Office of
Administrative Hearings
2420 Bristol Court S.W.
P.O. Box 42489
Olympia, WA 98504-2489

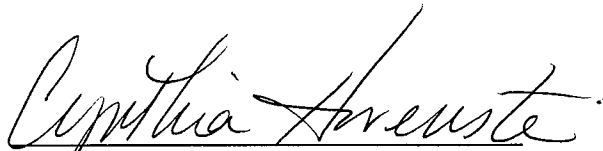
Steven W. Smith
Assistant Attorney General
Heritage Plaza Building
1400 South Evergreen Park Drive S.W.
Olympia, WA 98504-0128

Bill Rasmussen
Davis Wright Tremaine
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1688
Attorney for Waste Management

Jack R. Davis
Allison, Davis & Haffner
1200 Fifth Avenue, Suite 1900
Seattle, WA 98101
Attorney for T&G

Jim Sells
510 Washington Avenue, Suite 300
Bremerton, WA 98337
Attorney for WRRRA/Intervenor

DATED this 20th day of October, 1994.


Cynthia A. Horenstein, WSB #17830
Of attorneys for The Disposal Group,
Inc.



SERVICE AGREEMENT
NON-HAZARDOUS WASTE DISPOSAL

Contract # 082293-D
WMNA # 199962

The above named landfill and corporation are referred to herein as "Facility" and "Contractor," respectively.

Customer Billing Name:	Rust Remedial Services, Inc.
Customer's Billing Address:	4227 Technology Drive
City, State/Province, Zip/Postal Code:	Freemont, CA 94538-6337
Customer Contact: August Ochabauer	Phone Number: 510-249-4639
Bank Reference: n/a	Bank Contact: n/a

Credit will be extended to Customer only with the accompaniment of collateral in the form of cash, surety bond, an approved irrevocable commercial letter of credit in the amount equal to a normal 45 day disposal charge, or in an alternative form acceptable to the Contractor. It is the responsibility of the Customer to keep a surety bond or letter of credit current. Collateral deposits will be adjusted when there is an increase in disposal tonnage and/or rates. Collateral deficiencies must be corrected within 30 days of notice of adjustment required.

This is a legally binding contract, and Contractor agrees to provide and Customer agrees to accept the waste disposal services subject to the terms and conditions specified in this contract.

ESTIMATED MONTHLY AMOUNT OF WASTE FOR LAND DISPOSAL:

50,000 tons
(Include units e.g. cubic yards, pounds, kilograms)

Special instructions: Please see attached contract.

CUSTOMER

August Ochabauer
Authorized Signature
OPS. MGR. 9-5-94
Title Date

CONTRACTOR

[Signature]
Representative
Dykes Hill 9/16/94
Title Date

TERMS AND CONDITIONS OF DISPOSAL AGREEMENT

The Agreement. The agreement of the parties for the disposal of waste shall consist of this Agreement, Contractor's Definition of Special Waste, and any Generator's Special Waste Profile Sheet applicable to such waste.

Waste Accepted at Facility. Customer warrants that the waste delivered to Contractor hereunder will not contain a regulated quantity of any hazardous, radioactive, or toxic waste or substance as defined by applicable Federal, state, local or provincial laws or regulations.

Special Waste. Customer warrants that the waste delivered to Contractor hereunder will not contain any Special Waste unless specifically described on Generator's Special Waste Profile Sheet(s) which is attached hereto or which Contractor later agrees to accept in writing. Special Waste means any solid waste which meets the Contractor's Definition of Special Waste. The parties may incorporate additional Special Waste as part of this Agreement if prior to delivery of such waste to Contractor, Customer has provided a Generator's Special Waste Profile Sheet for such waste and Contractor has approved disposal of such waste in writing. Customer agrees to comply with precautions, limitations, and conditions contained in Contractor's written notice of approval of Special Waste.

Right of Refusal/Rejection. Contractor has the right to refuse or reject after acceptance any load of wastes delivered to its Facility if the Contractor believes the Customer has breached (or is breaching) its warranties or agreements hereunder. If Customer delivers wastes in breach of any warranty or agreements herein, Contractor may in its sole discretion either remove and dispose of that waste and charge Customer for: the costs or require Customer to promptly remove the waste.

