

BEFORE THE WASHINGTON 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 TC-072226

SETTLEMENT AGREEMENT

1 This settlement agreement (Agreement) is entered into by the undersigned parties for
the purpose of resolving all issues raised in the above docket. Because the undersigned
parties are not all of the parties to the proceeding, this Settlement Agreement represents a
“multiparty settlement” under WAC 480-07-730.

I. PARTIES

2 The parties to this Agreement are Glacier Recycle, LLC, Hungry Buzzard Recovery,
LLC, and T&T Recovery, Inc. (collectively “the Respondent Companies”), and the Staff of
the Washington Utilities and Transportation Commission (Staff) (collectively, “the Settling
Parties”).

II. BACKGROUND

3 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 the Respondent Companies, each of
which holds a motor freight common carrier permit under RCW 81.80, are operating as solid
waste collection companies, hauling solid waste for compensation without the necessary
certificate required by RCW 81.77.040 and Washington Administrative Code (WAC) 480-
70-016.

4 The Commission issued an Order Instituting Special Proceeding and Notice of
Prehearing Conference on Thursday, December 28, 2007.

5 In June 2008, Judge Torem ruled on the parties' cross-motions for partial summary
determination, reducing the number of issues remaining for hearing. Judge Torem granted
Commission Staff's Motion for Partial Summary Determination and denied the Respondent
Companies' Motion for Summary Determination. In sum, Order 06 found that
transportation of construction and demolition (C&D) debris for deposit into a landfill
constitutes disposal, not recycling, even if the deposited waste benefits the structural
integrity of the landfill. Order 06 concluded that when the Respondent Companies
transported C&D debris to the Weyerhaeuser materials recovery facility in Longview, they
were hauling solid waste, not recyclables.

6 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;
- (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.

Order 06 addressed factors (a) through (e), leaving the final two for further determination:
whether Respondent Companies are primarily engaged in business other than transporting
solid waste (including the frequency of their transportation of solid waste) and how they
hold themselves out to the public.

7

Since the entry of Order 06, the parties have attempted to resolve the remaining issues through settlement negotiations, as well as through a Commission-sponsored rulemaking, in Docket TG-080591. A major purpose of that rulemaking is to flesh out RCW 81.77.010(8). That statute exempts from the definition of “solid waste collection” the activity of “collecting or transporting recyclable materials . . . on behalf of a commercial or industrial generator of recyclable materials to a recycler for reuse or reclamation.” On November 11, 2009, the Commission solicited comments on a draft rule that, unlike a previous draft, is not intended to address every set of circumstances to which the commercial recyclables exemption from regulation might apply. Instead, the recent draft is narrowly focused on the question of when a company engaging in for-hire transportation of construction and demolition (C&D) debris for recycling is exempt from regulation as a solid waste collection company. If adopted by the Commission, the current draft would provide an objective standard, based on the percentage of C&D debris that is ultimately recycled versus disposed, for deciding whether a purported transporter of recyclable C&D debris 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” (factor (f) under WAC 480-70-016(4)). The Settling Parties agree that such a standard should be adopted through rulemaking rather than through case-by-case adjudication and therefore propose this Settlement Agreement.

III. AGREEMENT

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The Settling Parties have reached agreement on the issues raised in the above docket and present their agreement for the Commission’s consideration and approval. The Settling Parties therefore adopt the following Agreement, which the Settling Parties enter into

voluntarily, to resolve the matters in dispute between them and to expedite the orderly disposition of this proceeding.

9 (1) The Respondent Companies agree not to pursue administrative or judicial review of Judge Torem's Order 06 on Motions for Summary Determination. Further, the Settling Parties jointly request that the Commission endorse and adopt Judge Torem's Order 06 on Motions for Summary Determination as its own¹ so that that it will have the precedential effect of a Commission order.

10 (2) The Respondent Companies shall desist from transporting construction and demolition (C&D) debris from customer locations to the Weyerhaeuser facility in Longview without first petitioning for and obtaining a certificate of public convenience and necessity under RCW 81.77.040. This restriction does not apply to debris generated by the Respondent Companies' own demolition activities and transported for disposal by the respondents as an incidental adjunct to those demolition activities. This restriction also does not apply to residual debris that is left over after a Respondent Company sorts out recyclable materials at its own material recovery facility, so long as the amount of residual material disposed of or delivered for use as industrial waste stabilizer remains small in relation to the overall amount collected by the Respondent Company.

11 (3) Each of the Respondent Companies must file with the Commission, and provide to counsel for the intervener parties who have signed the exhibit to the protective order in this docket, a copy of the annual report that each Respondent Company files with

¹ See WAC 480-07-825(7)(a) and (c), and (8), (9). See also, TV-071125 Order 05 Granting Staff Request to Enter a Final Order.

Department of Ecology in the years 2010, 2011, and 2012 pursuant to WAC 173-350² or for the Washington State Recycling Survey.³

IV. GENERAL PROVISIONS

12 The Settling Parties agree that this Agreement reflects the settlement of all remaining contested issues between them in this proceeding. The Settling Parties understand that this Agreement—including the admissions contained herein—is not binding unless and until accepted by the Commission. If the Commission does not accept this Agreement, including all of its terms and conditions without change, then the Settling Parties shall be free to assert their pre-settlement positions and agree that neither this Agreement nor any statements or admissions contained herein shall be admissible or used for any purpose in this docket or any other proceeding for any purpose.

13 The Settling Parties agree to cooperate in submitting this Agreement promptly to the Commission for acceptance. The Settling Parties agree to support adoption of this Agreement in proceedings before the Commission. No party to this Agreement or its agents, employees, consultants, or attorneys will engage in advocacy contrary to the Commission's adoption of this Agreement.

14 The Settling Parties agree (1) to provide each other the right to review in advance of publication any and all announcements or news releases that the other party intends to make about the Agreement (with the right of review to include a reasonable opportunity to request changes to the text of such announcements) and (2) to include in any news release or

² See <http://www.ecy.wa.gov/biblio/ecy040168.html>

³ See <http://www.ecy.wa.gov/biblio/ecy040166.html>

announcement a statement that the Staff's recommendation to approve the settlement is not binding on the Commission itself.

15 The Settling Parties have entered into this Agreement to avoid further expense, inconvenience, uncertainty, and delay. The Settling Parties recognize that this Agreement represents a compromise of the Settling Parties' positions. As such, conduct, statements, and documents disclosed during negotiations of this Agreement shall not be admissible as evidence in this or any other proceeding, except in any proceeding to enforce the terms of this Agreement or any Commission order fully adopting those terms. This Agreement shall not be construed against either party because it was a drafter of this Agreement.

16 The Settling Parties have negotiated this Agreement as an integrated document to be effective upon execution. This Agreement supersedes all prior oral and written agreements on issues addressed herein. Accordingly, the Settling Parties recommend that the Commission adopt this Agreement in its entirety.

17 The Settling Parties may execute this Agreement in counterparts and as executed shall constitute one agreement. Copies sent by facsimile are as effective as original documents.

18 The Settling Parties shall take all actions necessary as appropriate to carry out this Agreement.

19 In the event that the Commission rejects all or any portion of this Agreement, each party reserves the right to withdraw from this Agreement by written notice to the other party and the Commission. Written notice must be served within 10 business days of the Order rejecting part or all of this Agreement. In such event, neither party will be bound or

prejudiced by the terms of this Agreement, and either party shall be entitled to seek reconsideration of the Order.

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

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Transportation Commission

Dated: 3/19, 2010.

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



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LLC, Hungry Buzzard Recovery, LLC, and
T&T Recovery, Inc.

Dated: 3/19, 2010.