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BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION

In re the Matter of Determining the Proper  
Carrier Classification of  
  
GLACIER RECYCLE, LLC; HUNGRY  
BUZZARD RECOVERY, LLC; AND T&T  
RECOVERY, INC.

Docket No.: TG-072226

**GLACIER RECYCLE, LLC, HUNGRY  
BUZZARD, LLC AND T&T  
RECOVERY, INC.'S MOTION FOR  
SUMMARY DETERMINATION**

**I. INTRODUCTION AND REQUEST FOR RELIEF**

Glacier Recycle, LLC, Hungry Buzzard Recovery, LLC, and T&T Recovery, Inc. (collectively, the “**Respondents**”), by and through their counsel of record, hereby move for summary determination pursuant to WAC 480-07-380(2) and CR 56. Summary determination is warranted because these proceedings present no genuine dispute of material fact, and Respondents’ transportation of construction, demolition and land clearing waste to the Weyerhaeuser Material Recovery Facility in Longview, Washington is not subject to regulation under RCW 81.77 as a matter of law.

**II. STATEMENT OF RELEVANT FACTS**

The facts relevant to the resolution of this motion are not in dispute.

This administrative hearing concerns the Respondents’ transportation of construction, demolition and land clearing (“**CDL**”) waste to a Weyerhaeuser Material Recovery Facility (“**MRF**”) in Longview, Washington. *See generally, Order Instituting Special Proceeding (“Order”), ¶ 5.*

1 All three Respondents are recycling companies. The Respondents provide roll-off boxes  
2 at their customers' demolition and construction sites specifically for the collection of recyclable  
3 CDL material. *Staff Request for Classification Proceeding ("Staff Request")*, at 4. The  
4 Respondents collect and haul the CDL material to their own sorting facilities, where their  
5 employees generally sort the material for delivery to manufacturing facilities or for disposal.<sup>1</sup>  
6 *Staff Request*, at 4-5. The Respondents also identify and transport some of the sorted CDL  
7 material to the Weyerhaeuser MRF. A flow-chart demonstrating this process is attached hereto  
8 as **Exhibit B**. The Respondents do not hold solid waste collection certificates from the  
9 Commission, but instead hold motor freight common carrier permits under RCW 81.80.

10 In addition to its MRF, Weyerhaeuser owns and operates a private landfill in Castle Rock,  
11 Washington. *Fulcher Decl.*, ¶ 2. The purpose of the landfill is to dispose of industrial waste  
12 generated by Weyerhaeuser's industrial pulp and paper operations. *Fulcher Decl.*, ¶ 3. Loads  
13 are sent to the landfill via railcar from Weyerhaeuser's MRF. *Fulcher Decl.*, ¶ 5. Loads  
14 received at the landfill are tipped into an active landfill cell; a bulldozer then spreads and mixes  
15 the material into thin layers to form slopes. *Fulcher Decl.*, ¶ 9. The Cowlitz County operating  
16 permit requires that these slopes be created, but does include specific direction as to how proper  
17 slopes will be achieved or what materials may be used in doing so. *Fulcher Decl.*, ¶ 9.

18 The purpose of spreading materials into slopes is to allow for optimal compaction and  
19 adequate drainage of the landfill. *Fulcher Decl.*, ¶ 10. Compaction is important because the  
20 biggest asset at a landfill is airspace; thus, Weyerhaeuser wants to put as much material into as  
21 little space as possible. *Fulcher Decl.*, ¶ 11. However, over-compacted landfill materials do not  
22 allow the landfill to drain. *Fulcher Decl.*, ¶ 11. Weyerhaeuser has determined that mixing the  
23 structural material obtained from third-parties, such as Respondents, with its own industrial  
24 waste provides the proper balance between compaction and drainage. *Fulcher Decl.*, ¶ 12.

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<sup>1</sup> Glacier Recycle, LLC's sorting facility is permitted as a Material Recovery and Recycling Facility by King County. A true and correct copy of said permit is attached hereto as **Exhibit A**.

