Service Date: May 18, 1998

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER of Sanitation, Inc., Lewistown, Montana, Application for a Montana Intrastate Certificate of Public Convenience and Necessity.	)))))	TRANSPORTATION DIVISION DOCKET NO. T-97.91.PCN ORDER NO. 6444

PROPOSED ORDER

APPEARANCES

FOR THE APPLICANT:

Neil E. Ugrin, Esq., Ugrin, Alexander, Zadick & Higgins, P.C., #2 Railroad Square, P.O. Box 1746, Great Falls, Montana 59403.

FOR THE PROTESTANT:

Jerome Anderson, Esq., P.O. Box 866, Helena, Montana 59601, representing Marvin E. Mintyala, dba City Garbage and Mr. "M" Disposal.

BEFORE:

BOB ANDERSON, Commissioner and Hearing Examiner.

COMMISSION STAFF:

Denise Peterson, Staff Attorney, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601.

The Hearing Examiner, having taken evidence and being fully advised in the premises, issues the following Proposed Findings of Fact, Conclusions of Law, and Order pursuant to Section 2-4-621, MCA.

BACKGROUND

1. On July 18, 1997, Sanitation, Inc., filed an application with the Montana Public Service Commission (Commission) for a Class D Certificate of Public Convenience and Necessity to transport ashes, trash, waste, refuse, rubbish, garbage, organic and inorganic matters and recyclables between all points and places in Harlowton (Wheatland County) and within five (5) miles of the city limits. Sanitation, Inc. filed an amendment to the application on July 21, 1997 to read "the town of Harlowton and a six mile radius thereof."

2. The Commission duly published notice of the application in the Lewistown News-Argus, Lewistown, Montana and the Billings Gazette, Billings, Montana.

3. On August 25, 1997 the Commission received a protest of the application from Marvin E. Mintyala, dba as City Garbage and Mister "M" Disposal (Mr. "M"). Mr. "M" holds Certificate of Public Convenience and Necessity No. 3819 which includes the Harlowton, Wheatland County area, covering the area of the application.

4. The Commission initially noticed the application for hearing to be held in Harlowton, Montana on October 29, 1997. On October 17, 1997 the Commission vacated this date and renoticed the hearing for December 11, 1997.

5. On November 12, 1997, the Commission received a notice from Jerome Anderson that he was making an appearance on behalf of Mr. "M," with a copy of Protestant's First Interrogatories to Sanitation, Inc., and a Motion to Reduce Time for Applicant to Answer Protestant's Interrogatories. On November 14, 1997, Applicant filed a letter memorializing the parties' agreements that Applicant would answer the Protestant's first interrogatories, to the extent he was able, in consideration for Protestant's likewise answering Applicant's First Interrogatories to Protestant, which would be faxed on November 17, 1997. On November 20, 1997, Applicant filed a waiver of the Commission's responsibility for issuing a decision within six months from filing the application.

6. Protestant submitted a letter received December 5, 1997, confirming the agreement on the time period for response to Interrogatories served on Sanitation, Inc., and response of Mr. "M," to respond on or before December 30, 1997, since the hearing was rescheduled.

7. The Commission once again rescheduled the public hearing, again duly noticed it in the Legal Sections of the newspapers, and conducted the hearing at the National Guard Armory, Highway 12 West, Harlowton, Montana, on January 14-15, 1998.

8. Parties agreed to a simultaneous briefing schedule, with briefs due 30 days after the transcript. Both briefs were filed on or before March 10, 1998.

9. On April 16, 1998, Mr. "M" filed a Motion for Substitution of Protestant and Reopening of Proceeding. Marvin Mintyala, dba City Garbage and Mr. "M" Disposal, requested that the purchaser of Mr. "M"'s certificate, Griffin-Phoenix, Inc., be substituted as Protestant and that the proceedings be reopened to allow Griffin-Phoenix, Inc., to demonstrate the present and future service it intended to perform under the certificate.

10. On April 23, 1998, Sanitation, Inc., filed a Response and on May 4, 1998 a Supplemental Response to the Motion for Substitution and Reopening of Proceeding. Mr. "M" filed its reply brief on April 28, 1998. The Commission at its duly noticed work session held May 5, 1998 voted to grant the Motion for Substitution of Protestant Griffen-Phoenix, Inc., and voted to deny the Motion for Reopening the Proceedings. The Commission determined that it was appropriate to substitute the present holder of the certificate, which purchased the certificate subject to its assets and any potential liabilities, including the completed hearing. As the purchaser, Griffen-Phoenix succeeded to the rights and obligations of Mr. "M." With a complete record on the application, there was no basis to reopen the proceeding

SUMMARY OF TESTIMONY

Applicant's Witnesses

11. **William A. Spoja, Jr.**, President and owner of Sanitation, Inc., (Applicant), Lewistown , Montana, first owned the company in 1987, sold it and received the garbage hauling company and a landfill back through a default in 1993. The books were in a mess and the landfill was a disgrace. The company has worked hard at cleaning it up and complying with governmental standards. It is the intention of Sanitation, Inc., to continue using its own landfill. The company hired Damschen & Associates and in consultation with the state Department of Environmental Quality (DEQ) has done what is required. The DEQ has ongoing concerns with both landfills in Lewistown. One problem is not covering garbage, but

he is working on it and intends to resolve the problem. He testified that the total cost when closure of the landfill takes place will be about $250,000. To comply with federal regulations, he is required to post a bond to cover the anticipated costs to close the landfill in the future. He has made arrangements to put into an irrevocable trust $2,000 per month, ($23,000 in 1997, $2,000 by the date of hearing for 1998). He has no lawsuits pending on landfill duties or notice on closure of the landfill. The useful life remaining on the landfill is about 10-15 years. According to best estimates, the post closure requirements should be met in ten years. While the remaining life of the landfill is rated for 10-15 years, he understands that his landfill should last in excess of that. If he had to close the landfill, they could haul the garbage to Great Falls.

12. Mr.Spoja testified that his company went from 800 customers when he took over in 1993 to 1,900 customers at present. In 1993 the equipment was working, but was not as reliable as it could be. He is proud of the reliability of his equipment now, and has more than sufficient equipment to handle the additional authority, if granted. He also has a line of credit at First Security Bank. The annual income of the company has gone from a loss of $37,000 in 1993 steadily up to income of $100,000 in 1996. The debt in 1993 of $240,000 has been reduced to $84,000. He has made loans to the company as needed, which the company could pay back, but he has chosen not to repay. He does not plan to take a salary until the company is on its feet. His own financial position is sound, he testified.

13. Sanitation, Inc., could easily render service in Harlowton, Mr. Spoja testified. In Stanford, for example, when Sanitation, Inc., obtained authority, it immediately got half the customers in the community and the customer base continues to grow. It was more dramatic in Judith Gap, where they had 75 percent of the customers in the first week. To comply with ordinances in Harlowton. Mr. Spoja had located properly covered 30 gallon containers to comply with the Harlowton ordinance, he testified. Originally, Sanitation, Inc., had a staff of three drivers and one office person and now has 15 employees. In 1997, Sanitation, Inc., bought two garbage trucks and put in a new office and wells, all $70,000-80,000 of expenditures coming from the income of the company. Under later cross-examination, Mr. Spoja testified that he also plans to use larger containers. Dumpsters are required for

businesses, which he will provide. Some cost $500-600 new, and he can acquire and refurbish used ones to new condition for $150.

14. Under cross-examination, Mr. Spoja responded that his principal occupation is as an attorney. He estimated that he spends about 25 percent of his time on Sanitation, Inc. He has a controller and a manager, with whom he meets at least weekly. He is in the office two to three times a week. He travels throughout the area serviced, gets to Stanford frequently and Lewistown daily. His manager Mr. Gallagher oversees the landfill operation, checks the landfill cover weekly, and participates in workshops and seminars.

