

LAW OFFICES OF  
McCLUSKEY, SELLS, RYAN, UPTGRAFT & DECKER, INC., P.S.

510 WASHINGTON AVENUE, SUITE 300  
BREMERTON, WASHINGTON 98310  
(206) 479-4545  
FAX: (206) 377-4581

TERRY K. McCLUSKEY  
JAMES K. SELLS  
JAMES E. RYAN  
DARRELL D. UPTGRAFT, JR.  
TARRELL S. DECKER

JEFFREY D. GOODWIN  
ANNE M. HANSON

GORDON WALGREN  
OF COUNSEL

November 21, 1994

Mr. Steve McLellan, Secretary  
Washington Utilities and  
Transportation Commission  
P. O. Box 47250  
Olympia, WA 98504-7250

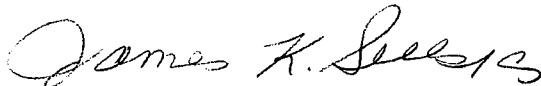
**Re: The Disposal Group, Inc., et al v. Waste Management  
Disposal Services of Oregon, Inc., et al  
Docket No. TG-941154**

Dear Mr. McLellan:

Enclosed for filing in the captioned matter is an original and  
three copies of **Post Hearing Brief of Intervenor Washington Refuse  
& Recycling Association.**

Very truly yours,

McCLUSKEY, SELLS, RYAN,  
UPTGRAFT & DECKER



JAMES K. SELLS

JKS:cs

encs.

cc: Mr. J. P. Jones  
Mr. Dave Wiley

STATE OF WASH.  
UTIL. & TRANSP.  
COMMISSION

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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

THE DISPOSAL GROUP, INC.,  
d/b/a Vancouver Sanitary  
Service and Twin City Sanitary  
Service, a Washington Corporation  
(G-65)

Complainant,

vs.

WASTE MANAGEMENT DISPOSAL  
SERVICES OF OREGON, INC.,  
d/b/a Oregon Waste Systems, a  
Delaware Corporation, and T & G  
TRUCKING & FREIGHT CO., an Oregon  
corporation,

Respondents.

DOCKET NO. TG-941154

POST HEARING BRIEF OF  
INTERVENOR WASHINGTON REFUSE  
& RECYCLING ASSOCIATION

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STATE OF WASH  
UTIL. & TRANSP  
COMMISSION

COMES NOW Intervenor Washington Refuse & Recycling Association and respectfully submits the following for the Commission's consideration.

**OVERVIEW OF PROCEEDINGS:** This proceeding was initiated by a formal complaint filed by The Disposal Group, a certificated solid waste carrier, pursuant to RCW 81.04.110 and WAC 480-09-420(5). Simply put, the complaint alleges that Respondents are illegally engaged in the transportation of solid waste for compensation over the highways of the State of Washington. In particular, the allegation is that Respondent T & G Trucking & Freight Co. is transporting an industrial sludge material from a site in Clark County to a railroad siding near Portland, Oregon. It is stipulated that the movement involves travel over the public highways of Washington. Stipulated Facts, (11).

The sludge is loaded on railroad flat cars and eventually is delivered to a landfill in Arlington, Oregon, owned and operated by Respondent Oregon Waste Systems, a wholly owned subsidiary of Waste Management Inc., now apparently renamed "WMX". Stipulated Facts, (2).

ORIGINAL

McCluskey, Sells, Ryan, Uptegraft and Decker  
ATTORNEYS AT LAW  
510 Washington Ave., Suite 300  
Bremerton, Washington 98337  
(206) 479-4545

1 The parties have reached agreement on the facts in this matter,  
2 which are contained in the "Stipulated Facts" furnished to Hearing  
3 Examiner Prusia. Witness affidavits and various documents have also  
4 been furnished, eliminating the necessity for a hearing or other oral  
5 presentation. Thus, the stipulated facts, affidavits and documentary  
6 evidence submitted comprise the record in this matter.