1           When Weyerhaeuser accepts the CDL material at its MRF, it charges the Respondents a  
2 “tipping” fee which varies between \$25 and \$50 per ton, depending on the type and volume of  
3 material discarded and Weyerhaeuser’s operational needs. *Fulcher Decl.*, ¶ 8. Loads delivered  
4 to the Weyerhaeuser MRF are weighed and then tipped onto its 20-acre asphalt yard. *Fulcher*  
5 *Decl.*, ¶ 14. Weyerhaeuser then picks through the material to remove any large pieces of  
6 obviously recyclable materials (which are separated for transportation to processors or end  
7 users). *Fulcher Decl.*, ¶ 14. The remaining materials are stockpiled separate and apart from  
8 Weyerhaeuser’s industrial waste. *Fulcher Decl.*, ¶ 14.

9           As Weyerhaeuser employees load contains for the train, they alternate scoops of  
10 industrial waste and structural residuals to pre-mix the loads destined for the landfill. *Fulcher*  
11 *Decl.*, ¶ 15. The industrial waste and structural residuals are further mixed at the landfill as the  
12 loads are spread and compacted with a bulldozer. *Fulcher Decl.*, ¶ 16.

13           During 2007, Hungry Buzzard Recovery, LLC delivered approximately 11689 tons of  
14 CDL material to the Weyerhaeuser MRF, T&T Recovery, Inc. delivered approximately 3258  
15 tons of CDL material, and Glacier Recycle delivered approximately 5052 tons of CDL material.  
16 *Fulcher Decl.*, ¶ 19. Weyerhaeuser contends that, “[e]ssentially, all of the material received  
17 from independent haulers, third-parties and self-haulers is material that has a beneficial structure  
18 for the landfill.” *Fulcher Decl.*, ¶ 17.

19           Through these proceedings, Commission Staff seeks entry of an Order directing the  
20 Respondents to “cease and desist from collecting more than an incidental or accidental amount of  
21 non-recyclable solid waste materials and transporting such solid waste to the Weyerhauser  
22 facility.” *Order*, ¶ 6.<sup>2</sup>

23 ///

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25 \_\_\_\_\_  
26 <sup>2</sup> See also *Staff Request*, at 7 (“Staff believes that these allegations, if proved, would warrant an  
order requiring the companies to cease and desist from collecting more than an incidental or  
accidental amount of non-recyclable solid waste materials and transporting such solid waste to  
the Weyerhauser facility”).

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### III. AUTHORITY AND ARGUMENT

The question in these proceedings is whether the Respondents' transportation of CDL material to Weyerhaeuser's MRF is subject to regulation pursuant to RCW 81.77. Summary determination in favor of the Respondents is warranted for two reasons. First, Respondents' transportation of CDL material is not subject to regulation under RCW 81.77 because Respondents are transporting recyclable materials, not solid waste. Second, Respondents' transportation of CDL material is not subject to regulation because it is brought to a "recycler for use" within the meaning of RCW 81.77.010(8).

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#### A. Summary Determination Standard

WAC 480-07-380(2) provides that a party may move for summary determination if "the pleadings filed in the proceeding, together with any properly admissible evidentiary support (e.g., affidavits, fact stipulations, matters of which official notice may be taken), show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." In reviewing a motion for summary determination, the Commission will consider the standards applicable to motions made pursuant to CR 56. WAC 480-07-380(2).

The purpose of summary judgment is to avoid a useless trial. *Hudesman v. Foley*, 73 Wn.2d 880, 886, 441 P.2d 532 (1968). Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." CR 56(c). A material fact is one upon which the outcome of the litigation depends. *Hudesman*, 73 Wn.2d at 886.

Pursuant to RCW 81.04.510, Respondents bear the burden of demonstrating that the transportation of CDL waste to Weyerhaeuser is not subject to regulation under RCW 81.77.

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#### B. Respondents are Entitled to Judgment as a Matter of Law

Under Washington law, it is unlawful for a solid waste collection company to "operate for the hauling of solid waste for compensation without first having obtained from the

1 commission a certificate declaring that public convenience and necessity require such  
2 operation.”<sup>3</sup> RCW 81.77.040. *See also* WAC 480-70-081(1) (“A person must have a certificate  
3 of public convenience and necessity from the commission before operating as a solid waste  
4 collection company in the state of Washington.”).