15. Mr. Spoja has personally been in contact with DEQ and is generally knowledgeable about compliance problems. In 1996 he considered closing the landfill, and he put together a plan. Since then, with the engineers, he has changed direction and is working on the future closure plan. He admitted that he saw a substantial financial obligation with the landfill and got into negotiations with BFI to sell the company. He, Marvin Mintyala and Dennis Johnston were also involved in negotiations which have fallen through. Under later redirect examination, Mr. Spoja explained that Dennis Johnston had sought to buy a garbage hauling business. Mr. Spoja and Johnston entered into negotiations to form a partnership, while he understood that Mr. "M" was going to sell his business to Johnston and then perhaps go into some kind of partnership also with Johnston. .

16. Mr. Spoja testified that the company gets 75 percent of its revenues from Lewistown. There are 50-70 customers in Judith Gap. Due to the mill closing in Judith Gap, he expects to lose six customers there. Mr. Spoja plans to base one or two trucks in Harlowton to serve the area applied for under the certificate. He would anticipate several round trips per week to the Lewistown landfill. He would start out with two employees in Harlowton and adjust, depending on the need. The two trucks and employees could probably serve Judith Gap as well.

17. Mr. Spoja responded under cross-examination that he had a compliance problem at the landfill in June, 1997 (a continuing violation from June 18 and corrected in July), when a machine broke the same day the examiners arrived. They have begun construction at the landfill, in consultation with the engineers, since there is no other way to escape the runoff.

He admitted that there had been false starts, but they have been working with the DEQ on a regular basis in trying to comply.

18. **Allen Gallagher, Sr.**, Lewistown, is the manager for Sanitation, Inc. He has 40 years of experience in heavy equipment, trucks and automobiles. He started in the sanitation business in 1979 as a mechanic designing hydraulic systems in Phoenix. In 1991 he went to work in Connecticut for a large rubbish company, working on the landfill and its equipment. He first worked for Sanitation, Inc., as the mechanic in 1993 , then in the landfill on the mechanical end, and finally became manager in September, 1996.

19. Mr. Gallagher oversees the landfill, the hauling, and the office personnel. The condition of the equipment has changed drastically since he first went to work. At first, Sanitation, Inc., had two vehicles, a Ford gas garbage truck and a diesel garbage truck. Sanitation, Inc., had three drivers, one office personnel, and his son as manager. He had to fill in as a driver in the morning, work at the landfill during the day and on the trucks in the afternoon and evening. Now, Sanitation, Inc., has six vehicles used for rubbish, a full-time mechanic and a part-time mechanic. The equipment passes the monthly inspections of the DOT. The company made four new purchases in 1997: two trucks, a service truck and a bulldozer for the landfill. The company keeps one spare vehicle on hand and plans for further expansion. The company has fully updated its offices and uses the old office as a training and safety room for the drivers. The shop is completely outfitted, and Sanitation, Inc., does not need to send equipment to an outside mechanic. Mr. Gallagher testified that the company is sound, growing, and in good financial condition.

20. Mr. Gallagher testified that when he came to Sanitation, Inc., in 1993 the whole landfill area was open and exposed, with no particular area confined to garbage. They have been trying to confine and separate the old from the new areas of garbage. They have put in monitoring wells and begun what needs to be done for closure.

21. On the question of non-payment by customers, Mr. Gallagher testified that Sanitation, Inc., gives customers 85 days before they receive a written letter. Sanitation, Inc., makes two phone calls and sends two more letters before terminating service. The computer

generates the information on nonpayment. Sanitation, Inc.'s drivers do not go through people's garbage to determine nonpayment for garbage services.

22. On cross-examination, Mr. Gallagher stated that he projected about 200 customers in the Harlowton area. He agreed with Mr. Spoja that the cost of a transfer station would be about $25,000, for a truck with two trailers and roll-off containers, on a 50 by 100 foot plot. He said that the six garbage hauling vehicles have rear-loading mechanisms that automatically unload dumpsters. The 30 gallon containers in Harlowton would be picked up manually.

23. **Alice Ruckman** appeared and testified on behalf of the Applicant. Her experience included 35 years working for the First National Bank of Lewistown, as an auditor, operations officer, cashier and assistant vice-president at her retirement. Since then she has held various jobs in banks in auditing, operations and budgeting. In 1993 Mr. Spoja hired her to audit the books of Sanitation, Inc., to determine the potential fraud of a former manager who was buying the company. She became the controller in 1994. In 1993 the operating gross for the company was $100,000; in 1993 it was $552,000. The net profitability has correspondingly increased, from a negative $36,000 in 1993 to a positive net after taxes of $50,000 in 1996. Mr. Spoja injected cash to keep the company operating, then borrowed $235,000 from Security Bank, which is paid down to $84,000. She expected that the obligation would be liquidated by 1999. Ms. Ruckman affirmed in general Mr. Spoja's testimony on the bond posted for the future closure requirements, as well as the generally improving financial picture for the company. The company made the capital improvements (new office and facilities) solely from the cash flow of the company.

24. Under cross-examination, Ms. Ruckman testified on the Annual Report for which she is responsible. The intrastate total operating revenues for 1996 were $515,542, consisting of income primarily from residential and commercial service and landfill operations. Landfill income was $69,694 in 1996. Some income came from miscellaneous sources including rent for containers (perhaps $5,000 in 1996). Costs included her contract costs before she became salaried. The company had costs of $16,500 for the contract with the engineering firm. The long-term obligations of $118,528 are owed to the bank after the

previous year, less $30,000 remaining on the debt to Mr. Spoja. Revenue for Lewistown in 1996 was about $325,000, "commercial rural" $60,000 (the towns they do business in, with dumpsters, etc.), and actual rural $68,000 (residential in outlying areas).

25. **Rick Billadeau**, mayor of Harlowton, appeared and testified in support of the application. As mayor for the past 8 years, he oversees the operation of the city, and is responsible for promoting safety and health. Using two trucks, the city had provided garbage service to all residents. The city passed ordinances requiring residents to have 30-gallon garbage containers installed in a rack six inches off the ground. Customers paid for their garbage service in conjunction with their water and sewer bills, which allowed the city to police who was using the service. Harlowton maintained a landfill north of town which it was forced to close in September, 1993 due to governmental regulations, causing the city to seek out garbage service.

26. When the city council met with Mr. "M" to discuss providing garbage service, Marvin Mintyala said that the rates would be based on two 55-gallon recycled drums for garbage containers, which could be applied to four 30-gallon containers. Mr. Billadeau understood that to mean that Mr. "M" would comply with the ordinance. Instead, more and more 55 gallon drums, which appear to be discarded oil or pesticide drums with the tops cut out, showed up around town as garbage containers. With the lids cut out, the barrels have jagged edges which rip bags. Dogs around town were knocking these lidless containers over, and strewn garbage had become a problem. In response, the city updated its ordinance to require premanufactured garbage containers. The city also learned that some residents' garbage service was shut off, leading to piling of garbage. To help police the garbage, the city council also requested that Mr. "M" provide a list of customers whose garbage service was shut off. From 1993 to 1997, Mr. "M" only provided one list, although requested to do so. After Mr. Spoja applied for a license, the city received 4 lists of customers whose service was discontinued.

27. Mr. Billadeau testified that as Mayor, concerned citizens have expressed their concerns on the garbage service. He also personally has had problems with the garbage service as a landlord with an apartment building and six renters, including four elderly ladies.

He had personally contracted garbage service in his own name. One renter informed him that Mr. "M" sent her a bill for garbage service. Mr. Billadeau told her not to pay it because he was paying for garbage service for the building. He then told the other renters not to pay Mr. "M" if they received any billing statement.

