

RECEIVED
SUPREME COURT
STATE OF WASHINGTON

001 FEB -5 P 3: 03

CLERK

NO. 76954-1

WASHINGTON SUPREME COURT

JOSEF VENTENBERGS, KENDALL TRUCKING, INC., a Washington
Corporation, RONALD HAIDER, and HAIDER CONSTRUCTION,
INC., a Washington Corporation,

Petitioners,

v.

THE CITY OF SEATTLE, a municipal corporation, SEATTLE PUBLIC
UTILITIES, and CHUCK CLARKE, in his official capacity as Director of
Seattle Public Utilities; WASTE MANAGEMENT OF WASHINGTON,
INC., d/b/a Waste Management of Seattle, a Delaware Corporation; and
RABANCO, LTD., a Washington corporation,

Respondents.

SUPPLEMENTAL BRIEF OF RESPONDENT RABANCO, LTD.

David W. Wiley, WSBA #08614
Dana A. Ferestien, WSBA #26460
WILLIAMS, KASTNER & GIBBS PLLC
Attorneys for Respondent Rabanco, Ltd.

Two Union Square
601 Union Street, Suite 4100
P.O. Box 21926
Seattle, WA 98111-3926
(206) 628-6600

TABLE OF CONTENTS

I. INTRODUCTION1

II. ARGUMENT2

 A. The Washington Legislature Has Established A
 Comprehensive Statewide Solid Waste
 Management Program That Authorizes and
 Requires The City to Regulate The Collection of All
 Solid Waste2

 1. The Legislature has established a statewide
 comprehensive solid waste management
 program3

 2. Companies like Petitioner Kendall Trucking
 fall within the scope of, and must comply
 with, the statewide comprehensive program in
 order to engage in the collection of any kind of
 solid waste5

 3. The comprehensive statewide program
 provides for only three solid waste collection
 methods6

 4. Washington courts have repeatedly
 acknowledged that the statewide
 comprehensive program grants municipalities
 broad authority to regulate solid waste
 collection companies8

 B. The Non-Washington Authorities Petitioners Have
 Cited Do Not Support Their Challenge to the City’s
 Authority11

 C. Petitioners’ Privileges and Immunities Clause
 Challenge Fails Because the City’s Restriction of
 CDL Collection to Rabanco and Waste
 Management Promotes the Public Health and Safety14

III. CONCLUSION18

TABLE OF AUTHORITIES

CASES

Citizens for Clean Air v. City of Spokane,
114 Wn.2d 20, 785 P.2d 447 (1990).....8

Douglas Disposal, Inc. v. Wee Haul, LLC,
(03-CV-2098).....13

In re Marriage of Schweitzer,
132 Wn.2d 318, 937 P.2d 1062 (1997).....14

Parker v. Provo City Corp.,
543 P.2d 769 (Utah 1975).....12, 13

Plummer v. City of Fruitland,
139 Idaho 810, 87 P.3d 297 (2004)..... 11-12

Seattle Police Officers Guild v. City of Seattle,
92 P.3d 243, 151 Wn.2d 823 (2004), quoting Davis v. State ex rel.
Department of Licensing, 137 Wn.2d 957, 977 P.2d 554 (1999).....2

Shaw Disposal, Inc. v. Auburn,
15 Wn. App. 65, 546 P.2d 1236 (1976).....9, 10

Smith v. City of Spokane,
55 Wash. 219, 104 P. 249 (1909).....10

Spokane v. Carlson,
73 Wn.2d 76, 436 P.2d 454 (1968)..... 8-9, 10

Washington Kelpers Association v. State,
81 Wn.2d 410, 502 P.2d 1170 (1972).....14

Washington State Coalition for the Homeless v. Department of
Social and Health Serv.,
133 Wn.2d 894, 949 P.2d 1291 (1997).....6, 7