7 **ISSUES:** The ultimate issue here, of course, is whether T & G  
8 Trucking & Freight is operating illegally as a transporter of solid  
9 waste and should be ordered to "cease and desist". The answer to that  
10 question appears to Intervenor to be contained in the classification of  
11 the material itself. The basic issue, thus, is whether the material  
12 being transported is solid waste or something else. If it is solid  
13 waste, and it is being picked up and transported over the public  
14 highways of this state for compensation, that collection and trans-  
15 portation must be done by a certificated carrier, in this instance The  
16 Disposal Group. RCW 81.77.040; WAC 480-70-070.

17 Thus, Intervenor will urge the Hearing Examiner to first define  
18 this commodity which, once done, will resolve any and all other issues  
19 which may be peripheral to this proceeding.

20 **INDUSTRIAL SLUDGE IS SOLID WASTE:** The commodity involved here is  
21 "industrial sludge"; that is, it clearly is not "sewage sludge" as  
22 defined by RCW 70.95.030(18) because it is not "generated from a  
23 wastewater treatment system", nor is it a "biosolid" or "municipal  
24 sewage sludge" and, thus, is not subject to the various provisions and  
25 programs of RCW Chap. 70.95J.

26 There are various definitions of, and/or inclusions of, the term  
27 "sludge" in several RCW and WAC provisions. There is, however, one  
28 clear theme which runs throughout the various provisions, and that is  
29 the inclusion of sludge in the definitions and/or references to solid  
30 waste.

31 RCW 81.77.010(9) refers to RCW 70.95.030 for the definition of  
32 solid waste. That definition is:

33 "Solid wastes" or "wastes" means all putrescible  
34 and nonputrescible solid and semisolid wastes,

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1 including, but not limited to, garbage, rubbish,  
2 ashes, industrial wastes, swill, sewer sludge,  
3 demolition and construction wastes, abandoned  
vehicles or parts thereof, and recyclable  
materials. RCW 70.95.030(19)

4 This definition must be read in conjunction with other clarifications  
5 and definitions of the term. It specifically does include "sewer  
6 sludge" (which the commodity at issue is not); and "industrial waste"  
7 (which the commodity at issue is).

8 There are two other terms for "solid waste" which appear in the  
9 statutes and regulations, those being "garbage" and "refuse". RCW  
10 81.77.015 clarifies that the term garbage and refuse are to be used  
11 interchangeably, and RCW 70.95.030(19) further clarifies that the terms  
garbage and refuse are incorporated into the perhaps more "politically  
correct" term "solid waste".

12 This material is "semisolid", rather than a liquid, as it is mixed  
13 with a thickening agent for transportation.

14 WAC 480-70-050(6) defines "refuse" as:

15 . . . all commercially worthless, useless,  
16 discarded, rejected or refused material, except  
17 offal and animal and vegetable waste materials;  
18 also it includes scrap, waste materials, rubbish,  
noncommercial lamp black, waste acid, sludge,  
broken building and fire bricks, discarded rubber  
tires, noncommercial sawdust, debris, trade waste,  
discarded articles, and industrial waste . . . .  
(emphasis added).

19 This commodity is industrial sludge generated by an Alcoa plant.  
20 Stipulated Facts, (3). WAC 480-70-050(6) is specific in including  
21 industrial sludge in the definition of refuse which, in turn, is solid  
22 waste.<sup>1</sup>

23 There simply is no other category into which this commodity can be  
24 placed. It is an industrial semisolid waste, commonly called sludge,  
which fits squarely into the various definitions of solid waste.

25 \_\_\_\_\_  
26 <sup>1</sup> WAC 173-304-100(39) defines industrial waste to include "waste  
27 byproducts from manufacturing operations such as scraps, trimmings, packing and  
other discarded materials not otherwise designated as dangerous waste under  
Chapter 173-303 WAC." The material at issue has been determined to be  
nondangerous. Ex. 6

1 If this material were a "recyclable", the solid waste statutes may  
2 not apply. However, it simply does not fit into any statutory  
3 definition applicable to recycling. RCW 70.95.030(15) defines  
4 "recyclable materials" as:

5 . . . Those solid wastes that are separated for  
6 recycling or reuse that are identified as  
7 recyclable material pursuant to a local  
8 comprehensive solid waste plan . . . .

