

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

In re the Matter of Determining the Proper	)	DOCKET TG-072226
Carrier Classification of	)	
	)	ORDER 06
GLACIER RECYCLE, LLC;	)	
HUNGRY BUZZARD RECOVERY, LLC;	)	ORDER ON MOTIONS FOR
AND T&T RECOVERY, INC.	)	SUMMARY DETERMINATION
	)	
.....	)	

1 ***Synopsis:** This is an Administrative Law Judge’s Initial Order that is not effective unless approved by the Commission or allowed to become effective pursuant to the notice at the end of this Order. This Order grants Commission Staff’s Motion for Partial Summary Determination and denies the Respondent Companies’ Motion for Summary Determination. This Order finds that transportation of construction, demolition, and land clearing waste for deposit into a landfill constitutes disposal, not recycling, even if the deposited waste benefits the structural integrity of the landfill. Therefore, this Order concludes that Respondent Companies are hauling solid waste, not recyclables, eliminating the need for a hearing on those issues. However, whether Respondent Companies are primarily engaged in business other than transporting solid waste, the frequency of their transportation of solid waste, and how they hold themselves out to the public, are issues that must still be resolved at hearing.*

**INTRODUCTION**

2 **Nature of Proceeding.** Docket TG-072226 involves a special proceeding instituted under Revised Code of Washington (RCW) 81.04.510 by the Washington Utilities and Transportation Commission (Commission) on its own motion to determine whether three companies, Glacier Recycle, LLC (Glacier Recycle), Hungry Buzzard Recovery, LLC (Hungry Buzzard), and T&T Recovery, Inc. (T&T) (collectively Respondent Companies), each already holding motor freight common carrier permits under RCW 81.80, are operating as solid waste collection companies by hauling solid

waste for compensation without the necessary certificate required by RCW 81.77.040 and Washington Administrative Code (WAC) 480-70-016.

3 **Competing Motions for Summary Determination.** On April 25, 2008, Respondent Companies filed a Motion for Summary Determination seeking to fully resolve this case as a matter of law by arguing that their hauling of construction, demolition and land clearing (CDL) wastes to the Weyerhaeuser Material Recovery Facility (MRF) in Longview, Washington, should be classified as transportation of recyclables and therefore exempt from regulation under RCW 81.77. On that same day, Commission Staff (Staff) filed its own Motion for Partial Summary Determination seeking to resolve the same issues, but in the opposite manner. Staff asserts that even if it prevails a hearing remains necessary to determine other facts about the day-to-day operations of the Respondent Companies before the Commission may issue a complete ruling on all relevant issues.

4 **Responses to Motions.** On May 9, 2008, Intervenor Washington Refuse and Recycling Association (WRRA) filed its Response to Motions for Summary Determination. On May 15, 2008, Intervenor Waste Management of Washington (WMW) filed its Response to Motions for Summary Determination. Also on May 15, 2008, Intervenor Murrey's Disposal Company, Inc., Waste Connections of Washington, Inc., Lynnwood Disposal d/b/a Allied Waste of Lynnwood, and Eastside Disposal d/b/a Allied Waste of Bellevue filed an Answer to Respondents' Motion for Summary Adjudication. Each intervenor supported Staff's positions and opposed Respondent Companies' arguments.

5 Staff filed its Response to Respondent Companies' Motion on May 15, 2008. On that same day, Respondent Companies filed their Memorandum in Opposition to Staff's Motion.

## MEMORANDUM

### **A. Standard of Review**

6 The Commission's rules allow parties to move for summary determination of one or more issues in a case if the pleadings, together with any properly admissible evidentiary support, demonstrate that there is no genuine issue of any material fact

and that the moving party is entitled to judgment as a matter of law. WAC 480-07-380(2). Further, the rule allows the Commission to consider the applicable standards from Civil Rule 56.