Limited License to Enter. During the term of this Agreement, Customer shall have a license to enter the Facility for the limited purpose of, and only to the extent necessary for, off-loading waste at the location and in the manner directed by Contractor. Except in an emergency, or at the express direction of Contractor, Customer's personnel shall not leave the immediate vicinity of their vehicle. After off-loading the waste, Customer's personnel shall promptly leave the Facility. Under no circumstances shall Customer or its personnel engage in any scavenging of waste at the Facility. Contractor may refuse to accept waste from, and shall deny an entrance license to, any of Customer's personnel whom Contractor believes is under the influence of alcohol or other chemical substances.

Charges and Payment. Customer agrees to pay Contractor's posted disposal rates which may change from time to time. Customer shall be liable for all taxes, fees, or other charges imposed upon the disposal of Customer's waste by Federal, state, local or provincial laws and regulations. Payment shall be made by Customer within ten (10) days after the date of the invoice from Contractor. In the event that any payment is not made when due, Contractor may terminate the Agreement. Customer agrees to pay a late fee for all past due payments not to exceed the maximum rate allowed by applicable law.

Term. This Agreement shall continue in effect until terminated by either party, with or without cause, upon forty-eight (48) hours notice. Customer's representations and warranties regarding the waste delivered and the mutual indemnities shall survive termination of this Agreement.

Driver's Knowledge and Authority. Customer warrants that its drivers who deliver waste to Contractor's Facility have been advised by Customer of Contractor's prohibition of deliveries of hazardous, radioactive, or toxic waste to the Facility, of Contractor's restrictions on deliveries of Special Waste to the Facility, of the definitions of "hazardous waste" and "Special Waste" herein provided, and of the terms of this license to enter Contractor's Facility.

Indemnification. (a) Contractor agrees to indemnify, save harmless, and defend the Customer from and against any and all liabilities, claims, penalties, forfeitures, suits, and the costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorneys' fees), which it may hereafter incur, become responsible for, or pay out as a result of death or bodily injuries to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulations, or orders caused solely by the negligent or willful act or omissions of Contractor's employees, or its subcontractors in the performance of the Agreement.

(b) Customer agrees to indemnify, save harmless, and defend Contractor from and against any and all liabilities, claims, penalties, forfeitures, suits, and the costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorneys' fees), which it may hereafter incur, become responsible for, or pay out as a result of death or bodily injuries to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulations, or orders caused, in whole or in part by the Customer's breach of any warranty, term or provision of the Agreement, or any negligent or willful act or omission of the Customer, its employees, or subcontractors in the performance of the Agreement.

Attorney's Fees. In the event of a breach of the Agreement, the breaching party shall pay all reasonable attorneys' fees, collection fees and costs of the other party incident to any action brought to enforce the Agreement.

Assignment. Neither party may assign, transfer or otherwise vest in any other company, entity or person, any of its rights or obligations under the Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, that Contractor may, without any such prior written consent, assign its rights and/or obligations under the Agreement to a subsidiary or affiliate corporation.

Miscellaneous. The Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. The Agreement shall be governed by and construed in accordance with the laws of the State in which the Facility is located.

Page 3 of 3
Contract # 082294-D
WMNA # 199962

DISPOSAL AND TRANSPORTATION FEES

[REDACTED]

TAXES, FEES AND SURCHARGES

\$.124 per ton Oregon DEQ fee for Oregon generated waste disposed (includes \$.13 per ton orphan site fee effective 01/01/93).

TERMS OF PAYMENT

30 days net (with approved credit). Without prior credit approval, all charges must be paid upon delivery to landfill.

SPECIAL INSTRUCTIONS

Waste must not contain free liquids.

FROM : Panasonic TAD/FAX

PHONE NO. :

Sep. 19 1994 01:49PM P2

09-19-1994 11:11AM FROM OWS

TO

090560 P.01

INDEPENDENT CONTRACTOR AGREEMENT

THIS AGREEMENT (the "Agreement") is made this 1st day of July, 1994, by and between Waste Management Disposal Services of Oregon, Inc., dba Oregon Waste Systems, Inc., ("OWS") and T&C TRUCKING AND FREIGHT, INC, a Corporation (corporation, partnership or sole proprietorship) ("Contractor").