28. On cross-examination, Mr. Billadeau testified that it would have cost $200,000 to close the landfill. Therefore, the city requested in 1993 that Mr. "M," as the only licensed garbage hauler in the area, provide service. Mr. "M" said that he would provide service on an individual basis and that he would handle his own billing. Although the city understood that Mr. "M" meant that he would use 30 gallon containers, the city never told Mr. "M" that he could not use the 55 gallon barrels. Mr. Billadeau said that Mr. "M" should have known about the ordinance because he was at the meeting, but he did not recall giving him a copy of the ordinance. He said that they were seeing more 55 gallon barrels because Mr. "M" was providing them at no cost.

29. Mayor Billadeau admitted the following under cross-examination. He had not asked the Mintyalas to come to the City Council meetings to discuss the matter. He had called three times asking for the list. His fear was that Mr. "M" as the only hauler would charge exorbitant rates, and more likely so if he had to close his landfill and haul 60 miles to another landfill. He admitted that he did not know the differences in cost. The city has an ordinance it enforces against loose dogs and littering the streets. People let their dogs out at night. It is not Mr. "M"'s responsibility to police the streets of garbage. The city did not give Mr. "M" a copy of the ordinance or require him to remove the drums.

30. On recall, Mayor Billadeau testified that Ordinance 7.36.040 passed in 1993, in fact required lids for garbage containers. Under cross-examination, Mr. Billadeau said that he had informed Mr. "M" as a company of the ordinance. He was sure the city had given him a copy, but it was not registered or certified. It was advertised in the paper. He read the ordinance: "[A]nyone acting for themselves residing in a dwelling or conducting a business shall deposit all garbage in the cans."

31. **Frank Hutton**, a second term Harlowton city councilman, testified in support of the application. He objected to the appearance of the 55 gallon drums and was concerned

about possible contamination of the containers from their previous use. He compared his observations of the nine years when the city picked up the garbage to the three years that Mr. "M" has provided the service. He said that there is more trash throughout the town and on the way to the landfill. As a city councilman, he was concerned about getting the names of people whose service was discontinued. People had been hiding the garbage. He testified that it is difficult to deal with the main office of Mr. "M." At Mr. "M" you are automatically considered wrong when you call. He recalled one incident involving a boxspring and a mattress. Mr. "M" told him it would be $20 each to remove them, so he gave them away and received a bill from Mr. "M" for $40. After calling Mr. "M"'s office and talking to Sandy (Mrs. "M"), the matter wound up with lawyers talking to each other. The bill was never paid. He felt that he was "treated like dirt."

32. Under cross-examination, Mr. Hutton admitted that Mr. "M" did not dispose of the trash in borrow pits and in the park. He said that the city had not enforced the litter ordinance, and it was hard to identify who was responsible for the trash. He admitted that they looked through the bags of garbage left about the city, but there were no addresses, only dirty diapers. He responded that it is different when Mr. "M" goes through the garbage cans of people paying for garbage service, because he does it for monetary gain, not to enforce litter ordinances. He knows that Mr. "M" has written letters every summer to visitors who leave their garbage in receptacles, because the visitors have written the city.

33. **Dick Stoltz** appeared and testified in support of the application. In general, he believed the city would be better served by deregulation, and he supported competition. As a city councilman, he was aware that there had been the request for lists of customers whose service had been terminated. He was concerned that the city did not get information. When the city hauled garbage and the 30-gallon ordinance was observed, there was not much garbage floating around. The dogs could not get into the garbage racks and turn the garbage over. Under cross-examination, he admitted that Mr. "M" was not personally responsible for picking up the garbage left in borrow pits outside of town.

34. **Brian Tomlinson**, a businessman and resident of Harlowton, has both a business account and a residential account from Mr. "M." He is an electrical contractor, and

his wife and mother have an antique store. He testified that he had a problem the year before when the dumpsters were not dumped for two weeks, although he had weekly service. He was not behind in his billing. Because they were not supposed to talk to the drivers, he called the office. The "lady" said she would check into why the truck just drove off without picking up the garbage two weeks in a row. She called back and said that the dumpster was turned at an odd angle so that the driver could not back up to it. Mr. Tomlinson said it would have been nice to know. Had he been notified, he could have turned the dumpster. She told him that the dumpster was in a muddy hole, but when he checked it was in a parking lot with a gravel surface. He asked for a refund for the two weeks, but did not receive it. He believed that with competition people would make an extra effort to accommodate.

35. Under cross-examination, Mr. Tomlinson admitted that Mr. "M" responded right away when he called. He did not call for two weeks. Mr. "M" had not told him that the dumpster had to be square to the alley. He said that there is adequate room in the alley to back up to the dumpster, no matter which direction it sits.

36. **Joan Brummond**, a resident of Harlowton and a business owner, is a customer of Mr. "M." She testified to two incidents which were aggravating. First, they used to break down the cardboard and put it in the barrels. Mr. "M" told them not to do that, but rather to leave the boxes and Mr. "M" would take care of them. Then Mr. "M" billed them separately for garbage left outside the container, although the barrels could have contained the cardboard. The previous year she was late paying a bill. Five days after it was paid, her dumpster was picked up. When she called requesting to talk to "Marvin," he refused to personally talk to her and the woman answering the phone conveyed his message to her. He said that he took the dumpster because she owed the bill. The woman checked the record books and confirmed that Ms. Brummond had paid five days before he picked up the dumpster. He then argued with Ms. Brummond that she still owed him, but she told him that her remittance for the next month was not due for five or six days (March 4 to March 10 due date).

37. Ms. Brummond testified that she objected that "Marvin" would not talk to her personally through the matter, and did not call her or check to see if the bill was paid or attempt to make arrangements. When he finally conveyed through the woman on the phone

that he would return the dumpster, Ms. Brummond told him that she was not generating that much trash and that she would take the barrels back. At that point, the woman told her that "Marvin" said that he would be monitoring her closely and that she had "better not be over 70 pounds." Mr. "M" never apologized for discontinuing her service.

38. **Alma Hinand**, owner of a sporting goods, western wear and convenience store in Harlowton, testified in support of the application. She had some concerns about the price of her garbage service. Most of the trash is generated from the convenience store, which primarily operates during the summer from fishing season to the end of tourist season. The bills are the same summer and winter, although they remove four out of six of the garbage containers in the slower months. They dispose of the recyclable paper and boxes from the western wear store elsewhere. No matter what their volume, winter or summer, the price stays the same. At one time they were charged for seven yards and only had two. When she called the garbage service, they had a "bad attitude" and were uncooperative. They indicate that you pay what you are billed or you get no service. When you call Mr. "M." you are always told that your conversation is being recorded.

39. Ms. Hinand also testified about problems with service to her rental properties, which received a bill although they had not asked for service. At another time, the renters asked to have their garbage picked up when they moved. Mr."M" took their garbage, along with Ms. Hinand's antique wheelbarrow that was converted to a planter and had blooming flowers. When she called Mr."M," the woman said "well, it was sitting in the yard." Mr. "M" told her that it was too late to retrieve the planter. Ms. Hinand said that once she had the skeletons of four washers which she asked to have hauled. Mr. "M" charged her $27 a piece, or $108. Another time she had some wire hauled and was charged $64 for seven yards and $18.40 for two yards, and they were all rolled up and did not take up that much space.

40. Ms. Hinand testified that she thought competition in garbage hauling would be good. She wants better prices and a better attitude.