7 The parties agree on the basic facts at issue in this proceeding, despite reaching irreconcilable conclusions upon applying the law to these agreed facts. As no party has raised any genuine issue with regard to any material fact, it is proper to resolve the disputed issues as a matter of law, based on these agreed facts:

**B. Agreed Facts**

8 Glacier Recycle, under a King County permit, operates and maintains a material recovery and recycling facility in Auburn, Washington.<sup>1</sup> Glacier Recycle provides its customers with containers into which they can deposit mixed CDL materials, wood waste, and/or asphalt roofing materials.<sup>2</sup> Glacier Recycle sorts the incoming waste stream and, as relevant here, hauls “industrial waste stabilizer” for disposal to a Weyerhaeuser Company facility in Cowlitz County.<sup>3</sup>

9 Hungry Buzzard operates and maintains a sorting facility in Snohomish County, Washington.<sup>4</sup> Hungry Buzzard provides its customers with containers into which they can deposit mixed CDL materials, wood waste, metals, and a variety of other potentially recyclable materials.<sup>5</sup> Hungry Buzzard sorts the incoming waste stream and, as relevant here, hauls some construction and demolition materials to a Weyerhaeuser Company facility in Cowlitz County.<sup>6</sup>

---

<sup>1</sup> See Exhibit A to Respondent Companies’ Motion; see also Declaration of Jonathan Thompson, Exhibit B to Commission Staff Motion (Thompson Declaration).

<sup>2</sup> See Thompson Declaration, Exhibit B, at 12.

<sup>3</sup> See Exhibit B to Respondent Companies’ Motion; see also Thompson Declaration, Exhibit B, at 14 and at 28 (the term “disposal” is taken from Glacier Recycle’s “2007 Recycling Survey Summary Info” sheet); see also Declaration of John Yeasting (Yeasting Declaration), ¶¶ 3-9 (describing Glacier Recycle’s sorting regime, various markets for sorted materials, and a range of corresponding commercial values), submitted with Respondent Companies’ Memorandum in Opposition to Commission Staff’s Motion.

<sup>4</sup> See Thompson Declaration, at 7-8.

<sup>5</sup> *Id.*, at 12 and 14 and 17. Hungry Buzzard’s “Transport Agreement” contract specifies that the company “accepts only recyclable material including construction, demolition, land clearing and yard debris.”

<sup>6</sup> *Id.*, at 13 and 15.

- 10 T&T operates and maintains a sorting facility in Bellingham, Washington.<sup>7</sup> T&T provides their customers with containers into which they can deposit mixed CDL materials, wood waste, sheetrock, asphalt, and a variety of other materials.<sup>8</sup> T&T sorts its incoming waste stream and, as relevant here, hauls some construction and demolition debris to a Weyerhaeuser Company facility in Cowlitz County.<sup>9</sup>
- 11 The Weyerhaeuser Company operates and maintains a Material Recovery Facility (MRF) and a Regional Limited Purpose Landfill in Cowlitz County.<sup>10</sup> The great majority of material that goes into the Weyerhaeuser landfill is first delivered to the MRF for sorting.<sup>11</sup> Weyerhaeuser's regional industrial operations produce 78 percent of the material received at the MRF, with the remainder from outside sources.<sup>12</sup> The facility is permitted to accept not only Weyerhaeuser's self-generated wastes related to forest products, but also CDL wastes and a variety of other industrial wastes.<sup>13</sup>
- 12 Operation of a landfill includes technical considerations such as the composition of waste accepted and placement of waste within cells of the landfill.<sup>14</sup> According to Richard Thiel, an engineer involved in designing Weyerhaeuser's landfill, "the more permeable and structural the waste is, the greater the benefit will be for internal drainage and slope stability."<sup>15</sup> Weyerhaeuser's operations tend to produce wastes "low in permeability and not highly structural," thus requiring the landfill to accept "as much high-permeability and structural waste, such as construction and demolition debris, as possible," in order to benefit leachate drainage and slope stabilization.<sup>16</sup>

---

<sup>7</sup> See *Id.*, Exhibit C.

<sup>8</sup> *Id.*, at 1 and 9.

<sup>9</sup> *Id.*, at 7.

<sup>10</sup> See Declaration of Larry Fulcher (Fulcher Declaration), ¶¶ 1-4; see also Exhibit A to Fulcher Declaration (operating permit). Commission Staff and Respondent Companies both submitted and relied upon the identical declaration from Mr. Fulcher, the manager for these Weyerhaeuser facilities.

<sup>11</sup> *Id.*, ¶ 5.

<sup>12</sup> *Id.*, ¶ 6.

<sup>13</sup> *Id.*, Exhibit A, Part 6.0, at 4-5.