RECITALS

1. Contractor is in the trucking business and has sufficient vehicles and the proper permits and licenses to perform such services.
2. OWS desires to contract with Contractor and Contractor desires to contract with OWS to provide services on the terms and conditions set forth herein.
3. OWS is an Equal Opportunity/Affirmative Action employer and does not discriminate on the basis of race, creed, color, national origin, sex, age, disability and disabled or Vietnam Era veteran status and requires that its contractors and subcontractors do the same.

NOW, THEREFORE, in consideration of the foregoing mutual promises and covenants, the parties hereto agree as follows:

1. Performance of Services

- 1.1 Location and Frequency of Services. Contractor agrees to perform such services as may be required under the purchase orders which are issued by OWS (OWS Purchase Order), in the form attached as Exhibit A or similar.
- 1.2 Performance of Services. Contractor agrees to perform the services in a professional and workmanlike manner and in compliance with all applicable laws, ordinances, rules, regulations and permits, including, but not limited to, Motor Carrier Safety Regulations (D.O.T. CFR49383 and 390-398) Vehicle Codes and Commercial Driver Licensing Laws. Contractor also represents and warrants that its employees are properly licensed to operate any motor vehicles and equipment necessary to perform the services herein. Contractor also represents and warrants that, by accepting and performing work under an OWS Purchase Order, that it has obtained all necessary permits and authorizations required by the Oregon Public Utility Commission, the Washington Utilities and Transportation Commission, or other similar State transportation authorities, as applicable.

FROM : Panasonic TAD/FAX

PHONE NO. :

Sep. 19 1994 01:50PM P3

09-19-1994 11:11AM FROM OWS

TO

2639560 P.02

OWS shall have the right to inspect, review and monitor Contractor's performance under this Agreement. If following any such review, OWS believes that Contractor's performance is inadequate, substandard, or is otherwise not in compliance with this Agreement, then OWS shall give notice of such breach to Contractor and Contractor shall have no more than three calendar days following receipt of such notice to cure such breach. If such breach is not cured within such period, OWS may immediately terminate this Agreement and any applicable OWS Purchase Order and pursue such other remedies at law as it may deem necessary.

- 1.3 Costs of Performing Services. Contractor shall bear all costs of performing the services, including, but not limited to: i) all maintenance costs required to maintain its vehicles in a condition and in a manner consistent with practices established by applicable laws, ordinances, regulations and permits, and (ii) all operating costs for equipment, personnel, fuel costs and permit and license fees.

2. Compensation

- 2.1 Rate of Compensation. OWS agrees to pay Contractor for the services performed by Contractor at the rate specified in the applicable OWS Purchase Order.

- 2.2 Adjustments to Compensation. Deductions in the payments due Contractor hereunder shall be made by OWS in an amount equal to that which OWS is required to spend on account of the Contractor's failure to perform the services or the amount of any liability or expense incurred by OWS by reason of the breach by Contractor of any of its obligations hereunder.

3. Term and Termination

- 3.1 Term. This Agreement shall commence on the date first written above and shall extend for a period of three (3) years unless otherwise terminated pursuant to the provisions of this Agreement.

- 3.2 Termination. This Agreement shall terminate upon the occurrence of any of the following events:

- (a) The filing by or against Contractor of a petition, consent or application under any federal or state bankruptcy law or any other law in which Contractor is alleged to be insolvent or unable to pay its debts as they become due or the making by Contractor of an assignment of the benefit of creditors;

FROM : Panasonic FAX/FAX

PHONE NO. :

Sep. 19 1994 01:50PM P4

09-19-1994 11:12AM

FROM OWS

TO

2839560 P.03

- (b) The failure of Contractor to perform any obligation imposed upon it by this Agreement, or a breach by Contractor of any covenant set forth herein; or
- (c) Thirty (30) days following receipt by Contractor of OWS's written notice of termination.

4. **Confidentiality.** Contractor recognizes and agrees that any information that it may obtain during the course of performing the services concerning the operations, plans, customers and procedures of OWS is confidential and proprietary information. Contractor will not during or after the term hereof in any way utilize such confidential and proprietary information without the prior written consent of OWS, except that Contractor and its employees may use such information disclosed to it by OWS in order to perform the services hereunder.

5. Matters Relating to Performing Services

5.1 **Insurance.** Contractor shall be responsible for any personal injury to any person and for any damage to property suffered by the public or by any private person that may be sustained through, or on account of, any negligence, failure or fault of Contractor, or its agents or servants, in complying with any carrying out the terms of this Agreement, and for any negligence with may occur as a fault of Contractor.