9 This material has not been "separated for recycling or reuse", it  
10 is a waste byproduct of the aluminum manufacturing process. Alcoa  
11 obviously has no intent to do anything other than to get rid of it. Nor  
12 has there been, nor can there be, any showing that this material is  
13 "identified as recyclable material" by the "local comprehensive waste  
14 plan". It is either solid waste or a recyclable, and it clearly is not  
15 a recyclable.

16 It is also instructive to note the regulatory definition of a  
17 "landspreading disposal facility" found in WAC 173-304-100(43), which  
18 is:

19 . . . a facility that applies sludges or other  
20 solid wastes onto or incorporates solid waste into  
21 the soil at greater than vegetative utilization and  
22 soil conditioners/immobilization rates. (emphasis  
23 added).

24 The use of the phrase "sludges or other solid wastes" obviously confirms  
25 that the Washington Department of Ecology considers sludge that is used  
26 as cover at a landfill to be "solid waste".

27 **THE COMMISSION HAS PREVIOUSLY DETERMINED**  
28 **INDUSTRIAL SLUDGE TO BE SOLID WASTE:**

29 In In re Application of Inland Transportation, Inc., Order M.V. No.  
30 142137 (Oct. 1990), the Commission considered a motor carrier  
31 application to transport fruit processing sludge to a disposal facility  
32 where it was spread directly on the ground. The Commission determined  
33 that since the shipper paid the destination site owner to "allow  
34 application", the commodity had "no value" and, thus, was subject to  
35 regulation under Chap. 81.77, rather than 81.80, the motor carrier  
36 statute.

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1 This is exactly the same situation here. The industrial sludge is  
2 transported to a landfill where it is spread, and there is a charge to  
3 the shipper for the application. Thus, as in Inland, the commodity has  
4 "no commercial value", and therefore is solid waste, not a "commodity".

5 **LIKE THE STATE OF WASHINGTON, OREGON ALSO**  
6 **CLASSIFIED THIS COMMODITY AS SOLID WASTE:**

7 Although Oregon's classification of this material is not binding  
8 upon the Commission, it is helpful in that the ultimate destination of  
9 the sludge is in the State of Oregon. The Oregon Administrative  
10 Regulations define "solid waste" as:

11 . . . all useless or discarded putrescible and  
12 nonputrescible materials, including, but not  
13 limited to, garbage, rubbish, refuse, ashes, paper  
14 and cardboard, sewer sludge, septic tank and  
15 cesspool pumpings or other sludge, useless or  
16 discarded commercial, industrial, demolition and  
17 construction materials, discarded or abandoned  
18 vehicles or parts thereof, discarded home and  
19 industrial appliances, manure, vegetable or animal  
20 solid and semi-solid materials, dead animals and  
21 infectious waste. (emphasis added).

22 **OAR 340-93-030(75).**

23 It is also relevant to note that Oregon's "approval" of the use of  
24 this sludge as "alternate daily cover" is merely authorization to  
25 conduct a test study, ending April 30, 1995. (Ex. 9). The  
26 communication to CRLRC specifically refers to the material as "waste",  
27 and requires CRLRC to follow its "special waste management protocol" in  
28 dealing with it.

It is interesting to speculate upon the consequences if Oregon  
either discontinues the "test" or disallows further use as ADC when the  
test is completed. In that event, apparently there would have to be a  
readjustment of the posted gate rate reduction in effect now.

In any case, it is clear that the State of Oregon considers this  
material as being solid waste, and it is defined as solid waste by the  
State of Washington. It becomes difficult to imagine what else it could  
be.