Weyerhaeuser v. Pierce County,
124 Wn.2d 26, 873 P.2d 498 (1994).....10

CONSTITUTION

Wash. Const. Art I, § 13
Wash. Const. Art I, § 1214

STATUTES AND RULES

RCW ch. 70.95.....2, 13
RCW 70.95.0104
RCW 70.95.0203
RCW 70.95.030(23).....5, 6
RCW ch. 81.77.....1, 2, 6, 7, 13
RCW 81.77.010(7).....5
RCW 81.77.010(9).....6
RCW 81.77.0207, 11, 15
RCW 81.77.0307
RCW 81.77.0406
RCW 81.77.0907
NRS 244.187.....13
NRS 444.490.....13
Utah Code Ann. 10-8-61 12-13
SMC § 21.36.0301
RAP 10.4(h).....14

I. INTRODUCTION

Rabanco, Ltd. joins in the supplemental briefs submitted by the other Respondents, the City of Seattle (“City”) and Waste Management of Washington, Inc. (“Waste Management”). Rabanco submits this supplemental brief in response to the Petitioners’ claim that the Court of Appeals erred by failing to address their argument that the City exceeded the authority granted to it by the Washington Legislature.

This litigation was triggered by the City’s amendment of its municipal code to make clear that solid waste collection companies cannot provide collection services for construction, demolition and land clearing waste (“CDL”) unless “they are authorized to collect solid waste in the City under RCW Chapter 81.77.” SMC § 21.36.030. Petitioners argue that the City’s implementation and enforcement of state law exceeds its authority and amounts to the grant of an illegal monopoly because Rabanco and Waste Management are the only two companies authorized under RCW ch. 81.77 to provide solid waste collection services within the City. The trial court and Court of Appeals, however, both rejected that claim and found that the City properly exercised its police power and acted within its broad authority to carry out the statewide comprehensive solid waste management program.

Petitioners effectively ask this Court to second guess the Legislature's policy choices and rewrite RCW ch. 70.95 and ch. 81.77. However, "[i]t is not the province of [the judiciary] to second-guess the wisdom of the Legislature's policy judgment so long as the Legislature does not offend constitutional precepts," however. Seattle Police Officers Guild v. City of Seattle, 92 P.3d 243, 151 Wn.2d 823 (2004), quoting Davis v. State ex rel. Dep't of Licensing, 137 Wn.2d 957, 976 n. 12, 977 P.2d 554 (1999). Because Petitioners fail to demonstrate any constitutional violation, Petitioners' claim fails as a matter of law.

II. ARGUMENT

A. The Washington Legislature Has Established A Comprehensive Statewide Solid Waste Management Program That Authorizes and Requires The City to Regulate The Collection of All Solid Waste.

Petitioners' challenge fails to properly account for the decisions of the Legislature codified in the Washington Solid Waste Management-Reduction Act, RCW ch. 70.95 (commonly referred to as the "Waste Not Washington Act of 1989") and RCW ch. 81.77, the statute regulating solid waste collection companies in Washington. In those statutes, the Legislature established a statewide comprehensive solid waste management program and gave the City broad authority to regulate the collection of all solid waste within its boundaries.

1. The Legislature has established a statewide comprehensive solid waste management program.

Pursuant to the authority granted by Art. I, § 1 of Washington's Constitution, the Legislature enacted the Waste Not Washington Act "to establish a comprehensive statewide program for solid waste handling," and more specifically:

(1) To assign primary responsibility for adequate solid waste handling to local government, reserving to the state, however, those functions necessary to assure effective programs throughout the state;

(2) To provide for adequate planning for solid waste handling by local government;

(3) To provide for the adoption and enforcement of basic minimum performance standards for solid waste handling, including that all sites where recyclable materials are generated and transported from shall provide a separate container for solid waste;

RCW 70.95.020.

In addition to articulating those purposes, the Legislature made specific findings as to why a comprehensive framework was needed.

Among the reasons the Legislature features in the Act are the following:

(1) Continuing . . . changes . . . have created new and ever-mounting problems involving disposal of garbage, refuse, and solid waste materials resulting from domestic, agricultural, and industrial activities.

