

1
2
3
4
5
6
7 BEFORE THE WASHINGTON STATE
8 UTILITIES AND TRANSPORTATION COMMISSION

9 In Re Application of Waste
10 Management of Washington,
11 Inc. d/b/a WM Healthcare
12 Solutions of Washington

Docket TG-120033

13 OBJECTIONS OF WASHINGTON
14 REFUSE & RECYCLING ASSOCIATION;
15 RUBATINO REFUSE REMOVAL, INC.;
16 CONSOLIDATED DISPOSAL SERVICES,
17 INC.; MURREY'S DISPOSAL, INC.; AND
18 PULLMAN DISPOSAL SERVICE, INC. TO
19 PORTIONS OF PREHEARING CONFERENCE
20 ORDER 041912

21 COME NOW PROTESTANTS Washington Refuse and Recycling
22 Association; Rubatino Refuse Removal, Inc.; Consolidated Disposal Services,
23 Inc; Murrey's Disposal, Inc.; and Pullman Disposal Service, Inc. and object to
24 portions of the Prehearing Conference Order entered herein on April 16, 2012.
25 This objection is made pursuant to the record and file in this matter, WAC
26 480-07-430 and WAC 480-07-810. The specific portions objected to are
Paragraphs (6) and (8):

PARAGRAPH (6): This portion of the Order calls for prehearing briefs on
a "Preliminary Legal Issue". Protestants certainly have no objections to
briefing of legal issues; but this portion of the Order would seem to put the
proverbial cart before the horse. The relevant statutes and voluminous case
law on the issue of biomedical waste, and the Commission's role in same, is
clear and presently open to very little, if any, legal integration or dissection.

Objections of WRRRA; Rubatino; Consolidated
Disposal; Murrey's; and Pullman Disposal to
Portions of Prehearing Conference Order
041912 - 1

JAMES K. SELLS

Attorney at Law

PMB 22, 3110 Judson St., Gig Harbor, WA 98335
360.981.0168 / e-mail: jamesells@comcast.net

1 We know what the law is; the purpose of a hearing such as this is to
2 determine how the law applies to this particular factual situation; not the
3 other way around.

4 Medical waste is garbage, but it is different. This is nothing new. As
5 the Commission noted in the Application to Ryder Distribution Resources,
6 Inc., Order MVG No. 1761 (also Order in Hearing No. GA-77539 (1995)):

7 The Commissioner is neither attempting to dismantle
8 regulation nor to harm existing carriers. It is dealing with
9 needs and services that were not contemplated at the time
10 the solid waste statutes were enacted, in a manner that not
11 only satisfies the statutory requirements but also satisfies
12 the public need and preserves the viability of universal
13 service. Contrary to Protestant's contentions, the
14 Commission is most assuredly neither attempting to
15 regulate nor asserting any jurisdiction over disposal.
16 Page 11 (emphasis added).

17 In other words, although medical waste may well be "different" from
18 traditional "garbage collection", the basic laws of solid waste collection (RCW
19 Chap. 81.77; WAC 480-07 and WAC 480-70) still apply. The basis of these
20 laws is simple, if the existing certificate holder is not providing service to the
21 "satisfaction of the Commission" the Commission may grant additional
22 authority. That is, the rules of engagement are already in place. In pertinent
23 part, RCW 81.77.040 states:

24 When an applicant requests a certificate to operate in a
25 territory already served by a certificate holder under this
26 chapter, the commission may, after notice and an
opportunity for a 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. . . .

27 Protestants represented by the undersigned see this as clear a legal
28 direction as can be found in our ever expanding catalogue of laws. Simply
29 put, here is the law: The Commission holds a hearing and makes the factual
30 determination as to whether the existing carrier is serving to its satisfaction.
31 Without question, when medical waste is involved the factual issues may (and

1 probably will) be more difficult, and certainly more technical. But the law is
2 the same, and provides not only for the same procedure, but the same
3 application of the facts to the law.

4 The problem with Paragraph (6) is not that it calls for prehearing
5 briefing, but that it calls for briefing with no relevant purpose, other than to
6 seek interpretation of a law which is firmly in place, and has been interpreted
7 by the Commission and the Courts time and time again. The briefing should
8 come after the facts are established via testimony, not before. The
9 Administrative Law Judge's job here¹ is to apply the facts to the law and make
10 a decision based upon that application. It is not to ponder and perhaps
11 administratively adjust the clearly applicable law before the evidence is
12 presented. The law "is what it is", and until the facts are presented in this (or
13 any other) case where the law is clear, there is absolutely no reason to subject
14 the parties, staff and Administrative Law Judge to a briefing exercise which
15 would appear to serve no useful present purpose. The time and expense
16 involved simply do not justify whatever may be the result.

17 Protestants have no objection to briefing, but it should be done when
18 there is something to brief.

19 PARAGRAPH (8): This unprecedented portion of the Order is of very
20 significant concern to the undersigned Protestants; and, we are certain, will
21 perhaps even be more troublesome to the other Protestants.