<sup>14</sup> *Id.*, Exhibit B, letter of December 12, 2005. See also Declaration of Calvin R. Palmer in Support of Waste Management's Response (Palmer Declaration), ¶¶ 9 and 13.

<sup>15</sup> *Id.* Accord, Palmer Declaration, ¶ 11.

<sup>16</sup> *Id.*, ¶ 12 and Exhibit B, letter of December 12, 2005. See also Exhibit B, letter of June 5, 2006, discussing problems of managing landfill slope stability due to saturation levels of Weyerhaeuser's industrial wastes. Mr. Thiel reiterates his recommendations that the landfill accept as much "structural" waste as possible, to include CDL wastes, up to a level of 29%. See also Palmer Declaration, ¶¶ 11-12.

13 Respondent Companies haul varying amounts of CDL materials to the MRF and pay a tipping fee to Weyerhaeuser.<sup>17</sup> MRF personnel sort the CDL materials for large pieces of obviously recyclable materials and then mix the remaining CDL waste with Weyerhaeuser-generated wet industrial waste for loading on railcars destined for the landfill.<sup>18</sup> Weyerhaeuser's landfill manager considers the CDL materials to contribute a beneficial structure for the landfill.<sup>19</sup>

14 The Cowlitz County Solid Waste Management Plan (SWMP) defines solid waste to include CDL waste.<sup>20</sup> The Cowlitz County SWMP also distinguishes between recycling and diversion of materials from the waste stream. It defines "recycling" as

the separation of a given waste material from the waste stream and processing it so that it may be used again as a useful material for products that may or may not be similar to the original. The Washington Department of Ecology's (Ecology) definition of recyclable materials generally includes paper, metal, glass, plastic, and organics.<sup>21</sup>

15 According to the Cowlitz County SWMP, "diversion"

represents materials that have been diverted from disposal for reuse, and are separate from recycled materials. Diverted materials include those which do not fit the definition of recycling as promulgated by Ecology, such as anti-freeze, concrete, ash and sand used in asphalt production, land clearing debris, and materials for energy recovery (wood, used oil, and tires).<sup>22</sup>

16 The Cowlitz County SWMP deems materials to be "recyclable" if they are marketable and result in waste-stream diversion. According to this Plan, "a marketable recycled material is defined as a material with established end-users who purchase recyclable

---

<sup>17</sup> *Id.*, ¶¶ 7-8 and 19. The tipping fee ranges from \$25 to \$50 per ton, but averages \$35 per ton. Although Respondent Companies assert that their CDL materials are "low value residuals," the record contains no evidence to support assignment of any commercial value to these materials. In fact, Glacier Recycle apparently hauls CDL to the Weyerhaeuser MRF and pays a tipping fee or arranges for a G-permit company to dispose of it, presumably paying a similar fee. *See* Yeasting Declaration, ¶ 9.

<sup>18</sup> *Id.*, ¶¶ 9-12 and 14-16.

<sup>19</sup> *Id.*, ¶ 17.

<sup>20</sup> *See* Thompson Declaration, Exhibit E, at ¶ 2.1. The Plan classifies CDL wastes as "special wastes."

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

materials, use them as raw materials, and transform them into new products.”<sup>23</sup> Finally, the Plan specifies “construction debris (other than wood)” as a recyclable material; however, its listing of the principal market for recyclables does not include any reference to any Weyerhaeuser facility within Cowlitz County.<sup>24</sup>

### C. Applicable Law and Regulation

17 RCW 81.77.040 makes it unlawful for a “solid waste collection company to operate for the hauling of solid waste for compensation without first having obtained from the commission a certificate declaring that public convenience and necessity require such operation.”

18 RCW 81.77.010 provides the following relevant definitions:

(7) “Solid waste collection company” means every person or his or her lessees, receivers, or trustees, owning, controlling, operating, or managing vehicles used in the business of transporting solid waste for collection or disposal, or both, for compensation, except septic tank pumpers, over any public highway in this state as a “common carrier” or as a “contract carrier”;

(8) “Solid waste collection” does not include collecting or transporting recyclable materials from a drop-box or recycling buy-back center, or collecting or transporting recyclable materials by or on behalf of a commercial or industrial generator of recyclable materials to a recycler for use or reclamation. Transportation of these materials is regulated under chapter 81.80 RCW; and

(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.