(2) Traditional methods of disposing of solid wastes in this state are no longer adequate to meet the ever-increasing problem. Improper methods and practices of handling and disposal of solid wastes pollute our land, air

and water resources, blight our countryside, adversely affect land values, and damage the overall quality of our environment.

(3) Considerations of natural resource limitations, energy shortages, economics and the environment make necessary the development and implementation of solid waste recovery and/or recycling plans and programs.

* * *

(6)(a) It should be the goal of every person and business to minimize their production of wastes and to separate recyclable or hazardous materials from mixed waste.

(b) It is the responsibility of state, county, and city governments to provide for a waste management infrastructure to fully implement waste reduction and source separation strategies and to process and dispose of remaining wastes in a manner that is environmentally safe and economically sound. It is further the responsibility of state, county, and city governments to monitor the cost-effectiveness and environmental safety of combusting separated waste, processing mixed municipal solid waste, and recycling programs.

(c) It is the responsibility of county and city governments to assume primary responsibility for solid waste management and to develop and implement aggressive and effective waste reduction and source separation strategies.

(7) Environmental and economic considerations in solving *the state's solid waste management problems requires strong consideration by local governments of regional solutions and intergovernmental cooperation. . . .*

RCW 70.95.010 (emphasis added).

2. Companies like Petitioner Kendall Trucking fall within the scope of, and must comply with, the statewide comprehensive program in order to engage in the collection of any kind of solid waste.

The Legislature has made clear that the regulation of solid waste extends to anyone that engages in the collection, transport or disposal of solid waste. It has broadly defined a “solid waste collection company” as anyone “owning, controlling, operating or managing vehicles used in the business of transporting solid waste for collection and/or disposal for compensation . . . over any public highway in this state . . .” RCW 81.77.010(7).

Petitioners nevertheless have repeatedly asserted that CDL is different from other wastes. The Legislature, however, has made no such differentiation between CDL and other forms of solid waste. On the contrary, it has unambiguously defined “solid waste” to include “CDL”:

"Solid waste" or "wastes" means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, **demolition and construction wastes**, abandoned vehicles or parts thereof, and recyclable materials.

RCW 70.95.030(23) (emphasis added).

Petitioners’ contention that the collection of CDL should somehow be treated differently from the collection of other forms of solid waste is contrary to the basic rule that the meaning of an unambiguous statute must

be derived from its language alone. See Washington State Coalition for the Homeless v. Dept. of Soc. and Health Serv., 133 Wn.2d 894, 904, 949 P.2d 1291 (1997). Had the Legislature wanted to treat the collection of CDL differently, it easily could have done so by expressing such a choice in the solid waste collection company statute, RCW ch. 81.77. Instead, however, in the solid waste collection company statute, the Legislature incorporated by reference the RCW 70.95.030(23) definition of “solid waste” quoted above and excluded only “source separated recyclable materials collected from residences.” RCW 81.77.010(9). Thus, the Legislature obviously thought about the issue and determined that, with regard to the regulation of solid waste collection companies, CDL should be treated the same as other types of solid waste.

3. The comprehensive statewide program provides for only three solid waste collection methods.

Under the comprehensive statewide program, solid waste collection services may be provided in only three different ways. First, a company may obtain a certificate of public convenience and necessity (“G-Certificate”) from the Washington Utilities and Transportation Commission (“WUTC”) authorizing the company to provide solid waste collection services in a specific geographic area. RCW 81.77.040. In order to obtain a G-Certificate, a solid waste collection company must

demonstrate to the WUTC that it has the knowledge, experience and financial wherewithal (fitness, willingness, and ability), and that its proposed service is required by the public convenience and necessity in the geographic area proposed. Id. If the WUTC does issue an applicant a G-Certificate, the solid waste collection company must comply with the WUTC's rules and regulations comprehensively governing rates and service levels. RCW 81.77.030.

