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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

**MEMORANDUM IN OPPOSITION TO
COMMISSION STAFF'S MOTION
FOR PARTIAL 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 submit this memorandum in opposition to the Commission Staff's Motion for Partial Summary Determination ("**Staff's Motion**"). The Commission should deny the Staff's Motion, because the 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. AUTHORITY AND ARGUMENT

Respondents incorporate by reference their Motion for Summary Determination, filed in the above-referenced proceeding on April 25, 2008 ("**Respondents' Motion**").

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*

ORIGINAL

1 (“Order”), ¶ 5. For the reasons set forth in Respondent’s Motion and herein, Staff’s Motion
2 should be denied and the Commission should conclude that Respondents’ transportation of CDL
3 material to Weyerhaeuser is not subject to regulation under RCW 81.77 as a matter of law.

4 Staff contends, however, that Respondents’ transportation of CDL material is subject to
5 regulation pursuant to RCW 81.77 for two primary reasons. First, Staff contends that
6 Weyerhaeuser is not “recycling” the CDL material transported by Respondents, but is instead
7 “disposing” of it. Second, Staff contends that the CDL material transported by Respondents is
8 neither “property” (or a “commodity”), nor “recyclable material,” but is instead solid waste.
9 Staff’s contentions are without merit.

10 **A. Staff’s Motion Should be Denied Because Respondents’ Transportation of CDL**
11 **Material to Weyerhaeuser does not Constitute “Disposal” Under RCW 81.77**

12 First, Staff contends that Respondents’ transportation of CDL material to Weyerhaeuser
13 is subject to regulation under RCW 81.77 because it is transported for disposal, not recycling.
14 *Staff’s Mot.*, at 9-14. As discussed in the their Motion, Respondents do not transport CDL
15 material to Weyerhaeuser for mere disposal; rather, Weyerhaeuser “recycles” and/or “reuses” the
16 CDL material. *Respondents’ Mot.*, at 8-10 (citing RCW 81.77.010(8), WAC 480-70-011(1)(e)-
17 (f), WAC 480-70-011(2)(b), and WAC 480-70-015(3)).

18 Staff’s argument is premised on the definitions of “solid waste,” “recyclable materials”
19 and “recycling” found in RCW 70.95.030, a statute pertaining to the Department of Ecology, and
20 an analysis of these definitions by a Department of Ecology employee. *Staff’s Mot.*, at 9-14.
21 Staff’s arguments are inapposite, however, because Staff disregards the plain language of RCW
22 81.77.010, which provides in pertinent part:

- 23 (8) “Solid waste collection” does not include ... collecting or transporting
24 recyclable materials by or on behalf of a commercial or industrial generator of
25 recyclable materials to a recycler for use or reclamation. Transportation of
26 these materials is regulated under chapter 81.80 RCW;
(9) “Solid waste” means the same as defined under RCW 70.95.030, except for
the purposes of this chapter solid waste does not include recyclable materials
except for source separated recyclable materials collected from residences[.]

1 (Emphasis added). Moreover, the Commission's own regulations define "recyclable materials"
2 as "materials that are transported for recycling, reprocessing, reclamation, or for any process that
3 extracts or modifies the commodity for reuse or another commercially valuable purpose." WAC
4 480-70-041 (emphasis added). In short, the plain language of the Commission's own statutes
5 and regulations provide the definitions of "solid waste" and "recyclable materials" pertinent to
6 these proceedings. Under these definitions, there can be no genuine dispute that the CDL
7 material transported by Respondents constitutes "recyclable materials."

8 Indeed, there is no dispute that the Respondents process those materials that enter their
9 sorting facilities, which results, in part, in the diversion of certain CDL material for
10 transportation to Weyerhaeuser. See *Yeasting Decl.*; *Staff Request for Classification Proceeding*
11 (*"Staff Request"*), at 4-5.¹ Nor is there any genuine dispute that Weyerhaeuser utilizes the CDL
12 waste for a commercially valuable purpose—ensuring the stability and drainage of its landfill.
13 *Fulcher Decl.*, ¶¶ 9-13, 15-17; Ex. B.² There is also no legal basis for the Commission to
14 disregard RCW 81.77.010(8)-(9) and WAC 480-70-041—the very statutes and regulations which
15 govern the transportation of such material.

16 Moreover, even if the Respondents' transportation of CDL material to Weyerhaeuser was
17 determined to constitute "solid waste collection" for the purposes of RCW 81.77 and WAC 480-
18 70, the Commission should nevertheless conclude that such transportation is not subject to
19 regulation pursuant to WAC 480-70-011(1)(g) and/or -016(1), as it is incidental to their general
20 recycling business. See *Yeasting Decl.*; *Resp.'s Mot.*, Ex. B; *Thompson Decl.*, Exs. B-D.

21 ¹ In pertinent part, the *Staff Request* alleges as follows:

22 Each company collects material generated by its customers construction and
23 demolition activities and hauls the material to its own sorting facility (or 'material
24 recovery facility') at which company employees sort the material, either by hand
25 or by mechanical means, for delivery to manufacturing facilities, or for disposal.
The companies admit that, after sorting, they haul some of the CDL material to
the Weyerhaeuser facility.