19 In addition, as directed by RCW 81.77.010(9), above, RCW 70.95.030 provides the following definition:

---

<sup>23</sup> *Id.*, at ¶ 4.3.

<sup>24</sup> *Id.*, at Table 4-3. Although the information contained in this table is dated as current only to 2002, we note that the Weyerhaeuser landfill was first permitted in approximately 1992. *See* Fulcher Declaration, Exhibit A (initial paragraph of 2006 Operating Permit refers to original application).

(23) “Solid waste” or “wastes” means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, and recyclable materials.

20 Further, RCW 70.95.030 also includes definitions for “recyclable materials” and “recycling”:

(18) “Recyclable materials” means those solid wastes that are separated for recycling or reuse, such as papers, metals, and glass, that are identified as recyclable materials pursuant to a local comprehensive solid waste plan.

(19) “Recycling” means transforming or remanufacturing waste materials into usable or marketable materials for use other than landfill disposal or incineration.

21 WAC 480-70-041, the Commission’s rule defining “recyclable materials” and “recycling”, offers very similar definitions of these terms:

“Recyclable materials” means materials that are transported for recycling, reprocessing, reclamation, or for any process that extracts or modifies the commodity for reuse or another commercially valuable purpose.

“Recycling” means transforming or remanufacturing materials into usable or marketable materials for use other than landfill disposal or incineration.

#### **D. Analysis**

22 The Commission’s jurisdictional mandate directs the proper approach to this matter; the Commission supervises and regulates solid waste collection companies.<sup>25</sup> The Commission’s focus is on transportation. The Commission does *not* supervise or regulate the management of solid waste itself, to include waste reduction or

---

<sup>25</sup> RCW 81.77.

recycling.<sup>26</sup> Nevertheless, the Commission’s statutory authority in this area is interwoven with that of the Department of Ecology.<sup>27</sup>

23 In this case, there is no question that Respondent Companies collect and sort CDL debris to separate out recyclable materials. There is no question that Respondent Companies then transport some portion of these remaining CDL materials to the Weyerhaeuser MRF for subsequent placement in the Weyerhaeuser landfill in Cowlitz County. The only disputes are over the appropriate characterization of the materials transported to the landfill and what Weyerhaeuser does with them:

- Are they solid waste or are they recyclable materials?
- Are they being disposed of or are they being recycled?

### **1. Recyclable Materials – RCW 70.95.030**

24 The Department of Ecology’s statutory definition of solid waste includes demolition and construction wastes as well as recyclable materials.<sup>28</sup> However, the Commission specifically exempts recyclable materials from its statutory definition of solid waste.<sup>29</sup>

25 The Department of Ecology’s statutory definition of “recyclable materials” focuses on solid wastes “separated for recycling or reuse” that are also identified as recyclable material in a local government’s comprehensive solid waste plan.<sup>30</sup> Cowlitz County’s SWMP does identify construction debris as a recyclable material, but only if the materials are both marketable and diverted from the waste stream.<sup>31</sup>

26 Respondent Companies argue that because prior to transporting loads to Cowlitz County they “subject the CDL material to a process designed to extract general recyclables and materials specifically for transportation to Weyerhaeuser’s MRF, and out of the general waste stream,” these loads must be considered recyclable

---

<sup>26</sup> RCW 70.95. These topics are overseen by the Department of Ecology and various municipal authorities.

<sup>27</sup> RCW 81.77.010(9) explicitly defers to the definition of solid waste contained in RCW 70.95.030. Further, RCW 70.95.030(2) refers to the Commission, acknowledging its shared role in this area. *See also* RCW 70.95.400 which requires transporters of recyclable materials to obtain a Commission permit.

<sup>28</sup> RCW 70.95.030(23).

<sup>29</sup> RCW 81.77.010(9), which adopts the definition set out in RCW 70.95.030 subject to this exception.

<sup>30</sup> RCW 70.95.030(18).

<sup>31</sup> *See, infra*, at ¶¶ 13-14 and notes 20-24.



materials.<sup>32</sup> There is no dispute that Respondent Companies sort through the CDL wastes they collect and transport to their own sorting yards, separating out various types of recyclable materials.<sup>33</sup> However, the evidence demonstrates that the Respondent Companies then take only what remains to Weyerhaeuser's MRF.<sup>34</sup> The remnants of Respondent Companies' sorting processes are not automatically classified as recyclable materials under RCW 81.77.010 or RCW 70.95.030.