Second, a solid waste collection company may provide services in a municipality, with or without a G-Certificate, by entering into a solid waste disposal contract with the municipality. RCW 81.77.020.

Third, a municipality may itself undertake solid waste collection services within its own boundaries. Id.

Indeed, in RCW 81.77.020, the Legislature has made clear that there is no other permissible method for the collection of solid waste:

No person, his lessees, receivers, or trustees, shall engage in the business of operating as a solid waste collection company in this state except in accordance with the provisions of this chapter: PROVIDED, That the provisions of this chapter shall not apply to the operations of any solid waste collection company under a contract of solid waste disposal with any city or town, nor to any city or town which itself undertakes the disposal of solid waste.

(Emphasis added); see also RCW 81.77.090 (making violations of RCW ch. 81.77 a gross misdemeanor).

4. Washington courts have repeatedly acknowledged that the statewide comprehensive program grants municipalities broad authority to regulate solid waste collection companies.

As acknowledged in Citizens for Clean Air v. City of Spokane, 114 Wn.2d 20, 35, 785 P.2d 447 (1990), the Legislature has assigned “primary responsibility for solid waste handling to local government. . . .” Consistent with the Legislature’s directives, Washington courts have recognized that municipalities have broad authority to provide for solid waste collection services and have given considerable deference to them in their exercise of that authority. For example, in Spokane v. Carlson, 73 Wn.2d 76, 436 P.2d 454 (1968), this Court rejected a challenge to a Spokane ordinance reserving to the city the exclusive right to provide solid waste collection services. In explaining its decision, the Court emphasized the deference cities are entitled to receive in connection with solid waste management:

An ordinance regularly enacted is presumed constitutional, and the burden of establishing the invalidity of an ordinance rests heavily upon the party challenging its constitutionality. *If a state of facts justifying an ordinance can reasonably be conceived to exist, such facts must be presumed to exist* and the ordinance passed in conformity therewith.

The mere fact that the particular refuse picked up and disposed of by the defendant may not have been injurious to the public health does not mean that the city could not reasonably decide that the control of the disposition of such materials was necessary for the protection of the public

health and sanitation. It is a matter of common knowledge that inorganic refuse is frequently mixed with organic refuse. The legislative body of the city could reasonably determine that the possibility of such mixture renders it advisable that all refuse, whether innocuous in itself or not, be dealt with in a controlled and uniform manner. This in itself is sufficient justification for the ordinance regulating the disposition of inorganic as well as organic refuse.

Id. at 80-81 (citations omitted) (emphasis added).

Similarly, this Court and the Court of Appeals have acknowledged on more than one occasion that a municipality has the inherent authority to grant exclusive collection contracts to one or more solid waste collection companies of its choosing. In Shaw Disposal, Inc. v. Auburn, 15 Wn. App. 65, 68, 546 P.2d 1236 (1976), the Court of Appeals, in rejecting a challenge to the City of Auburn's decision to award a solid waste disposal contract without any competitive bidding process, explained:

The accumulation of garbage and trash within a city is deleterious to public health and safety. The collection and disposal of garbage and trash by the city constitutes a valid exercise of police power and a governmental function which the city may exercise in all reasonable ways to guard the public health. It may elect to collect and dispose of the garbage itself or ***it may grant exclusive collection and disposal privileges to one or more persons by contract***, or it may permit private collectors to make private contracts with private citizens. The gathering of garbage and trash is considered to be a matter which public agencies are authorized to pursue by the best means in their possession to protect the public health

Shaw Disposal, Inc. v. Auburn, 15 Wn. App. at 68 (emphasis added), quoted with approval in Weyerhaeuser v. Pierce County, 124 Wn.2d 26, 40, 873 P.2d 498 (1994)).

