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7 BEFORE THE WASHINGTON UTILITIES
8 AND TRANSPORTATION COMMISSION

9 In the Matter of Determining the Proper
10 Carrier Classification of

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

DOCKET NO. TG-072226

14 WASTE MANAGEMENT OF
15 WASHINGTON'S RESPONSE TO
16 MOTIONS FOR SUMMARY
17 DETERMINATION

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I. INTRODUCTION

1. Intervenor Waste Management of Washington, Inc. ("WMW") supports the efforts of the Washington Utilities and Transportation Commission Staff to enforce the regulatory scheme established by the legislature for solid waste collection. More challenging than ensuring that regulated companies operate within the law is the job of policing those who operate illegally outside of its parameters. In these days and times, issues related to solid waste handling are increasingly complicated, and yet the demarcation between the need for customer protection when warranted and the opportunity for market competition when appropriate is grounded in statute and state policies. As a regulated company, WMW enjoys the benefits—and the burdens—of the WUTC's oversight. It desires only an "equal playing field," and this case presents an opportunity to communicate a stern message to businesses gaining a market advantage through noncompliance, and to clarify where the boundary falls between customer protection and market competition in the context of construction and demolition debris.

1 **II. ISSUE ADDRESSED**

2 2. Both the Commission Staff's Motion for Partial Summary Determination (Staff's
3 Motion) and Glacier Recycle, LLC, Hungry Buzzard, LLC and T&T Recovery, Inc.'s Motion for
4 Summary Determination (Respondents' Motion) are premised on one central question: Under
5 what circumstances does material that would otherwise indisputably be considered "solid waste"
6 become "recyclable material" when it is delivered to a landfill facility?

7 **III. LANDFILL OPERATIONS**

8 3. The core issue presented by the parties' dispositive motions implicates operational
9 practices and regulatory standards related to solid waste landfills in general. It raises matters not
10 typically considered by the WUTC because the focus is on the "back-end" of solid waste handling
11 rather than the "front-end" where collection services are provided. WMW therefore submits this
12 Response to Motions for Summary Determination ("WMW's Response") to further the record
13 regarding landfill operations and thereby assist the determination of the issue presented by the
14 parties' motions. In reality, the answer is more straightforward than Respondents would like, and
15 Staff's Motion is correct in characterizing the relevant activity as "disposal" and not "recycling." The
16 construction and demolition waste ("C&D") delivered by Respondents to Weyerhaeuser's Limited
17 Purpose Landfill and Material Recovery Facility is irrefutably "solid waste" that falls squarely
18 within the WUTC's regulatory system under Ch. 81.77 RCW because it is accepted at the facility
19 for disposal, despite the fact that the manner in which it is handled has some advantage to the
20 landfill's operations.

21 **A. The Weyerhaeuser Limited Purpose Landfill and Material Recovery Facility.**

22 4. Although each reaches different legal conclusions, the parties' motions share
23 similar views about the facts describing operations at Weyerhaeuser's Limited Purpose Landfill
24 and Material Recovery Facility (collectively, "Weyerhaeuser's Facility, and separately the "Landfill"
25 and the "MRF").
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1 **1. The Weyerhaeuser Landfill Is Similar in Design and Operation to a Municipal**
2 **Solid Waste Landfill.**

3 5. The main purpose of the Landfill at the Weyerhaeuser Facility is to dispose of
4 waste generated by Weyerhaeuser's own industrial pulp and paper operations. Declaration of
5 Larry Fulcher ("Fulcher Dec.") Par. 3; Declaration of Calvin R. Palmer ("Palmer Dec.") Par. 10,
6 attached hereto. The Weyerhaeuser Facility was not developed to process waste generated by
7 the households and commercial establishments typically utilized by WUTC haulers. Palmer
8 Dec. Par. 10.