Contractor agrees to keep at a minimum the following insurance in full force and effect during the term of this Agreement:

Workers' Compensation. (This coverage is required if Contractor employees individuals on either a full- or part-time basis to perform the Services.)

Coverage A Statutory

Coverage B One Million

FROM : Panasonic TAD/FAX

PHONE NO. :

Sep. 19 1994 01:51PM PS

09-19-1994 11:13AM FROM OWS

TO

2039560 7.04

Automobile Liability

Bodily Injury One Million Each Person
 One Million Each Accident

Property Damage One Million Each Accident

Comprehensive General Liability

Bodily Injury One Million Each Occurrence
 One Million Aggregate

Property Damage One Million Each Occurrence
 One Million Aggregate

Cargo Fifty Thousand Each Occurrence

The policy shall be endorsed to provide OWS with thirty (30) days prior written notice of termination, cancellation or material change in coverage. Such insurance shall name OWS as additional insured and shall hold Waste Management harmless of liability and all such actions. Satisfactory evidence of such insurance in an acceptable company shall be submitted to OWS at least ten (10) days after to the execution of this Agreement. OWS shall be the sole judge of what evidence is satisfactory and which company is acceptable. In addition, said certificates of insurance OWS as additional insured shall be resubmitted to on an annual basis.

FROM : Panasonic TAD/FAX

PHONE NO. :

Sep. 19 1994 01:51PM PG

09-19-1994 11:13AM FROM OWS

TO

2035560 P.05

6. Miscellaneous

6.1 Independent Contractor. Contractor shall be considered an independent contractor and performing the services hereunder and shall not be deemed an employee, agent or representative of OWS.

It is understood and agreed that the Contractor is, and at all times shall be, an independent contractor and nothing contained herein shall be construed as making Contractor, or any individual whose compensation for services is paid by Contractor, as agent or employee of OWS or authorizing the Contractor to create or assume any obligation or liability for or on behalf of OWS. Further, in connection with any claim for liability against OWS by any reason of any acts of Contractor, Contractor agrees to indemnify and hold OWS and its parent company harmless therefrom.

6.2 Notices. Any notice, request, report or other document required or permitted under this Agreement shall be in writing and sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the party to be notified at the addresses appearing below, or such other address as such party may hereafter designate by written notice. Any such change of address shall be effective upon receipt of said notice.

Oregon Waste Services

Contractor

**Doug Coenen
Division President and
General Manager
18177 Cedar Springs Lane
Arlington, Or 97812**

6.3 Applicable Law. This Agreement shall be governed by the laws of the State of Oregon.

6.4 Entire Agreement. This Agreement (including any schedules attached hereto) constitutes the entire agreement and understanding between the parties with respect to the matters contained herein, and supersedes any prior agreement matters contained herein, and supersedes any prior agreement and understandings relating to the subject matter hereof. The Agreement may be modified or amended by a written instrument executed by both parties hereto.

FROM : Panasonic TAD/FAX

PHONE NO. :

Sep. 19 1994 01:52PM P7

09-19-1994 11:11AM FROM OWS

TO

2839560 P.06

- 6.5 Legal Fees. If any legal action or any other proceeding is brought of the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.
- 6.6 Incorporation of Exhibits. Each and every Exhibit referred to herein and attached hereto is hereby incorporated herein by reference as it set forth herein in full.
- 6.7 Assignment. This Agreement may not be assigned in whole or in part by one party without prior written consent of the other party, except that this provision shall not prevent the assignment by Waste Management to any subsidiary, parent or affiliated company. If this Agreement is assigned as provided above, it shall be binding upon the inure and the benefit of the successors and assigns of the parties hereto.
- 6.8 Severability. If any provision of this Agreement is or becomes or is deemed invalid, illegal or unenforceable under the applicable laws or regulations of any jurisdiction, such provision will be deemed amended to the extent necessary to conform to applicable laws or regulations or, if it cannot be so amended without materially altering the intention of the parties, it will be stricken, and the remainder of this Agreement will remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

OREGON WASTE SYSTEMS

T & G TRUCKING AND FREIGHT INC

By:

[Handwritten Signature]

Title: VP - Sales & Transportation

By:

[Handwritten Signature]

Title: President

B:\CONTRACT\AGREE.OWS