41. **Ken Kelly**, Harlowton, testified on an incident at the end of 1995 when he moved across Harlowton. He notified Mr. "M" and said that there might be extra trash. He had two 30 gallon barrels and two 55-gallon drums. He didn't have as much trash as he had

thought. The woman at Mr. "M" advised him to bundle cardboard boxes. Given the jagged edge of the drum, he thought there might have been a problem pulling cardboard out. He flattened the 10 case-size boxes into two bundles, each about 2 and 1/2 feet long, 18 inches wide and 4 inches deep. There was room to put them in the empty drum. Mr. "M" then billed him $10 for an extra 55-gallon drum for the two bundles, over and above the normal bill. He protested in several calls. Six weeks later Mr. "M" told him to pay the bill and if he did not like it, he could haul his own garbage. He continued to use Mr. "M"'s service because he has no choice. He called the closest landfill 44 miles away at Big Timber, and was told that they would not accept out-of-county trash.

42. **Mary Ann Wilcox**, owner of Lazy J Bowling Lanes, Harlowton, is a former customer. In the summer when closed for maintenance, they had set some new shaker boards in the alley to shampoo the carpet on the boards. Mr. "M" came by and picked them up. When she returned from her out of town trip and called Mr. "M," the woman on the phone became irate with her when she said that they should pay for them. Mr. "M" returned the shaker boards in poor condition. One month after the shaker board incident, her barrels were gone. Ms. Wilcox pays for her garbage pickup on a yearly basis. She asked the drivers why they were not picking up the trash and they said she owed them money. She informed them she had not received a bill. She did not believe that she owed Mr. "M" any money, and if so, believes she should have received a bill. She had no notice before they picked up her barrels.

43. Ms. Wilcox testified that Mr. "M" once questioned her about someone else's garbage being in her garbage cans at her residence. Her son-in-law was staying with her, because his mother was gravely ill. They had put some of his mail in her trash. She did not think it was right that they should go through her trash. As a businesswoman, she throws business papers away. She does not have a shredder and cannot burn her papers. Her daughter in Billings contacted her to say that she had received notice that her mail was in the garbage can in Harlowton.

44. Ms. Wilcox, on cross-examination, testified that she hauls her bowling alley garbage to Lewistown or Billings once a month or every six weeks. They store the garbage in a secure building next door to the bowling lanes. She continues to use the residential service

from Mr. "M." There is no one else to contact for residential service, and they have enough hauling from the lanes.

45. **Rick Thompson**, Licensing Program Manager in the solid waste section at the Department of Environmental Quality (DEQ), Permit and Compliance Department in Helena, Montana, was called to testify that Sanitation, Inc., is making progress and coming into compliance with DEQ's regulations. He stated that Sanitation, Inc., has rectified groundwater monitoring problems. Sanitation, Inc., has in place and is current in payments on a post-closure plan with financial assurance. The types of problems Sanitation, Inc., has experienced are the same kind of problems that Mr. "M" has in his landfill, i.e., litter and inadequate cover. However, the state is currently suing Mr. "M" for its post-closure obligations, the only landfill in the state subject to a suit for non-compliance. The state attempted to work with Mr. "M" on compliance, giving him an extension from May to the end of September, 1997, but Mr. "M" failed to come into compliance. There are no DEQ plans to file any lawsuits against Sanitation, Inc.

46. Under cross-examination, Mr. Thompson testified that the agency records on which he was basing his testimony are restricted to the period from February, 1996, to the date of the hearing. Sanitation, Inc., has complied with the financial assurance requirements and has a post-closure plan in place. Sanitation, Inc., is in the process of upgrading the plan, and the DEQ is reviewing the plan. The DEQ is satisfied with Sanitation, Inc.'s compliance efforts. On Mr. "M" the department received the plan in March, 1997, and met with Mr. "M"'s consulting engineer in June, 1997. The plan was deficient. The department wrote a letter outlining what was needed and has not heard from the engineer. Mr. "M" is well beyond the deadline. On redirect, Mr. Thompson clarified that Sanitation, Inc.'s new submittal is for a voluntary upgrade which the department encourages. Even if Mr. "M" comes into compliance at this late date, Mr. Thompson believed that the department would pursue fines and penalties accrued in the three month period in the District Court action.

47. **Cherie Labrie Jones**, Harlowton, testified in support of the application. As a newly divorced single mother, she contacted Mr. "M" for garbage service and responded that there were five in her family. She asked how much it would be, and they said they would send

her a bill. They did not send her the bill for about a year, but kept picking up her garbage. When she finally receive her bill, it was too much for her to pay at once. Mr. "M" informed her that it would not pick up her garbage until the bill was paid in full. She made payments and stored her garbage and took it to her ex-husband's ranch.

48. Ms. Jones testified that whenever she called the office, the woman who answered the phone was not very nice. She informed her that her calls were being recorded, and yet when she would call again they would not have any idea of what the previous call had entailed. She was paying for 55 gallons of garbage, but had just two 20-gallon barrels. She put a little can out to make up the difference and got charged extra. She believed that she had not received the first part of her bill because she and her landlord were both paying for the service. When she got behind in payments again, they terminated service and charged her through November, although they did not pick up the full month of November. She felt that if they had a local office where she could discuss matters with them face to face, there would be better service. She admitted that her memory was not exact on the details. She considered dealing with Mr. "M" a "headache."

49. Under cross-examination, she testified that she had not used Mr. "M"'s service since November, 1994. She said that when she had service, for a year and a half she had called and asked what she owed. When she finally got the bill, it was too much to pay at once. Mr. "M" was not willing to work out a payment plan so that she could continue service, so she was forced to do without. She believed that she had finally paid off the bill, but she had no interest in resuming service with Mr. "M." From Mr. "M"'s records, Ms. Jones was questioned on the following under cross-examination. On February 18th, 1995 she was terminated for failure to pay. Service was resumed in March 31, 1995 on back payment of $76.70. On May 15, 1995, she was again notified that she would be cancelled unless she paid $67.50. On June 28th she paid $84.34, with a request to continue service. In October 26th, 1995, she was cancelled again due to nonpayment of $76.52. These details were not exactly as she remembered, but she admitted to an on and off payment history. On redirect, she stated that although she was struggling she always caught up and creditors knew this. She repeated that the company was not pleasant to deal with, so she decided not to have service.

50. **Kelly Frick**, a resident of Shawmut, 16 miles east of Harlowton, testified in support of the application. Previously her family resided in Harlowton and took service from Mr. "M." They had two garbage cans in the back. After six months of service, Mr. "M" apparently went through their garbage to find their names. They received a letter from Mr. "M" threatening that they were stealing services and were going to be fined. She called Mr. "M" to inform that they were using their trash cans on their property. Mr. "M"'s office was not at all helpful, never called back, and then sent another bill. She called her landlady who took care of the problem. She said that nobody in town knew them as they had just moved there. On cross-examination, she stated that garbage service was part of their rental agreement. On redirect she added that Mr. "M" did not make an effort to determine if she were a tenant.

51. **A. J. Lorenzen** and his wife Julie own businesses in Harlowton, including a pharmacy, a grocery store and a gift store, and also operate a cardboard recycling business, under the corporate entity, L & L Enterprises. They have used Mr. "M"'s garbage service, despite what has become a contentious situation. He recited many incidents in which they found dealing with Mr. "M" very difficult. Before they moved to Harlowton from Big Timber, one summer they renovated a motel in Harlowton. The contractor had garbage from the roofing project (reshingling), most of which he took back to the Big Timber landfill site. Later that month they received a bill for garbage at the motel site from Mr. "M," who told them that someone in a red pickup truck had authorized the pickup of sheetrock. Their contractor drives a blue pickup, and the project did not involve sheetrock. The situation escalated, they refused to pay the bill and finally it was dropped.