9 6. Consistent with this development objective, the Landfill is a "limited purpose
10 landfill" that is regulated under the Washington "Solid Waste Handling Standards," Ch. 173-350
11 WAC. It is permitted only to accept certain kinds of solid waste.¹ In contrast, landfills accepting
12 "municipal solid waste" ("MSW") to which most WUTC haulers deliver garbage are regulated under
13 the "Criteria for Municipal Solid Waste Landfills," Ch. 173-351 WAC.² Those landfills can
14 accept a more diverse waste stream.

15 7. Although the Weyerhaeuser Landfill is not an MSW landfill, it has similar design
16 and operational components. Palmer Dec. Par. 7. Design components, from bottom to top, are
17 similar and, like an MSW landfill, the Weyerhaeuser Landfill has a liner system to prevent
18 groundwater contamination and control methane. WAC 173-350-400(3)(b) and WAC 173-351-
19 300(2)(a). It has a leachate collection and control system, to provide for collection and removal
20 of the water or other liquid that becomes contaminated by dissolved or suspended materials due
21 to contact with solid waste or gases. WAC 173-350-400(3)(c) and WAC 173-351-300(2)(a)(i).
22 The design includes a run-on/runoff control system to prevent surface water flow onto and the
23 active portion of limited purpose and MSW landfills, and to guard against unpermitted

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25 ¹ A "limited purpose landfill" means a landfill which is not regulated or permitted by other state or federal
26 environmental regulations that receives solid wastes limited by type or source WAC 173-350-100.

² "Municipal Solid Waste (MSW)" means a subset of solid waste which includes unsegregated garbage, refuse
and similar solid waste materials discarded from residential, commercial, institutional and industrial sources and
community activities, including residue after recyclables have been separated. WAC 173-350-100.

1 discharges off of the landfill's face. WAC 173-350-400(3)(d) and WAC 173-351-200(7) and (8).
2 A final closure system is required. WAC 173-350-400(3)(e) and WAC 173-351-500.

3 8. Operationally, there is little difference between the Weyerhaeuser Landfill and an
4 MSW Landfill, either. Palmer Dec. Par. 8. Among the many regulatory obligations, both
5 regularly cover disposed waste to minimize leachate generation and to control disease vectors,
6 fires, nuisance, odors, blowing litter and scavenging. WAC 173-350-400(4)(b)(iii) and WAC
7 173-351-200(2). Both kinds of facilities thoroughly compact the solid waste before succeeding
8 layers are added. WAC 173-350-400(4)(b)(ii) and WAC 173-351-210(7).

9 9. Finally, it bears noting that the operators of any landfill, whether it be limited
10 purpose or full-service MSW, seek to manage the waste disposal practices to achieve optimal
11 compaction and adequate drainage. Palmer Dec. Par. 9. This is not a regulatory requirement so
12 much as a business objective. *Id.* The costs for designing, permitting and constructing a new or
13 expanded landfill demand a significant expenditure and capital reserve. *Id.* The only way to
14 recoup that investment is through disposal fees and otherwise minimize consumption of those
15 expensive infrastructure features. *Id.* Therefore, airspace is the most valuable asset at any
16 landfill. *Id.*; Fulcher Dec. Par. 11. A universal objective is to maximize waste volumes without
17 sacrificing the ability of the landfill to drain properly. *Id.* The Weyerhaeuser Landfill is not
18 unique in striving for that goal.

19 **2. The Weyerhaeuser MRF Is a Staging Area for the Landfill.**

20 10. The name of the facility ('Weyerhaeuser's Limited Purpose Landfill and Material
21 Recovery Facility') suggests that the Landfill and the MRF are separate operations. Certainly
22 each serves different functions, but from the perspective of the original developer the MRF was
23 built as a complement to the landfill so as to maximize transportation and landfill efficiency.
24 Palmer Dec. Par. 12. The MRF is operated as a staging facility for landfill material for mixing
25 the drier materials with industrial waste to allow for "optimal compaction and adequate drainage."
26 *Id.* Almost 98 percent of the material that goes to the landfill is processed by the MRF first.