(Emphasis added).

26 ² See also *Order*, ¶ 5(4) ("Weyerhaeuser accepts the CDL waste because it improves the internal
drainage and slope stability of the landfill."); *Staff Request*, at 3 ("[b]y mixing the CDL with its
own industrial waste, Weyerhaeuser improves the structure and drainage of the waste matrix in
its private landfill.")

1 **B. This Proceeding Concerns the Commission's Authority to Regulate the**
2 **Transportation of CDL Material, Not the Department of Ecology's Administration**
3 **of its Own Programs**

4 Staff's reliance on the declaration of Laurie Davies, a Department of Ecology employee
5 explaining how the Department of Ecology applies RCW 70.95, is similarly misplaced. *Staff's*
6 *Motion*, at 14. First and foremost, the manner in which the Department of Ecology administers
7 its own programs does not constitute legal precedent in these proceedings. Moreover, Ms.
8 Davies' analysis fails to acknowledge much less address the plain language of RCW
9 81.77.010(8)-(9), which expressly excludes "recyclable materials" from the definition of solid
10 waste, and WAC 480-70-041, which defines "recyclable materials" for the purposes of RCW
11 81.77.³ Again, neither the Staff nor Ms. Davies explains why the Commission should disregard
12 its own statutes and regulations, nor can they offer any legal justification for doing so.

13 Similarly, the Commission should disregard Staff's reliance on the official opinion issued
14 by the Department of Ecology's Solid Waste and Financial Assistance Program, which
15 concludes that the use of processed CDL material as "alternative daily cover" ("ADC") in a
16 landfill is not recycling. *Staff's Mot.*, at 14; *Davies Decl.*, Ex. A. As a threshold matter, the
17 Department of Ecology's analysis does not address the transportation of CDL material pursuant
18 to RCW 81.77 and WAC 480-70. Moreover, Staff's argument contradicts the Commission's
19 own regulations, which expressly distinguish between transporting waste to a landfill for some
20 beneficial purpose (i.e., soil used as part of the cover of the landfill) and transporting waste to a
21 landfill merely for disposal. WAC 480-70-016(3).⁴ The former is only subject to regulation
22 under RCW 81.80, whereas the latter is subject to regulation under RCW 81.77. *Id.*

23 ³ WAC 480-70-041 provides that recyclable materials include "materials that are transported for
24 recycling, reprocessing, reclamation, or for any process that extracts or modifies the commodity
25 for reuse or another commercially valuable purpose." (Emphasis added).

26 ⁴ WAC 480-70-016(3) provides:

In some instances, transportation of a specific commodity may be subject to
commission regulation under the provisions of chapter 81.80 RCW, or as solid
waste under the provisions of chapter 81.77 RCW, depending on the circumstances
involved in the transportation of that commodity. For example, if soil is

1 In fact, this case is directly analogous to the distinction drawn by WAC 480-70-016(3) in
2 that the CDL material transported to Weyerhaeuser is used for a beneficial purpose (structure and
3 drainage of the landfill); the CDL material is not transported to Weyerhaeuser merely for
4 disposal. *Fulcher Decl.*, ¶¶ 9-13, 15-17; Ex. B. Indeed, there is no genuine dispute that the CDL
5 material provided by Respondents to Weyerhaeuser performs a critical function within the
6 landfill. *Id.* See also *Order*, ¶ 5(4) (“Weyerhaeuser accepts the CDL waste because it improves
7 the internal drainage and slope stability of the landfill.”); *Staff Request*, at 3 (“[b]y mixing the
8 CDL with its own industrial waste, Weyerhaeuser improves the structure and drainage of the
9 waste matrix in its private landfill.”). Pursuant to the plain language of WAC 480-70-016(3), the
10 Commission should deny Staff’s Motion and grant summary determination in favor of
11 Respondents.

12 Finally, Staff contends that the legislative enactments set forth in Laws of 1989, ch. 431 §
13 2, mandate the conclusion that the transportation of CDL material is subject to regulation under
14 RCW 81.77, because said enactments broadened the definition of “solid waste” in RCW
15 70.95.010 to include “recyclable materials.” *Staff’s Mot.*, at 16-19. Again, Staff’s reliance on
16 the definitions set forth in RCW 70.95.010 and the legislative enactments pertaining thereto is
17 misplaced. As noted above, RCW 81.77.010(9) specifically excludes “recyclable materials”
18 from the definition of “solid waste” for the purposes of the Commission’s regulation of the
19 transportation of solid waste. Had the legislature intended to include “recyclable materials”
20 within the scope of RCW 81.77.010, it would have modified RCW 81.77.010(8)-(9) accordingly.

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24 transported to a landfill to become part of the cover of the landfill, the
25 transportation is subject to regulation as a motor carrier under the provisions of
26 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.

(Emphasis added).

RESPONDENTS’ MEMORANDUM IN OPPOSITION TO
MOTION FOR PARTIAL SUMMARY DETERMINATION - 5

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1 Staff's Motion should be denied as a matter of law, because Staff disregards the plain
2 language of the Commission's own statutes and regulations, specifically RCW 81.77.010(8)-(9)
3 and WAC 480-70-016(3), -0041.