- 27 The Respondent Companies offer no evidence that their CDL wastes are marketable. According to Black's Law Dictionary, "marketable" means "salable" and describes "such things as may be sold in the market at current value" or "those for which a buyer may be found."<sup>35</sup> The Cowlitz County SWMP itself defines "marketable" by explaining that end-users "purchase" the recyclable materials. It is undisputed that Weyerhaeuser does not purchase CDL waste from any of the Respondent Companies. To the contrary, the Respondent Companies pay Weyerhaeuser a tipping fee to accept these loads.<sup>36</sup> Under the agreed facts of this case, the Respondent Companies' CDL wastes delivered to Weyerhaeuser's MRF are not marketable and thus cannot be considered recyclable materials under the Cowlitz County SWMP.
- 28 Further, Respondent Companies' argument that their delivery of CDL materials to Weyerhaeuser's limited purpose landfill in Cowlitz County is a diversion from "the general waste stream" is not sustainable. It is uncontested that Weyerhaeuser is operating a landfill, albeit one that is private and for a limited purpose. As noted in the Cowlitz County SWMP, diverting solid waste from the waste stream means actually "diverted from disposal for reuse."<sup>37</sup> At best, Respondent Companies are diverting their CDL waste from its original waste stream, but this material reenters the waste stream in Cowlitz County when it is disposed of at Weyerhaeuser's landfill.<sup>38</sup>

---

<sup>32</sup> Respondent Companies' Motion for Summary Determination, at 8.

<sup>33</sup> See, *infra*, at ¶¶ 7-9 and notes 1-9.

<sup>34</sup> The dregs of Glacier Recycle's process are either ground up for use as alternate daily cover or sent as "industrial waste stabilizer" to Weyerhaeuser's MRF. See Thompson Declaration, Exhibit B, at 14 and 28. Hungry Buzzard notes that "all sorted material moves on for re-use" but conspicuously absent from its list of individual streams sorted for export (wood, concrete, metals, cardboard, plastics, aggregate, composition roofing, and sheetrock) is any mention of residual CDL waste. See Thompson Declaration, Exhibit D at 8.

<sup>35</sup> Black's Law Dictionary, Abridged Fifth Edition (1983), at 500.

<sup>36</sup> See, *infra*, at ¶ 12 and note 17.

<sup>37</sup> See, *infra*, at ¶ 13 and note 22.

<sup>38</sup> Respondent Companies' argument that the Weyerhaeuser landfill's "reuse" of the material is not disposal is taken up separately, below.

29 Under the definitions set out in RCW 70.95.030, the Respondent Companies are not transporting “recyclable materials” to Weyerhaeuser’s MRF.

## 2. Recyclable Materials – WAC 480-70

30 The Commission’s regulatory definition of “recyclable materials” focuses on transportation of materials from one location to another where some process for extraction or modification occurs, allowing reuse or another commercially valuable purpose.<sup>39</sup> In determining whether a company’s operations should be exempted from solid waste collection regulation, the Commission looks to particular circumstances.<sup>40</sup>

31 The Commission previously confronted the question of what “recyclable materials” means under RCW 70.95.030 in 1998 in the case of *Drop Boxes R Us, Inc.*<sup>41</sup> In that case, the Commission noted that “virtually anything is ‘capable of being recycled’” and went on to recognize that “if the mere possibility of being transformed to a condition offering further beneficial use were all that is necessary to classify something as ‘recyclable material,’ there would be nothing left for the Commission to regulate under Chapter 81.77 RCW.”<sup>42</sup>

32 The Commission’s focus in *Drop Boxes* was on the various intentions of generator, transporter, and receiver of the materials in question. First, the Commission cited to a prior case’s rationale that

[t]he operative distinction is the purpose of the transportation. If the transportation is for disposal, the material is garbage. If the transportation is to move an item to a location for a higher use, the transportation is motor carriage.<sup>43</sup>

The Commission also noted that in some circumstances, a material could be classified as solid waste because it had no commercial value while in other circumstances the

---

<sup>39</sup> WAC 480-70-041.

<sup>40</sup> WAC 480-70-016. The specific example regarding soil contained in WAC 480-70-016(3) is deferred for later discussion, below.