1 Fulcher Dec. Par. 5. The MRF has a 20-acre asphalt yard, where loads of materials are tipped
2 and then sorted through in a rudimentary fashion. Fulcher Dec. Par. 14. The facility sorts
3 ‘bbviously recyclable materials’ and sends them to processors or end users. Fulcher Dec. Par. 14.

4 11. However, the extent to which the MRF actually pulls out recyclable materials for
5 market is not relevant to this proceeding. Each of the Respondents claim to sort the marketable
6 materials out of their individual waste streams before taking loads down to Weyerhaeuser.
7 Respondents’ Motion at 2.³ The C&D delivered to the Weyerhaeuser Facility by the Respondents
8 does not contribute to the recyclable material that is processed at the MRF.

9 12. Instead, it is the manner in which the MRF is operated as a staging facility for
10 landfill material that is implicated in this case. On this point, all parties appear to agree. C&D
11 delivered by Respondents (‘independent haulers’) is used as ‘material that has a beneficial structure
12 for the landfill.’ Fulcher Dec. Par. 17. The stated purpose of mixing the ‘structural materials’ with
13 industrial waste is to allow for ‘optimal compaction and adequate drainage.’ Fulcher Dec. Par. 10.
14 The waste produced by Weyerhaeuser is generally wet and not free draining in nature. Fulcher
15 Dec. Par. 12. The industrial waste generated internally by Weyerhaeuser has always generally
16 had too high of a moisture content to be disposed of directly into the landfill. Palmer Dec.
17 Par. 11. It has to be mixed with some other dry materials to achieve proper compaction rates and
18 still maintain adequate drainage. *Id.* The ability to maximize compaction and yet still drain the
19 leachate properly is enhanced by mixing the C&D waste delivered to the Weyerhaeuser Facility
20 by Respondents with the company’s internal waste. Fulcher Dec. Par. 17.

21 13. It is this activity that Respondents believe warrants moving their C&D out of the
22 regulated drop box for ‘solid waste’ and into the unregulated container for ‘recyclable material.’
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25 ³ Only Glacier Recycle produced a permit for its ‘Material Recovery and Recycling Facility.’ To be exempt from
26 the requirement of obtaining a solid waste handling facility permit, a facility must accept only source separated
recyclable materials and dispose of an incidental and accidental residue not to exceed five percent of the total waste
received, by weight per year, or ten percent by weight per load. WAC 173-350-310. This is a difficult standard to
meet, and raises questions about the status of permits for the other two Respondents’ facilities.

1 **B. Strategic Placement of Waste in Landfills Is Common Practice and Qualifies as**
2 **“Disposal.”**

3 14. The goals of “optimal compaction and adequate drainage” are not unique, and
4 strategic placement of waste is a common landfill practice. Palmer Dec. Par. 13. Managing
5 disposal to minimize airspace and still maintain drainage functions must be taken into
6 consideration by any landfill operator. *Id.* This operational activity at the Weyerhaeuser Facility
7 does not convert solid waste into a recyclable material. The material is being put in the landfill
8 for disposal. It is not being converted back to bottles, remanufactured as cans, or even
9 composted for soil amendment. It is simply being disposed of, albeit in a smart way.

10 15. For example, when a load of sewage sludge or dredged sediments is delivered to
11 an MSW landfill operated by Waste Management, measures have to be taken to ensure that the
12 wet material is mixed with other, more dry waste so that it does not create a drainage problem.
13 Palmer Dec. Par. 14. A responsible landfill operator will spread the sludge out over a landfill lift
14 so it isn’t concentrated in one area. *Id.* The landfill operator will also try to have that wet waste
15 covered with dry refuse to control odors. *Id.* This is prudent landfill management. *Id.* Because
16 the drier waste has an advantageous benefit to the overall landfill operation does not make it a
17 recyclable material. The dry waste is *not* being used “for any process that extracts or modified the
18 commodity for reuse or another commercially valuable purpose.” Respondents’ Motion at 8
19 (quoting WAC 480-70-041). It is simply being disposed of, but in a manner involving strategic
20 placement of the waste.⁴