5 Pursuant to RCW 81.77.010(8), however, solid waste collection does not include  
6 “collecting or transporting recyclable materials by or on behalf of a commercial or industrial  
7 generator of recyclable materials to a recycler for use or reclamation.” Rather, transportation of  
8 recyclable materials is subject to regulation under to RCW 81.80. RCW 81.77.010(8). To this  
9 end, RCW 81.77.010(9) expressly excludes recyclable materials from the definition of solid  
10 waste. Recyclable materials are defined by WAC 480-70-041 as “materials that are transported  
11 for recycling, reprocessing, reclamation, or for any process that extracts or modifies the  
12 commodity for reuse or another commercially valuable purpose.”

13 WAC 480-70-011 further provides, in relevant part:

14 (1) The following collection and hauling operations are not regulated by the commission:

15 [...]

16 (e) The operations of a recycling company or nonprofit entity collecting and  
17 transporting recyclable materials from a buy-back center, drop box, or  
18 from a commercial or industrial generator of recyclable materials when  
those recyclable materials are being transported for use other than disposal  
or incineration, or under agreement with a solid waste collection company  
(refer to RCW 81.77.140);

19 (f) The operations of a commercial or industrial generator of commercial  
20 recyclable materials in selling, conveying, or arranging for transportation  
of recyclable materials to a recycler for reuse or reclamation (refer to  
21 RCW 81.77.140); [...].

22 (2) The following collection and hauling operations are not regulated by the  
23 commission as solid waste:

24 [...]

25 (b) A carrier collecting or transporting recyclable materials from a drop box  
26 or recycling buy-back center, or collecting or transporting recyclable  
materials by or on behalf of a commercial or industrial generator of

<sup>3</sup> RCW 81.77.010(7) broadly defines “solid waste collection company” as including “every person ... operating ... vehicles used in the business of transporting solid waste for collection or disposal, or both, for compensation ... over any public highway in this state[.]”

1                    recyclable materials to a recycler for use or reclamation. This type of  
2 operation is regulated under chapter 81.80 RCW as transportation of  
3 general commodities.

4 (Emphasis added).

5 Similarly, WAC 480-70-016 provides:

6 [...]

7 (2) In some instances carriers may be engaged extensively in both motor freight and solid  
8 waste collection operations. In cases where such operations are separable, carriers  
9 may be required to hold both a solid waste certificate under the provisions of  
10 chapter 81.77 RCW and a motor carrier permit under the provisions of chapter  
11 81.80 RCW in order to provide both services. In each case it is within the  
12 discretion of the commission to determine whether a carrier is required to hold  
13 both a motor carrier permit and a solid waste certificate.

14 (3) In some instances, transportation of a specific commodity may be subject to  
15 commission regulation under the provisions of chapter 81.80 RCW, or as solid  
16 waste under the provisions of chapter 81.77 RCW, depending on the  
17 circumstances involved in the transportation of that commodity. For example, if  
18 soil is transported to a landfill to become part of the cover of the landfill, the  
19 transportation is subject to regulation as a motor carrier under the provisions of  
20 chapter 81.80 RCW. However, if the soil is being transported to a landfill merely  
21 for disposal, the transporter is subject to regulation as a solid waste collection  
22 company under the provisions of chapter 81.77 RCW.

23 (4) In determining whether operations require a solid waste certificate or a motor  
24 carrier permit, the commission will consider factors including, but not limited to:

- 25 (a) The intent of the shipper;
- 26 (b) The intended destination of the shipment;
- (c) The actual destination of the shipment;
- (d) Special handling or conditions placed on the shipment by the shipper  
and/or receiver;
- (e) The value of the commodity being transported;
- (f) Whether the carrier is primarily engaged in the business of providing solid  
waste collection or is primarily engaged in the business of providing a  
service other than the collection of solid waste; and
- (g) Whether the carrier holds itself out to the public as a transporter of solid  
waste.

(Emphasis added).