<sup>41</sup> See Commission Decision and Order Denying Administrative Review; Affirming and Adopting Initial Order, In the Matter of Determining the Proper Classification of Drop Boxes R Us, Inc. and In the Matter of Determining the Proper Classification of Puget Willamette Xpress, Inc., Order M.V.G. No. 1840, Hearing Nos. H-5039 and H-5040 (October 8 1998).

<sup>42</sup> *Id.*, at 7.

<sup>43</sup> *Id.*, at 8, quoting from *In re Sunshine Disposal, Inc.*, Order M.V. No. 133753, App. No. E-19104 (April 1986).

same material could become a marketable commodity and exempted from solid waste regulation.<sup>44</sup>

33 Finally, the *Drop Boxes* case discussed a case most apposite to this one: *Joray Trucking Corp. Common Carrier Application* which analyzed classification of debris from demolition and excavation work for purposes of determining the former Interstate Commerce Commission's jurisdiction.<sup>45</sup> In evaluating whether such material was property or merely debris and rubble, the *Joray Trucking* opinion stated:

The debris, although it may ultimately serve a purpose in helping to fill wasteland, is not purchased from the contractors who desire its removal and to them it has a negative value as a commodity, . . . The contractors are not concerned with any beneficial ownership of the debris, they do not select the destination to which it is to be taken (they may not even know where it will be taken), and it would appear they relinquish any nominal ownership of the commodity at the time it is loaded and removed from the demolition or excavation site. Thus, we are inclined to conclude that the commodity does not have the attributes commonly associated with the word property.<sup>46</sup>

The *Drop Boxes* decision ultimately concluded that because the materials transported in that case became landfill they were properly classified as solid waste, not as recyclable materials.<sup>47</sup>

34 WAC 480-70-016(4) sets out multiple factors for determining whether a company's operations require a solid waste certificate under RCW 81.77:

- (a) The intent of the shipper;
- (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;

---

<sup>44</sup> *Id.*, at 8, citing to C&C Transfer Co., Inc., Order M.V. No. 143632, App. No. E-74249 (July 1991) (Commission found that agricultural sludge was solid waste when the shipper had to pay for its disposal but became a commodity when used to enrich soil, for animal feed, or some other valuable end use).

<sup>45</sup> *Id.*, at 8, citing to *Joray Trucking Corp. Common Carrier Application*, 99 M.C.C. 109 (ICC 196 5).

<sup>46</sup> *Id.*, quoting from *Joray Trucking*, 99 M.C.C. at 110.

- (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.

Of these criteria, the first five are relevant to the questions raised by the motions.

35 *Shipper's Intent and Special Handling Conditions.* The contracts between Respondent Companies and their customers are the only evidence available of original "shipper" intent. These documents demonstrate that Respondent Companies are paid to haul away mixed CDL wastes. Further, these contracts contain limitations on the types of waste Respondent Companies will receive, but aside from knowing that the materials will be legally recycled or disposed of, the shipper places no conditions on the shipment.

36 *Intended and Actual Destination.* The mixed CDL wastes endure a two part journey. First, Respondent Companies haul these loads to their own sorting yards for processing. After the sorting process, the remaining materials relevant to this matter are shipped to Weyerhaeuser's MRF. As in *Drop Boxes*, there can be no dispute here that the materials delivered to Weyerhaeuser's MRF ultimately become landfill.

37 *Value.* As in *Joray Trucking*, we conclude that these mixed CDL wastes have negative value to the original shippers: they pay Respondent Companies to haul them away. Similarly, the post-sorting CDL wastes that Respondent Companies deliver to Weyerhaeuser's MRF also have negative value, as Respondent Companies pay a tipping fee for Weyerhaeuser's acceptance of each shipment.

38 Each of these factors guides us to conclude that Respondent Companies are disposing of solid waste when they deliver their loads to the Weyerhaeuser MRF. Under the Commission's regulations, Respondent Companies are not delivering recyclable materials to a location where for reuse or in another commercially valuable purpose.

---

<sup>47</sup> *Id.*, at 10. Although the *Drop Boxes* decision noted that the Respondents in that case paid a solid waste tax on their materials, a tax inapplicable to recyclable materials, there is no evidence of such taxes paid or not paid in this case. The absence of such information does not alter the current legal analysis.