22 There is no argument that a court or an agency can "manage" discovery
23 to the point (as in Federal courts) of limiting the number of questions in
24 interrogatories, or even the number of pages. However, Paragraph (8), rather,
25 limits the "scope of the parties' interest in the proceeding. . .", which seems to
26 Protestants to be not only unprecedented but punitive, as it relates to
"financial or operative fitness" of the applicant. It almost seems to say "Waste
Management is a big international company and everybody knows they have
the ability to provide the service, so why waste time asking them about it?" It

¹ And eventually that of the Commission.

1 cannot help but remind one of those (mostly totally uninformed) folks who,
2 when discussing a criminal trial, respond with “why bother with a trial -
3 everyone knows he/she did it!”

4 Applicant may well be fully capable of providing the requested service,
5 but we do not know that, and we will not know it unless and until they can
6 prove it on the hearing record. The fitness requirement does not simply go
7 away because the applicant may be a large, apparently well-financed

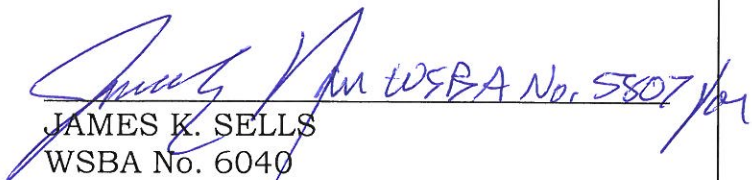
8 . . . must show that it has the financial ability to provide
9 the proposed service. The applicant must also state its
10 assets and establish its costs of operation and facilities.
11 Finally, the applicant must demonstrate the financial
12 feasibility of the operations. Ryder Distribution Resources,
Inc., Order M.V.G. No. 1761, Hearing No. GA-77539 and
GA-75154 (August 1995); citing In re Sureway Medical
Services, Inc., Order GA-7598 (November 1993).

13 Protestants have no problem whatsoever adhering to the Commission’s
14 rules relative to discovery. However, Paragraph (8) invokes an entirely new
15 and never adopted set of “rules”, which seriously and unfairly limit
16 Protestants’ access to information which is clearly contemplated by the rules
17 and is material to the showing required by a solid waste collection company
18 applicant to make under law, and has been previously accepted and approved
19 by the Commission in similar proceedings. The requirement in Paragraph (8)
20 of the Prehearing Conference Order appears to layer on a requirement above
21 and beyond the discovery rules and, in so doing, constrains the Protestants’
22 abilities to develop a full hearing record.

23 REQUEST FOR RELIEF: WAC 480-07-810(2)(b) approves review of an
24 interlocutory order such as this when “a review is necessary to prevent
25 substantial prejudice to a party that would not be remediable by post-hearing
26 review.” The paragraphs subject to objection here basically limit discovery to
the point that it is meaningless and it curtails Protestants’ rights to inquire as
to a significant part of the applicant’s fitness by literally granting applicant a
pass on some of the fundamental legal and evidentiary tests any applicant

1 must address before it can be granted authority. The two sections should,
2 thus, be revised to simply state that the Commission's rules on discovery will
3 be followed, and eliminate for now any requirement for prehearing legal briefs.
4 Finally, if applicant believes the discovery rules are being abused, it has
5 ample opportunity to present that position to the Administrative Law Judge or
6 the Commission.

7
8 Respectfully submitted this 23rd day of April 2012.

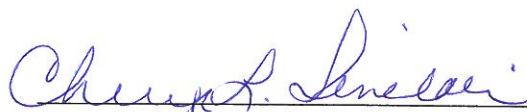
9 
10 JAMES K. SELLS
11 WSBA No. 6040
12 Attorney for Protestants WRRRA,
13 Rubatino, Consolidated, Murrey's and
14 Pullman

CERTIFICATE OF SERVICE

I hereby certify that I have this day served this document upon all parties of record in this proceeding, by the method as indicated below, pursuant to WAC 480-07-150.

Washington Utilities and Transportation Commission 1300 S. Evergreen Park Dr. SW PO Box 47250 Olympia, WA 98504-7250 360.664.1160 records@utc.wa.gov	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Email
Fronda Woods 1400 S. Evergreen Park Dr. SW PO Box 40128 Olympia, WA 98504-0218 fwoods@utc.wa.gov	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Email
Administrative Law Judge Gregory Kopta gkopta@utc.wa.gov	<input checked="" type="checkbox"/> Via Email
Jessica Goldman Polly L. McNeill Summit Law Group 315 - Fifth Avenue S. Suite 1000 Seattle, Washington 98101-2939 jessicag@summitlaw.com pollym@summitlaw.com	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Email
Stephen B. Johnson Jared Van Kirk Garvey Schubert Barer 1191 Second Avenue Suite 1800 Seattle, WA 98101 sjohnson@gsblaw.com jvankirk@gsblaw.com	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Email

DATED at Silverdale, Washington, this 23rd day of April 2012.


Cheryl L. Sinclair