This Court made similar comments in Smith v. City of Spokane, 55 Wash. 219, 221, 104 P. 249, 250 (1909) and again in Spokane v. Carlson, 73 Wn.2d 76, 79, 436 P.2d 454 (1968) when, in rejecting citizens' challenges to the City of Spokane's ordinances prohibiting them from engaging in the business of solid waste collection and disposal, it stated:

But that the removal and destruction of the noxious, unwholesome substances mentioned in these ordinances tends directly to promote the public health, comfort, and welfare would seem to be beyond question. If so, an ordinance which tends to accomplish these results is a proper exercise of the police power; and from this power is necessarily implied the duty to determine the means and agencies best adapted to the end in view. . . . ***Ordinances conferring the exclusive right to collect garbage and refuse substances upon some department of the city government, or upon a contractor with the city, have almost universally been sustained***

(Emphasis added.) As illustrated by the preceding review of the Legislature's enactments and judicial precedent, the City had broad authority to contract with one or more companies for the collection of all

commercial solid waste within its boundaries.¹ Whether or not exercise of its broad discretion violated any constitutional protection, the City's ordinance was the issue the Court of Appeals needed to address, and in fact addressed, soundly rejecting Petitioners' claims of constitutional violations.

B. The Non-Washington Authorities Petitioners Have Cited Do Not Support Their Challenge to the City's Authority.

In support of their challenge, Petitioners have cited two cases from Utah and Nevada where courts have concluded that local governments do not have the authority to impose certain restrictions or regulations on the collection of CDL. Those cases, however, have no application here because, in contrast to Washington, the Utah and Nevada legislatures have not specifically granted municipalities broad authority to implement a comprehensive solid waste management program that extends to the collection of all solid wastes, including CDL.²

¹ Petitioners complain that the Court of Appeals did not specifically address their contention that the City lacked authority to enter into exclusive contracts with Rabanco and Waste Management and provide for the enforcement of the framework established by RCW 81.77.020. There was no need for the Court of Appeals to specifically address that contention.

² In the earlier stages of this litigation, Petitioners had also relied upon the Idaho Supreme Court's initial ruling in Plummer v. City of Fruitland, holding that an ordinance creating an exclusive solid waste franchise exceeded the municipality's authority granted by statute. However, the Idaho Supreme Court subsequently found, on rehearing, that by virtue of Idaho's Constitution, municipalities have the inherent authority to create exclusive franchises:

In their opening brief to the Court of Appeals, Petitioners repeatedly cited to Parker v. Provo City Corp., 543 P.2d 769 (1975), a case in which the Utah Supreme Court invalidated an amendment to a municipal ordinance regarding solid waste collection. The Provo ordinance at issue in Parker made it illegal for anyone other than the municipal waste removal department to collect garbage, and the proposed amendment sought to extend the prohibition to “waste matter” as well as “garbage.” Parker, 543 P.2d at 769.

The Parker court focused upon the limited grant of authority the Utah legislature gave to municipalities contained in 10-8-61 U.C.A., which states, in relevant part, that:

[Municipalities] shall not grant to any person the exclusive right to collect or transport through the streets or public thoroughfares any garbage, kitchen refuse or by-products, ***but they may prescribe, by ordinance, that any garbage, kitchen refuse or by-product which may be deemed deleterious to the public health may be taken by the city and burned or otherwise destroyed by it.***

(Emphasis added.) The Utah court invalidated the amended ordinance because there was no evidence in the record that the “waste” covered by

[W]e hold that a city’s regulation of sanitation by the granting of exclusive solid waste collection franchises is a constitutionally-derived exercise of police power and that such an exercise of police power is not in conflict with the general laws of the state and is accordingly valid.

139 Idaho 810, 87 P.3d 297, 301 (2004).

the amended ordinance was deleterious to the public health as required by the Utah legislature's limited grant of authority. Id. at 770.

Here, in contrast, and as already noted, the Washington legislature has granted the City broad authority to regulate the collection of all solid waste. Unlike Utah, neither RCW ch. 70.95 nor RCW ch. 81.77 requires a showing of deleterious effect as a prerequisite to the City's ability to enter into an exclusive solid waste disposal contract.

