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BEFORE THE WASHINGTON UTILITIES
AND TRANSPORTATION COMMISSION

In the Matter of Determining the Proper
Carrier Classification of

GLACIER RECYCLE, LLC; HUNGRY
BUZZARD RECOVERY, LLC; AND T&T
RECOVERY, INC.

Case No.: TG-072226

INTERVENOR WASHINGTON
REFUSE AND RECYCLING
ASSOCIATION'S RESPONSE TO
MOTIONS FOR SUMMARY
DETERMINATION

COMES NOW Intervenor Washington Refuse and Recycling Association (WRRRA), and responds to Commission Staff's Motion for Partial Summary Determination and Respondents' Motion for Summary Determination as follows:

INTERVENOR'S POSITION: Intervenor supports Staff's position that Respondents are, in fact, transporting solid waste over the public highways for compensation, to a disposal site, for disposal. Once this finding is made, a "cease and desist" order should issue; and if Respondents choose to apply for solid waste authority (a "G" Permit), they certainly are then free to do so. Intervenor does not necessarily agree that, should this motion be granted, further proceedings may be necessary to determine if the volume of transport of solid waste admitted here is incidental to some other business. In fact, if this material is solid waste, as Staff argues, Respondents are nothing more or less than illegal haulers and/or sham recyclers who must first stop, then

1 apply for a "G" Permit. Based upon admissions and discovery in this record,
2 there could be no other conclusion.

3 Conversely, Respondents' Motion should be denied in its entirety.
4 Respondents' premise simply makes no sense, logically or legally.
5 Respondents haul CDL, which is solid waste (RCW 70.95.030(23)) to a landfill
6 where it is disposed of, but want the Commission to call this recycling. One
7 has to admire the sheer audacity of this claim, but when you take garbage to
8 the dump, you are not recycling.

9 **FACTS:** Both Staff and Respondents have more than adequately
10 fleshed out the facts here, and there is no reason to go over them again. The
11 most important facts, which must be remembered first and foremost, are that
12 the Weyerhaeuser facility is a landfill, at which Respondents pay a tipping fee
13 to dispose of material¹ and that Respondents, in 2007 alone, dumped some
14 23,700 tons of solid waste at the facility.² Those two facts are the starting
15 and ending points of this discussion.

16 **THE LAW:** As memoranda submitted by Staff and Respondents clearly
17 demonstrate, there certainly is no lack of statutory and administrative
18 guidance available here. There are definitions of recycling, solid waste,
19 transfer stations, recyclable materials and just about every other catch phrase
20 all the parties here are using. However, perhaps the most direct avenue to
21 reach a determination of the nature of this material, and its disposal, is to
22 look at the agency charged with its management and handling; that being the
23 Department of Ecology.

24 Staff has appended to its Motion the Declaration of Laurie Davis,
25 Manager of DOE's Solid Waste and Financial Assistance Program. Her job is
26 to "oversee the proper management and disposal of solid waste" This

¹ Staff Motion, pg. 2, citing Fulcher Dec., para. 3

² Staff Motion, pg. 4, citing Fulcher Dec., para. 19

1 includes “the handling of recyclable materials”³ In short, she is the head
2 garbage/recycling person at DOE, the Agency which is charged with oversight
3 and supervision of solid waste disposal and recycling.

4 Ms. Davis’ opinion (and thus the position of DOE) is that what is going
5 on here is not the “transforming or remanufacturing waste material into
6 usable materials for use other than landfill disposal.”⁴ The WUTC regulates
7 transportation of solid waste and DOE regulates (along with Departments of
8 Health) disposal and transportation of commercial recyclables. Each agency
9 should, and does, defer to the other when dealing with the other’s area of
10 statutory authority and technical expertise. Ms. Davis has provided this
11 record with valuable insight and her agency’s policy, neither of which should
12 be taken lightly.

13 Also of particular importance here are what would seem to be
14 reasonably clear and specific statutory and administrative definitions. RCW
15 70.95.030(23) defines solid waste as:

16 . . . all putrescible and nonputrescible solid and semisolid wastes
17 including, but not limited to, garbage, rubbish, ashes, industrial
18 wastes, swill, sewage sludge, demolition and construction wastes,
19 abandoned vehicles or parts thereof, and recyclable materials.
(Emphasis added).

20 The same statute at (18) defines “recyclable materials” as:

21 . . . those solid wastes that are separated for recycling or reuse,
22 such as papers, metals and glass, that are identified as recyclable
23 materials pursuant to a local comprehensive solid waste plan. . . .

24 Finally, RCW 70.95.030(19) defines recycling as:

25 . . . transforming or remanufacturing waste materials into usable
26 or marketable materials for use other than landfill disposal or
incineration. (Emphasis added).

There is very little one can add, or even imagine, that needs to go
beyond these definitions. Here we have:

³ Davis Dec., pg. 1

⁴ Davis Dec., pg. 2, referencing RCW 70.95.060

- CDL, which is statutorily defined as solid waste
- which is not “separated for recycling or reuse”
- and is not transformed or remanufactured into a usable or marketable product; and
- goes into a landfill, never (hopefully) to be seen again.

Respondents would like the Commission, DOE and several counties to believe they are engaged in recycling when they transport statutorily defined solid waste to a landfill where, apparently within the day, it disappears into a large hole in the ground; along with all the other garbage. Perhaps it is too obvious to ask; where is the transformation or remanufacturing into a useful product? And is this not “landfill disposal?” If not, what is it?

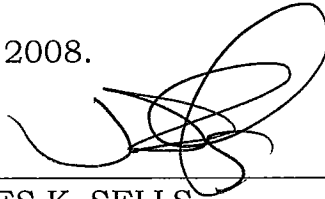
There is a phrase, cited by Staff, in DOE’s Guidelines for the Development of Local Solid Waste Management Plans, which quite succinctly refers to recyclables as materials which are “marketable and result in waste stream diversion.” (Emphasis added). In the situation we face here, the material cannot possibly be “marketable,” because Respondents pay to dispose of it;⁵ nor does it result in “waste stream diversion” which, one would think, is keeping the material out of the landfill. The Cowlitz County Solid Waste Management plan wisely refers to recyclables as material which is diverted from the waste stream and transformed into new products. As Staff correctly points out, CDL falls into this category only if it has “established end users who purchase the material, use them as raw materials and transform them into new products.⁶ Somehow the disappearance of this material into the bowels of a landfill falls short of this goal.

⁵ This would be an entirely new concept of marketing strategy; perhaps one which Respondents should share with the business community as well as appropriate state agencies.

⁶ Staff Motion, pg. 12

1 **CONCLUSION:** Respondents apparently want to be in the
2 garbage business. There is a way to do that: apply for a "G" certificate.
3 They have chosen, instead, to try and enter through the back door by
4 transporting garbage, under the guise of recycling, to a small private
5 landfill, in obvious hope that they would "fly under the radar."
6 Thankfully that has not happened, and it is time Respondents comply
7 with the law, just as do the vast majority of others in the solid waste
8 and recycling industries.

8 DATED this 9 day of May 2008.



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CERTIFICATE OF SERVICE


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

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Honorable Adam E. Torem Administrative Law Judge Washington Utilities and Transportation Commission 1300 S. Evergreen Park Dr. SW PO Box 47250 Olympia, WA 98504-7250 atorem@utc.wa.gov	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Email
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DATED at Silverdale, Washington, this 9th day of May 2008.


Cheryl L. Sinclair