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24 ⁴ Similarly, whether a tipping fee is being charged should not be considered a decisive criteria for determining
25 whether material is a solid waste. Recycling processors typically charge some fee. Soils used for cover and other
26 materials used at a landfill for a positive function are normally charged a tipping fee. Conversely, however, a
landfill operator actually paying for certain materials would be strong, if not conclusive, evidence that the material is
not a solid waste: no prudent landfill operator would unnecessary pay to dispose of materials that consume valuable
airspace.

1 **C. Using Materials in Landfill Components Is Not “Disposal.”**

2 16. Nonetheless, some items delivered to a disposal facility are not “solid waste.” Just
3 because a material is taken to a landfill, still there are positive functions that can served. Glass
4 cullet can be used as road bed. Palmer Dec. Par. 15. Crushed aggregate can be used as a
5 drainage layer in the liner system. *Id.* At the Weyerhaeuser Landfill, shredded tires have been
6 placed in “fingers” to provide internal drainage of water contained within the waste. *Id.*
7 Contaminated soils are regularly used for daily, interim and final cover. *Id.* See WAC 480-70-
8 016(3) (“[I]f soil is transported to a landfill to become part of the cover of the landfill, the
9 transportation is subject to regulation as a motor carrier under the provision of chapter 81.80
10 RCW”). However, if these same materials were placed in the active area of a landfill cell along
11 with other solid waste instead of being used as a component of the landfill cell or facility, no
12 matter how valuable they may be in terms of strategic placement they would be regulated as
13 “solid waste” that is taken for disposal. *Id.* (“However, if soil is being transported to a landfill
14 merely for disposal, the transporter is subject to regulation as a solid waste collection company
15 under the provisions of chapter 81.77 RCW.”) Accepting Respondents’ logic would lead to an
16 absurd result because arguably all solid waste in a landfill serves a valuable function by bringing
17 a landfill to an elevated final grade, thereby promoting drainage and structural integrity of the
18 final closed facility.

19 17. Rather, only materials used as operational components of a landfill are not being
20 disposed of, and are not “solid waste.” That is *not* the situation presented in this case, however.
21 There is little risk that a ruling in favor of Staff’s Motion would justify regulating the
22 transportation of crushed glass from curbside recycling programs which is used within the
23 landfill as drainage layers, as Respondents’ Motion suggests. There is a principled basis for
24 distinguishing between a positive functional utility in the context of a landfill facility component,
25 and strategic placement of waste in the active area of the landfill itself. The former may be
26 outside the scope of regulation; but the latter is not.

1 18. Garbage and refuse placed for disposal in a landfill cell are *per se* regulated solid
2 waste, no matter how they may enhance the operational efficiencies of the facility. That does not
3 foreclose the legal conclusion that some materials delivered to a landfill facility are not solid
4 waste because they are not accepted for disposal—rather, they are used in design or operational
5 components, and in some part constrained by regulatory oversight of landfill construction and
6 operation.

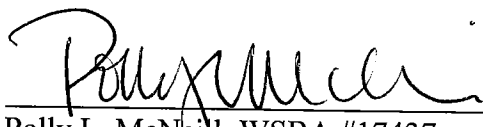
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8 **IV. CONCLUSION**

9 19. Intervenor WMW has extensive experience with landfills of all kinds. Its
10 operational perspective strongly supports the position taken by Staff, and negates the arguments
11 posited by Respondents. For the foregoing reasons, WMW requests that Commission Staff's
12 Motion for Partial Summary Determination be granted; and that Glacier Recycle, LLC, Hungry
13 Buzzard, LLC and T&T Recovery, Inc.'s Motion for Summary Determination be denied.

14 DATED this 15th day of May, 2008.

15 Respectfully submitted,

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