Petitioners' reliance upon Douglas Disposal, Inc. v. Wee Haul, LLC (03-CV-0298), an unpublished trial court opinion from Nevada's Ninth Judicial District, is similarly misplaced. In Douglas Disposal, the trial court invalidated the county's grant of an exclusive franchise for the collection of CDL as well as other solid waste because "there [was] no indication that the Nevada Legislature granted the authority to displace competition for the '[c]ollection and disposal of garbage and other waste' in **NRS 244.187**, that it intended to include all types of solid waste, namely **construction debris** under **NRS 444.490**." Douglas Disposal at 15 (emphasis in original).

Even if the Nevada statute bore some resemblance to Washington's statutory framework (which it does not), Petitioners' reliance upon the unpublished Douglas Disposal trial court opinion is improper. "Unpublished opinions have no precedential value and cannot

be cited as authority under RAP 10.4(h).” In re Marriage of Schweitzer, 132 Wn.2d 318, 329, 937 P.2d 1062 (1997).

C. Petitioners’ Privileges and Immunities Clause Challenge Fails Because the City’s Restriction of CDL Collection to Rabanco and Waste Management Promotes the Public Health and Safety.

Although Petitioners attempt to characterize the City’s actions as discriminatory in violation of the Privileges and Immunities Clause, Art. I, § 12 of the Washington Constitution, they have not shown that there was a lack of any rational basis for the City’s selection of Rabanco and Waste Management as the exclusive providers of solid waste collection services.³

As the Court of Appeals observed, the City’s ordinance is permissible so long as it has “a reasonable and substantial relation to the accomplishment of some purpose fairly within the legitimate range or scope of the police power.” Slip Op. at 6 (quoting Washington Kelpers Ass’n v. State, 81 Wn.2d 410, 417, 502 P.2d 1170 (1972)). As the Court of Appeals recognized, the City’s Ordinance met the rational basis standard because, among other things, by restricting the collection of CDL to the two companies with whom it has contracted, the City is able “to maintain the environmental standards established in its long-haul disposal contract with Waste Management, to ensure that waste is sent to proper landfills, and to promote recycling in the commercial sector.” Id.

³ The City provides a detailed discussion, in its supplemental brief, regarding the rational basis standard and why it is the proper level of scrutiny to be applied in this case.

The fact that only Rabanco and Waste Management held preexisting G-Certificates justified the City's decision to contract with them to be the exclusive providers of commercial solid waste collection services. Rabanco and Waste Management were the only solid waste collection companies with the demonstrated ability to operate in accordance with the WUTC's rules and regulations.

Petitioners Kendall Trucking and Ventenbergs, on the other hand, had been operating illegally, in violation of RCW 81.77.020, for many years. Given that solid waste collection and disposal is a heavily regulated activity, it was certainly reasonable for the City to decline to contract with a solid waste company that had demonstrated such indifference for, and had totally failed to comply with, requirements imposed by the Legislature.

Similarly, by limiting collection of CDL and other commercial solid wastes to Rabanco and Waste Management, the City could ensure that CDL is disposed of at a facility that is "environmentally acceptable to the City." CP 226. Notwithstanding Petitioners' attempts to characterize CDL as benign, waste from construction and demolition activities often will be intermixed with hazardous substances. Whether or not CDL typically includes hazardous substances, the mere potential for improper disposal of dangerous materials such as asbestos, sealants and preservation

chemicals in building materials justifies the City's selection of solid waste collection companies that operate landfills and other state-of-the-art solid waste handling facilities where such material may be disposed of safely and without posing any unnecessary threat to the environment.

The City's contracts with Rabanco and Waste Management also provide it with the ability to efficiently and effectively manage solid waste collection activities within its boundaries. The contracts contain numerous provisions to ensure that commercial solid waste collection services will be available throughout the City and provided in a manner that is both safe and in conformance with the City's requirements. For example, the City's contract with Rabanco contains provisions requiring Rabanco to:

- (a) provide service at levels set by the City and perform its work in a "timely, thorough and professional manner" and comply with various rules established to prevent the creation of nuisances impacting the general public (§§ 60, 220-250, 340-50; CP 220, 228, 230);
- (b) coordinate its operations with the City (§§ 200-10 and Operations Plan; CP 227-28, 263-72); and
- (c) charge service rates set by the City in order to ensure fair and uniform pricing (§ 300; CR 229).