4 **VI. CONCLUSION**

5 For the foregoing reasons, the Commission should conclude that the Respondents'
6 transportation of construction, demolition and land clearing waste to the Weyerhaeuser Material
7 Recovery Facility in Longview, Washington is not subject to regulation under RCW 81.77 as a
8 matter of law, and thus deny the Staff's Motion for Partial Summary Determination.

9 DATED this th 14 day of May, 2008.

10 EISENHOWER & CARLSON, PLLC

11 By: 

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

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Docket No.: TG-072226

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

DECLARATION OF JOHN YEASTING

JOHN YEASTING, declares and states as follows:

1. I am over the age of 18 years and otherwise competent to testify. The matters stated below are based upon my personal knowledge.

2. I am a member of Glacier Recycle, LLC. I have reviewed the Motion for Partial Summary Determination filed by Commission Staff in the above-referenced matter, and write to provide the Commission with additional information as to the manner in which Glacier processes incoming materials at its Material Recovery Facility.

3. Glacier Recycle, LLC collects recyclable construction and demolition debris from various customers, principally commercial construction companies. All materials are brought to Glacier Recycle's permitted Auburn Material Recovery Facility for sorting and recycling, with the exception of certain source segregated loads of metal or concrete that are hauled directly to third party recycling facilities. Materials received at the facility are weighed in at our scale house and directed to the appropriate receiving area. If material is originating from demolition or renovation project, attendant verifies appropriate survey paperwork is on file.

4. All commingled recyclables are inspected with the use of a top view, pan tilt zoom camera at the scale house, and then by one of our US EPA AHERA certified receiving

DECLARATION OF JOHN YEASTING - 1

1 officers at the tipping floor. The receiving officer has authority to reject and/or surcharge
2 customer loads containing non-desired materials. The commingled loads are then sorted by staff
3 into segregated commodities, including urban wood, ferrous and non-ferrous metals, cardboard,
4 clean gypsum, plastic films (polyethylene and polypropylene), black corrugated HDPE pipe,
5 concrete & asphalt pavements, asphalt roofing shingles, cement board siding, vinyl siding, and
6 other commodities as warranted.

7 5. As illustrated on the flow diagram of our operation previously submitted, each
8 commodity is prepared based on the market it is going to. The largest commodity that we
9 handle is urban wood, which is directed to a secondary sort line where it is further sorted by
10 grade of wood for either biomass fuel production or pulp furnish production. It then flows down
11 the line to our grinder, and then through a series of size classification screens and magnetic
12 removal devices to remove nails and other embedded metals. Wood chips are then stockpiled by
13 type and size for various customers, and shipped out in chip trailers daily.

14 6. Other commodities, including cardboard and plastics are directed to our baling
15 station, where staff loads them into a horizontal baler to produce bales of cardboard, rigid
16 plastics, plastic films or vinyl siding. Some rigid plastics are ground using portable grinder for
17 shipment in bulk boxes to market.

18 7. Concrete and asphalt pavements, as well as clean cement board siding are
19 stockpiled for on-site crushing, screening and sales as aggregate product for road base and other
20 applications. Asphalt roofing shingles are stockpiled for on-site grinding and screening. Ground
21 asphalt can be sold as either an aggregate blend for dust control applications or to hot-mix
22 asphalt plants for paving mix.

23 8. Ferrous and non-ferrous metals are simply compacted into containers and
24 transported to one of several area metals brokers. Clean gypsum is hauled to either a permitted
25 compost facility or a permitted fertilizer manufacturer.

26 9. The low-value residuals remaining after this process are shipped to either the
Weyerhaeuser MRF in Longview for use as industrial waste stabilizer or to a G-permit company
for disposal. We have plans to screen the residuals for production of ADC, but are not currently
doing so.

DECLARATION OF JOHN YEASTING - 2

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10. I declare, under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct, and that I have signed this Declaration on the date stated below in DuPont, Washington.

DATED this 8th day of May, 2008.



JOHN L. YEASTING

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DECLARATION REGARDING FILING OF FACSIMILE
SIGNATURE PAGE OF JOHN YEASTING

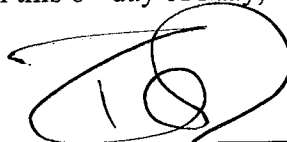
Ian M. Bauer certifies under penalty of perjury under the State of Washington that the following is true and correct:

I am one of Glacier Recycle, LLC's attorneys in the above-captioned matter, and make this declaration pursuant to GR 17(a)(2).

The name of the document to be filed with a facsimile signature, to which this declaration is attached, is the Declaration of John Yeasting.

The Declaration consists of 3 pages together with a facsimile copy of page 3 bearing the signature of John Yeasting and this declaration page, for a total of 4 pages. I have examined the Declaration and I have determined that the document is a complete and egible petition.

DATED at Tacoma, Washington, on this 8th day of May, 2008.



Ian M. Bauer

GR 17 DECLARATION

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