In reviewing statutes, the courts' objective is to ascertain and carry out the Legislature's  
intent. *E.g., Dep't of Ecology v. Campbell and Guinn, L.L.C.*, 146 Wn.2d 1, 9-10, 43 P.3d 4  
(2002). Similarly, courts interpret administrative regulations so as to give effect to their  
underlying policy and intent, and to give them a rational, sensible interpretation. *Mader v.*  
*Health Care Authority*, 149 Wn.2d 458, 472, 70 P.3d 931 (2003).

1 Thus, where the language of a statute or regulation is plain and unambiguous, courts must  
2 derive its meaning from the plain language of the provision alone. *Campbell*, 146 Wn.2d at 9-  
3 10; *Dep't of Licensing v. Canon*, 147 Wn.2d 41, 57, 50 P.3d 627 (2002). Legislative definitions  
4 included in a statute are controlling. *Am. Cont'l Ins. Co. v. Steen*, 151 Wn.2d 512, 518, 91 P.3d  
5 864 (2004). But in the absence of a statutory definition, the courts must give a term its plain and  
6 ordinary meaning ascertained from a standard dictionary. *Id.* Similarly, when construing  
7 administrative regulations, undefined terms should be given their plain and ordinary meaning  
8 unless a contrary intent appears. *Silverstreak, Inc. v. Dep't of Labor & Indus.*, 159 Wn.2d 868,  
9 898, 154 P.3d 891 (2007) (citations omitted).

10 A statute is ambiguous if it can be reasonably interpreted in more than one way. *Am.*  
11 *Cont'l*, 151 Wn.2d at 518. However, a statute is not ambiguous simply because different  
12 interpretations are conceivable. *Id.* The courts thus refrain from searching for ambiguity by  
13 "imagining a variety of alternative interpretations." *Id.* (citation omitted); *State v. Reier*, 127  
14 Wn. App. 753, 757-58, 112 P.3d 566 (2005) (when interpreting an administrative regulation,  
15 court must avoid absurd or strained consequences) (citations omitted).

16 **1. The Respondents' Transportation of CDL Material to Weyerhaeuser's MRF**  
17 **is not Subject to Regulation Under RCW 81.77 Because Respondents Are**  
18 **Transporting Recyclable Material, not Solid Waste**

19 As a threshold matter, the Commission should conclude that the Respondents'  
20 transportation of CDL material to Weyerhaeuser's MRF is not subject to regulation under RCW  
21 81.77 because Respondents are transporting recyclable material, not solid waste.

22 RCW 81.77.010(8) provides that solid waste collection does not include "collecting or  
23 transporting recyclable materials by or on behalf of a commercial or industrial generator of  
24 recyclable materials to a recycler for use or reclamation." *See also* WAC 480-70-011(1)(e)-(f)  
25 (Commission does not regulate the operations of recycling companies who (1) transport  
26 recyclable materials for use other than disposal or incineration; or, (2) sell, convey or arrange for  
the transportation of recyclable materials to a recycler for reuse or reclamation); WAC 480-70-

1 011(2)(b) (Commission does not regulate the operations of carriers collecting or transporting  
2 recyclable materials by on behalf of a commercial or industrial generator of recyclable materials  
3 to a recycler for use or reclamation). As noted above, RCW 81.77.010(9) expressly excludes  
4 recyclable materials from the definition of solid waste. RCW WAC 480-70-041 further defines  
5 recyclable materials as “materials that are transported for recycling, reprocessing, reclamation, or  
6 for any process that extracts or modifies the commodity for reuse or another commercially  
7 valuable purpose.”

8 Here, the CDL material transported to Weyerhaeuser’s MRF is recyclable material, not  
9 solid waste. There is no dispute that prior to transportation to Weyerhaeuser’s MRF,  
10 Respondents subject the CDL material to a process designed to extract general recyclables and  
11 materials specifically for transportation to Weyerhaeuser’s MRF, and out of the general waste  
12 stream. See Exhibit B. Said transportation is thus not subject to regulation under RCW 81.77.  
13 RCW 81.77.010(8) (solid waste collection does not include “collecting or transporting recyclable  
14 materials... to a recycler for use or reclamation.”); RCW 81.77.010(9) (for the purposes of RCW  
15 81.77, the definition of solid waste does not include recyclable materials).