Moreover, the contract provides the City with meaningful mechanisms to enforce these requirements if Rabanco fails to comply, including:

- (a) a performance bond (§ 700; CP 244);

- (b) insurance naming the City as an additional insured (§ 730; CP 246-49);
- (c) indemnity (§ 740; CP 249); and
- (d) liquidated damages for performance problems such as the failure to promptly clean up spilled waste (§ 750; CP 249-50).

Petitioners argue that the City can require these same provisions in contracts with other solid waste collection companies like Kendall Trucking. These contractual provisions, however, are meaningless unless the solid waste companies have the experience, skills and financial resources to perform the obligations imposed. Thus, while Petitioners have characterized Rabanco's and Waste Management's size and financial strength as a significant negative, the companies' extensive resources, in fact, are of real benefit to the City. Rabanco's and Waste Management's substantial expertise and resources provide the City and its residents with meaningful assurances that the two solid waste collection companies operating within the City's boundaries will remain fully accountable for the safe and proper collection and disposal of all solid wastes including CDL. This would not be true if the City were required to contract with anyone who decided to buy a truck and start hauling solid waste across the City's often busy urban streets and highways.

III. CONCLUSION

For the reasons stated above and in the City of Seattle's and Waste Management's briefs, the Court of Appeals decision rejecting Petitioners' challenge should be affirmed.

RESPECTFULLY SUBMITTED this 5th day of February, 2007.

WILLIAMS, KASTNER & GIBBS PLLC

By 
David W. Wiley, WSBA #08614
Dana A. Ferestien, WSBA #26460

Attorneys for Respondent Rabanco, Ltd.

FILED AS ATTACHMENT
TO E-MAIL

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that under the laws of the State of Washington that on the 5th day of February, 2007, I caused a true and correct copy of the foregoing document, "SUPPLEMENTAL BRIEF OF RESPONDENT RABANCO, LTD.," to be delivered by U.S. mail, postage prepaid, to the following counsel of record:

Counsel for Appellants:

William R. Maurer
Michael E. Bindas
INSTITUTE FOR JUSTICE
Washington Chapter
811 First Avenue, Suite 625
Seattle, WA 98104

Counsel for City of Seattle, Seattle Public Utilities
and Chuck Clarke:

Gregory C. Narver
Suzanne L. Smith
SEATTLE CITY ATTORNEY'S OFFICE
600 Fourth Avenue, 4th Floor
P.O. Box 94769
Seattle, WA 98124-4769

Counsel for Waste Management of Washington d/b/a
Waste Management of Seattle:

Polly L. McNeill
Jessica L. Goldman
SUMMIT LAW GROUP, PLLC
315 Fifth Ave. S., Suite 1000
Seattle, WA 98104-2682

CLERK

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
2007 FEB -5 P 3:03

Andrew M. Kenefick
WASTE MANAGEMENT OF WASHINGTON, INC.
801 Second Avenue, Suite 614
Seattle, WA 98104-1599

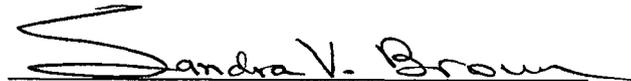
Counsel for Amicus Curiae WRRRA:

James K. Sells
RYAN SELLS UPTEGRAFT, INC., P.S.
9657 Levin Rd. NW, Suite 240
Silverdale, WA 98383

Counsel for Amicus Curiae BIAW:

Timothy M. Harris
Building Industry Association of Washington
111 West 21st Avenue
Olympia, WA 98501

DATED this 5th day of February, 2007, at Seattle, Washington.


Sandra V. Brown

FILED AS ATTACHMENT
TO E-MAIL