

December 23, 2009

David W. Danner, Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P. O. Box 47250
Olympia, Washington 98504-7250

Re: *In 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

Dear Mr. Danner:

Commission Staff hereby provides its individual status report as required by Judge Torem's September 10, 2009, Notice of Requirement to File Final Status Report Prior to Issuance of New Procedural Schedule.

There are two important principles that Staff wanted to bring before the Commission for a determination in this case.

First, Staff sought to a finding that when a carrier collects construction, demolition, and land clearing (CDL) waste for transportation to the Weyerhaeuser facility in Longview for use as "industrial waste stabilizer" it is engaging in solid waste collection regulated under RCW 81.77.

Second, Staff sought a determination concerning the circumstances under which a carrier collecting CDL material, and transporting that material to a sorting yard for removal of recyclable materials, would require a solid waste certificate under RCW 81.77 due to an excessive amount of residual non-recyclable waste.

The ALJ's Order on Motions for Summary Determination resolved the first issue in Staff's favor. As noted in Judge Torem's Notice, the Order found that "the respondent companies' transportation of construction, demolition, and land clearing (CDL) waste for deposit into a landfill constituted the hauling of solid waste for disposal, not recycling."

Despite this finding, it does not necessarily follow that the Respondents' are subject to regulation under RCW 81.77 as solid waste collection companies and that they either should change their practices or cease operations. That is because the Respondents variously assert that they either no longer transport materials to Weyerhaeuser or that they only transport a

relatively small proportion of material to Weyerhaeuser after sorting out the bulk of the CDL that they collect for bona fide recycling purposes.

Following the Order on Motions for Summary Determination on the first issue, the parties agreed to suspend the procedural schedule pending the outcome of the rulemaking in docket TG-080591. That rulemaking includes within its scope the question of when the activities of a carrier holding itself out as a transporter of recyclable CDL, like each of the Respondents, fall within the definition of solid waste collection under RCW 81.77.

The rulemaking proceeding has taken much longer than Staff anticipated when the proposal was made to suspend the procedural schedule in this case. However, recent activity in that docket bodes well for the adoption of a rule that would resolve all issues remaining to be resolved in this docket. Specifically, the Commission published a draft rule on November 16, 2009, with a request for comments from stakeholders by January 8, 2010. The draft rule is focused solely on the issue of where a transporter of recyclable CDL waste may transport that material and how much residual, non-recyclable waste is permissible without the transporter becoming subject to regulation under RCW 81.77.

Because of these recent developments in the rulemaking docket, Staff recommends that Judge Torem schedule a status conference on a date at least two weeks after the comment deadline called for in the rulemaking proceeding. At that point, Staff should have a better idea of where the stakeholders, including the parties to this case, stand on the proposed rule language. If it appears from the comments that the issue does not lend itself to resolution through rulemaking, and instead must be resolved through case-by-case adjudication, then Staff will recommend that Judge Torem reestablish the procedural schedule in this case, so that the parties may resume discovery and proceed to hearing. If, on the other hand, it appears that the prospects for resolving the matter through rule adoption are favorable, then Staff will recommend dismissal of this adjudicative proceeding as to the remaining issues. At that time, Staff might also recommend that the matter proceed to a final order on the issues already decided in the Order on Motions for Summary Determination.

Sincerely,

JONATHAN C. THOMPSON
Assistant Attorney General

JCT/emd
cc: Parties