### 3. Recycling

39 The Department of Ecology and the Commission define “recycling” essentially the same way: transforming or remanufacturing materials into usable or marketable materials for use other than landfill disposal or incineration.<sup>48</sup> Both agencies concur that landfill disposal is *not* recycling.<sup>49</sup> Respondent Companies object to this interpretation and contend that if Weyerhaeuser puts delivered CDL material to beneficial use in its the landfill, the materials are being recycled.<sup>50</sup>

40 Without question, the engineering and construction of a landfill involves materials that are not solid waste. The liner, venting pipes, and leachate collection systems are functioning parts of a landfill that are required in order to comply with regulations.<sup>51</sup> These component parts of the landfill manage the containment and breakdown of the solid waste ultimately deposited into the facility. The dispute in this case is whether some (or all) of the solid waste deposited into the landfill made after engineering, permitting, and construction, can be considered as other than solid waste. In a sense, the question becomes “is everything disposed of in a landfill necessarily solid waste?”

41 WAC 480-70-016(3) attempts to answer this question by way of an example:

. . . if soil is transported to a landfill to become part of the cover of the landfill, the 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.

Thus, when the soil in this example is intended to become a working part of the landfill, a cover to prevent dispersal of solid waste by scavengers or weather conditions, the soil itself is not solid waste. On the other hand, if the soil in this example is dumped into the landfill for disposal, it is solid waste.

---

<sup>48</sup> RCW 70.95.030(19) and WAC 480-70-041. The Commission’s regulation tracks word for word with Ecology’s statutory definition, omitting only the word “waste” as a modifier before the word “materials.”

<sup>49</sup> See Declaration of Laurie Davies, submitted in support of Commission Staff Motion.

<sup>50</sup> Respondent Companies’ Motion for Summary Determination, at 8-10.

<sup>51</sup> See, e.g., WAC 173-304.

42 Respondent Companies argue that Weyerhaeuser’s mixing of their CDL waste with the Weyerhaeuser Company’s own wastes to achieve a proper balance between compaction and drainage in the landfill is directly analogous to the above example.<sup>52</sup> If this were so, the Commission’s stated concerns in *Drop Boxes* are on point:

Respondents . . . urge a parsimonious reading of our governing statutes that, taken to its logical conclusion, would wholly eviscerate our authority under Chapter 81.77 RCW.<sup>53</sup>

43 As most clearly recognized by Intervenor Waste Management of Washington, the logic advanced by Respondent Companies “would lead to an absurd result because arguably all solid waste in a landfill serves a valuable function by bringing a landfill to an elevated final grade, thereby promoting drainage and structural integrity of the final closed facility.”<sup>54</sup>

44 In order to operate safely and efficiently, there is no dispute that Weyerhaeuser’s landfill requires a portion of structural materials to be deposited along with its forest product wastes. There is no dispute that Respondent Companies’ CDL wastes help Weyerhaeuser to meet this need. However, characterizing Weyerhaeuser’s acceptance of the CDL waste as recycling is misplaced. Weyerhaeuser is using Respondent Companies’ CDL wastes for landfill disposal. Under both RCW 70.95.030(19) and WAC 480-70-041, this practice cannot be characterized as recycling.

45 Respondent Companies are paying Weyerhaeuser to dispose of their CDL wastes in a landfill, alongside and as an integral part of all the other waste being deposited in Weyerhaeuser’s landfill. A landfill’s requirement that some proportion of its waste be less permeable than others is simply prudent recognition of the physics involved in building up large piles of putrescible and non-putrescible materials that decompose and shed their water content at varying rates.<sup>55</sup> Weyerhaeuser may not have originally intended to desire the types of hydrophobic detritus that Respondent Companies now deliver, but a landfill operator’s strategic choices as to what types

---

<sup>52</sup> Respondent Companies’ Motion for Summary Determination, at 9.

<sup>53</sup> *Drop Boxes*, at 3.

<sup>54</sup> Waste Management of Washington’s Response to Motions for Summary Determination, at 7, ¶ 16.

<sup>55</sup> See Fulcher Declaration, ¶¶ 10-12, and Exhibit B.

and quantities of wastes are accepted at any given time in a landfill's lifespan does not convert the landfill's function from dumping and disposal to reuse and recycling.