52. Mr. Lorenzen testified on an incident involving garbage left by other people in their dumpster at their grocery store. One of Mr. "M"'s employees removed a "white typical Glad Bag that you see at a grocery store" and placed it on the ground beside the dumpster. Mr. Lorenzen was told that it was not the store's garbage. Mr. Lorenzen testified that his business is open for motor homes, travelers and visitors, who purchase from his store. He stated that if they leave garbage at his premises, that becomes his garbage. He pays for pickup

of a volume of garbage and expects that his customers as members of the public can use the service he provides.

53. Mr. Lorenzen expressed concerns about Mr. "M"'s employees going through his garbage for other purposes, as well. The store has a contract with its book vender that provides magazines and books. The book vendor requires the store to tear off the front cover of the magazines and books and dispose of them to receive credit; the store is not allowed to redistribute the books, despite the many requests it receives. At first, they tore off the covers and put them in the dumpster. Then they observed a lot of "dumpster diving" by Mr. "M"'s employees, with removal of paperback books and magazines to the front of the cab, in violation of his contract with the book distributors. This activity has forced Mr. Lorenzen to expend employee time destroying the materials before disposal. Mr. Lorenzen also has a pharmacy; Mr. "M"'s activities raised concerns about their customers privacy in their confidential information. Mr. Lorenzen purchased a shredder and does not otherwise dispose of confidential information. He also feels that they cannot dispose of outdated medications, which has forced them to dissolve these medications and dispose of them in the sewer, taking a lot of time. He pays for disposal, and does not feel comfortable knowing that Mr. "M"'s employees go through his garbage.

54. Mr. Lorenzen is also concerned about his high rates. Sanitation, Inc., has quoted rates that would save him $600 per year. He now pays $2,600 per year. Sanitation, Inc., will allow him to consolidate his garbage from his businesses, which Mr. "M" would not allow. He also complained about being billed for pickup of cardboard, which he had not authorized because it was to be used for the annual bonfire at the football field. The driver later said that noone had authorized it; he just picked it up. Mr. Lorenzen was embarassed to discuss what were individually small items, but he said cumulatively they had escalated. His files contained a lot of communication and letters. Based on his experience with Mr. "M" he feared reprisal for his testifying.

55. On cross-examination, Mr. Lorenzen was questioned on the time frame of the incidents and letters. He stated that he had a thick file of his correspondence. Counsel for Mr. "M" objected to the prompting from Mr. Lorenzen's wife. On checking his files,

Mr. Lorenzen testified that the cardboard incident was in the fall of 1994. The period of time involving the magazine vendors was 1995. He stated that he feared reprisal based on a letter dated February 1, 1995 that was about a substantial rate increase. He recalled that Mr. "M"'s employees took pictures of his dumpster and audited the contents. The letter stated that he was to have nothing to do with Mr. "M"'s drivers, and they would have nothing to do with him. He inferred a threat from the overall manner in which his disputes were handled. Mr. "M"'s letter indicated that while he had claimed the driver was belligerent, in fact Mr. "M"'s version was that he cursed the driver. On cross-examination, counsel pursued a line of questioning on whether Mr. Lorenzen had placed any garbage next to the dumpster for pickup, and he replied that he had not.

56. Mr. Lorenzen contrasted the manner in which he would handle customer complaints with how he was treated by Mr. "M." In general, after doing his research, he would always be courteous, even in assessing late fees for movies, for example. But he would have documentation, and the message would always be in a friendly tone. On redirect, Mr. Lorenzen testified that he has owned and managed businesses in several communities for 20 years and has never been treated in business dealings as Mr. "M" has treated him. The February 1, 1995, letter from Sandra Mintyala told him that he should be able to haul his own garbage. On the cursing incident, Mr. Lorenzen testified that when he was told where to park his trailer, he did not make a direct curse, but said, "I will park my **** trailer anywhere I wish on my property." He said that he is not a person to use profanity normally, but after all the letter writing, this was the straw that broke the camel's back.

57. **Julie Lorenzen** appeared and testified to clarify some matters. The $10 charge for the sheetrock incident appeared on the garbage bill for their house. This incident occurred after the previous difficulties. She called Mr. "M" and was told that the conversation was being recorded. She was told that a red flatbed Ford truck pulled up to the garbage truck and asked that the sheetrock be put on the garbage truck and billed to this location (their home). She told Mr. "M" that she had never authorized this and that the individual did not work for them. The response from Mr. "M" was not polite. She told them that their contractor did roofing, not sheetrocking, and that they had not used sheetrock. Their contractor disposed of

his own garbage. Eventually the fee was removed. She felt that Mr. "M"'s photographing their garbage was harassment, along with the letters and a corresponding increase in fees. They consulted an attorney to end the harassment, but dropped the matter.

Protestant's Witnesses

58. **Marvin E. Mintyala**, Lewistown, owner/manager doing business as Mr. "M" Disposal (Mr. "M"), protested the application. He has been in business since 1974. His father bought a garbage route in 1949. Mr. Mintyala worked for his father for several years after high school. In 1974, at the request of the state health department and the local sanitarian, Mr. Mintyala testified that he obtained an operating certificate (PSC No. 3819), began a rural operation and bought a landfill for $38,000. He expanded his operation, buying out his father's and another garbage-hauling authorities (with some equipment) at $50,000 and $116,000, respectively. The legal cost for hearings to obtain the authority cost about $15,000. He also protested three or four applications and engaged in court litigation which probably cost him $100,000.

59. In addition to the landfill, Mr. "M" has an office on-site where they park their trucks. They live on the front side of the site in a house. There is a pole barn on the backside that can be used for shop facilities, as well as a shop downtown. He does most of the mechanical work, along with two of the "driver dumpers." Mr. "M" has about 16 employees, including seven drivers, office personnel, and a cat operator. Mr. Mintyala drives a garbage truck occasionally; he also does all the safety training, educates new drivers on what can be dumped into a garbage truck, and demonstrates route runs. His equipment includes cats, dozers, and a scraper. He has a 1985 GMC garbage truck with a 20 yard packer, a 1982 Ford tilt cab with a 16 yeard packer, a 1982 Ford F-800 with a 20 yard packer; a 1977 International with a 20 yard packer. They have pickups and 11 dumping trailers used for larger items, 3 D9 Cats, 2 pull scrapers, and one self-propelled scraper (used at the landfill).

60. Mr. Mintyala is responsible for the operation of the landfill. He testified about the compliance requirements for the landfill. However, the landfill is a separate operation from the pickup and disposal. Mr. Mintyala has taken numerous courses as a landfill operator. The stringent Federal regulations which went into effect April 9, 1997, have created more

difficulty in compliance with the Department of Environmental Quality. Before that he was licensed and in full compliance.

61. Mr. Mintyala testified that the new regulations on closure and post-closure requirements called for new closure plans to be approved by the DEQ. In 1993 he hired an engineering firm in order to come into compliance. He testified about the difficulties with the engineering firm and a previous law firm in working with the DEQ after April, 1997, when he thought he was close to compliance and to having a bond commitment for the post-closure requirements. When they were within a month of the extension, the lawyer and the engineer told him they were not going to complete the commitment for closure requirements. The lawyer told him that the lawyer was going to "go partners" with another carrier and they would provide bonding at the landfill for 60 percent of the total assets of Mr. "M" Disposal. The engineering firm told him he was nearly bankrupt and should accept the offer. Mr. Mintyala walked out of the meeting. On cross-examination, he added that the problems on the post-closure bond were not entirely the fault of the lawyers and the engineers. The banking corporation did not release some loans that were paid off in 1991 and 1992, which clouded the financial records.

62. If the landfill became unusable, he testified that he has the option of taking the garbage to Waste Management in Great Falls. Waste Management committed to a price of $17.06 per ton to unload. If Waste Management were to haul, it would cost between $28 and $38 per ton. The difference between using his landfill and that of Waste Management would be between $5 and $7 a ton, he calculated. He did not think that would change the rate structure.