McCluskey, Sells, Ryan, Uptegraft and Decker  
ATTORNEYS AT LAW  
510 Washington Ave., Suite 300  
Bremerton, Washington 98337  
(206) 479-4545

1 INTERSTATE COMMERCE IS NOT AN  
2 ISSUE IN THIS PROCEEDING:

3 Respondents continue to insist that the "trailer-on-  
4 flatcar/container-on-flatcar" regulation<sup>2</sup> which exempts that type of  
5 service from state regulation is controlling here. That analysis may  
6 well be correct if the material being transported is "property". It is  
7 not property, it is solid waste. The ICC does not regulate the  
8 transportation of waste in any manner. Joray Trucking Corp. Common  
9 Carrier Application, 99 MCC 109, 110 (1965).

10 Any solid waste which is collected within the State of Washington  
11 and transported over the state's public highways is subject to the  
12 Commission's regulatory powers pursuant to RCW Chap. 81.77. This is the  
13 case whether the destination is in or out of state. The Commission's  
14 regulation of collection and transportation of waste (while in the  
15 state) is "without regard to the location of the ultimate disposal  
16 site". In the Matter of Enoch Rowland, d/b/a Kleenwell Biohazard and  
17 General Ecology Consultants, Order M.V.G. No. 1445 (Oct. 1990). see  
18 also In re Evergreen Waste Systems, TG-1911 (May, 1986); In re Arrow  
19 Sanitary Service, Inc., d/b/a Oregon Paper Fiber, TG-2197 (Dec., 1989).

20 The interstate commerce argument simply is not applicable to this  
21 situation.

22 **SUMMARY:** As previously indicated, this action is very simply  
23 resolved. If the material at issue is solid waste, its collection and  
24 transportation within the state of Washington is subject to Commission  
25 regulation. If the material is property, Respondent's position is  
26 probably correct.


27 Both the states of Oregon and Washington classify and/or define  
28 industrial sludge as solid waste. The material is being transported to  
a landfill which is being paid to receive it. It is not "property"; if  
it were, the payment would travel in the opposite direction. One does  
not need to be an economist to understand that one does not pay another  
to take property, one pays another to take waste.

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2 49 CFR 1090.2

1 An order should issue directing Respondents to immediately cease  
2 and desist the subject activity.

3 Respectfully submitted,

4   
5 JAMES K. SELLS  
6 WSBA No. 6040  
7 Attorney for Intervenor  
8 Washington Refuse & Recycling  
9 Association

8 CERTIFICATE OF SERVICE

9 I hereby certify that on this day a true copy of the foregoing was  
10 served by first class mail, postage prepaid, addressed to:

11 Hon. John Prusia  
12 Administrative Law Judge  
13 2420 Bristol Court SW  
14 P. O. Box 42489  
15 Olympia, WA 98504-2489

16 Mr. Jack R. Davis  
17 Suite 1200  
18 IBM Building  
19 Seattle, WA 98101

20 Mr. Steven W. Smith  
21 Asst. Attorney General  
22 Heritage Plaza Building  
23 1400 S. Evergreen Park Dr. SW  
24 Olympia, WA 98504-0128

25 Mr. Bill Rasmussen  
26 Davis Wright Tremaine  
27 2600 Century Square  
28 1501 Fourth Ave.  
Seattle, WA 98101-1688

Ms. Cindy Horenstein  
Horenstein & Duggan  
P. O. Box 694  
Vancouver, WA 98666

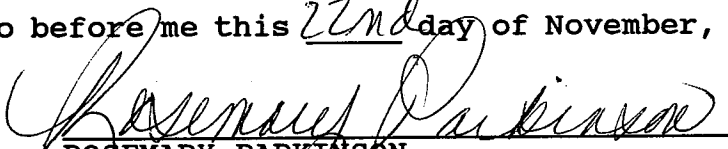
25   
26  
27 JAMES K. SELLS

28 McCluskey, Sells, Ryan, Uptegraff and Decker  
ATTORNEYS AT LAW  
510 Washington Ave., Suite 300  
Bremerton, Washington 98337  
(206) 479-4545



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Subscribed and sworn to before me this 22nd day of November, 1994.



ROSEMARY PARKINSON  
Notary Public for the  
State of Washington  
Residing at Mason Co. WA  
My commission expires 2/6/97