46 Mr. Thiel's June 2006 letter to Larry Fulcher demonstrates that ensuring structural reliability within Weyerhaeuser's landfill by intentionally incorporating "structural waste" from outside sources into the landfill is merely management of its contents, not construction of the landfill itself.<sup>56</sup> Respondent Companies' CDL waste may at some level be a necessary ingredient in the Weyerhaeuser landfill, but its strategic use and placement therein does not necessarily imbue the debris with commercial value.<sup>57</sup>

47 Based on all of the foregoing discussion, Weyerhaeuser is not recycling the CDL waste that Respondent Companies pay the Weyerhaeuser MRF to accept.

#### **E. Conclusion**

48 Respondent Companies are not transporting recyclable materials to Weyerhaeuser's MRF in Cowlitz County. Further, Weyerhaeuser's mixing of these CDL wastes with their own industrial wastes under the permitting requirements for its landfill does not constitute recycling under any legal definition. Therefore, Respondent Companies are transporting solid waste when they deliver mixed CDL materials to the Weyerhaeuser MRF.

### **FINDINGS OF FACT**

49 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary findings of fact, incorporating by reference pertinent portions of the preceding detailed findings:

---

<sup>56</sup> See Fulcher Declaration, Exhibit B. In questioning whether consuming one-third of the landfill's capacity with CDL wastes is counter to Weyerhaeuser's original purpose and need for its limited purpose landfill, Mr. Thiel concludes that "allowing one-third of the current waste stream to consist of C&D and land clearing type of debris is well within the planned landfill capacity, especially since a certain portion of the landfill capacity, albeit undefined, had been allocated to this type of waste even since the beginning."

<sup>57</sup> Arguably, if Weyerhaeuser was purchasing the CDL waste from Respondent Companies, the same materials might be seen in a different light as marketable. However, that case is not presented here.

- 50 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington vested by statute with the authority to regulate solid waste collection companies. *RCW 81.77.*
- 51 (2) Glacier Recycle, LLC, Hungry Buzzard Recovery, LLC, and T&T Recovery, Inc., each currently hold common carrier certificates from the Commission under RCW 81.80.
- 52 (3) The Commission initiated a proceeding on December 28, 2007, to determine if Glacier Recycle, LLC, Hungry Buzzard Recovery, LLC, and T&T Recovery, Inc., should be classified as solid waste haulers under RCW 81.77.
- 53 (4) There are no genuine issues as to any material facts in this case.
- 54 (5) Respondent Companies each collect and sort construction, demolition and land clearing waste from their customers before transporting the remaining portion to Weyerhaeuser's Material Recovery Facility in Cowlitz County, Washington.
- 55 (6) Respondent Companies pay a tipping fee to Weyerhaeuser to accept these materials.
- 56 (7) Weyerhaeuser mixes the materials received from Respondent Companies with its own industrial waste and deposits it into a Weyerhaeuser landfill.

### **CONCLUSIONS OF LAW**

57 Having discussed above all matters material to this decision, and having stated detailed findings, conclusions, and the reasons therefore, the Commission now makes the following summary conclusions of law incorporating by reference pertinent portions of the preceding detailed conclusions:

- 58 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter and the parties to this proceeding.
- 59 (2) Commission Staff is entitled to judgment as a matter of law on the issues presented in its Motion for Partial Summary Determination.



- 60 (3) Weyerhaeuser is not “recycling” Respondent Companies’ construction, demolition and land clearing materials when it mixes them with its own less permeable solid waste for deposit into the Weyerhaeuser landfill.
- 61 (4) Respondent Companies are transporting solid waste, not recyclable materials, to Weyerhaeuser’s MRF in Cowlitz County.
- 62 (5) Transportation of construction, demolition and land clearing waste to be permanently placed in a landfill is disposal of the material subject to regulation under RCW 81.77.

**ORDER**

THE COMMISSION ORDERS:

- 63 (1) Glacier Recycle, LLC, Hungry Buzzard, LLC and T&T Recovery, Inc.’s, Motion for Summary Determination is denied.
- 64 (2) Commission Staff’s Motion for Partial Summary Determination is granted.
- 65 (3) In preparing for a hearing on the merits of the remaining issue in this docket, the parties shall adhere to the previously established procedural schedule.

Dated at Olympia, Washington, and effective June 13, 2008.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM  
Administrative Law Judge