16 **2. The Respondents’ Transportation of CDL Material to Weyerhaeuser’s MRF**  
17 **is Not Subject to Regulation Under RCW 81.77, Because Weyerhaeuser**  
18 **“Recycles” or “Reuses” the Material**

19 In the alternative, the Commission should conclude that the Respondents’ transportation  
20 of CDL material to Weyerhaeuser’s MRF is not subject to regulation under RCW 81.77 because  
21 Weyerhaeuser “recycles” and/or “reuses” the material.

22 Again, RCW 81.77.010(8) provides that solid waste collection does not include  
23 “collecting or transporting recyclable materials by or on behalf of a commercial or industrial  
24 generator of recyclable materials to a recycler for use or reclamation.” See also WAC 480-70-  
25 011(1)(e)-(f); WAC 480-70-011(2)(b). Pursuant to WAC 480-70-016(4), the Commission is to  
26 consider the following non-exclusive factors in determining whether transportation of certain  
commodities requires a solid waste certificate: (a) the intent of the shipper; (b) the intended



1 destination of the shipment; (c) the actual destination of the shipment; (d) special handling or  
2 conditions placed on the shipment by the shipper and/or receiver; (e) the value of the commodity  
3 being transported; (f) whether the carrier is primarily engaged in the business of providing solid  
4 waste collection or is primarily engaged in the business of providing a service other than the  
5 collection of solid waste; and (g) whether the carrier holds itself out to the public as a transporter  
6 of solid waste. In the case at the bar, reasonable minds can reach but one conclusion upon  
7 consideration of these factors—that Respondents’ transportation of CDL material to  
8 Weyerhaeuser’s MRF is not subject to regulation under RCW 81.77.

9 The Respondents are not primarily engaged in the business of solid waste collection; nor  
10 do they generally hold themselves out to the public as a transporter of solid waste. Moreover,  
11 while the intended and actual destination of the CDL material is the Weyerhaeuser landfill, it is  
12 neither the Respondents’ nor Weyerhaeuser’s intent that the CDL material is being transported  
13 merely for disposal. To the contrary, Weyerhaeuser mixes the CDL material with its own  
14 industrial waste in two separate steps so as to achieve what it has determined to be the proper  
15 balance between compaction and drainage in the landfill. *Fulcher Decl.*, ¶¶ 10-12, 15-16. The  
16 manager of Weyerhaeuser’s MRF and landfill further contends that, “[e]ssentially, all of the  
17 material that received from independent haulers, third-parties and self-haulers is material that has  
18 a beneficial structure for the landfill.” *Fulcher Decl.*, ¶ 17.

19 Moreover, the circumstances present in this case are directly analogous the example set  
20 forth in WAC 480-70-016(3):

21 (3) In some instances, transportation of a specific commodity may be subject to  
22 commission regulation under the provisions of chapter 81.80 RCW, or as solid  
23 waste under the provisions of chapter 81.77 RCW, depending on the  
24 circumstances involved in the transportation of that commodity. For example, if  
25 soil is transported to a landfill to become part of the cover of the landfill, the  
26 transportation is subject to regulation as a motor carrier under the provisions of  
chapter 81.80 RCW. However, if the soil is being transported to a landfill merely  
for disposal, the transporter is subject to regulation as a solid waste collection  
company under the provisions of chapter 81.77 RCW.

1 (Emphasis added). WAC 480-70-015(3) distinguishes between transporting waste to a landfill  
2 for some beneficial purpose (i.e., soil used as part of the cover of the landfill) and transporting  
3 waste to a landfill merely for disposal. The former is only subject to regulation under RCW  
4 81.80, whereas the latter is subject to regulation under RCW 81.77.