63. Mr. Mintyala testified on how he began serving Harlowton. The city council decided to get out of the municipal garbage business, with landfill compliance becoming so expensive. He had authority to serve Wheatland County. He met with the city council in two to four meetings and other meetings with a county-wide group to discuss garbage-hauling and landfill options. He agreed to provide service and preferred to do his own billing. He told the city council what receptacles (30s and 55s) he would provide. Lately, he admitted that the bottoms were falling out of some of the old barrels, but he said he would replace them if

people called. Nobody told him that these receptacles were illegal. The first time he heard about hinged receptacles was in Sanitation, Inc.'s application. Had the mayor contacted him, he would have informed him about alternatives to the 30-gallon container.

64. Mr. "M" provides service to communities and farms/ranches in Meagher, Wheatland, Golden Valley, Musselshell, Petroleum, Fergus, Judith Basin and Choteau Counties six days of the week. The off-highway service is provided once a month for over five miles and twice a month for one to three miles from the highway. The service to towns is more frequent. Mr. "M" has various routes during the week to serve its customers. Pertinent here, on Monday, Wednesday and Friday, trucks go to Harlowton, dividing up the town into three sections. Mr. "M" provides service to other communities and the ranches on these routes, and additional service on a one-time basis, such as for remodeling and roofing jobs.

65. Mr. Mintyala testified that Mr. "M" supplies 30- and 55-gallon drums and rents various sized dumpsters for $17.30 per month above the cubic yard charge for disposal. Dumpsters, other than those used for construction projects, have lids. The 30- and 55-gallon garbage receptacles are barrels. They purchased most of the 55 gallon barrels from the bee company in town and steam-cleaned them. The 30-gallon barrels are primarily oil drums which are drained but not steam-cleaned. On cross-examination, Mr. Mintyala testified that there are "at least hundreds" of these barrels around town. Mr. "M" also picks up garbage in galvanized and plastic cans on racks owned by the customers. Mr. Mintyala testified that the mayor of the city of Harlowton asked him once to supply lids, and they put lids on all their drums and barrels in Harlowton. He indicated that customers did not keep the lids on the containers. On the new city ordinance to provide 30-gallon receptacles with hinged lids, Mr. Mintyala testified that he had received no notice and learned about it 10 days later from the newspaper. He would provide service under these requirements. However, he said that he intended to appear at the January 20, 1998, city council meeting and make suggestions on the types of carts and containers that should be allowed.

66. Mr. Mintyala testified that their drivers are trained on customer relations. The drivers are not conduits of messages. Mr. "M" has a 1-800 number for its customers. Mr. Mintyala admitted that his drivers go through garbage looking for names of people who

might have left garbage. If a store or gas station, for example, has uncharacteristic garbage, that is a red flag. They need to know who is doing it to figure out whether it is legal.

67. Mr. "M" has a total of about 3,200 customers, including about 510-20 in Harlowton. Mr. Mintyala said that a loss of revenues from the customer base would cause a rate increase in the future. If the applicant took 200 customers, Mr. Mintyala testified that Mr. "M" would still have to serve three days a week if the customers wanted three-day a week service. That would also result in an increase in rates. He testified further on the competition with Sanitation, Inc., in Stanford, Judith Gap and the surrounding areas. Mr. "M" lost quite a few customers in Stanford because their people did not get out there on a one-to-one basis. He did not know whether the customers in Judith Gap were lost to competition with Sanitation, Inc., or a result of the mill closing. The closure of the mill had a detrimental effect on Lewistown, Harlowton and Judith Gap.

68. Mr. Mintyala addressed various witness testimony in the Applicant's case. On Mr. Tomlinson's testimony, he said that he was the driver and recalled that they were doing construction work and moved the container back against the building between a power pole and behind the gas meter. It rained and was muddy, so they did not try to move the dumpster away from the building past the gas meters. He believed that they picked up that garbage two days later. On testimony about harassing the customers, he said that in their "check procedures" they talk to the people involved and any third party witnesses, then normally write a letter.

69. On cross-examination, Mr. Mintyala stated that Mr. "M" has 4,800 customers, which includes 3,200 year-round customers and 1,600 occasional customers. He admitted that 200 customers was between 1/16th and 1/24th of his customer base. He did not have to raise rates in the other towns in which Sanitation, Inc., competes.

70. Mr. Mintyala testified that Mr. "M" has a form letter (one sent to a customer's mother admitted as SI-6) that it sends to people after the employees have gone through the garbage and found someone else's address in it. Mr. "M" sends out three of these letters per month to both the parties alleged to have stolen garbage service and to the County Attorney. Mr. Mintyala admitted that Mr. "M" has a policy of looking through people's garbage if there

is a trigger, such as a resident calling and saying that someone is using his cans. He admitted that no one in Harlowton had contacted Mr. "M." with the concern that someone was using garbage service without authorization. He admitted that taking the Glad bag out of Mr. Lorenzen's dumpster was pursuant to company policy.

71. Mr. Mintyala admitted under cross-examination that he had told the Commission he had sold his business to Dennis Johnston. Counsel for Mr. "M" objected to a discussion of why the sale did not go through as being irrelevant to the proceedings. Mr. Mintyala admitted that he faces a $200,000 obligation to close down the landfill and that he does not have the money but could borrow it. He testified that if he were to haul the garbage to Waste Management's landfill in Great Falls, there would be increased costs for a transfer station ($40,000 for construction) and an employee at the station. He admitted that it could cost up to $10-20 per ton to use a transfer station, which might result in an increase in rates. Mr. "M" does not have sufficient equipment at this time to haul garbage to Great Falls. On redirect he said that Mr. "M" would probably haul the garbage to Great Falls rather than have Waste Management do it. There would be enough loads to justify buying a semi-tractor and two walking floor trailers at a cost of $40,000 to $60,000. He did not expect that he would need additional employees to run the transfer station and haul to Great Falls. To staff questions, Mr. Mintyala responded that he would also have the costs of closing the landfill, but he believed that they would come in at substantially less than the $200,000 anticipated by the engineer and the DEQ.

72. Mr. Mintyala testified that Mr. "M"'s policy is to tape record all telephone calls. If someone says they said something else or says they want something done and then claim that was not what they wanted, Mr. "M" can rely on the recording. The reception from outlying areas is not always good, so they can replay the tapes to get addresses. Telling people they are being recorded stops a lot of profanity, he said.

73. Mr. Mintyala testified that Mr. "M" charges $6.25 for an additional 30-gallon pickup any time there is additional garbage, which would include an extra bag. He said that there are extra costs incurred to pick it up, including the time to write down the additional load and process it through bookkeeping in the office.

74. **Sandra Mintyala**, office manager of Mr. "M" since 1974, testified that she does all the bookkeeping, directs the staff to respond to customers or does it herself, tries to make sure the customers are properly charged fees and that Mr. "M" gets paid, has set up the customer data system, amasses and analyzes data, and bills for work. Mrs. Mintyala is also qualified by the Manager of Landfill Operations (MOLO) Course. The office's 1-800 number is on all their billing statements and part of their letterhead. She or a staff member respond to calls in the office about accounts and complaints. She researches complaints. Sometimes she has the route drivers query the customer, pulls the files and the daily truck reports, and talks to third parties who may be referenced in the files she keeps on all customers and locations. She prefers to respond in a letter and keep documentation in a file. Billing is somewhat automated, with statements used primarily for businesses and coupons for residential customers.

75. Mrs. Mintyala testified on Mr. "M"'s customer information and communication. She records calls as part of her data system to back up company records. Customers are informed they are being recorded. Since instituting this procedure, they have "less real hostile phone calls, the cursing, the swearing, using inappropriate language. . .," though it has not been totally eliminated. If a customer calls and talks to someone else, she can use the tape to analyze the conversation. She believed that the company gives full information on the phone. Mr. "M" also distributes to customers a document, "Things You Need to Know," which tells them what they can put in their containers and other rules, their credit policy, fee structures, and their landfill charges.

76. Mrs. Mintyala testified that Exhibit SI-6, a copy of a letter to a customer from Mr. "M," is a form letter the company has used for several years. When they find the address of someone other than the customer in the dumpster, they send the letter, with a carbon to the customer and a copy to the County Attorney. She sent it the County Attorney as part of their cooperative efforts with the local authorities.

77. Mrs. Mintyala brought the individual files of some of the witnesses to refute their claims that the company was not cooperative. On the mattress incident alleged by Frank Hutton, her records showed that they had a call from Biegle's Bar to pick up a mattress and box springs. The truck report indicated that it was picked up. They sent out a bill and it was

disputed. On whether Mr. Tomlinson received a refund, she could find no record of his requesting a refund. The follow-up notation showed that they moved and dumped the bin, plus one yard extra, three days later. On the testimony of the owner of the Cornerstone, Mrs. Mintyala stated that there was no notation of a call or a dialog in the file. She said that when they first came to Harlowton, they sat down with Mrs. Hinand to determine her needs for garbage service. It was hard to set a rate for her, because the volumes of garbage varied so much. They attempted to average her usage for a rate. Mrs. Mintyala said that she has tried to discuss the matter with Mrs. Hinand, but this was difficult because she interrupted and talked over her head (and other customers do this, too). Mrs. Mintyala tried to solve the matter by putting her communications in writing, because Mrs. Hinand was such a good customer. She stated that if all the customers were as good about paying as Mrs. Hinand and Mr. Lorenzen, Mr. "M" would have no problems.

78. Mrs. Mintyala testified that there was a series of letter-writing episodes between Mr. "M" and Mr. Lorenzen. Mr. Lorenzen's contact started with a letter referring to one of the "audit verifications" she had done. She tried to respond and "deal with the man" with difficulty. Counsel for Mr. "M" introduced into the record documentation of the exchange between them (and exhibits M-4, M-5, M-6, and M-10 through M-12 were admitted).

79. On cross-examination, Mrs. Mintyala testified that she did not think any of the witnesses were right about her company, but they had the right to their opinion. She did not feel that she had a customer relations problem. She admitted that part of the reason for instituting the tape recording of phone calls was to cut down on cursing and swearing. On SI-6, the letter sent to the mother of a customer, she testified that it is part of their normal procedure to deal with "this type of an incident." The letter states that it had come to attention of Mr. "M" that this person had been dumping her trash in the containers at [her daughter's] in Harlowton. The letter advised that this act constituted misdemeanor theft. Mrs. Mintyala admitted that she did no further investigation, once the address of the wrongful user is ascertained. They were not "advised that anything more was required when . . . advised to use this form letter to deal with this type of situation." She admitted that she did not call either the customer or the person to whom they send the form letters. Mrs. Mintyala stated that they do

not go through every garbage can, "only through cans that there is an indication to us that the garbage in that can is different than what is normally there."

80. In exhibit SI 5 (the letter to Mr. Lorenzen), Mrs. Mintyala admitted that in the middle of the letter she made the following statement: "and since you have brought your account to my attention, we're increasing what you're going to have to pay." She also admitted that she told Mr. Lorenzen if he did not like their service, he had the option of hauling his own garbage. The landfills she told him he could haul his garbage to are Mr. "M"'s and Sanitation, Inc.'s in Lewistown, 40 miles away. On redirect, she stated that the rate increase was due to volume.

81. On Mr. Stoltz's and the Mayor's complaints about not getting the customer list, Mrs. Mintyala testified that they have no formal contract with the city to do so. She indicated that Mr. "M" has concerns about the customers' privacy, the information becoming a matter of public record, and the possibility of competitors getting the information. She did reluctantly provide information on customers no longer receiving service. She would agree to provide the information to the city in the future, if the city would agree not to disseminate it to the general public.

82. **Jim Howe**, a customer of Mr. "M" in Harlowton, testified that Mr. "M"'s service has been perfect. Further, he had personal knowledge with some of his renters of Mr. "M"'s flexibility in providing service despite nonpayment.

FINDINGS AND DISCUSSION

83. Pursuant to Title 69, Chapter 12, Montana Code Annotated (MCA), the Commission supervises and regulates intrastate motor carrier service. § 69-12-201, MCA. The maintenance of an adequate common carrier motor transportation system has been declared a public purpose. § 69-12-202, MCA. To obtain motor carrier operating authority, a motor carrier must file an application with the Commission, which will give notice of the filing and schedule a hearing upon filing of a protest or a request for a hearing. § 69-12-321, MCA.

84. Section 69-12-323, MCA, sets out the requirements for a Commission decision on an application for a certificate and the evidence presented at hearing. The Commission shall find and determine from the evidence whether public convenience and necessity require

authorizing the proposed service. The Commission will consider existing transportation service; the likelihood of the proposed service being permanent and continuous 12 months of the year; and the effect of the proposed service on other essential transportation service in the affected communities. Under § 69-12-323(2)(b), MCA, for purposes of Class D certificates, a determination of public convenience and necessity may also include a consideration of competition.

85. The Commission has interpreted § 69-12-323, MCA, as requiring it to address these issues before granting an application for authority:

a. Is the applicant fit and able to perform the proposed service?

b. Does the public convenience and necessity require the authorization of the proposed service?

c. Can and will existing carriers meet the public need for the proposed service?

d. Would the proposed service have an adverse impact on existing transportation service?

e. **(discretionary for Class D applications, only)** If there is a public need for the service and applicant is fit to provide the service, but existing carriers could meet the need or might be harmed by granting the application, would competition with the existing carriers promote the public interest?

Fitness

86. The Commission makes a threshold determination of whether the applicant is fit, willing and able to provide the service, considering these factors: (1) the financial condition of the applicant; (2) the intention of the applicant to perform the service sought; (3) the adequacy of the equipment the applicant has to perform the service; (4) the experience of the applicant in conducting the service sought; and (5) the nature of previous operations, if there are allegations of illegal operations.

87. The Commission finds that Applicant has demonstrated that it is fit, willing and able to provide the service for which he has applied. Financial records indicate that Applicant has the capability to operate and maintain its present equipment and to acquire new equipment as needed. Sanitation, Inc., has operated as a garbage hauler under Class D authority with a

business that has grown to 1,900 customers. It presently has relatively modern equipment and employees available. It has the ability to hire additional help and acquire additional equipment.

88. Sanitation, Inc., previously filed for garbage hauling authority in Wheatland County, and its application was denied. (Docket No. T-93.54.PCN, Order No. 6251a, issued December 23, 1993.) Mr. "M" was the Protestant in that Docket, too, and made an issue of Sanitation, Inc.'s non-compliance with state regulations on its landfill. Mr. Spoja candidly admitted that Sanitation, Inc., had some major financial difficulties as result of previous management. Tables have turned, and Sanitation, Inc., is on sound financial ground with newer equipment, substantial landfill investment and new office facilities. The business is operating in the black. DEQ's witness in the present docket testified that Sanitation, Inc., is in compliance with its landfill while there is a lawsuit against Mr. "M" for its failure to present a closure plan. The landfill issue is peripheral to the application, since owning a landfill is not essential to providing garbage service. However, Sanitation, Inc.'s compliance is further indication of its financial fitness and willingness to comply with governmental regulations.

Public Convenience and Necessity

89. In determining public convenience and necessity, the Commission has traditionally followed the analysis of Pan-American Bus Lines Operation, 1 M.C.C. 190 (1936).