5 Here, the Respondents' transportation of CDL material to Weyerhaeuser is directly  
6 analogous to the distinction drawn by WAC 480-70-015(3)—the CDL material transported to  
7 Weyerhaeuser are used for a beneficial purpose; the CDL material is not transported to  
8 Weyerhaeuser merely for disposal. Fulcher Decl., ¶¶ 10-12, 15-17. In the event that the  
9 Commission were to determine that the Respondents' transportation of CDL material to  
10 Weyerhaeuser is subject to regulation under RCW 81.77, this conclusion would reach beyond the  
11 current case. Indeed, such a ruling could easily be construed as justification for regulating the  
12 transportation of crushed glass from curbside recycling programs which is used within landfills  
13 as drainage layers, or the transportation of chipped tires for drainage layers or protection of  
14 bottom liners.

15 Moreover, Respondents' payment of a tipping fee does not change this conclusion  
16 because such payment does not change the fact that Weyerhaeuser puts the CDL material to a  
17 beneficial use. See *Fulcher Decl.*, ¶ 17. If transporting CDL materials to Weyerhaeuser's MRF  
18 was an act of mere disposal, logic dictates that the Respondents would simply transport the CDL  
19 material to a landfill closer than Weyerhaeuser.

20 Respondents' motion for summary determination should be granted.

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**MOTION FOR SUMMARY DETERMINATION - 10**

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**VI. CONCLUSION**

For the foregoing reasons, the Respondents request that the Commission enter an Order concluding that Respondents' transportation of construction, demolition and land clearing waste to the Weyerhaeuser Material Recovery Facility in Longview, Washington is not subject to regulation under RCW 81.77 as a matter of law.

DATED this 25 day of April, 2008.

EISENHOWER & CARLSON, PLLC

By: 

Donald L. Anderson, WSBA # 8373  
Ian M. Bauer, WSBA # 35563  
Attorneys for Glacier Recycle, LLC,  
Hungry Buzzard Recovery, LLC, and  
T&T Recovery, Inc.

**CERTIFICATE OF SERVICE (WAC 480-07-150)**

I hereby certify that on the 25<sup>th</sup> day of April 2008, I filed the Motion to Amend Protective Order with the Washington Utilities and Transportation Commission and served a copy upon the following via electronic mail, with hard copies to follow via legal messenger service:

James K. Sells  
Ryan Sells Uptegraft, Inc. P.S.  
9657 Levin Rd. NW, Suite 240  
Silverdale, WA 98383

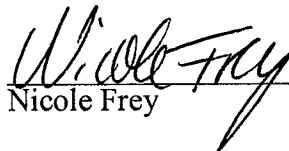
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DATED this 25<sup>th</sup> day of April 2008, at Tacoma, Washington.

  
\_\_\_\_\_  
Nicole Frey

**EXHIBIT A**

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# Public Health Seattle & King County



SOLID WASTE/VECTOR

Solid Waste - Facilities

PERMIT NO. PR0032699

P/E 1023

## PERMIT

Material recovery and recycling  
facility

GRANTED TO GLACIER RECYCLE  
LOCATION 32300 148TH AV SE  
AUBURN, WA 98092

FOR A PERIOD BEGINNING 01/01/2008 AND ENDING 12/31/2008

### MAILING ADDRESS

GLACIER RECYCLE  
C/O JOHN YEASTING  
32300 148th AVE SE  
AUBURN, WA 98092

Director and Health Officer

DATED 02/29/2008

BY 

SUBJECT TO ALL STATE LAWS, COUNTY BOARD OF HEALTH RULES AND REGULATIONS, AND/OR CITY OR COUNTY ORDINANCES PERTAINING THERETO. THIS PERMIT MAY BE SUSPENDED OR REVOKED UPON VIOLATION BY THE HOLDER OF ANY OF THE TERMS OF THESE REGULATIONS. THIS PERMIT IS NOT TRANSFERABLE AND MUST BE POSTED IN A CONSPICUOUS PLACE. THIS PERMIT IS NOT VALID UNLESS SIGNED BY OPERATOR. **NEW OWNERS MUST APPLY AND PAY FOR A NEW PERMIT BEFORE BEGINNING OPERATION.**

X

  
OPERATOR SIGNATURE

LITHO IN U.S.A.

**EXHIBIT B**