> The question in substance is whether the new operation or service will serve a useful public purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines of carriers; and whether it can be served by applicant with the new operation or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest. 1 M.C.C. 203.

90. The public need to meet in an application for a certificate of public convenience and necessity is shipper need. In a Class D application, this need is for garbage hauling service. Mr. "M" has existing authority to provide garbage hauling service in the area of the application where it has 510-520 customers out of the 3,200 to 4,800 total customers.

Witnesses attested to dissatisfaction with the practices of and service provided by Mr. "M" and urged the Commission to approve Sanitation, Inc.'s request for a certificate in the area.

91. Testimony of Mr. "M"'s customers supports a finding that Mr. "M"'s service falls short of meeting the public convenience and necessity. Although much of the testimony related back in time, this testimony was corroborated and brought up to date by the testimony and demeanor of Protestant's witnesses. Customers testifying about prior events indicated that the incidents were starkly fresh and that dealing with Mr. "M" (calling or writing or receiving correspondence) continued to be difficult and uncomfortable. Mr. "M" conveyed the strong impression that if they did not like Mr. "M"'s service, they could haul their own garbage 40 plus miles away to three possible landfills, including that of Mr. "M."

92. Mr. "M" has serious public relations problems. The company has alienated and created a contentious relationship with two of its highest paying commercial customers, even though Mrs. Mintyala admitted that they were her best customers and always paid on time. Apparently, the hostile atmosphere created around dealing with Mr. "M" resulted in Mr. "M"'s decision to tape record all telephone conversations. Mr. and Mrs. Mintyala both maintained that the recording was to correct them if they got an address wrong. However, their overriding testimony was that recording had cut back substantially on cursing from customers and they could bring out the recording to demonstrate that the customer was wrong.

93. Mr. "M" engaged in unusual payment policy requirements. For example, Mr. "M" would tell customers to leave cardboard and some other items next to the garbage receptacle and then charge them $6.25 extra for a bag, although the receptacle was unused as a result of this request and the volume had not been reached. Mr. "M" also routinely billed renters individually, although the landlord was paying for service.

94. One witness who ran a successful restaurant testified that her service was discontinued without notice and her dumpster removed. When she called, she was told that it was for non-payment, although she had paid her bill 5 days before, as confirmed by the office. Mr. "M" then challenged her that she still owed, but the remittance was not due for 5 or 6 days. Mr. "M" never apologized. In fact, when she decided that she needed service for less volume, the office person told her that "Marvin" would monitor her closely to make sure she

was not over this volume. The Commission finds that this kind of communication fosters poor public relations.

95. Protestants testified that they audit garbage regularly to determine if the people using the receptacles are paying for the service. The drivers go through the contents of the garbage looking for names of people who might have left garbage. If a store or gas station, for example, has uncharacteristic garbage, they need to find out who has left it to determine if it is legal. The Commission finds it unacceptable that Mr. "M" has taken on the task of determining whether there is theft of service, and then sending out letters threatening prosecution if the alleged criminal does not pay $15.00. Mr. "M" makes no effort to ascertain if there is an actionable crime of theft. If there were, then the proper avenue is to prosecute. If not extortion, this letter-writing campaign appears to be gross harassment. It does not reflect well on Montana that these letters are wending their way to all parts of the country and perhaps Canada. At the least, Mr. "M" has too limited a view as to the purpose of garbage receptacles in grocery stores and public parks; that is, for the use of the public patronizing these services. It is not Mr. "M"'s business to pursue someone's private guest leaving a sack of garbage at her mother's or daughter's house, either.

Competition

96. When the issue of competition is raised, the Commission does not view it as a stand-alone, controlling element, but rather in the context of the basic principles of motor carrier regulation. Upon determining fitness of an applicant and public need for the service, the Commission examines the ability of existing carriers to meet the need. Mr. "M" has the authority, facilities, equipment and ability to perform this service. The public, however, has demonstrated that Protestant has provided rude and intimidating service, terminated service, and informed customers that they have no option other than to take the service or haul it themselves. Mr. "M" has created a niche for competition with its attitude toward customers and service, policing their garbage and inspecting the contents, sending out threatening letters to relatives and travelers, and telling people if they do not like the service, they can haul themselves. At the request of persons in Harlowton, Mr. Spoja recognized a need for

competition and applied for this authority, stepping in to fill this niche and provide an alternative service that the witnesses would not otherwise have.

97. Members of the public testified. Those presiding at the hearing judge the credibility of witnesses. Mr. "M"'s witnesses corroborated the public testimony in their statements and demeanor. They justified their employees going through garbage on the mere suspicion that some garbage might belong to a person other than the customer. Even more egregious are the form letters sent to house guests and family members of customers and to residents of other cities and states who were passing through and depositing their garbage in public places such as grocery stores and car washes. Mr. "M" sent these letters, with a copy to the County Attorney, threatening prosecution for theft of services if the "violator" did not pay $15. Mr. "M" has created a niche for competition with its attitude toward customers and service, policing their garbage and inspecting the contents. The Commission finds that competition would promote the public interest in improving garbage service to this area.

Existing carrier's ability to meet public need; resulting harm

98. Mr. "M" did not demonstrate that the company would be harmed by the loss of perhaps 200 customers in Harlowton out of its 3,200 to 4,800 customers system-wide. Mr. Mintyala showed no figures as to projected losses that would substantially impair the ability to provide service. At the worst, Mr. Mintyala testified that competition might result in a rate increase. However, he stated that he did not raise his rates in other areas where Mr. "M" has gone head to head in competition with Sanitation, Inc. He did not blame competition on the loss of customers in other service areas, but rather not getting out there on a one-to-one basis (Stanford) and the mill closure (Judith Gap).

99. The Commission has weighed competition as allowed in consideration of applications for Class D garbage hauling authority. The Commission finds that public convenience and necessity require the proposed service, that Applicant is fit to perform the service, that the existing carrier may be able to perform the service, but will not be harmed by the grant of the application, and that competition will promote the public interest in improving service, and perhaps rates.

CONCLUSIONS OF LAW

1. The Montana Public Service Commission properly exercises jurisdiction over the parties and matters in this proceeding pursuant to Title 69, Chapter 12, Montana Code Annotated.

2. The Commission has provided adequate notice and opportunity to be heard to all interested parties in this matter pursuant to the Montana Administrative Procedures Act (MAPA) requirements for contested case procedures. §§ 2-4-601 et seq., MCA.

3. An applicant for a certificate of Class D operating authority must show that the public convenience and necessity require the proposed service. In applications for Class D garbage hauling authority, the Commission may consider competition as a factor in determining public convenience and necessity. § 69-12-323, MCA.

4. Applicant is fit to provide the service as requested.

5. Applicant has demonstrated a public demand or need for a the proposed service which is not met by existing carriers and cannot be met so long as the Protestant has no competition.

6. Granting this application will not adversely affect Protestant, or be destructive to an extent contrary to the public interest, but will likely encourage reasonable, cost-based rates and considerate service.

ORDER

NOW THEREFORE IT IS ORDERED that the application of Sanitation, Inc., Lewistown, Montana for a Class D Certificate of Public Convenience and Necessity is granted as follows.

Class D - Garbage within the town of Harlowton, Montana and a six (6) mile radius.

Done and dated this 18th day of May, 1998.

BOB ANDERSON
Commissioner and Hearings Examiner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: This Proposed Order is a proposal for decision. Each party has the opportunity to file exceptions, present briefs, and have oral argument before the PSC prior to Final Order. See, Section 2-4-621, MCA. Exceptions and briefs must be filed within 20 days of the service date of this Proposed Order. Briefs opposing exceptions must be filed within 10 days thereafter. Oral argument, if requested, must be requested at or prior to the time of briefing. *See*, ARM 38.2.4803 and 38.2.4804.